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Public Comments Processing,
Attn: FWS-HQ-ES-2025-0049
U.S. Fish and Wildlife Service
MS: PRB/3W
5275 Leesburg Pike
Falls Church, VA 20041-3803

Re: Comments on the U.S. Fish and Wildlife Service's Request for Information on Endangered Species Act (ESA) Section 10(a) Program Implementation; Development of Conservation Benefit Agreements and Habitat Conservation Plans, and Issuance of Associated Enhancement of Survival and Incidental Take Permits, FWS-HQ-2025-0049 (June 9, 2025)

To Whom It May Concern:

The American Petroleum Institute ("API"), the American Exploration and Production Council ("AXPC"), the Independent Petroleum Association of America ("IPAA"), GPA Midstream Association, Marcellus Shale Coalition, the North Dakota Petroleum Council ("NDPC"), the Petroleum Alliance of Oklahoma, the Texas Oil and Gas Association ("TXOGA"), and Utah Petroleum Alliance ("UPA") (collectively, the "Associations") appreciates the opportunity to provide comments in response to the Fish and Wildlife Service's ("FWS" or "the Service") request for information ("RFI") issued on June 9, 2025. This RFI sought feedback on improvements to the development and implementation of survival permits associated with Conservation Benefit Agreements (CBAs) and Incidental Take Permits (ITPs) associated with Habitat Conservation Plans (HCPs) under Section 10(a) of the Endangered Species Act (ESA). We appreciate the Trump Administration's desire to achieve a meaningful reduction in regulatory burdens while continuing to meet statutory obligations, advance American energy independence, and ensure the responsible stewardship of the nation's public lands and resources.

API is committed to meeting the challenge of providing affordable and reliable energy. As the leading trade association representing the entire value chain of the U.S. oil and natural gas industry, API supports policies that strengthen our nation's energy security and our economy while protecting our environment.

API is a national trade association representing nearly 600 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 and its members are dedicated to meeting environmental requirements, while economically developing and supplying energy resources for consumers. Our industry employs a wide variety of protective and beneficial practices and technologies during all phases of our operations to foster the safe and responsible development of the nation's oil and natural gas resources while minimizing potential impacts to species, habitats, land, water, and other natural resources.

The American Exploration and Production Council (AXPC) is a national trade association representing the leading independent oil and natural gas exploration and production companies in the United States. AXPC companies produce some of the cleanest and safest oil and natural gas in the world, while supporting millions of Americans in high-paying jobs and investing a wealth of resources in our communities. Dedicated to safety, science, and technological advancement, our members strive to deliver affordable, reliable energy while positively impacting the economy and the communities in which we live and operate. As part of this mission, AXPC members understand and promote the importance of ensuring positive environmental and public-welfare outcomes and responsible stewardship of the nation's natural resources. It is important that regulatory policy enables us to support continued progress on both fronts through innovation and collaboration. AXPC works with regulators and policymakers to create sound, fact-based public policies that enable responsible development of America's vast oil and natural gas resources in order to meet domestic and global energy demands.

The Independent Petroleum Association of America (IPAA) is a national upstream trade association representing thousands of independent oil and natural gas producers and service companies across the United States. Independent producers develop 91 percent of the nation's oil and natural gas wells. These companies account for 83 percent of America's oil production, 90 percent of its natural gas and natural gas liquids (NGL) production, and support over 4.5 million American jobs.

GPA Midstream Association is composed of over 50 corporate members that directly employ over 57,000 employees that are engaged in the gathering, transportation, processing, treating, storage and marketing of natural gas, natural gas liquids (NGLs), crude oil, and refined products, commonly referred to in the industry as "midstream activities." In 2023, GPA Midstream members operated over 500,000 miles of pipelines, gathered over 91 Bcf/d of natural gas, and produced over 5.3 million barrels/day of NGLs from over 365 natural gas processing facilities.

The Marcellus Shale Coalition is a statewide trade association with a regional membership of over 150 member companies. These companies are engaged in all aspects of the unconventional natural gas industry, including upstream, midstream, transmission, processing and downstream utilization, as well as the professional service firms, supply chain, contractors and skilled trades organizations that work with the industry. MSC member companies are responsible for producing, processing and transporting

more than 95% of Pennsylvania's natural gas, and have helped make Pennsylvania the nation's second largest natural gas producing state in the nation.

Established in 1952, the North Dakota Petroleum Council (NDPC) is a trade association that represents more than 550 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region. Our members have an extensive history of responsible oil and gas development and environmental stewardship in North Dakota, which boasts some of the cleanest air and water in the country.

The Petroleum Alliance of Oklahoma represents more than 1,700 individuals and member companies and their tens of thousands of employees in the upstream, midstream, and downstream sectors and ventures ranging from small, family-owned businesses to large, publicly traded corporations working throughout the Mid-Continent oil and natural gas-producing region of the United States. Our members produce, transport, process, and refine the vast majority of Oklahoma's crude oil and natural gas.

The Texas Oil & Gas Association (TXOGA) is a statewide trade association representing every facet of the Texas oil and gas industry including small independents and major producers. Collectively, the membership of TXOGA produces approximately 90 percent of Texas' crude oil and natural gas and operates the vast majority of the state's refineries and pipelines. In fiscal year 2024, the Texas oil and natural gas industry supported over 490,000 direct jobs and paid $27.3 billion in state and local taxes and state royalties, funding our state's schools, roads and first responders.

Utah Petroleum Alliance (UPA) is a statewide oil and gas trade association established in 1958 representing companies involved in all aspects of Utah's oil and gas industry. UPA members range from independent producers to midstream and service providers, to major oil and natural gas companies, including refineries, widely recognized as industry leaders responsible for driving technology advancement resulting in environmental and efficiency gains.

Voluntary conservation agreements such as HCPs and CBAs are helpful mechanisms to minimize impacts to species and habitat and contribute to overall species conservation goals, while avoiding unwarranted access restrictions that could obstruct national energy security objectives. A significant value of these plans lies in their ability to streamline or even proactively preempt the often-lengthy Incidental Take Permit process, a benefit that works both in favor of industry and the Service. Though not applicable in all situations and for all species, the Associations' members already successfully leverage various CBAs and HCPs for species such as the Dunes Sagebrush Lizard, the Lesser Prairie Chicken, the Texas Hornshell Mussel, and the Monarch Butterfly. Critical learnings from these initiatives can be applied to future conservation plans, as per the suggestions delivered below.

We appreciate your attention to these critical initiatives and look forward to working with you. If you have any questions about the matters discussed in this letter, please contact the Associations' representatives below.

Sincerely,

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COMMENTS

The Service invited information and comments for improving the efficiency and effectiveness of conservation benefit agreements, habitat conservation plans, and their respective enhancement of survival permits and incidental take permits. The Associations have responded in sections related to the six key areas that the Service sought comments concerning.

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I. Barriers that prevent applicants from pursuing development of conservation benefit agreements and habitat conservation plans

A. Costs

Operators find cost to be a significant barrier. Development cost for a Conservation Benefit Agreement (CBA; formerly Candidate Conservation Agreement (CCA) and Candidate Conservation Agreement with Assurances (CCAA)) or Habitat Conservation Plan (HCP) are on the order of $250k-$500k. Enrollment costs can reach upwards of $500k-$1million, especially in the case of CBAs where proponents may wish to enroll large land holdings. Mitigation cost to comply with the terms of a CBA or HCP can add another $15k-$30k per acre disturbed, especially when purchase of mitigation credits is required.

Participants have limited control over the implementation of conservation activities under CBAs and HCPs. Fees collected under these types of agreements can be directed to areas that are far from operational activities with limited potential for participant recognition and engagement. Particularly for CBAs, fees are based on development projections rather than actual development activity. At times, capital projects will slow down due to market variations or aging reserves, making it difficult to justify the cost for continuous enrollment of acreage that may or may not be developed. As a result, it can be considerably more cost-effective to permit projects on an individual basis than to enroll in a CBA or HCP. The Associations thus recommend FWS consider analyzing opportunities to streamline the application process to minimize development costs and reduce fees associated with enrollment and analyze alternative uses of fees for enrollment or mitigation that can be reused by the participant.

B. Time Horizon and Cooperation

Development of CBAs and HCPs is labor intensive and has long lead times that can easily span several years. This not only presents a hinderance to oil and gas projects but also delays or even impedes the implementation of conservation actions through these plans.

An active working relationship between operators and the USFWS is essential to align on mutually agreeable conservation plans. However, operators often have no certainty as to when to expect such engagement and sometimes don't know whether it is even desired. This can lead to missed or delayed conservation opportunities against the intent of ESA Section 10. It would be prudent if USFWS would consider guidance to ensure regional offices are accountable for future engagement or otherwise centralize communications to ensure fewer opportunities fall to the wayside.

For example, the process for a multi-state HCP stretched on for years of unproductive discussion and ultimately, the group of operators abandoned the HCP. State budgets often fail to support owning a conservation program, which limits the amount of interest by States in implementing such a program.

C. Inconsistent Plan Requirements

There is no clear consensus on what constitutes a good or satisfactory conservation plan. Though the USFWS's "Habitat Conservation Planning and Incidental Take Permit Processing Handbook" provides comprehensive guidance on the key contents of a plan, it lacks guidance on quantitative elements such as mitigation ratios and how those ratios fit within the context of the Service's recovery plan for a listed species. This leaves it up to operators and Service representatives to negotiate acceptable ratios on a plan-by-plan basis, which can lead to subjective decisions as well as inconsistent mitigation accounting and cost. The added uncertainty can pose a barrier to plan development and drive-up development timelines.

D. Recognition in Species Status Assessments

Industry recognizes that CBAs and HCPs are powerful tools for conservation. The Associations' members are a part of many conservation programs across the geographies they operate, such as ROW programs for pollinator species and habitat specific plans in the Permian Basin for reptiles, amphibians and other desert species. However, these efforts are often not credited in species status assessments and also seem to receive little consideration in species listings. This can be a demotivating factor especially for the development of CBAs, which are voluntary efforts to prevent a species from being listed.

In the last year alone, API submitted four comment letters highlighting the impactful work industry members are doing through existing CCA/As and CBAs. The Associations ask that the Service recognize these efforts in their assessments, consider them when making listing decisions, and, in cases where a species still needs to be listed despite an existing CBA, provide the scientific justification why.

II. Methods to streamline conservation benefit agreement and habitat conservation plan development and their associated permit issuance

A. Categorical Exclusion

The very nature of Section 10 programs is to achieve a conservation benefit. It follows then that HCPs and CBAs have no potential to negatively affect the human environment. For this reason, the Associations believe there should be a mechanism for HCPs and CBAs to qualify for a streamlined, consolidated, or otherwise expedited assessment pursuant to the National

Environmental Policy Act (NEPA). The Associations and their members suggest introducing a categorical exclusion for CBAs & HCPs in further implementing Section 10 and NEPA, including through any future NEPA regulations.

B. Multi-State HCP/CBA Leads

While each state appears to have a designated USFWS HCP/CBA coordinator, it would be beneficial to establish a single lead role for multi-state HCPs/CBAs rather than having multiple leaders from each state without a clear primary contact. This lead role could potentially be filled at the national level, especially since some HCPs/CBAs may span multiple USFWS regions.

C. Improve Guidelines for Plan Development

To avoid major inconsistencies between plans, the Services should provide guidelines on how to determine mitigation ratios by taxa, for example, for pollinators, ground-dwelling birds, reptiles, amphibia, aquatic species, etc. Guidelines should address mitigation ratios for temporary and permanent disturbance, different habitat types (e.g., occupied vs. non-occupied), and how those ratios apply in cases where disturbances and mitigation actions overlap for different species.

III. Strategies to enhance Service communications on conservation benefit agreements, habitat conservation plans, and their associated permits

A. Setting Development Timeline Targets

To enhance collaboration between the USFWS and operators and achieve greater certainty for projects and conservation actions, we request that timelines be established for CBA and HCP development, if necessary, through regulation. CBAs and HCPs should remain voluntary; however, in such instances where they are being considered, both USFWS and industry would benefit from defined timelines during which such plans should be available for public comment.

Development timelines should start once a scoping-level proposal for an HCP or CBA has been submitted. Such a proposal should include a draft outline of the plan, a meeting schedule and key milestones to guide the development of the plan. Public consultation should occur no later than 1 year after the scoping-level proposal has been submitted, except in the case of extenuating circumstances, or if the Service concludes that productive alignment on the contents of the plan could not be reached.

B. Searchable Database

The Associations propose the creation of a searchable database of existing and in-development HCP/CBA/CCAAs with their current statuses (for those in development or still open for enrollment), expiration of permit, and availability by industry.

IV. Clarification on the roles and responsibilities of the Service and applicants during conservation benefit agreement and habitat conservation plan development and permit issuance

A. Key Decision Makers within the Service

The Associations respectfully request that the Service identify key decision makers within the Service who have the authority to consider plan amendments or revisions and grant special considerations, as well as Service subject matter experts (SMEs) that serve as industry contacts at the field office level. In addition, we request identifying designated Service personnel who have the authority to engage in dispute resolution if, and when required.

B. The Role of States

Further clarification as to the role of states with respect to the implementation, coordination and oversight of voluntary conservation plans is needed. For example, in some states, an HCP is coordinated by the state's Department of Natural Resources (DNR) or equivalent state agency, while in others, it is managed by parks and wildlife agencies. It is not clear how the responsibilities of these agencies align with those of the USFWS, or whether they have the designated, or delegated, authority to make decisions on behalf of the USFWS. The Associations ask that for each plan, USFWS clarify which agency the Service designates authority to, and what that designated authority entails.

V. Funding and resources necessary to develop and implement conservation benefit agreements and habitat conservation plans

A. Resources Upon Listing

The Associations believe that the Service should develop habitat maps or species distribution maps before a species listing is being considered. This would help direct voluntary conservation plans to areas that are most likely to achieve an effective outcome and prevent a species from being listed.

In addition, upon or shortly after a listing decision, critical habitat maps should be developed promptly, and clarity should be provided on effective conservation methods to aid in recovery of the species. Rather than leaving it to operators to develop such methods on a species by species

or plan by plan basis, tangible guidance should be given on geographical areas of focus, milestones and recommended approaches. This would positively affect the plan development timelines commented on earlier and provide increased certainty to operators regarding the Service's expectations of a plan. The Associations believe this would significantly aid in decreasing costs associated with development, already a major barrier to voluntary efforts.

B. Sharing Data

According to operators' experiences, state-level agencies can be hesitant to share their survey data with industry. Conduction of field surveys is both costly and time-consuming, and duplication of data sets is in no one's interest. A program should be developed to promote cost-sharing and allow multiple industries and agencies to access the survey data, for example, against a fee.

VI. Strategies the Service could pilot to improve the overall effectiveness of the section 10(a) program.

A. Plan Revisions and Updates

We suggest that plans should have provisions in place that allow for revisions or updates when the plan is no longer fit-for-purpose.

In a real-life example, a 20-year plan was originally established to charge a fee per surface disturbance at a time when oil and gas wells were drilled as one well per pad site. Advancements in technology led to the development of multi-well pads, which were a better outcome for species conservation due to a reduction in overall surface disturbance and fragmentation.

However, the plan did not have the flexibility to adapt its fee structure to multi-well pad designs, and as a result became increasingly obsolete. In the end, the funding the plan was able to attract for conservation programs was greatly reduced. This underscores the necessity for a mechanism for reviewing and updating elements of a plan that become outdated, for example, due to improvements in technology.

Additionally, it may be necessary for habitat boundaries to be updated in a functional manner when new scientific or technological information becomes available.

In summary, the Associations and their members request an easier method to update plans with clear direction by the Service and based on periodic reviews.

B. ILF Programs

Overall, operators would support states implementing bat habitat In-Lieu Fee (ILF) programs similar to those in Pennsylvania and Kentucky. Such programs offer flexibility by allowing payment on a per-project or per-activity basis, which also provides a degree of regulatory certainty. This is contingent upon the ability to pay a fee for summertime clearing, even if it incurs additional costs.

C. All Activity Enrollments

Implementing all activities enrollments which would allow for flexibility as assets are acquired or divested. Participants should be able to update their enrolled acreage on an annual basis even after the species has been listed.

D. Broaden 'Covered Activities'

Consider a broadening of the Covered Activities under CBAs and HCPs to offer enrollment to alternative industries that have not historically been considered by the plans and agreements (e.g. renewables, CCUS). Expanding covered activities can have the effect of increasing the scope and effectiveness of conservation activities and reducing the cost of participation.