NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE 02-105 ***JUNE 17, 1999***
Protected Resources Management
FINAL POLICY FOR CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES
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SUMMARY OF REVISIONS:

result in listed species occupying adjacent properties.

The Services will use the maximum flexibility allowed under the Act in addressing neighboring properties under Safe Harbor Agreements and associated take authorizations, including, but not limited to, granting of incidental take authority to the owners of neighboring lands, where occupation of neighboring lands is expected as a result of the Agreement. Neighboring landowners would only be required to agree to such conditions as would be necessary to ensure that the Agreement does not circumvent those obligations or requirements, if any, under section 9 of the Act that were applicable at the time the Agreement was signed. Implications to neighboring landowners with non-enrolled lands will be determined on a case-by-case-basis, and the Services will make every effort to include them as a signatory party to the Agreement and enhancement of survival permit when the occupation of their lands by covered species is expected. For neighbors to receive the Safe Harbor Assurances, they would sign an Agreement with the following requirements: (1) Allow an assessment/establishment of the baseline on their properties with concurrence by all parties, (2) notify the Services prior to significantly modifying the habitat, and (3) allow the Services access to capture and translocate individuals of the covered species on their property that would be expected to be adversely affected by those habitat modifications. To facilitate neighboring landowner's participation, the Services will encourage them to become signatory parties to these Agreements, where appropriate.

Part 15. Will There Be Public Review?

The Services will encourage property owners to involve the public in the development of an Agreement. However, public participation must be agreed to by the property owner. The Services will make every Safe Harbor Agreement available for public review and comment as part of the evaluation process for issuance of the associated enhancement of survival permit. This comment period will generally be 30 days; with the comment period for large or programmatic Agreements 60 days.

Part 16. What Is the Scope of the Policy?

This policy applies to all Federally-listed species of fish and wildlife administered by the Services, as provided in the Act and its implementing regulations.

Dated: March 22, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

Dated June 10, 1999.

Penelope D. Dalton,

Assistant Administrator of Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service

Announcement of Final Policy for Candidate Conservation Agreements with Assurances

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Announcement of final policy.

SUMMARY: The Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (jointly the Services) announce a joint final Policy for Candidate Conservation Agreements (Agreements) with Assurances under the Endangered Species Act of 1973, as amended (Act). This policy offers assurances as an incentive for non-Federal property owners to implement conservation measures for species that are proposed for listing under the Act as threatened or endangered, species that are candidates for listing, and species that are likely to become candidates or proposed in the near future. Published concurrently in this **Federal Register** are the FWS's regulations necessary to implement this policy.

DATES: This policy is effective July 19, 1999.

ADDRESSES: Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Washington, D.C. 20240 (Telephone 703/358–2171, Facsimile 703/358–1735); or Chief, Endangered Species Division, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910 (Telephone 301/713–1401, Facsimile 301/713–0376).

FOR FURTHER INFORMATION CONTACT: Richard Hannan, Acting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (Telephone 703/358–2171) or Marta Nammack, Endangered Species Division, National Marine Fisheries Service (Telephone 301/713–1401).

SUPPLEMENTARY INFORMATION:

Background

On June 12, 1997, the Services issued a draft policy (62 FR 32183), and the FWS issued proposed regulations to implement the policy (62 FR 32189). This policy is intended to facilitate the conservation of proposed and candidate species, and species likely to become candidates in the near future by giving citizens, States, local governments, Tribes, businesses, organizations, and other non-Federal property owners incentives to implement conservation measures for declining species by providing certainty with regard to land, water, or resource use restrictions that might be imposed should the species later become listed as threatened or endangered under the Act. Under the policy, non-Federal property owners, who enter into a Candidate Conservation Agreement with assurances that commit them to implement voluntary conservation measures for proposed or candidate species, or species likely to become candidates or proposed in the near future, will receive assurances from the Services that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the species become listed in the future.

Much of the land containing the nation's existing and potential fish and wildlife habitat is owned by private citizens, States, local governments, Native American Tribal governments, businesses, organizations, and other non-Federal entities. The future of many declining species is dependent, wholly or in part, on conservation efforts on these non-Federal lands. Such conservation efforts are most effective and efficient when initiated early. Early conservation efforts for proposed and candidate species, and species likely to become candidates or proposed in the near future can, in some cases, preclude or remove any need to list these species as threatened or endangered under the Act.

By precluding or removing any need to list a species through early conservation efforts, property owners can maintain land use and development flexibility. In addition, initiating or expanding conservation efforts before a species and its habitat are critically imperiled increases the likelihood that simpler, more cost-effective conservation options will still be available and that conservation will ultimately be successful.

Early conservation efforts for declining species can be greatly expanded through a collaborative stewardship approach. A collaborative approach fosters cooperation and facilitates the exchange of ideas among private citizens, Federal agencies, States, local governments, Tribes, businesses, and organizations by involving all stakeholders in the conservation planning process.

Candidate Conservation Agreements without assurances have been effective mechanisms for conserving declining species, particularly candidate species, and have, in some instances, precluded or removed any need to list some species. Development of Agreements without assurances will continue to be a high priority. However, most of these Agreements have been between the Services and other Federal agencies since non-Federal property owners have had little incentive to enter such Agreements. Many non-Federal property owners are willing to manage their lands to benefit fish, wildlife, and plants, especially those species that are declining. However, some of these property owners are reluctant to implement conservation measures for declining species because of possible future land, water, or resource use restrictions that may result from the Act's section 9 ''take'' prohibitions if their conservation efforts cause a species to colonize their lands or increase in numbers and the species is subsequently listed as threatened or endangered. This policy is designed to provide these property owners with the necessary assurances to remove these concerns and encourage them to implement conservation measures for these species.

Non-Federal property owners, who through a Candidate Conservation Agreement with assurances commit to implement conservation measures for a proposed or candidate species or a species likely to become a candidate or proposed in the near future, will receive assurances from the Services that additional conservation measures will not be required and additional land, water, or resource use restrictions will not be imposed should the species become listed in the future. These assurances will be provided in the property owner's Agreement and in an associated enhancement of survival permit issued under section 10(a)(1)(A) of the Act.

The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, 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. ''Other necessary properties'' are other properties on which conservation measures would have to be implemented in order to preclude or remove any need to list the covered species.

The kinds of conservation measures specified in an Agreement with assurances will depend on the types, amounts, and conditions of, and need for, the habitats existing on the property and on other biological factors. Different kinds of conservation measures may benefit different life stages or serve to fulfill different life history requirements of the covered species. The amount of benefit provided by an Agreement with assurances will depend on many factors, particularly the size of the area on which conservation measures are implemented and the degree of conservation benefit possible (e.g., through habitat restoration or reduction of take). For example, an Agreement with assurances for a property with a small area of severely degraded habitat could be designed to achieve greater benefits than one for a property with a large amount of slightly degraded habitat.

Because Candidate Conservation Agreements with assurances will be designed with the goal of precluding or removing any need to list the covered species, these Agreements can have significance in the Services' listing decisions. However, the determination of whether these Agreements do in fact preclude or remove any need to list the covered species will be made on a case-by-case basis in accordance with the listing criteria and procedures under section 4 of the Act.

Collaborative stewardship with State and Tribal fish and wildlife agencies is particularly important in the development of Candidate Conservation Agreements, given the statutory role of these entities under the Act and their traditional conservation responsibilities and authorities for resident species. The Services recognize that, under some circumstances, a State, Tribal, or local agency or other entity may be able to work more promptly, effectively, and efficiently with individual property owners toward conservation of declining species. Under this policy, the Services can enter into an ''umbrella'' or programmatic Agreement with an appropriate State, Tribal, or local agency or other entity. Such an Agreement and its associated enhancement of survival permit would specify the assurances and take allowances that could be distributed by the participating State, Tribal, or local agency or other entity to individual property owners who choose to participate under the umbrella Agreement. Appropriate agencies for such programmatic Agreements include State or Tribal fish and wildlife agencies and State, Tribal, or local land management agencies. The State, Tribal, or local agency or other entity would be the permittee and would issue Certificates of Inclusion (also called Participation Certificates) to private property owners who satisfy the terms and conditions of the State, Tribal, or local agency's or other entity's programmatic Agreement and its associated ''enhancement of survival'' permit.

The Services have a long history of developing Candidate Conservation Agreements with Federal agencies, and these efforts will continue to be a high priority. However, because subsections 7(a)(1) and (a)(2) of the Act obligate Federal agencies to affirmatively conserve listed species, an obligation not imposed upon non-Federal property owners, the Services will not provide assurances to other Federal agencies through these Agreements.

In 1994, the FWS prepared Draft Candidate Species Guidance, which underwent public review and comment (59 FR 65780, December 21, 1994). However, it did not address the development of Candidate Conservation Agreements with assurances for non-Federal property owners. This final policy will be incorporated into the FWS's final guidance on candidate species conservation.

A final rule of the FWS's regulations necessary to implement this policy is published concurrently in this issue of the **Federal Register**. That final rule also includes the FWS's regulations necessary to implement the Safe Harbor policy (also published concurrently in this issue of the **Federal Register**). The NMFS will publish proposed regulations to implement these policies at a later time.

Summary of Comments Received

The Services received more than 280 letters of comment on the draft policy from Federal and State agencies, businesses and corporations, conservation groups, religious organizations, trade associations, private organizations, and individuals. The Services considered all of the information and recommendations received from all interested parties and made changes to the draft policy where appropriate. A few commenters raised issues related to the FWS's draft implementing regulations, and the FWS

has addressed these issues where appropriate in its final implementing regulations also published in today's **Federal Register**. The following is a summary of the comments on the draft policy and the Services' responses.

Issue 1. Many commenters stated that the policy is inconsistent with provisions of section 7(a)(1) of the Act that requires all Federal agencies to use their authorities to conserve endangered and threatened species.

Response 1. The Services believe that the policy is consistent with provisions of section 7(a)(1) of the Act and enables the Services to further satisfy the intent of this section of the Act. Entering into an Agreement with assurances is completely voluntary for the Services, as it is for property owners. The Services will enter into an Agreement with assurances only if we have determined that the conservation needs for covered species on the participating property owner's property are adequately addressed in the Agreement.

By entering into a Candidate Conservation Agreement with assurances, a property owner can obtain certainty that no additional conservation measures will be required and no additional land, water, and resource use restrictions will be imposed if the species is listed in the future. If they cannot obtain such certainty, some property owners might choose to eliminate or reduce the species' habitat before listing occurs. An Agreement with assurances thus can further the conservation of the covered species because it can prevent such losses of existing habitat.

Issue 2. Many commenters believed that the policy is inconsistent with provisions of section 7(a)(2) of the Act because it precludes reinitiation of section 7 consultation on issuance of an enhancement of survival permit. Also, many commenters believed that the Services cannot guarantee that funding will be available to pay for additional conservation measures needed to address unanticipated changes in circumstances.

Response 2. The Services believe that the policy is consistent with section 7(a)(2) of the Act. As applied to implementation of this policy, section 7(a)(2) requires the Services to conduct a formal intra-Service consultation on the issuance of an enhancement of survival permit. The purpose of any consultation is to ensure that any action authorized, funded, or carried out by a Federal agency, including the issuance of an enhancement of survival permit by the Services, is not likely to jeopardize the continued existence of any listed or proposed species or result in the destruction or adverse modification of designated or proposed critical habitat of such species. Since the standard for Candidate Conservation Agreements with assurances is the preclusion or removal of the need to list, the Services believe that it is highly unlikely that the conservation measures prescribed in an Agreement or any incidental take authorized by the associated enhancement of survival permit would later be discovered to adversely affect the covered species or any listed species causing a need to reinitiate intra-Service consultation.

If unanticipated changes in circumstances occur that might warrant modifications to the agreed upon conservation measures, the Services would work with the property owner to seek mutually agreed upon adjustments to those conservation measures that enhance their effectiveness for the covered species. Thus, the Services and property owners could agree to substitute the original agreed upon conservation measures for new ones that would be no more costly but more effective in addressing the changed circumstances. In this fashion, the conservation goal for that property owner's property could still be maintained.

The Services will not enter into an Agreement unless (1) the threats to and the requirements of the covered species are adequately understood so that the Services can determine that the agreed upon conservation measures will be beneficial to the covered species; and the effects of the agreed upon conservation measures are adequately understood so that the Services can determine that they will not adversely affect listed species or adversely modify critical habitat or (2) any information gaps relating to the requirements of the covered species or the effects of the conservation measures on the covered species or listed species can be adequately addressed by incorporating adaptive management principles into the Agreement. The Services believe that, in many Agreements, the conservation measures prescribed for the covered species will also benefit other species, including listed ones.

Moreover, the Services have significant resources and conservation authorities that can be used to address the needs of species covered by Agreements with assurances when unanticipated changes in circumstances cause a need for additional conservation measures. Some funding for additional conservation measures may come from existing appropriations for either candidate conservation or recovery, depending on whether the species is listed. When necessary, the Services will work with other Federal, State, and local agencies, Tribal governments, conservation groups, and private entities to implement additional conservation measures for the species.

Finally, the Services are prepared as a last resort to revoke a permit implementing a Candidate Conservation Agreement with assurances 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 Services would first have to exercise all possible means to remedy such a situation.

Issue 3. Many commenters believed that the policy precludes adaptive management.

Response 3. The Services encourage the inclusion of the principles of adaptive management into Candidate Conservation Agreements with assurances and associated enhancement of survival permits when necessary, especially when new management techniques are being tested. Adaptive management is a process of monitoring the implementation of conservation measures, then adjusting future conservation measures according to what was learned. Adaptive management can also include testing of alternative conservation measures, monitoring the results, and then choosing the most effective and efficient measures for long-term implementation. Inclusion of adaptive management in Agreements allows for up-front, mutually agreed upon changes to conservation measures in response to changing conditions or new information.

By incorporating adaptive management into Agreements with assurances and associated enhancement of survival permits, the Services believe that these Agreements will have sufficient flexibility to enable the Services and property owners to address reasonably foreseeable changes in circumstances or new information.

Issue 4. Many commenters stated that Candidate Conservation Agreements with assurances will undermine recovery of the covered species once it is listed.

Response 4. The Services believe that this comment reflects confusion regarding the standard required by the policy in all Agreements with assurances. The policy requires the Services to determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, 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. Since this is essentially a recovery standard, each property owner with an Agreement with assurances would contribute to precluding or removing any need to list the covered species. Therefore, if the covered species became listed, these property owners would already be implementing conservation measures that address the covered species' conservation needs on their properties.

Issue 5. Many commenters believed that the draft policy limited public participation. Some stated that the draft policy was unclear as to when the Services will solicit comments on Candidate Conservation Agreements with assurances, and some commenters felt that the public should be allowed to participate in the development of all Agreements. In addition, many commenters said that Agreements should be subject to citizen enforcement.

Response 5. The Services have changed the policy to clarify when the public will have the opportunity to review and comment on Agreements with assurances. The Services will make every Agreement with assurances available for public review and comment as part of the evaluation process for issuance of the enhancement of survival permit associated with these Agreements. This comment period will generally be 30 days; the comment period for large-scale or programmatic Agreements that may affect other natural resources will be at least 60 days.

The development of an Agreement with assurances consists primarily of the preparation of a proposal by a non-Federal property owner to modify voluntarily their current land management practices so as to restore, enhance, or preserve habitat or to implement voluntarily other conservation measures for declining species. Because development of such a proposal is purely voluntary and involves private land use decisions, public participation in the development of an Agreement with assurances will only be provided when agreed to by the property owner.

However, the Services will encourage property owners to allow for public participation during the development of an Agreement with assurances, particularly if non-Federal public agencies (e.g., State fish and wildlife agencies) are involved. The Services also will encourage State or local agencies or other entities developing ''umbrella'' or programmatic Agreements, which would specify the assurances and take allowances that could be further delegated by the State or local agency or other entity to individual participating non-Federal property owners, to provide extensive opportunities for public involvement during the development process.

The public will also be given other opportunities to comment on Agreements in cases that are related to a listing determination. When one or more additional Agreements are completed after the covered species is proposed for listing, and the Services determine, based upon a preliminary evaluation, that all completed Agreements could potentially justify withdrawal of the proposed listing, the comment period for the proposed listing will be extended or reopened to allow for public comments on the Agreements' adequacy in removing threats to the species. The Services believe a preliminary evaluation of the likelihood that the completed Agreements remove the need to list is necessary in order to justify constricting the available time to reach a final determination by extending or reopening the comment period on a proposed rule.

The provisions of the Act providing for citizen suits will be neither enhanced nor diminished in any way by the issuance of this policy because it will be implemented through the enhancement of survival permitting process recognized under the Act. To the extent that the current Act allows for citizen lawsuits to challenge the issuance of a given section 10(a) permit, nothing in this policy would modify or alter that opportunity for possible judicial review.

Issue 6. Many commenters stated that all Candidate Conservation Agreements with assurances should undergo independent scientific review.

Response 6. In determining the need for independent scientific review, the Services will consider the complexity of the Agreement, the size of the geographic area covered, the number of species covered, the presence of data gaps or scientific uncertainties, and other factors. Scientific experts will often be asked to assist with development of conservation measures and/or to review a draft Agreement. When scientific experts are not specifically solicited to provide comments, such individuals can submit comments during the general public review and comment periods (see Response 5 above). In developing Agreements with assurances, the Services may use existing State conservation plans or strategies that have undergone scientific review, or the Services may use other scientific information published in peer reviewed journals.

Issue 7. Many commenters questioned the authority for and the availability of adequate funding for the implementation of this policy.

Response 7. The Services believe that sections 2, 7, and 10 of the Act allow the implementation of this policy. For example, section 2 states that ''encouraging the States and other interested parties through Federal financial assistance and a system of incentives, to develop and maintain conservation programs * * * is a key * * * to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.'' The Services believe that establishing a program for the development of Candidate Conservation Agreements with assurances provides an excellent incentive to encourage conservation of the Nation's fish and wildlife. Section 7 requires the Services to review programs they administer and to ''utilize such programs in furtherance of the purposes of this Act.'' The Services believe that, in establishing this policy, they are utilizing their Candidate Conservation Programs to further the conservation of the Nation's fish and wildlife. Of particular relevance is section 10(a)(1) which authorizes the issuance of permits to ''enhance the survival'' of a listed species. From the perspective of the Services, a well designed voluntary Candidate Conservation Agreement is the epitome of conservation efforts designed to ''enhance the survival'' of the covered species.

Funding is available to implement this policy through annual appropriations. The Services are currently working on Candidate Conservation Agreements without assurances, and with finalization of this policy the Services will use available resources to develop Agreements with assurances as well. The FWS is currently implementing over 40 conservation agreements (without assurances) and actions benefitting over 200 species. Several of these conservation agreements and actions have successfully precluded or removed threats so that listing by the Services was avoided.

The Services will prioritize the development of Agreements with assurances because resources to develop Agreements are limited. Prioritization will help the Services focus on those Agreements that are expected to provide the greatest conservation benefits.

Issue 8. Many commenters stated that the policy should require that all

Candidate Conservation Agreements with assurances include monitoring provisions.

Response 8. The Services agree that monitoring is necessary to ensure that the conservation measures specified in an Agreement with assurances 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. For these reasons, monitoring will be a component of most Agreements with assurances. For many of these Agreements, monitoring can be conducted by the Services or the State and, in many cases, may involve only a brief site inspection and appropriate documentation.

Issue 9. Many commenters believed that Candidate Conservation Agreements with assurances will wrongly be used to replace recovery plans or warranted listing determinations or to delay the listing process.

Response 9. The Services do not intend for Agreements with assurances to replace recovery plans. In fact, in order to facilitate the development of Agreements with individual property owners, the Services may develop a conservation outline, strategy, or plan to determine the measures needed to address the conservation needs of the covered species. If the covered species is later listed, the conservation strategy or plan may form the basis for part or all of a recovery plan.

The Services also do not intend to use Agreements with assurances to justify a determination not to list the covered species when listing is in fact warranted. As described in Response 5, when an Agreement with assurances is completed after the covered species is proposed for listing, and when the Services determine, based upon a preliminary evaluation, that the Agreement could potentially justify withdrawal of the proposed rule, the comment period for the proposed rule will be extended or reopened to allow for public comments on the Agreement's adequacy in removing threats to the species.

However, the Act requires the Services to issue a final determination within 1 year of issuing a proposed rule to list. The FWS is working diligently to remove the backlog of listing actions that accrued following the listing moratorium in 1995 and 1996, and the FWS expects to soon be able to again make final listing determinations within the 1-year time frame. The Services will not extend this time frame in order to allow for the completion and/or consideration of an Agreement with assurances. The Services believe a preliminary evaluation of an Agreement is necessary in order to justify constricting the available time to reach a final determination by extending or reopening the comment period on a proposed rule.

Issue 10. Several commenters stated that the policy should require incorporation of avoidance and minimization of take in all Candidate Conservation Agreements with assurances.

Response 10. The Services believe that avoidance and minimization of take is an inherent consideration in the development of any Agreement with assurances. Property owners whose current land, water, or resource use results in take of proposed or candidate species, or species likely to become candidates or proposed in the near future, are a primary focus of this policy. For some Agreements, avoidance and/or minimization of take may be the primary objective. A property owner entering into an Agreement with assurances can be assured that, if the covered species is listed in the future, no additional land, water, or resource use restrictions will be imposed above and beyond the conservation measures set forth in the Agreement. After take is eliminated or reduced, land, water, or resource uses can often provide significant benefits to the covered species. For example, a property owner could eliminate or reduce take of a declining grassland bird species that nests on his property by agreeing to delay mowing until after the nesting season. The species would benefit from successful reproduction, and the property owner would benefit from being able to maintain his current land use even if the species is later listed.

If a property owner exceeds the conservation goal established for his property as specified in an Agreement with assurances, the property owner may choose to reduce the level of conservation benefits he/she has provided to the covered species to a lower level, but one that is still at or above the conservation goal specified in the Agreement. The property owner's enhancement of survival permit would authorize incidental take associated with this reduction of conservation benefits back to the agreed upon level. Prior to issuing the enhancement of survival permit, the Services must determine that the conservation goal for the property can be maintained with the level of take authorized by the permit. The policy also requires that the Agreement include a notification requirement, if appropriate, to provide the Services or State agencies with a reasonable opportunity to rescue and translocate individuals of a covered species before any authorized take occurs. The Services believe that these provisions will ensure that any authorized take will not prevent a property owner from achieving the conservation goal established for his property and will minimize the amount of authorized take that occurs.

Issue 11. Several commenters believed that the policy should list the minimum conditions that must be satisfied before any Candidate Conservation Agreements with assurances are pursued.

Response 11. The Services agree with this comment, and the final policy lists the general requirements that all Agreements with assurances and associated enhancement of survival permits should satisfy. In addition, FWS's implementing regulations, which are published in today's **Federal Register**, also list the requirements that must be met before the Services will issue an enhancement of survival permit.

In addition, the FWS's draft Candidate Conservation Handbook includes a list of conditions under which Candidate Conservation Agreements would most likely be successful in eliminating threats and precluding or removing any need to list the covered species. This list would also apply to Agreements with assurances. The Services believe that such a list is more appropriately included in implementation guidance such as the FWS's Candidate Conservation Handbook.

Issue 12. Several commenters stated that the policy should not apply to candidate and proposed species because determinations have already been made that these species should be listed, and efforts to develop Candidate Conservation Agreements with assurances would only delay or forego the necessary protection that could be afforded by listing.

Response 12. The Services do not believe that Agreements with assurances will delay or forego any actions necessary to achieve conservation of the covered species. In fact, these Agreements will help to garner the necessary support from non-Federal property owners in achieving conservation through voluntary implementation of conservation measures. Additionally, the Services

believe that, for some candidate and proposed species, it is possible to complete the Agreements with assurances necessary to remove the need to list before a final listing determination could be made. These candidate and proposed species may include (1) species for which relatively few, non-complex Agreements are necessary, (2) species for which development of Agreements begins prior to the species becoming a candidate or proposed species, and (3) candidate species that have a low listing priority. Therefore, the Services believe that including candidate and proposed species in this policy is appropriate. However, for the Services to justify withdrawal of a proposed rule to list, the parties to all Agreements with assurances for the covered species must have the authority, funding, and commitment to implement the Agreements.

As of April 30, 1999, there were 154 FWS candidate species awaiting preparation of proposed rules and 69 FWS proposed species awaiting preparation of final rules. Final listing of many of these species, as well as many of the species that will be added as candidates or proposed species in the future, will require considerable time. The FWS believes that initiating early conservation efforts, including the development of Agreements with assurances, for some of these species will significantly increase the likelihood that conservation will be successful.

Issue 13. Several commenters asked how the conservation goal for each property owner's property can be determined without preparing a recovery plan.

Response 13. The Services believe it may be appropriate in some cases to prepare a conservation outline, strategy, or plan for a species before an Agreement with assurances is developed. In some cases, a conservation strategy or plan may already have been developed by the Services, another Federal agency, and/or a State agency. These strategies or plans may already have identified measures that should be implemented to conserve the covered species. In these cases, development of Agreements with assurances can be initiated right away.

Issue 14. Some commenters argued that a property owner could destroy habitat for candidate or proposed species, and then request a Candidate Conservation Agreement with assurances based on a lower starting baseline. Also, some commenters suggested that property owners may threaten to destroy habitat unless Agreements are written their way.

Response 14. The Services will not enter into any Agreement with assurances that does not meet the minimum standards established by this policy and its implementing regulations. Entering into an Agreement with assurances is voluntary for the Services and property owners; the Services will refuse to enter into an Agreement that does not meet the minimum established standards. Also, because the conservation goal for a property owner's property is not based solely on the amount of currently suitable habitat present, destroying habitat will likely only make it more difficult for the property owner to achieve the conservation goal for his property. Removing threats and taking actions consistent with the goal of precluding or removing any need to list would only be made more arduous by an initial destruction of habitat. Finally, the Services do not believe that it is credible to suggest that a property owner who is otherwise interested enough in declining species conservation to consider entering into an Agreement is likely to go in and first destroy portions of the species' habitat before entering into an Agreement.

Issue 15. Some commenters stated that the standard for Candidate Conservation Agreements with assurances should be to increase the likelihood that the species will survive rather than to preclude or remove any need to list.

Response 15. The Services believe that the overall goal for Agreements with assurances developed under this policy should be to remove threats to the covered species so as to preclude or remove any need to list the species. The Services believe that the policy must incorporate this standard in order to justify the expenditure of resources to develop and evaluate Agreements with assurances, process associated enhancement of survival permits, and allow the Services to provide assurances to the property owner.

Issue 16. Some commenters stated that the Services must conduct National Environmental Policy Act (NEPA) analyses for all Candidate Conservation Agreements with assurances and enhancement of survival permits.

Response 16. The Services believe that implementation of this policy must comply with NEPA. The Services have determined that most of these Agreements will be categorically excluded under the Department of Interior Departmental Manual (DM) NEPA procedures in 516 DM 2, Appendix 1.10 and under NOAA Administrative Series 216–6, Sections 602b.3 and 602c.3. The Services expect that most Agreements with assurances and associated enhancement of survival permits will result in minor or negligible effects on the environment including federally listed species and their habitats. Complex, large-scale, or programmatic Agreements and their associated permits will require individual NEPA analysis.

Issue 17. Many commenters were confused by the term ''umbrella agreements'' in the draft policy.

Response 17. The Services may enter into an ''umbrella'' or programmatic Agreement with an appropriate State or local agency or other entity, and through such an Agreement and associated enhancement of survival permit, specify the assurances and take allowances that could be further delegated by the State or local agency or other entity to individual participating non-Federal property owners. In such a case, the State or local agency or other entity would be the permittee and would issue Certificates of Inclusion (also sometimes called Participation Certificates) to non-Federal property owners who satisfy the terms and conditions of the State or local agency's or other entity's ''umbrella'' or programmatic Agreement and associated permit. To avoid confusion in this final policy, the term ''Agreements with non-Federal property owners'' is used to refer to Agreements between the Services and individual property owners as well as ''umbrella'' or programmatic Agreements with State or local agencies or other entities through which assurances are further delegated to individual participating non-Federal property owners.

Issue 18. The statement ''These assurances will only be provided to the participating property owners or State or local land management agencies but not to State regulatory agencies'' confused many commenters who recognized that many State or local land management agencies also have regulatory responsibilities.

Response 18. The Services agree that this statement was confusing and have clarified it in the final policy. In making the statement, the Services overlooked the dual role of many State and local land management agencies. The Services intended to emphasize that only non-Federal property owners, whether they are State or local agencies, private individuals, Tribes, or other non-Federal entities, can receive assurances. However, as discussed previously, the Services can enter into an ''umbrella'' or programmatic Agreement with a State or local agency, including a State or local regulatory agency if appropriate, or other entity, and through such an Agreement and its

associated enhancement of survival permit, specify the assurances and take allowances that can be delegated by the State or local agency or other entity to individual participating non-Federal property owners through Certificates of Inclusion, Participation Certificates, or other similar vehicles.

Issue 19. Many commenters questioned the meaning of, or were confused by, the phrase ''similarly situated property owners,'' which was used in describing the standard to which every Candidate Conservation Agreement with assurances will be held. Some commenters asked what the standard would be if there are no other similarly situated property owners within the range of the species. Some commenters asked what non-similarly situated property owners would be required to do. In addition, some commenters asked what property owners outside the current range of the species would be required to do if expansion of the current range of the species is necessary to preclude or remove any need to list.

Response 19. The Services agree that the draft policy did not clearly explain the standard that all Agreements with assurances must meet and have revised the description of the standard in the final policy as follows:

''The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, 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. Other necessary properties are other properties on which conservation measures would have to be implemented in order to preclude or remove any need to list the covered species. The kinds of conservation measures specified in an Agreement with assurances will depend on the types, amounts, and conditions of, and need for, the habitats existing on the property and on other biological factors. Different kinds of conservation measures may benefit different life stages or serve to fulfill different life history requirements of the covered species. The amount of benefit provided by an Agreement with assurances will depend on many factors, particularly the size of the area on which conservation measures are implemented and the degree of conservation benefit possible (e.g., through habitat restoration or reduction of take). For example, an Agreement with assurances for a property with a small area of severely degraded habitat could be designed to achieve greater benefits than one for a property with a large amount of slightly degraded habitat.''

The Services believe this description of the standard more clearly explains the contribution an individual property owner entering into an Agreement with assurances would need to make toward precluding or removing any need to list the covered species. This description addresses the fact that properties differ and that, consequently, different conservation measures could be specified for different properties. In addition, this description takes into account the fact that the Services may need to expand the species' current range in order to preclude or remove any need to list.

Issue 20. Several commenters asked for clarification of the phrase ''species which will likely become candidates in the near future.''

Response 20. The objective of this policy is to provide incentives to encourage non-Federal property owners to implement early conservation for declining species with the goal of precluding or removing any need to list. The Services did not want to exclude those species that are declining and/or are becoming subject to increasing threats and may soon be considered for candidate status. Including these species is particularly important considering that the rates of decline can sometimes increase abruptly, that the development of a Candidate Conservation Agreement with assurances might take longer than expected, and that conservation options may be more numerous the earlier a species is addressed. Because the circumstances surrounding each species are unique, the Services have chosen not to adopt a strict regulatory definition of the term ''species that will likely become candidates in the near future.'' Instead, the Services will review species that are not candidates or proposed species on a case-by-case basis when determining whether they may be covered by an Agreement with assurances.

Issue 21. Several commenters were confused by the phrase ''above those levels agreed upon and specified in the Agreement,'' which was used in describing the assurances provided through Candidate Conservation Agreements with assurances and associated enhancement of survival permits.

Response 21. The Services agree that this phrase is confusing and have clarified the meaning in the final policy. The draft policy stated that ''* * * take authorization would be provided to allow the property owner or State or local land management agency to implement management activities that may result in take of individuals or modification of habitat above those levels agreed upon and described in the Agreement.'' The Services did not intend this statement to mean that the amount of take authorized by an enhancement of survival permit could exceed the amount specified in the associated Agreement or could allow for more habitat modification than specified in the Agreement. Rather, the statement was an attempt to explain that the enhancement of survival permit accompanying an Agreement with assurances would authorize a property owner who exceeds the conservation goal specified in the Agreement (e.g., through additional habitat improvement or the implementation of conservation measures that are more effective or beneficial than anticipated and described in the Agreement) to take the additional or enhanced number of individuals of the species that is consistent with the conservation goal specified in the Agreement. That is, a property owner can still avoid the imposition of additional restrictions above those agreed to in the Agreement where the property owner surpassed the conservation goals established under the Agreement.

Issue 22. Some commenters were confused by Part 3A of the draft policy that stated that a Candidate Conservation Agreement with assurances will identify habitat characteristics that support use by the covered species on lands or waters under the property owner's control or that support populations of the covered species in waters that may not be under the property owner's control. These commenters questioned the meaning of the phrase ''waters that may not be under the property owner's control.''

Response 22. In using this phrase, the Services intended to address the fact that, in some cases, characteristics of a particular property owner's property may sustain (or land, water, or resource uses on that property may affect) individuals of a species located on other lands or waters adjacent to or some distance away from the property owner's property. For example, riparian habitat enhancement measures upstream may benefit candidate species that are downstream from the participating property owner's property. An Agreement with assurances can describe this relationship and can include conservation measures to improve the characteristics of the property that help sustain (or to reduce

the impacts of the land, water, or resource uses that may affect) the individuals of the species found off the property owner's property.

Issue 23. Several commenters asked if there was any difference between the meanings of the terms ''conservation actions,'' ''management actions,'' ''conservation activities,'' ''management activities,'' and ''conservation management activities.''

Response 23. The Services did not intend for these terms to have different meanings and, in the final policy, have used a single term, ''conservation measures,'' in place of the terms listed above. The term ''conservation measures'' clearly describes the range of practices which could be included in a Candidate Conservation Agreement with assurances. Not all conservation measures involve ''management'' that is continued into the future; conservation measures may include removal of a hazard to the species, construction of a habitat feature (such as placement of boulders in a stream to create fish resting habitat), or other practices.

Issue 24. Several commenters were confused by the sentence in the ''Definitions'' section of the draft policy under ''Covered species'' that read ''Those species covered in the Agreement must be treated as if they were listed.''

Response 24. The Services agree that this sentence may have caused some confusion and the sentence has been deleted from the final policy. The Services have also clarified the definition in the final policy.

Issue 25. Some commenters questioned why the Services used the term ''incidental take'' to describe take authorized by an enhancement of survival permit under section 10(a)(1)(A) of the Act when ''incidental take'' normally applies to take authorized by an Incidental Take permit under section 10(a)(1)(B).

Response 25. The Services have decided to use the term ''incidental take'' to refer to the take authorized by an enhancement of survival permit associated with a Candidate Conservation Agreement with assurances because this ''take'' is incidental to enhancing the survival of the species through compliance with the Agreement. Similarly, take resulting from research authorized by an enhancement of survival permit under section 10(a)(1)(A) is ''incidental take'' in that it is typically a consequence of and not the purpose of the research. The Services believe using the term ''incidental take'' in this policy will be less confusing than coining a new term to differentiate take authorized under section 10(a)(1)(A) from that authorized under section 10(a)(1)(B).

Issue 26. Some commenters questioned the use of the term ''net benefit'' in the draft policy.

Response 26. The term ''net benefit'' was erroneously included in the draft policy and has been eliminated in the final policy. ''Net benefit'' is a concept more appropriately used in ''Safe Harbor'' Agreements for listed species conservation.

Revisions to the Proposed Policy

The following represents a summary of the revisions made to the proposed Candidate Conservation Agreements with Assurances policy following consideration of public comments.

(1) The final policy describes the mechanism for property owners to terminate their voluntary Candidate Conservation Agreements with assurances before the expiration date.

(2) Specific public review periods for proposed Candidate Conservation Agreements with assurances and their associated proposed enhancement of survival permits have been established in the final policy and implementing regulations.

(3) The final policy includes general guidelines for the development of monitoring provisions of Candidate Conservation Agreements with assurances.

(4) Several definitions and terms have been clarified in the final policy.

Final Candidate Conservation Agreements With Assurances Policy

Part 1. What Is the Purpose of the Policy?

This policy, is intended to facilitate the conservation of proposed and candidate species, and species likely to become candidates or proposed 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 certainty with regard to land, water, or resource use restrictions that might otherwise apply should the species later become listed as threatened or endangered under the Act. Under the policy, non-Federal property owners who commit in a Candidate Conservation Agreement with assurances to implement mutually agreed upon conservation measures for a proposed or candidate species, or a species likely to become a candidate or proposed in the near future, will receive assurances from the Services 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 Candidate Conservation Agreement with assurances, the Services will consider the extent to which the Agreement reduces threats to proposed and candidate species and species likely to become candidates or proposed in the near future so as to preclude or remove any need to list these species as threatened or endangered under the Act. While the Services realize that the actions of a single property owner usually will not preclude or remove any need to list a species, they also realize the collective effect of the actions of many property owners may be to preclude or remove any need to list. Accordingly, the Services will enter into an Agreement with assurances when they determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, 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.

While some property owners are willing to manage their lands to benefit proposed and candidate species, or species likely to become candidates or proposed 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 Services will provide regulatory certainty to a non-Federal property owner who enters into a Candidate Conservation Agreement with assurances by authorizing, through issuance of an enhancement of survival permit under section 10(a)(1)(A) of the Act, a specified level of incidental take of the species covered in the Agreement. Incidental take authorization benefits non-Federal property owners in two ways. First, incidental take authorization provides assurances to property owners that any extra, either intentional or unintentional, benefits they achieve for the species beyond those agreed upon will not result in additional land, water, or resource use restrictions that would otherwise be imposed should the species become listed in the future. Second, in the event the species is listed in the future, incidental take authorization enables

property owners to continue current land uses that have traditionally caused take, provided take is at or reduced to a level consistent with the overall goal of precluding or removing any need to list the species.

Candidate Conservation Agreements with assurances will be developed in close coordination and cooperation with the appropriate State fish and wildlife agencies and other affected State agencies and Tribes, as appropriate. Close coordination with State fish and wildlife agencies is particularly important given their primary responsibilities and authorities for the management of unlisted resident species. Agreements with assurances are to be consistent with applicable State laws and regulations governing the management of these species.

The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, when combined with those benefits that would be achieved if it assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. Pursuant to section 7 of the Act, the Services must also ensure that the conservation measures included in any Agreement with assurances do not jeopardize any listed or proposed species and do not destroy or adversely modify any proposed or designated critical habitats that may occur in the area.

Some non-Federal property owners may not have the necessary resources or expertise to develop Candidate Conservation Agreements with assurances. Therefore, the Services are committed to providing, to the maximum extent practicable given available resources, the necessary technical assistance to develop Agreements with assurances and prepare enhancement of survival permit applications. Furthermore, the Services may assist or train property owners to implement conservation measures.

Development of a biologically sound Agreement and enhancement of survival permit application are intricately linked. The Services will process the participating non-Federal property owner's enhancement of survival permit application following the procedures described in 50 CFR Parts 17.22(d)(1) and 17.32(d)(1) or 50 CFR Part 222. All terms and conditions of the enhancement of survival permit must be consistent with the conservation measures included in the associated Agreement with assurances.

Part 2. What Definitions Apply to this Policy?

The following definitions apply for the purposes of this policy.

''Candidate Conservation Agreement'' means an Agreement signed by either Service, or both Services jointly, and other Federal or State agencies, local governments, Tribes, businesses, organizations, or non-Federal citizens, that identifies specific conservation measures that the participants will voluntarily undertake to conserve the covered species.

''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 non-Federal property owner with the assurances described in this policy.

''Candidate Conservation Assurances'' are assurances provided to a non-Federal property owner in a Candidate Conservation Agreement with assurances that conservation measures and land, water, or resource use restrictions in addition to the measures and restrictions described in the Agreement will not be imposed should the covered species become listed in the future. Candidate Conservation Assurances will be 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.

''Candidate species'' are defined differently by the Services. 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. NMFS defines candidate species as species for which NMFS has information indicating that listing may be warranted but for which sufficient information to support actual proposed listing rules may be lacking. The term ''candidate species'' used in this policy refers to those species designated as candidates by either of the Services.

''Conservation measures'' are actions that a non-Federal property owner voluntarily agrees to undertake when entering into a Candidate Conservation Agreement with assurances.

''Covered species'' means those species that are the subject of a Candidate Conservation Agreement with assurances 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 in the near future.

''Enhancement of survival permit'' means a permit issued under section 10(a)(1)(A) of the Act that, as related to this policy, authorizes the permittee to incidentally take species covered in a Candidate Conservation Agreement with assurances.

''Non-Federal property owner'' includes, but is not limited to, States, local governments, Tribes, businesses, organizations, and private individuals, and includes owners of land as well as owners of water or other natural resources.

''Other necessary properties'' are properties in addition to the property that is the subject of a Candidate Conservation Agreement with assurances on which conservation measures would have to be implemented in order to preclude or remove any need to list the covered species.

''Proposed species'' is a species for which the Services have published a proposed rule to list as threatened or endangered under section 4 of the Act.

Part 3. What Are Candidate Conservation Agreements With Assurances?

Candidate Conservation Agreements with assurances 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 by the covered species on lands or waters owned by the participating non-Federal property owner; and/or the existing characteristics of the property owner's lands or waters included in the Agreement that support populations of covered species on lands or waters not on the participating property owner's property;

B. The conservation measures the participating non-Federal property owner is willing 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 threat) and the conditions that the participating non-Federal property owner agrees to maintain. The Services must determine that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, 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;

D. Assurances provided by the Services 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. Assurances related to take of the covered species will be authorized by the Services through a section 10(a)(1)(A) enhancement of survival permit (see Part 5);

E. A monitoring provision that may include measuring and reporting progress in implementation of the conservation measures described in B above and changes in habitat conditions and the species' status resulting from these measures; and,

F. A notification requirement to provide the Services 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 Candidate Conservation Agreement with assurances, the Services must make a written finding that the benefits of the conservation measures implemented by a property owner under a Candidate Conservation Agreement with assurances, 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. If the Services and the participating property owner cannot agree to an adequate set of conservation measures that satisfy this requirement, the Services will not enter into the Agreement. Expected benefits of the conservation measures could include, but are not limited to: restoration, enhancement, or preservation of habitat; maintenance or increase of population numbers; and reduction or elimination of incidental take.

Part 5. What Are Assurances to Property Owners?

In a Candidate Conservation Agreement with assurances, the Services will provide that if any species covered by the Agreement is listed, and the Agreement has been implemented in good faith by the participating non-Federal property owner, the Services 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 individuals of the covered species so long as the level of take is consistent with those levels agreed upon and identified in the Agreement.

The Services will issue an enhancement of survival permit at the time of entering into the Agreement with assurances. This permit will have a delayed effective date tied to the date of any future listing of the covered species. The Services believe that an enhancement of survival permit is particularly well suited for Candidate Conservation Agreements with assurances because the main purpose of such Agreements is to enhance the survival of declining species.

The Services are prepared as a last resort to revoke a permit implementing a Candidate Conservation Agreement with assurances 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 Services would first have to exercise all possible means to remedy such a situation.

Part 6. How Do the Services Comply With National Environmental Policy Act?

The National Environmental Policy Act of 1969 (NEPA), as amended, and the regulations of the Council on Environmental Quality (CEQ) require all Federal agencies to examine the environmental impact 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 Services will review each Candidate Conservation Agreement with assurances 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 NOAA's Environmental Review Procedures and NOAA Administrative Order Series 216–6). If the Services determine 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 Services exclude 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 Candidate Conservation Agreements with assurances 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. When the impacts to the environment are expected to be more than minor, individual NEPA analysis will be required. Complex, large-scale, or programmatic Agreements and their associated permits will typically be subject to individual NEPA analysis.

Part 7. Will There Be Public Review?

Public participation in the development of a proposed Candidate Conservation Agreement with assurances will only be provided when agreed to by the participating property owner. However, the Services 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 enhancement of survival permit associated with the Agreement. This comment period will generally be 30 days but may be longer for very large or programmatic Agreements. The public will also be given other opportunities to review Agreements in certain cases. For example, when the Services receive an Agreement covering a proposed species, and when the Services determine, based upon a preliminary evaluation, that the Agreement could potentially justify withdrawal of the proposed rule, the comment period for the proposed rule will be extended or reopened to allow for public comments on the Agreement's adequacy in removing or reducing threats to the species. However, the Act requires the Services to issue a final determination within 1 year of issuing a proposed rule to list; the Services will not extend this time frame in order to allow for the completion and/or consideration of an Agreement with assurances. Therefore, the Services may not be able to consider in their final determination Agreements 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 Agreement. The Services will provide technical advice, to the maximum extent practicable, to the property owner when requested. Additionally, a participating property owner, with good cause, can terminate the Agreement prior to its expiration date, even if the terms and conditions of the Agreement have not been realized. However, the enhancement of survival permit would also be terminated at the same time.

Part 9. What Is the Discretion of All Parties?

Nothing in this policy compels any party to enter a Candidate Conservation Agreement with assurances at any time. Entering an Agreement is voluntary for non-Federal property owners and the Services. Unless specifically noted, an Agreement 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 Candidate Conservation Agreement with assurances transfers ownership of the enrolled property, the Services 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. 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 under the Agreement nor receive any assurances relative to section 9 restrictions resulting from listing of the covered species.

An Agreement must commit the participating property owner to notify the Services of any transfer of ownership at the time of the transfer of any property subject to the Agreement. This will allow the Services the opportunity to contact the new property owner to explain the prior Agreement and to determine whether the new property owner would like to continue the original Agreement or enter a new Agreement. When a new property owner continues an existing Agreement, the Services will honor the terms and conditions of the original Agreement.

Part 11. Is Monitoring Required?

The Services will ensure that necessary monitoring provisions are included in Candidate Conservation Agreements with assurances and associated enhancement of survival permits. 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 Agreements depending on the circumstances. For many Agreements, monitoring can be conducted by the Services or a State agency and may involve only a brief site inspection and appropriate documentation.

Large-scale or complex Candidate Conservation Agreements with assurances may require more in-depth and comprehensive monitoring. Monitoring programs must be agreed upon and included in the Agreement prior to public review and comment on the Agreement. The Services are committed to providing as much technical assistance as possible in the development of acceptable monitoring programs. Additionally, 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 Services, the appropriate State fish and wildlife agencies, affected Tribal governments, and property owners is important to the successful development and implementation of Candidate Conservation Agreements. The Services will closely 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 an Agreement.

Dated: March 22, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

Dated: June 10, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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