



March 21, 2017

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Office of Protected Resources

NOAA Fisheries

1315 East-West Highway

Silver Spring, MD 20910

RE: Request to Withdraw the Candidate Conservation Agreements with Assurances Rule and Policy (Docket No. FWS-HQ-ES-2015-0177 and 60223138-6138-01; FF09E40000 156 FXES 11150900000; 160223138-6999-02)

Dear Acting Directors:

The American Exploration & Production Council (“AXPC”) is grateful for this opportunity to express our concerns with the pending implementation date of the final Candidate Conservation Agreements with Assurances (“CCAA”) issued by the U.S. Fish and Wildlife Service (“FWS”) as well as for the FWS and National Marine Fisheries Service (“NMFS”) final revised CCAA Policy and to request that both the CCAA regulations and the CCAA Policy be withdrawn pending further review by the FWS and the NMFS.

AXPC is a national trade association representing 33 of America’s largest and most active independent natural gas and crude oil exploration and production companies, each with considerable experience drilling, operating and producing oil and natural gas on federal, state and private lands. AXPC members are “independent” in that their operations are limited to the exploration for and production of oil and natural gas. Moreover, its members operate autonomously, unlike their fully integrated counterparts, which operate in additional segments of the energy business such as downstream refining and marketing. AXPC members are leaders in developing and applying the

innovative and advanced technologies necessary to explore for and produce oil and natural gas, both onshore and offshore, from non-conventional sources in an environmentally responsible manner.

On December 27, 2016 FWS published its final revised regulations dealing with enhancement-of-survival permits issued pursuant to the Endangered Species Act (“ESA”). These new regulations can be found at 50 CFR Part 17. At the same time, FWS and NMFS issued revisions to the CCAA policy under the ESA. Both were to be effective on January 26, 2017 but were delayed by the memorandum issued by the White House on January 20, 2017 that delayed the effective date until March 21, 2017. The referenced White House memorandum provides for further delay for purposes of additional notice and comment rulemaking in implementing regulations impacted by such memorandum. AXPC believes that the final CCAA Rule and related Policy warrant further review and hereby requests that the FWS delay the implementation of the Rule and revoke the Policy with a view to allowing FWS and NMFS to carefully review all aspects of same.

The use of CCAAs has directly benefited a number of species, e.g. the greater sage grouse, the dunes sagebrush lizard and the lesser prairie chicken and has generated significant participation and yielded material conservation benefits. AXPC is, however, concerned that the introduction of the concept of “net conservation benefit”, which is an ambiguous and needlessly burdensome standard for voluntary pre-listing agreements, will have the unintended consequence of deterring participation in future CCAAs. Moreover, the concept of “net conservation benefit” derives from a 2015 Presidential Memorandum (Mitigating Impacts on Natural Resources for Development and Encouraging Related Private Investment) and not legislation passed by Congress. In fact, the “net conservation benefit” conflicts with the regulatory framework enacted by Congress. That is to say, the ESA itself does not require a “net conservation benefit”.

Finally, the preamble of the revised CCAA policy states that activities such as “...housing developments, mining or other energy development activities are inappropriate for CCAA”. On the contrary, AXPC members have successfully developed and utilized CCAAs to provide significant benefits to various species and their respective habitats. This incorrect statement and the resulting policy is arbitrary and capricious and needlessly jeopardizes the ability of the oil and gas industry, as well as other industries, to make use of such agreements for the benefit of all parties and impacted species.

For the reasons set forth in this letter as well as those described in the letter sent to you by the American Petroleum Institute and the Independent Petroleum Association of American, AXPC respectfully requests that the CCAA Rule be withdrawn and the Policy be revoked pending further review and consideration.

We look forward to being engaged with you in the further review of this policies. Should you have questions or require additional information, please contact the undersigned by phone at 202-347-7529 or by email at [bthompson@axpc.us](mailto:bthompson@axpc.us).

Very truly yours,

A handwritten signature in blue ink, appearing to read "V. Bruce Thompson". The signature is fluid and cursive, with the first name "V." being particularly prominent.

V. Bruce Thompson  
President