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Public Comments Processing

Attn: Docket Nos. FWS-HQ-ES-2017-0074 and FWS-HQ-ES-2017-0075

Division of Policy, Performance, and Management Programs

US Fish and Wildlife Service

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Re: Request for Comments on the Candidate Conservation Agreements with Assurances Regulations and Associated Policy; 81 *Fed. Reg.* 55550 and 82 *Fed. Reg.* 55625 (November 22, 2017)

To Mr. Newman and Ms. Somma:

The National Rural Electric Cooperative Association (NRECA) submits these comments in response to the request by the US Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) (collectively, the “Services”) for public input on their joint Candidate Conservation Agreements with Assurances (CCAA) Policy (81 *Fed. Reg.* 55625) and the USFWS CCAA Rule (81 *Fed. Reg.* 55550).

NRECA is the national service organization for America’s electric cooperatives. NRECA represents the interests of the nation’s more than 900 rural electric utilities responsible for keeping the lights on for more than 42 million people across 47 states. Electric cooperatives are member-owned, not-for-profit small businesses serving member-consumers facing significant economic challenges, especially in rural areas. They are driven by their purpose to power communities and empower their members to improve their quality of life. Affordable electricity is the lifeblood of the American economy, and for 75 years electric co-ops have been proud to keep the lights on. Given their critical role in providing affordable, reliable, and universally accessible electric service, electric cooperatives are vital to the economic health of the communities they serve.

In December 2016, the Services revised the CCAA Policy and USFWS concurrently made necessary amendments to its CCAA regulations to conform to the revised policy. CCAAs are developed to encourage voluntary conservation efforts to benefit species that are candidates for listing by providing regulatory assurances to non-federal property owners that a “take” associated with implementing an approved CCAA will be permitted under Endangered Species Act (ESA) Section 10(a)(1)(A). In addition, if covered species are ultimately listed, property owners will not be subject to additional mitigation requirements or land-use restrictions. Overall, CCAAs may contribute to down-listing species, accelerating species recovery, or avoiding the need to list a species under the ESA in the first place.

NRECA and its members believe that CCAAs are important voluntary conservation tools that are mutually beneficial to species and property owners. NRECA appreciates the Services' efforts to review and potentially revise the CCAA Policy and Rule. To encourage CCAA participation, the Services should make revisions that improve the CCAA development and approval process while continuing to ensure benefits to covered species. Below we provide the following recommendations on how to revise the CCAA Policy and Rule. In addition, NRECA endorses comments submitted by the National Endangered Species Act Reform Coalition (NESARC) and the Energy and Wildlife Action Coalition (EWAC). NRECA encourages the Services to review these comments and ensure that any revisions to the CCAA program reflect our collective concerns and recommendations.

**1) Remove “Net Conservation Benefit” Standard.**

Recent revisions to the CCAA Rule and Policy include the adoption of “net conservation benefit” as an issuance standard. This is defined as the cumulative benefits of the CCAA's specific conservation measures designed to improve the status of a covered species by removing or minimizing threats so that populations are stabilized, the number of individuals is increased, or habitat is improved. NRECA and its members are concerned that this imposes a burdensome standard that discourages voluntary conservation efforts. Since CCAAs apply to unlisted species, it is not appropriate to include a standard designed to promote the recovery of species listed under the ESA.

The Services justified the “net conservation benefit” requirement as a condition of CCAA approval and permit issuance on the basis that Safe Harbor Agreements (SHAs) already include this standard. However, the Services failed to recognize and distinguish that CCAAs and SHAs have different conservation objectives and apply to different ESA listing statuses. Thus, the Services should not require the same standards for pre-listing as post-listing activities. NRECA recommends that the Services instead use a CCAA measurement standard that focuses on avoiding the need to list covered species, one that provides measures that will beneficially contribute to species and habitat conservation. This revision would better incentivize the program and align the Policy and Rule with the original intent of CCAAs.

**2) Encourage CCAAs for Energy-Development Activities, Including Those on Federal Lands.**

The Services should not predetermine what type of property management actions may qualify for inclusion in a CCAA. For instance, the Services often seem reluctant to approve CCAAs that provide assurances to major infrastructure development, including energy-related activities. This is unfortunate as these types of activities may yield the largest benefits to both species and the local economy. For example, some NRECA members are enrolled in CCAAs for the lesser prairie-chicken and dunes sagebrush lizard, each of which have proven successful at providing benefits to the species. Thus, the Services should simply consider whether a proposed CCAA provides a benefit to the covered species or its habitat. This would help promote a more robust and efficient conservation program, providing a permitting tool to a broader spectrum of activities with the potential to affect unlisted or candidate species.

The CCAA Policy further restricts enrollment by non-federal property owners, including those persons with a fee simple, leasehold, or other property interest, if proposed management activities occur on federal lands. This stance diminishes potential conservation benefits for species and limits opportunities for voluntary conservation efforts by non-federal entities that operate wholly or partially on federal lands. Many NRECA

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members have special use authorizations or grants for electric utility rights-of-ways on federal lands. In addition, many NRECA members' service territories occurring in the western United States include expansive areas of federally owned or controlled lands. These are prime examples of lost opportunities to provide voluntary conservation benefits to species and their habitats on federal lands due to arbitrary restrictions. The Services should expand CCAA applicability to include those activities proposed by non-federal entities that operate on federally owned or controlled lands and water. This would expand the voluntary conservation "toolbox" and provide additional opportunities for CCAA enrollment and habitat improvement on federal land.

### **3) Conservation Measures Must Be Economically and Technologically Feasible.**

While NRECA supports the CCAA provision that conservation measures be based on best available science, the Services should revise the criteria to also ensure that such measures are economically and technologically feasible for non-federal property owners to implement. The resources available to the property owner and/or located on the enrolled property should dictate the scale or scope of any adopted conservation measures. Given that CCAAs are voluntary, it is vital that conservation measures are reasonable and practicable. This clarification will provide an additional safeguard to ensure that conservation requirements are not too burdensome and that property owners will have an incentive to participate in the CCAA program. The underlying goal of revising the CCAA Policy and Rule should be to make CCAAs attractive to a greater number of non-federal entities so that both participants and species benefits increase.

### **Conclusion**

Again, NRECA appreciates the opportunity to provide comments on how to revise the CCAA Policy and associated regulations. We welcome an opportunity to discuss our recommendations further with your team and look forward to continuing to work with the Services to improve ESA implementation.

Respectfully,



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