



November 3, 2008

Public Comment Processing
Attention: 1018-AT50
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 North Fairfax Drive, Suite 222
Arlington, VA 22203

RE: Interagency Cooperation Under the Endangered Species Act: Notice of Availability of Draft Environmental Assessment and Invitation for Public Comment, 73 Fed. Reg. 63667 (Oct. 27, 2008)

Dear Sir/Madam:

Responding to the referenced notice of availability, the Interstate Natural Gas Association of America (INGAA) supports the Draft Environmental Assessment (Draft EA) and shares the Services' conclusion that the proposed amendments are wholly procedural, not substantive, and adopting these regulations would not cause any environmental effects warranting preparation of an environmental impact statement.

Last year our sister organization, the INGAA Foundation, commissioned a report entitled *Suggestions on How to Improve the Endangered Species Act*. The report identified a number of measures that could be taken to improve the consultation process and streamline the construction of critical natural gas infrastructure without compromising the long-standing policy objectives and substantive requirements of the Endangered Species Act. As specified in that report, the extension and expansion of the interstate natural gas pipeline system is subject to comprehensive regulation by the Federal Energy Regulatory Commission (FERC) through its authority to issue certificates of public convenience and necessity under Section 7 of the Natural Gas Act (NGA). As part of the application process, FERC subjects proposed projects to comprehensive environmental reviews that include consideration of potential effects on endangered and threatened species (and their habitats) under the Endangered Species Act (ESA). The report offered a number of suggestions to enhance the consultation process in light of FERC's expertise and the depth of its review.

The regulations proposed in this docket reflect many of the changes offered in the INGAA Foundation report, and INGAA supports the proposed regulations, albeit with a few suggested modifications, as evidenced by the comment letter INGAA filed in this docket on October 14, 2008.

Turning to specific provisions in the Draft EA, Alternative A — the "No Action Alternative" — would withdraw the proposed regulations and leave the current consultation procedures unchanged. INGAA finds this alternative unacceptable for all the reasons detailed in the INGAA Foundation report. As noted in the Draft EA, maintaining the *status quo* has its own

environmental effects, measured in the time and effort spent on redundant and unnecessary reviews instead of those projects that would benefit from the Services' expertise most. As the Services noted in announcing the proposed rule, the procedural changes would allow more efficient use of limited resources and help focus consultation on “those effects that can be meaningfully addressed.” 73 Fed. Reg. 47,868, 47,869, 47, 871 (Aug. 15, 2008)

Alternative C — adopting the proposed regulations and instituting measures for expanded Service oversight of federal action agencies — perpetuates the diversion of Service resources. The proposed amendments are based on the realization that federal action agencies now have decades of experience with ESA consultation, that these agencies are capable and qualified to determine when consultation is not necessary, and that they appreciate the gravity of their decisions and their liability under the ESA, *e.g.*, Preamble to the Proposed Rule, 73 Fed. Reg. at 47871. INGAA concurs with the Services' view of the federal action agencies — particularly as applied to FERC — and we therefore see no environmental benefit in pursuing Alternative C instead of simply going forward with the regulations as proposed.

INGAA also agrees with the Services that the approaches described in Alternative D do not merit environmental assessment because they would not fulfill the purpose of the proposed regulations.

Finally, INGAA concurs that an environmental impact statement is not necessary because the proposed regulations deal only with procedural matters. As correctly stated on Page 13 of the Draft EA:

This Draft EA examines whether the proposed regulatory changes will have any direct, indirect, or cumulative impacts on the quality of the human environment. As explained in more detail below, the proposed action is not expected to result in significant effects within the meaning of NEPA and the CEQ regulations. This is because the proposed limited regulatory modifications change neither the obligations of agencies to comply with section 7(a)(2) nor any substantive standard related to the protection of listed species or designated critical habitat. Rather, the proposed regulatory changes provide clarifications consistent with the state of current law and agency practice and are proposed with the intent and goal of providing for more clarity and efficiency in the section 7(a)(2) consultation process. And while some may believe that one or more of the proposed regulatory changes will somehow result in substantive changes in the level of species protection, the Services do not believe this is the case. Moreover, because the changes focus on consultation processes, to the extent that any of the proposed changes could result in environmental effects, no such effects have been identified that would rise to the level of significance requiring the Services to prepare an environmental impact statement.

In several cases, the Services are proposing to change the consultation regulations to reflect concepts that have been in place for 20 years, *see* Draft EA at pp. 15-18 (discussing proposed changes to the definitions of “cumulative effects” and “effects of the action”). In other cases, the

Services propose to offer procedural flexibility without changing any substantive requirements, *see* Draft EA at pp. 14-15 (discussing proposed changes to the definition of “biological assessment”). As noted on page 18 of the Draft EA, the proposed amendments specify circumstances when consultation is not required; however, those circumstances only apply “when the direct and indirect effects of [the contemplated federal] action *are not anticipated to result in take.*”

The proposed amendments do not alter any of the substantive requirements of the ESA and they advance the objectives behind ESA consultation by promoting a more effective allocation of Service resources. For purposes of the National Environmental Policy Act and the regulations issued by the Council on Environmental Quality, the environmental assessment is sufficient as drafted, and an environmental impact statement is not necessary or appropriate.

Respectfully submitted,

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