

Cooperative Alternatives to ESA Regulatory Process

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Cooperative Conservation

Purpose: To provide technical assistance and leverage funding for the conservation of candidate and other at-risk species.

Candidate Conservation Program

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Two Key Elements:

1) Species Assessments:

FWS identifies candidate species for ESA listing and provides conservation recommendations that can remove and reduce threats so that listing will be unnecessary.

- Process emphasizes coordination with the States to obtain the best available information on species status and recommendations for conservation.*
- Provides the foundation for planning and implementing voluntary conservation agreements that are most likely to be effective in making listing unnecessary.*

2) Candidate Conservation Agreements With Assurances (CCAAs):

Guides activities on non-federal lands that can help make listing unnecessary. Under Section 10 of the ESA and related regulations for CCAAs, the FWS may issue an enhancement of survival permit to property owners who commit to a CCAA pursuant to permit issuance criteria and conditions provided at 50 CFR 17.22(d)(2) and (3), respectively.

- The permit includes assurances that no additional resource use restrictions or conservation measures on non-federal lands will be required by the FWS beyond those in the CCAA without their consent (see 50 CFR 17.22(d)(5) for the specific text of assurances).*
- The permit also authorizes a prescribed amount of incidental take of the covered species that may result from the participant's actions covered by the CCAA.*
- The permit becomes effective if the species is listed under the ESA in the future.*

Positives:

- *Landowners can participate in obtaining/providing the best available information on species status and recommendations for conservation.*
- *Agreements are negotiated.*
- *No additional resource use restrictions or conservation measures on private land beyond those in the CCAA without the landowner's consent.*
- *Provisions of CCAA can be extended to adjacent federal lands through Biological Opinion or management guidelines.*

Negatives:

- *Cost prohibitive; generally requires considerable up-front expenditures of time and resources by private landowners.*
- *Presumes that the threats identified to the species relative to resource use are real and subject to alleviation through resource use restrictions.*
- *Burden for species conservation on private lands falls disproportionately on private landowners rather than on society in general.*
- *Lack of trust between government agencies and private landowners.*

Safe Harbor Agreements

Safe Harbor Agreements (SHAs) are voluntary agreements involving Private or other non-federal property owners whose actions contribute to the recovery of species listed under the ESA. The agreement is between cooperating non-federal property owners and the FWS (or NOAA in regard to listed marine and anadromous fish species). Although many SHAs and permits will involve only a single property owner, the FWS encourages the development of "Programmatic SHAs."

Programmatic SHA:

A programmatic SHA and associated permits authorize State, Local

and Tribal governments, and other entities to enter into an agreement and hold the associated permit. The entity can enroll private landowners within a specific region and convey the permit authorization and assurances to them through a "certificate of inclusion."

Purpose:

To provide a net conservation benefit that contributes to the recovery of the covered species.

Nature of Agreement:

In exchange for actions that contribute to the recovery of listed species on non-federal lands, participating property owners receive formal assurances from the FWS that the FWS will not require any additional or different management activities without the owner's consent. In addition, at the end of the agreement period, participants may return the enrolled property to the baseline conditions that existed at the beginning of the SHA.

Key Elements:

- 1) Property owner and FWS gather general information including, but not limited to, a map of the property, proposed management actions, information about the listed species on the property, and other pertinent information. In the case of a Programatic SHA, the map shows the specific area within which individual property owners can enroll. These participating owners then provide applicable information for their respective properties to the holder of the associated programatic SHA permit.*
- 2) FWS or approved cooperators describe the baseline conditions for the property to be enrolled in the SHA program. Baseline conditions can refer to population estimates and distribution, or to the habitat characteristics that sustain seasonal or permanent use by the species.*
- 3) Using the baseline determination, the property owner and the FWS discuss land use objectives, assess habitat quality, and identify other information needed to develop an agreement that meets the SHA net conservation benefit standard.*
- 4) With the technical assistance from the FWS, the property owner and any other pertinent entity (such as a State game & fish agency) develops a draft SHA.*
- 5) The property owner applies to the FWS for an Enhancement of Survival Permit, with the draft SHA attached. In the case of a Programatic SHA, the qualified entity submits the draft SHA and is the applicant for the Permit.*
- 6) Upon compliance with applicable ESA provisions (internal review and public comment period on the permit application), and after the FWS ensures that the permit criteria have been satisfied, the property owner is issued an Enhancement of Survival Permit and the SHA is finalized.*
- 7) In the event that continuation of permitted activities will appreciably reduce the likelihood of survival and recovery of any listed species in the eyes of the FWS, the FWS may, as a last resort, revoke the permit. Prior to revocation, the FWS will, with the consent of the permittee, pursue all appropriate options to avoid revoking the permit.*

Positives:

- *Landowners can participate in obtaining/providing the best available information on species status and recommendations for conservation.*
- *Agreements, including durations thereof, are negotiated.*
- *No additional or different management activities required without the participant's consent*
- *At the end of the agreement period, participants may return the enrolled property to the baseline conditions that existed at the beginning of the SHA.*
- *Enhancement of Survival Permit coverage (Section 10(a)(1)(A) of the ESA) authorizes incidental take of species that may result from actions undertaken by the landowner under the SHA (including returning the enrolled property to baseline conditions).*
- *Participating neighbors can obtain certificate of inclusion.*
- *SHA can be renewed for as long as the property landowner and FWS mutually agree.*
- *SHA can be applied to federal lands through Biological Opinion and/or guidelines (only on Coronado NF so far in Arizona)*

Negatives:

- *Cost prohibitive; generally requires considerable up-front expenditures of time and resources by private landowners.*
- *Presumes that the threats identified to the species are real and subject to alleviation through additional, different or restricted management activities.*
- *Permit coverage subject to revocation should the FWS subsequently determine that a continuation of the permitted activities will appreciably reduce the likelihood of survival and recovery of any listed species.*
- *Burden for listed species conservation on private lands falls disproportionately on private landowners rather than on society as a whole.*
- *Risk of litigation regarding ESA Section 7 consultation relative to application of SHA to federal lands.*
- *Risk of increased resource use restrictions should listed species colonize adjacent private and federal lands where not previously found.*
- *Listing of new species on private land covered by current SHA will likely require new SHA or amendment of old SHA to cover new species.*
- *Takes at least six to nine months, or longer, to develop an SHA.*
- *Lack of trust between government agencies and private landowners*

Partners for Fish & Wildlife

Purpose:

To help the FWS fulfill its mission to conserve, protect, and enhance fish, wildlife, and plants by providing technical and financial support to Private landowners who want to improve fish and wildlife habitat on their land.

Major Goals:

- Protect T&E listed and other federal trust species.*
- Protect and restore valuable habitat such as riparian, wetland, stream, and grasslands on non-federal land.*
- Restore biological integrity.*
- Reduce habitat fragmentation.*
- Develop partnerships to restore habitat.*
- Provide technical assistance to landowners.*
- Promote environmental education.*

Key Elements:

- Up to \$25,000 available for each Partners project.*
- Possible to receive more than \$25,000 for “outstanding projects.”*
- Landowners are reimbursed for costs while implementing an approved project.*
- Landowner donation of in-kind services and/or cash encouraged and taken into consideration when FWS selects projects for funding.*
- Habitat restoration and enhancement activities may include, but are not limited to, installing fencing along riparian areas to exclude livestock; rehabilitating in-stream aquatic habitats; restoring wetland hydrology; removing non-native plants; planting*

native grasslands; planting native trees, shrubs, and other plants to provide food and shelter for wildlife in degraded habitats; creation of native fish refugia.

Positives:

- *Opportunity to protect or restore populations of native fish, wildlife and plants.*
- *Opportunity to provide refugium for listed and other federal trust species (such as migratory birds, for example).*
- *Opportunity to improve water quality and watershed health.*
- *Opportunity to reduce nonpoint source pollution.*
- *Opportunity to increase the knowledge of nature with outdoor classrooms.*

Negatives:

- *Cost prohibitive; generally requires considerable up-front expenditure of time and resources by private landowner before reimbursement can occur.*
- *Presumes, relative to livestock, that exclusion of presence from riparian areas will protect and enhance threatened and endangered native warm water fish species when the best scientific and commercial information available clearly shows that it has not.*
- *Burden for listed species conservation on private lands falls disproportionately on private landowner rather than on society as a whole.*
- *Lack of trust between government agencies and private landowners.*