

Programmatic SHA Template language

The draft template Programmatic Safe Harbor Agreement (SHA) on the following pages is intended as a suggested format for Programmatic SHAs. Regions may modify this format as long as all necessary sections are included in each SHA. In the following template, all text in bold font is standardized template language that we strongly recommend using in all SHAs, regardless of what format is used; [] indicates instructions; and general suggestions are neither in bold or in brackets.

DRAFT TEMPLATE SAFE HARBOR AGREEMENT

Cover Page

This Programmatic SHA, effective and binding on the date of last signature below, is between [insert name of Agreement Administrator], [insert name of any other Cooperators such as State or Federal agencies] (Cooperators), and the U.S. Fish and Wildlife Service (Service):

Agreement Administrator: [Insert name of agency or organization administrating the programmatic agreement and the individual responsible [Insert name, title, phone, and address of the relevant individual].

Cooperator: [Insert name of Cooperators and their addresses].

Service: **The Service designates the following as the Agreement Contact:** [Insert name, title, phone, and address of the relevant Service individual (usually the Field Supervisor or a Regional Coordinator)].

Tracking Number: Assign a unique identifier to be used as a tracking number for the SHA.

Summary of Purpose of the SHA

The purpose of this agreement is to outline conservation actions that Participating Property owners will implement and monitor on their enrolled properties for [list the common and scientific name of the species to be covered by the SHA]. The goal of the agreement is to encourage Property Owners to engage in conservation actions for the (species] that provide a net conservation benefit to recovery.

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Responsibilities of the Parties

[Identify and outline the responsibilities of the agreement administrator and any other party involved in implementation of the SHA other than individual Participating Property owner.]

Planning Area, Covered Area

[Include county and describe boundaries of the geographical area to be covered by the programmatic SHA and include a map, noting the area to be covered by the SHA.]

Authority and Purpose

Sections 2, 7, and 10 of the Endangered Species Act (Act) of 1973, as amended, allow the U.S. Fish and Wildlife Service to enter into this SHA. Section 2 of the Act states that encouraging interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs is a key to safeguarding the Nation's heritage in fish, wildlife, and plants. Section 7 of the Act requires the Service to review programs that we administer and to utilize such programs in furtherance of the purposes of the Act. By entering into this SHA, we are utilizing our Recovery Programs to further the conservation of the Nation's fish and wildlife. Lastly, section 10(a)(1)(A) of the Act authorizes the issuance of permits to "enhance the survival" of a listed species.

The purpose of this SHA is to join with [insert name of participating programmatic agreement administrator] to implement conservation measures for the [list the common and scientific name of the species to be covered by the SHA] by [very briefly mention the measures and expected conservation benefit(s)].

[Note: A summary of biological and background information pertinent to this agreement should be included to tie conservation actions to the species or habitat needs and known threats. More information including descriptions of species' status, reasons for listing references are not necessary to include in detail in the SHA, however may be appropriate to include in the Service's separate SHA standard determination in the Findings document.]

Background and Description of Existing Conditions

[Describe the population levels of the covered species existing at the time the SHA is being developed (if known or obtainable,) identify existing and anticipated threats and describe habitat use by the species. Describe the existing habitat characteristics on lands or waters in the region/landscape covered by the programmatic agreement. Reference conservation plans and strategies for the species covered and include all relevant information, maps, and recommendations. To avoid potential management conflicts, reference all other listed and candidate species that occur within the covered area and the management actions for these species.]

Baseline Determination

The Parties agree that the baseline conditions applicable to this Agreement are as follows:
[here describe baseline conditions in terms appropriate for each covered species. Baseline

conditions may in some instances be expressed as measures of the utilization of the enrolled property by the covered species (e.g., numbers of individuals, occupied breeding territories, etc.), particularly where such measures typically experience little seasonal or year-to-year variability. More commonly, baseline conditions will be expressed as measures of the quantity and/or quality of habitat suitable for or occupied by the covered species.]

Conservation Measures/Management Activities

Permit Holder: [Explain how the conservation measures are appropriate for the covered species and are expected to provide a net conservation benefit to recovery to the species on an enrolled property. Describe the nature, extent, timing, and other pertinent details of the conservation measures that Participating Property owners enrolled through CIs will need to undertake, including a timeline for implementation, and specify the types of land uses on the enrolled properties that will allow the property owner to continue to meet the conservation goal specified of the programmatic the SHA. Indicate that a Participating Property owner may not have to implement on their property all of the conservation measures discussed, however there will be a subset of measures depending on the particular conditions that are present or can be anticipated on their property including changes in management the Property Owner will not engage in that could adversely impact the species and its habitat.]

Expected Benefits to the Species

[Describe the benefits to the species and the habitat that are expected to accrue as a result of the implementation of the particular conservation measures on enrolled lands.]

Level/Type of Take/Impacts

[Describe the existing and planned management and development activities on the properties that will be enrolled through CIs, and any possible incidental take of individuals or occupied habitat that may be associated with those activities during the SHA's term. Identify the specific permit-covered activities which may result in incidental take, and the area within which this take would be authorized. Describe any actions the Property Owner with a CI will take to avoid and minimize the likelihood of take, including continuing the existing management program.)]

The Service recognizes that this level of take is consistent with the overall goal of providing a net conservation benefit to recovery of the species on the enrolled property.

Assurances Provided

The assurances listed below apply to the Participating Property owners enrolled by a Certificate of Inclusion (CI) in this SHA where the conservation measures specified in the CI are being properly implemented. The assurances apply only with respect to species covered by the programmatic SHA. Through this SHA, the Service provides each cooperating Property Owner with an a CI with assurances that no additional conservation measures or additional land, water, or resource use restrictions, beyond those voluntarily agreed to and described in the "Conservation Measures" section of this SHA and in the management plan associated

with the CI, will be required. These assurances will be authorized with the issuance of an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act.

Coverage under the CI will only apply to Participating Property owners who enroll, or, if available, sign a letter of intent to enroll lands under this programmatic SHA for [enter name of the species].

Assurances Provided to enrolled Property Owners in Case of Changed or Unforeseen Circumstances

(1) *Changed circumstances provided for in the SHA.* If additional conservation measures are necessary to respond to changed circumstances and the measures were set forth in the SHA's operating conservation program, the enrolled Property Owner will implement the measures specified in the SHA and their CI.

(2) *Changed circumstances not provided for in the SHA.* If additional conservation measures not provided for in the SHA's operating conservation program are necessary to respond to changed circumstances, the Service will not require any conservation measures in addition to those provided for in the SHA without the consent of the enrolled Property Owner, provided the SHA is being properly implemented.

(3) *Unforeseen circumstances.*

(A) If additional conservation measures are necessary to respond to unforeseen circumstances, the Service may require additional measures of the enrolled Property Owner where the SHA and CI is being properly implemented, but only if such measures are limited to modifications within the SHAs conservation strategy for the affected species, and only if those measures maintain the original terms of the SHA to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources available for development or use under the original terms of the SHA and CI without the consent of the enrolled Property Owner.

(B) The Service will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Service will consider, but not be limited to, the following factors:

- (1) Size of the current range of the affected species;**
- (2) Percentage of range adversely affected by the SHA;**
- (3) Percentage of range conserved by the SHA;**
- (4) Ecological significance of that portion of the range affected by the SHA;**

- (5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the SHA; and
- (6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

Monitoring and Reporting

[Describe what will be monitored, how monitoring will be conducted, by whom, and include a schedule or list or performance milestones, as appropriate.]

(1) *Biological Monitoring.*

[Describe any periodic surveys that will be conducted, by whom, how and when they will be conducted to determine the status of populations, improved/restored habitats, management effectiveness, etc.]

(2) *Compliance Monitoring.*

The programmatic permit holder will be responsible for specified monitoring and reporting related to implementation of the SHA and associated individual CIs and fulfillment of its provisions, including implementation of agreed-upon conservation measures, and take authorized by the permit. The SHA will grant the programmatic permit holder and the Service, after reasonable prior notice to a Property Owner, the right to enter the enrolled lands to ascertain compliance with the SHA and the CIs.

(3) *Incidental Take Monitoring*

The programmatic permit holder is responsible for working with the Property Owner(s) to record and monitor any Incidental Take for the duration of the agreement and individual CIs.

Reports will be due [date] of each year and copies will be made available to all Parties.

Notification Requirement

For planned actions that might result in incidental take by a property owner with a CI, they agree to provide the programmatic permit holder [insert name of programmatic permit holder] and the Service with an opportunity to rescue individuals of the covered species before any authorized incidental take occurs. Notification that take is likely to occur must be provided to the programmatic permit holder and the Service at least [30] days in advance of the action. [This language could be modified if permitted take is on an ongoing basis (e.g., as a result of mowing, timber harvest) and the Service agrees that notification can be in the form of annual timber harvest plans, or other appropriate means of notification.]

Duration of SHA and Permit

The SHA will be in effect for duration of [x] years following its approval and signing by the Parties. The section 10(a)(1)(A) permit authorizing take of the species will have a term of [x]

years from the effective date of the permit. The permit and SHA may be extended beyond the specified terms through amendment, upon agreement of the Parties.

Modifications

After approval of the programmatic SHA, the Service may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, an enrolled Property Owner or successor in interest to the owner, to compensate for changes in the conditions or circumstances of any species or ecosystem, natural community, or habitat covered by the SHA except as stipulated in 50 CFR 17.22(c)(5) and 17.32(c)(5).

Modification of the SHA

Any party may propose modifications or amendments to this programmatic SHA, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, the other Parties. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the other Parties' written concurrence.

Amendment of the Permit

The permit may be amended to accommodate changed circumstances in accordance with all applicable legal requirements, including but not limited to the Endangered Species Act, the National Environmental Policy Act, and the Service's permit regulations at 50 CFR 13 and 50 CFR 17. The party proposing the amendment shall provide a statement describing the proposed amendment and the reasons for it.

Termination of the SHA

As provided for in Part 8 of the Service's SHA Policy (64 FR 32726, June 17, 1999), the Property Owner participating through a CI may, for good cause, terminate implementation of the SHA's voluntary management actions prior to the SHA's expiration date, even if the expected benefits have not been realized. If the SHA CI is terminated, the Participating Property owner is required to surrender the CI, thus relinquishing his or her take authority and the assurances granted by the permit through the CI. The Participating Property owner is required to give 30 days written notice of their intent to terminate the CI, and must give the Service an opportunity to relocate affected species within 60 days of the notice.

The programmatic permit administrator may suspend or revoke the CI and associated permit for an individual enrollee for cause in accordance with the laws and regulations in force at the time of such suspension or revocation.

The Service may suspend or revoke the programmatic permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation (50 CFR 13.28(a)). The Service may also, as a last resort, revoke the permit if continuation of

permitted activities would likely result in jeopardy to covered species (50 CFR 17.22/32(c)(7)). The Service will revoke because of jeopardy concerns only after first implementing all practicable measures to remedy the situation.

Termination of the SHA or CIs

As provided for in Part 8 of the Service's SHA Policy (FR 64:32726), the enrolled Property Owner may terminate implementation of the SHA's voluntary management actions prior to the CI's expiration date for any reason. Upon termination, the Participating Property owner surrenders the CI, thus relinquishing his or her take authority and the assurances granted by the CI. The Participating Property owner may terminate this CI with [x] days prior written notice to the programmatic permit holder and other Parties to provide an opportunity to relocate affected species within [x] days of that notice.

The programmatic permit holder may terminate a CI prior to its expiration date for any reason. Upon termination, the Participating Property owners would be required to surrender the CI, thus relinquishing his or her take authority and the assurances granted by the CI. The Participating Property owner will be requested to provide the programmatic permit holder, the Service and other Parties an opportunity to relocate affected species within [x] days of the termination of the CI.

The Service may suspend or revoke the programmatic permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the permit if continuation of permitted activities would likely result in jeopardy to covered species (50 CFR 13.28(a)). Prior to revocation, the Service would exercise all possible measures to remedy the situation.

Remedies

Each party shall have all remedies otherwise available to enforce the terms of the SHA and CIs and the permit, except that no party shall be liable in damages for any breach of this SHA, any performance or failure to perform an obligation under this SHA or any other cause of action arising from this SHA.

Dispute Resolution

The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.

Succession and Transfer

This SHA shall be binding on and shall inure to the benefit of the Parties and their respective successors and transferees, (i.e., new owners) in accordance with applicable regulations (50 CFR 13.24 and 13.25). The rights and obligations under this SHA and associated CIs shall run with the ownership of the enrolled property and are transferable to subsequent non-Federal Property Owners pursuant to 50 CFR 13.25. The enhancement of survival permit associated

with the CI issued to the Property Owner also will be extended to the new owner(s). As a party to the original CI and permit, the new owner(s) will have the same rights and obligations with respect to the enrolled property as the original owner. The new owner(s) also will have the option of receiving SHA assurances by signing a new CI and receiving a new permit. The Property Owner shall notify the Service of any transfer of ownership, so that the programmatic SHA administrator can attempt to contact the new owner, explain the particular responsibilities applicable to the property, and seek to interest the new owner in signing the existing CI or a new one to benefit the specific species addressed in the SHA. Assignment or transfer of the CI shall be governed by Service regulations in force at the time.

Availability of Funds

Implementation of this programmatic SHA is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this SHA will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this programmatic SHA to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

Relationship to Other Agreements

[If, appropriate, discuss the relationship of the SHA to other agreements, such as Partners for Fish and Wildlife, Endangered Species Incentives Program, cooperative agreements, etc.]

No Third-Party Beneficiaries

This SHA does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this SHA to maintain a suit for personal injuries or damages pursuant to the provisions of this SHA. The duties, obligations, and responsibilities of the Parties to this SHA with respect to third parties shall remain as imposed under existing law.

Notices and Reports

Any notices and reports, including monitoring and annual reports, required by this SHA shall be delivered to the persons listed below, as appropriate:

Agreement Administrator/Permittee
[Name and address]

Field Supervisor,

U.S. Fish and Wildlife Service

IN WITNESS WHEREOF, THE PARTIES HERETO have, as of the last signature date below, executed this Programmatic Candidate Conservation Agreement with Assurances to be in effect as of the date that the Service issues the permit.

Agreement Administrator/Permittee

Date

**Deputy (or) Regional Director
U.S. Fish and Wildlife Service**

Date

References Cited