

DRAFT

**CANDIDATE CONSERVATION AGREEMENTS
WITH ASSURANCES**

HANDBOOK

U.S. Fish and Wildlife Service
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EXECUTIVE SUMMARY

Conservation of fish and wildlife resources on private lands is critical to maintaining our Nation's biodiversity. However, private property owners may face land use restrictions if species found on their lands are listed under the Endangered Species Act (Act). The potential for future land use restrictions has led some property owners to manage their lands to prevent or discourage colonization or use of their property by these species. Regulatory certainty was one incentive property owners needed to encourage them to voluntarily promote candidate conservation on their properties. To address this need for regulatory certainty, the Service and the National Marine Fisheries Service finalized a policy to establish standards and procedures for developing Candidate Conservation Agreements with Assurances (CCAAs) for private property owners that would promote conservation of unlisted species on non-federal lands and provide property owners with the regulatory certainty that they desired. This final policy and associated regulations were published in the *Federal Register* on June 17, 1999 (64 FR 32726).

Non-Federal property owners who voluntarily enter into a CCAA agree to implement conservation measures that remove threats or improve the status of unlisted species, can receive assurances from the Service that their conservation efforts will not result in future regulatory obligations in excess of those established in the CCAA. In return for the proactive management, the Service will provide take authorization through enhancement of survival permits that would allow the property owners to take the covered species, as specified in the CCAA. However, prior to the Service entering into the CCAA and issuing any property owner a permit, the Service must determine that the benefits of the conservation measures to be implemented, when combined with the benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species.

This handbook outlines the specific procedures that must be undertaken to develop a CCAA, explains the basic concepts associated with developing and implementing CCAAs, and was primarily developed to aid Service personnel in developing and implementing CCAAs. Although intended primarily as internal Service guidance, the handbook was also developed to facilitate its use by the public and is available for that purpose. This handbook will be updated as necessary as new procedures, regulations and policies are developed that may affect development of CCAAs or implementation of the CCAA program.

I. INTRODUCTION

A. Background

The CCAA Policy, issued June 17, 1999 (64 FR 32726, Appendix 1), is intended to facilitate the conservation of proposed and candidate species, and species that may become candidates, by giving non-Federal property owners incentives to implement conservation measures for declining or at-risk species. The incentives available through CCAAs involve the U.S. Fish and Wildlife Service (Service) providing property owners certainty that no further land, water, or resource use restrictions beyond those agreed to in the CCAA will be imposed if the species later becomes listed under the Endangered Species Act (Act). If the species does become listed, the property owner is authorized through an enhancement of survival permit that is issued in association with the CCAA to take the covered species as long as the level of take is consistent with the level identified and agreed upon in the CCAA. The CCAA Policy considers that all CCAAs will provide benefits to covered species through implementation of voluntary conservation measures that are agreed to and implemented by property owners. Before entering into a CCAA, however, the Service must determine that the benefits of the conservation measures to be implemented, when combined with the benefits that would be achieved if it is assumed that conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. "Other necessary properties" are other properties on which conservation measures would have to be implemented in order to preclude or remove any need to list the covered species. A list of definitions are included as Appendix 2 to facilitate understanding of the CCAA program.

B. Purpose of Handbook

This handbook expands the basic information contained in the final CCAA Policy and its implementing regulations. The handbook is intended for use by Service personnel and others who may develop or assist in the development of CCAAs. This document also explains the procedures for developing a CCAA and the underlying concepts that will allow the Service and others who may be involved in the development of CCAAs to better understand the process. A clear understanding of the process will allow the Service to consistently develop CCAAs with property owners that benefit covered species while offering regulatory assurances. Improvement and refinement of this handbook may be appropriate and necessary as more CCAAs are completed and as a more comprehensive set of guidelines can be developed.

C. Purpose of CCAAs

The purpose of the CCAA Policy is to facilitate the conservation of proposed and candidate species, and species likely to become candidates. Much of the property containing our nation's fish and wildlife and their habitat is owned by private citizens, States, local governments, Native American Tribal governments, conservation organizations, and other non-Federal entities. The future of many of these declining species is dependent upon conservation efforts on these non-

Federal lands, but conservation efforts for these species will be most effective and efficient when initiated early in a species' decline. Early conservation efforts can, in some cases, preclude or remove any need to list species as threatened or endangered under the Act. By precluding the need to list a species through early conservation efforts, property owners can maintain land use flexibility. Specifically, initiating or expanding conservation efforts before a species and its habitat are critically imperiled increases the probability that simpler and less expensive conservation options will be available and that conservation of the species will more likely be successful.

D. Legal Authority

Sections 2, 4, 6, 7, and 10 of the Act allow implementation of the CCAA Policy. Section 2(b) of the Act states that “the purposes of this Act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of...treaties and conventions...” Section 2(c)(1) states that “all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.”

Section 4 of the Act outlines guidelines for identifying species that are threatened or endangered under the Act. Section 4(h)(3) requires that the Service establish a ranking system to assist in identifying species that should receive priority review for listing. To fulfill our responsibilities, the Service developed a program to identify species that warrant protection under the Act (termed “candidates” or “candidate species”) and to monitor and conserve those species for which protection is deemed appropriate until listing can proceed.

Section 6 of the Act provides for the cooperation with the States in endangered species conservation, including matching Federal funding and delegation of permitting authority. Collaborative stewardship with State agencies is important in the development of CCAAs, given the statutory role of State agencies and their traditional conservation responsibilities and authorities for resident species.

Section 7 of the Act requires the Service to review programs it administers and to utilize those programs to further the purposes of the Act. In establishing the CCAA Policy, the Service is utilizing its Candidate Conservation program to further conservation of fish and wildlife. By providing assurances to private landowners who are willing to conserve species and their habitats, the Service is helping to conserve the ecosystems upon which endangered and threatened species depend.

Section 10(a)(1)(A) of the Act allows the Service to issue permits for acts that would otherwise be prohibited by section 9 if such acts are expected to enhance the propagation or survival of the affected species. A well-designed conservation agreement, such as a CCAA, should, by its

nature, enhance the survival of the covered species. Therefore, the Service has determined that section 10(a)(1)(A) enhancement of survival permits provide the best method for permitting take under a CCAA. The take that is authorized by such permits can assume many forms, but it must be in compliance with the CCAA.

E. Coordination Between Fish and Wildlife Service and National Marine Fisheries Service

The Service and the National Marine Fisheries Service (NMFS) share joint authorities under the Act. Generally, the Service is responsible for terrestrial and freshwater aquatic species, while NMFS is responsible for listed marine mammals, anadromous fish, and other living marine resources. The CCAA Policy was issued as a joint policy between the Service and NMFS, but this handbook is only intended to address the Service's development of CCAAs. For situations in which a landowner has both NMFS and FWS candidate species on his or her property, a joint CCAA could be developed between the property owner, NMFS, and the Service, or the property owner could develop separate CCAAs with NMFS and the Service. In a situation where a landowner has NMFS listed species on his or her property as well as FWS candidate species, and the landowner wishes to enter into a Habitat Conservation Plan (HCP; see HCP Handbook 11/96) and receive an incidental take permit, the FWS candidate species cannot be covered by the HCP for NMFS listed species. The landowner can work with the FWS to develop a CCAA for the FWS candidate species. The Service will coordinate closely with NMFS in such cases and in any instances where marine mammals, anadromous fish, or other living marine resources might be involved.

II. GENERAL DESCRIPTION OF A CCAA

A CCAA is a conservation tool that provides regulatory assurances to non-Federal property owners who voluntarily agree to manage their lands or waters in such a way that threats to candidate species, proposed species, or species that may become candidate or proposed species in the future, are removed or significantly reduced. A non-Federal property owner who signs a CCAA with the Service is issued an enhancement of survival permit that provides the property owner with the assurances that he or she will not become responsible for additional conservation measures and will not incur additional, future regulatory obligations if the covered species is later listed under the Act. The property owner is, therefore, only responsible for implementing and maintaining the conservation measures and/or management actions that he or she agreed to in the CCAA, as long as the CCAA is being (or has been) properly implemented. The Service can, if requested by the property owner, provide technical assistance in the development and implementation of CCAAs.

When evaluating a potential CCAA, the Service must determine that the benefits of conservation measures to be implemented by a property owner under a CCAA, when combined

with those benefits that would be achieved if the conservation measures were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. This is the standard that all CCAAs must meet (i.e., the CCAA standard). In developing a CCAA, a non-Federal property owner thus needs to only address those threats, or the proportion of those threats, that he or she can control on the property enrolled in the CCAA. Property owners can do this by protecting, managing, and/or enhancing existing populations and habitats, restoring degraded habitat, creating new habitat, augmenting existing populations, restoring historic populations, or undertaking other activities on the enrolled property that remove threats to the covered species or otherwise improve the covered species' status. In some cases, having a property owner agree not to undertake an activity that would harm a covered species may be sufficient to meet the CCAA standard.

III CCAA PROCESS

One of the great strengths of the CCAA process is its flexibility to address the needs of individual species and the habitats upon which they depend, while also addressing critical landowner needs. CCAAs can vary enormously in size, scope, structure, complexity, and the activities they address. The first CCAA approved was with the Oregon Department of Fish and Wildlife for the Columbian sharp-tailed grouse. In this CCAA, State biologists radio-collared Columbian sharp-tailed grouse before releasing them on private rangeland, where landowners can receive assurances through an enhancement of survival permit issued for the Oregon Department of Fish and Wildlife's CCAA. Participating landowners can be covered under the CCAA if they are willing to provide suitable sharp-tailed grouse habitat for a minimum of five years. Although this particular CCAA applies to approximately 160,000 acres, CCAAs may be as small as a single property or as large as an entire State or region. They can also apply to a single species, a suite of species, or a community or ecosystem. They could address complex conservation actions such as timber management or be an agreement not to do something, such as foregoing haying during a species' breeding season. In situations where our knowledge of a particular species and the threats to it are limited, frequent monitoring may be necessary as part of the CCAA, and, in some cases, development of an adaptive management strategy may also be necessary in order to meet changing needs.

A. Phase 1 - Agreement Development

i. Initial Discussions

Field and Regional Offices are strongly urged to conduct workshops in their communities to inform the public of the availability of and process associated with the development of CCAAs. Typical audiences might include other governmental agencies, civic groups, ranching, farming and forestry organizations, consultants, and/or environmental, conservation, or other non-profit groups. An aggressive and proactive effort to initiate contact with property owners and to

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distribute CCAA-related materials and guidance will help ensure consistent implementation of the CCAA Policy and reduce the chance that the public will receive conflicting, misperceived, or incorrect information. Furthermore, contacts with the landowner should be frequent and cooperative as this will facilitate information exchange and foster a working relationship with the property owner.

Discussions with individual property owners should include the presentation of general outreach materials regarding the Act, the listing process, the Candidate Conservation program, and Candidate Conservation Agreements. In discussions with the property owner, the Service will be responsible for providing sufficient information about the candidate or proposed species, or species of concern, and the types of conservation measures that we believe would be necessary to meet the CCAA standard. However, the Service must strive to ensure that communication with potential partners is a two-way street. Service staff should be open to information provided by landowners that may illuminate additional needs of the species or suggest alternate methods of achieving the species' conservation goals.

The Service will provide property owners with information on the species, including threats, life history, population status, and benefits of potential conservation measures, and will inform them of any State conservation or management plans or other sources of information about the covered species. The Service will also discuss all candidates, proposed species, or other species that may become candidates in the future that may be present on the potential enrolled property. If other CCAAs have been completed in nearby areas or with related species, the Service, with that participating property owner's permission, may share these CCAAs with property owners who are considering development of their own CCAA. It is imperative to ensure that the property owner clearly understands that a CCAA is not an assurance that the Service will not list the covered species. Instead, it is an agreement that if the covered species were to eventually be listed, the Service would not impose further land, water, or resource use restrictions on the property owner for the enrolled property. Furthermore, the Service will ensure that the property owner is aware of the CCAA permit's corresponding authorization to take individuals of the covered species, as long as the level of take is consistent with the terms of the CCAA.

If appropriate, Service discussions with property owners should include a brief description of section 7 and the jeopardy standard. Permits associated with a CCAA can be revoked under a jeopardy situation if the species becomes listed. Therefore, discussions of the jeopardy standard should be as specific as possible and done in the context of the species to be covered under the CCAA, making sure that the property owner clearly understands that the Service will do everything possible to avoid the need to revoke a permit (see "Permit Revocation" section of this document).

ii. Negotiations

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Developing a CCAA is a voluntary and collaborative process between the Service, the property owner, and any other cooperators. As such, all parties must agree to each of the CCAA's provisions. However, the parties will have some discretion to negotiate the provisions, except for provisions that are requirements of the CCAA Policy (e.g., must be an unlisted species, must meet the CCAA standard, must include the required notification requirements).

Ultimately, the Service's signing of the CCAA and its issuance of an enhancement of survival permit is the result of a team effort, requiring review and input from several different levels of the Service. It is important that Field Office staff recognize this also is a collaborative approach, because Service representatives at the Field Office level negotiate the CCAA believing that it will meet the CCAA standard, but cannot pre-approve any CCAA. This is because section 10 permits are issued by the Regional Office, and the permit application must be evaluated fully during Permit Processing Phase (discussed below), which includes the public comment period.

The Service needs to encourage property owners to allow for public participation during the development of the CCAA, when appropriate, particularly when non-Federal public agencies are involved. However, public participation in the actual development of the CCAA does not need to occur unless the property owner so wishes.

iii. Coordination

iii(a) Treaty Rights and Trust Responsibilities:

A unique and distinctive relationship exists between the United States and Native American Tribes, as defined by treaties, executive orders, statutes, court decisions, and the United States Constitution. This relationship differentiates Tribes from other entities that deal with, or are affected by, the Federal government. Native American Tribes including Alaskan and Hawaiian natives, are recognized under Federal law as sovereign nations with governmental rights over their lands and people. These governmental rights and authorities extend to natural resources that are reserved by or protected in treaties, executive orders, and Federal statutes. Such reserved rights may include off-reservation rights to hunt, fish, or gather trust resources. The United States has a Federal trust obligation to Native American Tribes to preserve and protect these rights and authorities.

During CCAA development with non-Federal landowners, the Service must consider whether proposed plans might affect Tribal rights or trust resources. Whenever the Service has a reasonable basis for concluding that such effects might occur, they must notify the affected Tribes and consult with those Tribes in a meaningful, government-to-government manner. Consultation with the affected Tribe(s) must be completed in a timely manner, and, after careful consideration of the Tribe's concerns (if any), the Service must clearly state the rationale for the recommended final decision and explain how the decision relates to the Federal government's trust responsibilities. Therefore, it is important that the Service identify and evaluate any

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anticipated effects of a proposed CCAA upon Native American Tribal trust resources during the planning process. Further, a Tribe can voluntarily and cooperatively work with the Service to pursue a CCAA, but the CCAA must meet the CCAA standard and other criteria if assurances are to be given to the Tribe.

iii(b) U.S. Trust Territories:

In addition to Native American Tribes, the Service may need to coordinate with the U.S. Trust Territories for CCAAs that are proposed within these Territories. These Territories include American Samoa, Guam, Micronesia, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. In addition, all of these Territories have their own fish and wildlife agencies that may want or need to be involved in the development of CCAAs within the Territories.

iii(c) Involving other Federal and State agencies:

Throughout development of a CCAA, the Service will encourage, where appropriate, the participation of other Federal and State agencies who can utilize their existing authorities, expertise, lands and/or resources in support of the CCAA. In particular, it may be important to encourage participation of other Federal and State agencies that manage nearby lands as their participation may provide additional benefits to the covered species. However, the Service must ensure that the CCAA does not obligate other agencies to conduct conservation activities for the covered species, unless the agency specifically agrees. Federal agencies cannot receive assurances for their participation or actions in a CCAA, because their authorities and responsibilities already fall under the Act's Section 7 provisions. However, these provisions do not preclude a Federal agency from participating in proactive conservation efforts.

Close coordination with State fish and wildlife agencies is very important, because States retain primary responsibility and authority for management of nonlisted resident species. A close working relationship with the appropriate State fish and wildlife agencies will also help to ensure that CCAAs will be consistent with applicable State laws and regulations governing management of nonlisted species. In CCAA efforts, Service personnel should invite State participation in landowner visits so that a coordinated conservation approach is encouraged.

iv. Determining if a CCAA is the Appropriate Tool

The CCAA Policy allows for flexibility in implementation of CCAAs to accommodate a variety of circumstances. CCAAs may resemble a Safe Harbor Agreement (SHA), an HCP, a Recovery Plan, a combination of these types of agreements, or none of these, depending on the covered species, the habitat, and the specific circumstances on the enrolled property. The development of a CCAA is generally guided by what is needed for a particular CCAA to meet the CCAA standard. With some species, meeting the CCAA standard may require habitat restoration and a corresponding increase in the number and/or size of the covered species' population, while other species may require only the removal of existing threats.

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CCAAs are generally appropriate when we know enough about the covered species to determine which conservation measures are most likely to meet the CCAA standard. This does not mean that the Service must have every conceivable piece of information related to the covered species in order to enter into the CCAA. Rather, the Service should utilize the information sources available to it when assisting a property owner in the development of a CCAA and when evaluating a CCAA against the CCAA standard. Information sources such as a conservation or management plan for the species would undoubtedly be helpful in determining appropriate conservation measures and the level to which they must be applied to meet the CCAA standard. At a minimum, the Service must internally review and summarize the available and existing information pertaining to the species in order to determine threats and necessary conservation measures. As a part of its analysis, the Service should identify the geographic scope of the area within which conservation measures would be necessary in order to remove the need to list the covered species (“other necessary properties” as referred to in the policy). The identification of these other necessary properties does not have to result in a map but will likely take the form of a description of the amount, type, and quality of habitat necessary to meet the CCAA standard. In some cases, an existing conservation strategy or plan may provide the necessary “big picture” information on the covered species and the conservation measures necessary for its conservation. In those cases, development of CCAAs can be initiated immediately based on existing data and information.

Candidate Conservation Agreements

Some non-Federal landowners may not be interested in developing a CCAA process because (a) they do not want to go through the permitting process, (b) they do not wish to publicly announce their conservation intentions, or (c) they do not seek assurances and/or take authority for the covered species. However, these property owners may be interested in conservation of unlisted species. Under these circumstances, another tool, called a Candidate Conservation Agreement (CCA), is available. CCAs are voluntary conservation agreements between the Service and one or more private or public property owners (including Federal agencies) that provide conservation benefits to unlisted species but do not provide the property owners or any cooperators to the CCA with regulatory assurances or take authorization should the species become listed. Development of CCAs is similar to CCAAs in that the Service works with the property owner and any cooperators to identify threats to the covered species, plan the conservation measures needed to stabilize and conserve them, develop a CCA, implement the conservation measures, and monitor the CCA’s effectiveness. In a CCA, however, the Service should inform the property owner that developing a CCA will not provide regulatory assurances if the covered species is federally listed at some time in the future. In other words, if the species were listed, the property owner would not receive protection from the Act’s section 9 take prohibitions.

Existing Situation Meets the CCAA Standard

In this situation, a property owner may have property that is already in suitable condition for the covered species or may already be doing the necessary conservation measures that will maintain

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its populations or provide habitat such that the CCAA standard is already met. For example, a property owner with 100 acres of habitat may only need to ensure that 80 acres are in suitable condition for the covered species to meet the CCAA standard. So, if the property owner is willing to continue to manage and/or protect 80 acres for the covered species, the Service can enter into the CCAA by defining the conservation measures necessary on the 80 acres, thus assuring the property owner that no additional conservation measures will be required if the covered species becomes listed. If the covered species is later listed, the enhancement of survival take permit would allow the take of the remaining 20 acres at any time (e.g., through development, conversion to agriculture, or timber harvesting), because protection of this acreage was not necessary to meet the CCAA standard.

In another example, a property owner has property that could benefit a candidate species, which is currently in a condition that meets the CCAA standard, but the property owner is also willing to implement other conservation measures to further improve the habitat for this species. In this case, the CCAA standard could be met under the current situation, and the Service would enter into a CCAA that defines the existing habitat conditions and the additional conservation measures to be undertaken and allows the property owner to take any habitat that is created that is above the current level. The CCAA would further assure the property owner that no further conservation measures or land use restrictions beyond those agreed to in the CCAA would be required if the covered species becomes listed.

Existing Situation Needs Improvement to Meet the CCAA Standard

In this scenario, a landowner may have occupied, but suboptimal, habitat on 50 acres of his/her property, yet the Service determines that the habitat must be suitable on 30 acres to meet the CCAA standard. If the landowner agrees to enhance and maintain the 30 acres of habitat in its enhanced condition, the Service could enter into a CCAA with him/her. The CCAA would spell out what conservation management actions were required and what types of land use were allowed on the 30 acres. The landowner would receive assurances that no further conservation measures or land use restrictions would be required to avoid take should the species become listed. He/she would also receive an enhancement of survival permit that would allow take of the species on the remaining 20 acres.

Ongoing Take

In this situation, a property owner with a candidate species on his/her property is regularly engaged in an activity that results in what would be considered “take” of that species if it were listed. This situation might occur in a grassland environment where haying of grasslands before the end of the nesting season might destroy nesting birds, fledglings and/or eggs. This ongoing level of “take” contributes to the decline of the species. The Service might determine that if the property owner is willing to implement the conservation measure of delaying haying until after an average hatch date for the nesting birds, the level of “take” would be reduced and the CCAA Standard met. The Service and the property owner could then enter into a CCAA that defines

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the allowable dates for haying as the conservation measure, assures the property owner that, if the covered species is (are) listed, no further conservation measures would be required, and provides the property owner with an enhancement of survival take permit that would allow any take associated with the delayed, but on-going, haying.

Voluntarily Forgoing an Action That Would Harm a Candidate

In this example, a property owner owns property that is scheduled for development. An abandoned building containing a maternity colony of a sensitive species of bats exists on the property. Because there are no prohibitions against take of nonlisted species, the property owner could legally destroy the building. However, the property owner is willing to move the building to an adjacent location, which will preserve the colony. In this case, the Service can enter into a CCAA, where moving the building is the required conservation measure. No further measures would be required to meet the CCAA standard, and the property owner can receive an enhancement of survival permit protecting him or her from any take associated with the development if the bat is later listed. In a similar situation, it may be appropriate to require, as an additional conservation measure, a buffer area surrounding the new location of the maternity colony where no development may occur.

Situations In Which a CCAA May Not Be Appropriate

CCAs will generally not be appropriate when we do not have enough knowledge about the habitat or life history requirements of the covered species to determine if threats to the covered species are present on the enrolled property and which conservation measures would be necessary to address those threats and meet the CCAA standard. CCAs that allow a reduction of current population numbers or suitable habitat acreages for the covered species are also generally not appropriate for situations where the Service has determined that the covered species cannot tolerate even a limited amount of permitted take. Basically, if the covered species is so highly imperiled that any take of it would increase the threat(s) to it, the Service may be unwilling to enter into the CCAA. However, it may be appropriate to develop a CCAA for highly imperiled species if the property owner undertakes actions that are expected to result in population or habitat increases for the covered species, and limited incidental take to the covered species only occurs once those increases have been achieved.

v. Elements of a CCAA

Each CCAA must be written to identify or include certain discussion topics, analyses, and other factors: See (a) through (p) below and refer to Appendix 3 for a template CCAA that includes standard language for many of these topics.

v(a) Parties

This section of the CCAA should identify and outline each party involved in implementation of the CCAA.

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v(b) Tracking Number

Each Regional Office needs to develop a system of identifying CCAAs with a unique number assigned to each CCAA, and that number should be identified in this section. This number could be the number generated through the Service Permit Information and Tracking System (SPITS).

v(c) Enrolled Property

This section of the CCAA should identify the boundaries of the area covered by the CCAA (i.e., the enrolled property) and should reference or include maps, figures, township and range, and/or legal descriptions as necessary to clearly delineate the precise boundaries of the enrolled property.

v(d) Authority and Purpose

This section of the CCAA should include language that describes the purpose of the CCAA and identifies the authorities under which the Service and the other cooperators undertake the CCAA. This section can also outline the CCAA standard which requires that the Service determine that the benefits of the conservation measures to be implemented, when combined with the benefits that would be achieved if the conservation measures were also to be implemented on other necessary properties, would remove the need to list the covered species. Each CCAA must meet this standard.

v(e) Background

This section of the CCAA should contain information that identifies the covered species, describes the covered species' relevant biological and other characteristics, and identifies both the overall threats to the covered species and the threats that can be addressed on the enrolled property. This section should also reference any conservation strategies, management plans, or other agreements that may exist and have relevance to the enrolled property.

v(f) Description of Existing Conditions

This section of the CCAA should describe the population levels of the covered species that exist at the time the CCAA is being negotiated, if those levels are available or determinable. It should also include a detailed description of the existing habitat characteristics of the lands and/or waters on the enrolled property that sustain any current, permanent, or seasonal use by the covered species. The description might include the vegetation type, the major plant species and their percent cover, the soil type(s) and their moisture regimes, the hydrology of the area, and any other relevant characteristics. These factors should be described quantitatively, when possible, but a thorough qualitative description can be provided where no quantitative data exist. In addition, if existing characteristics of the enrolled property help support populations of the covered species on other lands or waters (i.e., outside of the enrolled property), these characteristics should also be described. For example, riparian conditions on an enrolled

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property may affect water quality and the individuals or populations of the covered species that live downstream, so the CCAA should describe this type of relationship if it exists.

The existing conditions described in this section are not a “baseline” in the same sense as a Safe Harbor Agreement has a baseline. That is, a property owner may or may not be able to return to the existing conditions while meeting the CCAA Standard or maintaining his or her compliance with the CCAA.

v(g) Identification of Conservation Measures and Management Activities

In this section of the CCAA, the conservation measures and/or management activities that the property owner will undertake are identified. These conservation measures should focus on actions that eliminate or reduce the threats to the covered species on the enrolled property in order to meet the CCAA standard. Specifically, the property owner and the Service should: (1) describe the nature, extent, timing, duration, and other pertinent details of the conservation measures that the property owner is willing to undertake to address the threats and conserve the covered species; and (2) explain how the conservation measures are appropriate for the covered species and are expected to eliminate or reduce the threats to the species on the enrolled property.

The determination of whether the conservation measures identified in a CCAA will meet the CCAA standard is a critical part of CCAA development. In order to make this finding, the Service must determine that the benefits of the conservation measures implemented by the property owner under a CCAA, when combined with those benefits that would be achieved if the conservation measures were also implemented on other necessary properties, would preclude or remove any need to list the covered species. This determination will be made by the Service on a case-by-case basis and needs to include an analysis relating the proposed conservation measures to the five listing factors under section 4 of the Act (64 FR 32726) that categorize potential threats. These threat factors are:

- (A) the present or threatened destruction, modification, or curtailment of the species' habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms;
- (E) other natural or manmade factors affecting its continued existence.

Specifically, the CCAA should clearly demonstrate how the proposed conservation measures would reduce or eliminate the threats to the covered species on the enrolled property. By demonstrating this relationship, the Service can assume that if other property owners addressed the threats to the species on their properties, the CCAA standard would be met. Since it is unlikely that all five of these threat factors will occur on each enrolled property, the CCAA needs only to address those specific threats that apply to the covered species on the enrolled

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property. If a specific threat factor does not apply to the covered species on the enrolled property, the CCAA needs merely to state this fact. This approach will allow the Service to compare threats and conservation measures by species across individual CCAAs, and it will help organize the threats discussion so that all five threat factors are addressed.

The conservation measures contained in a CCAA will likely vary, and may even vary in CCAAs that cover the same species. This variability can result from a variety of site-specific factors including, among others, the likely suitability and effectiveness of the conservation measure(s) proposed for each enrolled property, the magnitude of the threats to the covered species on the enrolled property, and the biological characteristics of the covered species. Therefore, the conservation measures may range from direct management actions that are continued into the future (e.g., long-term restoration of native vegetation through the application of prescribed fires or control of predators), to one-time construction of a habitat feature or component (e.g., breeding ponds or artificial dens), to one-time removal of existing threats to the target species (e.g., discontinued use of pesticides/herbicides or exclusion of managed livestock). The types of conservation measures specified in the CCAA will depend upon the types, amounts, and condition of habitats existing on and off the enrolled property, the threats to the covered species that are being addressed, and the degree of imperilment of the covered species. The Service and the participating property owner must agree on a timeline for implementation of the conservation measures and specify the appropriate milestones in this section of the CCAA, but this level of detail will not always be possible, especially when a high level of adaptive management is anticipated due to a lack of information during development of the CCAA.

The CCAA should describe the conservation measures in the context of the threat factors the conservation measures will address and the habitat and/or species population conditions that the property owner agrees to maintain through CCAA implementation. Certain threats to the covered species may not be addressed in the CCAA due to impossible or impractical circumstances. In such cases, the CCAA should describe the threat and the reasons why conservation measures to address the threat are not provided, are impractical, or are unnecessary. Also, there will be instances in which the CCAA should specify the types of land uses that will be allowed on the enrolled property and those that will not. For example, if a landowner agrees to implement a delayed haying schedule to protect a ground-nesting bird species from this activity, future conversion of the enrolled property to cultivated agriculture will not likely be a land use that would be consistent with meeting the CCAA standard. However, grazing on the enrolled property might be consistent with the CCAA standard, depending on the seasonal grazing schedule that is proposed.

v(h) Expected Benefits

This section of the CCAA should describe the benefits to the covered species that are expected to accrue as a result of the implementation of the conservation measures. The expected benefits might be described in terms of the expected increase in population numbers, the expected

improvement in key habitat characteristics, the expected reduction or elimination of take, the threats to the species that will be removed by the implementation of the agreed-upon measures, or all of the above. If the expected benefits are described in terms of habitat characteristics, this section of the CCAA should also reference literature or other data that explains or demonstrates the link between those habitat characteristics and the expected benefit to the covered species (e.g., abundance, density, recruitment). In all CCAAs, the expected benefits must be sufficient for the Service to determine that the CCAA standard will be met. Otherwise, the Service cannot enter into the CCAA.

v(i) Level/Type of Take/Impacts

A CCAA does not cover take of a species until the species is listed. Therefore, this portion of the CCAA must quantify the level and type of take anticipated for each covered species once the species is listed. This take is most often expressed as the number of individuals that will be taken or, if appropriate for the covered species, the number of breeding pairs or other species-specific designations that can accurately quantify the take. Where a census or other estimation of the individuals is not possible or appropriate, habitat may be used as a substitute. When habitat is used for determining the quantity and type of take, the Service may want to quantify take by habitat quality, such as by nesting, foraging, or breeding habitat, or as suitable or unsuitable habitat, or as occupied, unoccupied, or transitional/seasonal habitat.

In addition, this section of the CCAA should describe all conservation measures related to the CCAA and all other activities proposed for the enrolled property which may result in authorized (i.e., permitted) take of the covered species. This will include on-going take that is the result of day-to-day management or operation of the enrolled property and any take that is the result of specific conservation measures or other actions. Such activities might include harvesting, forestry, livestock grazing, or the use of vehicles or other equipment. Cumulatively, these activities may result in short-term and/or long-term impacts and direct and/or indirect impacts to the covered species. For example, such impacts might result from pond or wetland construction, habitat improvement or maintenance, or the moving of a structure or some other mobile habitat (e.g., moving a shed where bats are living). Take may also result from monitoring and other species management activities, such as translocation or relocation of the covered species.

This section of the CCAA should also identify any take minimization measures that will be undertaken. For instance, if the property owner agrees to alter his or her crop harvesting, forestry, or livestock grazing schedule to benefit the covered species, those activities should be considered take minimization measures. Similarly, the Service should encourage the property owner to use trained personnel to implement the conservation measures (e.g., certified prescribed burners) or other activities that could result in take, which would further minimize take of the covered species. All such measures are noted in this section of the CCAA.

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v(j) Assurances Provided

This section will contain standard language that states that the Service, if it approved the CCAA and issues an associated permit, will not require additional conservation measures nor impose additional land, water, or resource use restrictions beyond those voluntarily agreed to and described in the “Conservation Measures” section of the CCAA should the covered species become listed in the future. These assurances are authorized through a section 10(a)(1)(A) enhancement of survival permit, issued under 50 CFR part 17, which will allow the property owner to take individuals of the covered species so long as the take is consistent with the terms of the CCAA. These assurances may apply to a whole parcel of land, or to a portion, as specifically described in the CCAA.

This section of the CCAA will also describe the specific level of take authorization that the property owner will receive for the covered species and/or its habitat, and will identify, if possible, the manner in which the take might occur (e.g., mowing, habitat conversion through development, timber harvest). That is, the CCAA must describe in detail the type and level of take that will be permitted and must state that this level of take is consistent with meeting the CCAA standard. The permit will be issued at the time the CCAA is signed, but it will have a delayed effective date tied to the date the covered species is listed.

The CCAA’s enhancement of survival permit’s regulatory assurances are tied to the effects of “changed circumstances” and “unforeseen circumstances.” “Changed circumstances” are those changes in circumstances that can reasonably be anticipated and planned for in the CCAA (e.g., fire, flood, drought). “Unforeseen circumstances” are those circumstances affecting a covered species that could not reasonably have been anticipated by the permittee and the Service at the time of the CCAA’s negotiation and development, and that result in a substantial and adverse change in the status of the covered species (e.g., the eruption of Mount St. Helens was not reasonably foreseeable). In the event of changed or unforeseen circumstances, the assurances provided apply to the property owner with an enhancement of survival permit only where the CCAA is being properly implemented and only with respect to the covered species.

(1) Changed Circumstances

The following standard text for the changed circumstances assurances should be included in this section of the CCAA:

Changed circumstances provided for in the Agreement. If additional conservation measures are necessary to respond to changed circumstances and the measures were set forth in the CCAA’s operating conservation program, the Permittee will implement the measures specified in the CCAA.

Changed circumstances not provided for in the Agreement. If additional conservation measures not provided for in the CCAA’s operating conservation program are necessary

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to respond to changed circumstances, the Service will not require any conservation measures in addition to those provided for in the CCAA without the consent of the Permittee, provided the CCAA is being properly implemented.

(2) Unforeseen Circumstances

The following standard text for the unforeseen circumstances assurances should be included in this section of the CCAA:

(A) If additional conservation measures are necessary to respond to unforeseen circumstances, the Director may require additional measures of the permittee where the CCAA is being properly implemented, but only if such measures are limited to modifications within the CCAAs conservation strategy for the affected species, and only if those measures maintain the original terms of the CCAA 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 CCAA without the consent of the permittee.

(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 CCAA;
- (3) Percentage of range conserved by the CCAA;
- (4) Ecological significance of that portion of the range affected by the CCAA;
- (5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the CCAA; 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.

v(k) Monitoring

In this section of the CCAA, the parties to the CCAA will determine who is responsible for monitoring and reporting the progress of the CCAA (compliance monitoring) and will fully describe these responsibilities. Specifically, this section should establish quantifiable criteria for measuring progress associated with the implementation of the agreed-upon conservation measures. For example, if the conservation measures consist of revising a grazing management plan to restrict livestock use of riparian areas, this section might describe the date(s) (month/year) when required fencing will be completed.

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This section should also include provisions for monitoring and reporting the CCAA's progress toward the expected conservation benefits (biological monitoring), but these provisions will likely vary among CCAAs due to differing circumstances. The criteria for biological monitoring do not generally relate to the implementation of the measures but, instead, relate to determining the effectiveness of the measures. Many CCAAs may be adequately monitored by a brief site inspection followed by adequate documentation, which may be conducted by the Service or a CCAA cooperator, but other CCAAs, especially large-scale or complex CCAAs, may require a higher level of monitoring effort. It is important to establish quantifiable criteria for measuring the CCAA's progress toward the expected conservation benefits, and these criteria should be described in this section. These criteria may be defined in terms of the covered species' population levels and/or the key habitat characteristics affected by the conservation measures. For example, if the expected conservation benefit is an improvement in water quality, this section should describe the tests that will be used to assess water quality, the party or entity that will complete the tests, the date the tests will be completed, and how the results will be interpreted and reported. In addition, any adaptive management strategies or plans that are part of the CCAA's monitoring plan should also be described in this section. Further information on CCAA monitoring is located later in this Handbook.

v(l) Requirement for Notification of Take

This section of the CCAA contains language that requires the participating property owner to provide the Service at least 30 days notice in advance of any activity that may result in take and provide the Service with a reasonable opportunity to rescue individuals of the covered species before any authorized take occurs. This language can 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 take the form of annual timber harvest plans, or other appropriate means of notification.

v(m) Amendments

All CCAAs should contain provisions that allow for amendment of the CCAA and describe the processes necessary for the parties to modify the CCAA. In many instances, these provisions will be generic in order to allow the parties to the CCAA to modify the CCAA to meet the changing needs of the parties and/or the CCAA's conservation program. For instance, it may be necessary to modify the CCAA to add or remove a species covered by the CCAA, extend or shorten the duration of the CCAA, change the boundaries of the enrolled property, or add or remove a conservation measure covered by the CCAA. In order to facilitate an effective amendment process, the parties need to agree to a set of amendment stipulations that, at a minimum, includes: (1) a notification provision to ensure that all parties are provided any proposed amendments; (2) a provision that all parties are given a sufficient opportunity to review and respond to any proposed amendments; and (3) a provision that identifies how the parties will handle approval or denial of any proposed amendments.

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For each proposed amendment, the Service must determine whether the proposed amendment is a minor or administrative change, or a major modification of the CCAA that could result in outcomes that are significantly different from those analyzed for the original CCAA. In particular, amendments for actions that would either (1) result in a different level or type of take than was analyzed in association with the original CCAA or (2) result in a change to the cumulative conservation benefits to the covered species such that the CCAA Standard might not be met would require additional analysis and would, therefore, likely be major amendments. Major amendments are likely to be subject to the procedural requirements of Federal laws and regulations, such as NEPA, and to require additional analysis by the Service, public notification in the *Federal Register*, and a formal CCAA amendment process. Regional and Field Offices will coordinate on all proposed amendments and will help property owners determine the appropriate course of action for proposed amendments. Additional information on amendments is in the “Phase 3 - Post Issuance” portion of this Handbook.

Minor amendments involve routine administrative revisions or changes to the operation and management program associated with the CCAA, and such minor amendments may or may not alter the conditions of the permit. Upon the written request of one of the parties to the CCAA, the Service can approve minor amendments to the CCAA if the amendment does not conflict with the purposes of the CCAA or does not result in some material change to the Service’s analysis (i.e., with respect to meeting the CCAA standard or the amount of take authorized). These minor amendments do not require a “formal” amendment process, but they do require written documentation that the amendment was approved by the parties to the CCAA prior to the amendment becoming effective. For example, a minor amendment may include a change in monitoring or reporting protocols.

v(n) Duration of the CCAA

The duration of a CCAA may vary. However, the duration must be sufficient to allow the Service to determine that the benefits of the CCAA’s conservation measures would meet the CCAA standard. In most circumstances, the CCAA and the permit will have the same duration but, in some circumstances, the permit could remain in effect beyond the expiration of the CCAA. One example of this would be when the conservation measures only require a one-time action or activity for implementation (e.g., removal of a hazard or barrier). CCAAs and their associated permits cannot be perpetual, but the agreed-upon duration should be commensurate with the habitat needs of the species, the length of time necessary to obtain the CCAA’s expected benefits of the conservation measures, or other relevant factors. Generally, it is to the property owner’s advantage to enter into a CCAA with a long duration. Property owners who enter into CCAAs with a short duration should be notified that if they later decide to renew the CCAA before or at the time of expiration, the Service must reevaluate the CCAA at that time to determine if the CCAA will continue to meet the CCAA standard at the time of renewal. If the status of the species has declined, the conservation measures required at the time of CCAA renewal may be greater than those originally required. Furthermore, if the species has become

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listed, the CCAA is nearing expiration, and the property owner wants to continue to receive assurances, he or she must renew the CCAA in order to receive those assurances and take authorization.

v(o) Termination of the CCAA

In this section of the CCAA, the procedures for CCAA termination must be described. Property owners can end their participation in a CCAA and terminate the CCAA, with good cause, prior to its expiration date, even if the terms and conditions of the CCAA have not been realized. In doing so, property owners do not retain any of the liabilities or benefits of the CCAA. In particular, termination results in a corresponding loss of the permit's regulatory assurances.

v(p) Adaptive Management

An adaptive management strategy will not be necessary for all CCAAs, but, where significant uncertainty related to the covered species or the effect of the conservation measures exists, an adaptive management approach can be highly advantageous. Incorporation of adaptive management provisions and concepts in this section of the CCAA can minimize this uncertainty. Further discussion on adaptive management for CCAAs is located later in this Handbook under the heading "Adaptive Management."

vi. Application Procedures

vi(a) Process

The applicant must provide the lead Field Office with a completed permit application form (i.e., Form 3-200-54), the permit application fee (if required), and a copy of the proposed (draft) CCAA. If the applicant is an individual, the applicant will complete sections A and C of the application form; if the applicant is a business or other entity, including any entities that are applying for a programmatic permit, the applicant will complete sections B and C of the application form. All required information on the application form must be provided, and the applicant must sign and date the completed application form. Applicants should not provide Field Offices with a completed application, the application fee, and the draft CCAA until the Field Office and Regional Office have had an opportunity to review the draft CCAA. This will help minimize delays in the permit review process where a draft CCAA is submitted that will not meet the permit issuance criteria.

Because a species covered by a CCAA may become listed in the future, property owners who may want to engage in activities that would be prohibited under section 9 of the Act if the species were listed as endangered or threatened must apply to the appropriate Regional Director for an enhancement of survival permit at the time of the CCAA development. The enhancement of survival permit is the mechanism whereby the assurances to the landowner are authorized. Although the assurances may be reiterated in the CCAA itself, the permit, not the CCAA, is the legal mechanism that allows those assurances to be transmitted to a property owner. Developing

a biologically sound CCAA and enhancement of survival permit are closely linked processes, and the terms and conditions of the permit must be consistent with the conservation measures included in the CCAA. All participating landowners must apply for the permit following the procedures described in 50 CFR parts 17.22(d)(1) and 17.32(d)(1) and 50 CFR 13, and must use the Federal Fish and Wildlife License/Permit Application Form (i.e., Form 3-200-54) (Appendix 4).

vi(b) Required Documents

The Field Office with the lead for the CCAA is responsible for compiling the completed application package. This package should contain a minimum of four items, although some regions may require additional items: (1) a draft CCAA, (2) a completed application form 3-200-54, (3) the application fee, and (4) the draft NEPA document that the Field Office prepares for the draft CCAA. Appendix 3 contains a template CCAA that property owners and Field Offices can use when developing the draft CCAA. Property owners and Field Offices are encouraged to use this template but are free to modify the format to meet the needs of individual CCAAs as long as all information and language recommended or required for permit issuance is included in the draft CCAA.

In addition, the Field Office must prepare a memorandum that transmits the completed application package to the Regional Office. This memorandum should certify that the Field Office has reviewed the draft CCAA and the application and that the Field Office believes the application package to be sufficient for permit processing. The memorandum and application package are then forwarded to the Regional Office. However, Field Offices should not forward any application packages to the Regional Office if: (1) the Regional Office and/or Solicitor has not had an opportunity to review the draft CCAA prior to the permit processing phase, or (2) there are unresolved issues related to the CCAA that may cause changes to the draft CCAA. This will help minimize any potential delays in the permit processing phase that result from a draft CCAA that is incomplete, inadequate, and/or must be revised.

B. Phase 2 - Permit Processing

The permit processing phase includes those activities associated with regulatory compliance involved in the CCAA's approval or denial. These activities include the NEPA analysis, intra-Service consultation under section 7 of the Act, and determination whether the CCAA meets the issuance criteria.

It should be noted that CCAA permits are subject to both the general Service general permitting regulations in 50 CFR Part 13 and the CCAA specific regulations in CFR Parts 17.22 and 17.32(d). 50 CFR Part 13 provides conditions for the general administration of the Services' fish, wildlife, and plant program.

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The Regional Office, utilizing the Service Permit Information Tracking System (SPITS), enters the applicant's (i.e., the property owner's) information and assigns a permit number to the CCAA. The Regional Office also ensures that the application fee is processed and finalizes the Federal Register notice and sends it to the Office of the Federal Register. Processing an enhancement of survival permit application consists of publishing a Notice of Availability (NOA) in the *Federal Register* that opens the public comment period and announces the availability of the draft CCAA, the Service's draft NEPA document, and the property owner's permit application. The NOA must provide the public with at least 30 days to provide comments, although complex projects may warrant a longer (i.e., 60-day or 90-day) public comment period. Further, the NOA should also contain a general synopsis that clearly explains the rationale behind the CCAA and the Service's potential issuance of the requested enhancement of survival permit. An example *Federal Register* NOA is provided in Appendix 5. Processing the application also consists of evaluating any public comments that are received, conducting an intra-Service consultation under section 7 of the Act, and determining whether the CCAA meets the permit issuance criteria. These basic steps are required for all CCAAs. However, specific document and processing requirements will vary depending on the size, complexity, and scope of the CCAA.

i. Regulatory Compliance

i(a) NEPA

Issuance of an enhancement of survival permit is a Federal action subject to the National Environmental Policy Act (NEPA). The purpose of NEPA is to promote productive and enjoyable harmony between human activity and the natural world by ensuring that there is analysis and disclosure of the environmental issues surrounding a proposed Federal action. The Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA (40 CFR §§ 1500-1508) require all agencies to analyze the impacts of their proposed actions and to include other agencies and the public in the process.

The goals and mechanisms of NEPA and the Endangered Species Act as they relate to enhancement of survival permits and CCAAs are similar and functionally compatible in many respects. It is important to recognize the similarities and differences in the requirements and to integrate those requirements in a manner that provides useful information to the decision-maker and to the public.

Although the Act's section 10 requirements and NEPA's requirements overlap considerably, the scope of NEPA goes beyond that of the Act by considering the impacts of a Federal action on non-wildlife resources including, but not limited to, water quality, air quality, and cultural resources. Depending on the scope and likely impacts of the CCAA, NEPA requirements can be satisfied through: (1) a categorical exclusion, (2) an Environmental Assessment (EA), or (3) an Environmental Impact Statement (EIS).

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CEQ regulations (40 CFR 1508.4) define categorical exclusions as "...a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required."

The Service's procedures for implementing categorical exclusions are found in the Department of the Interior Manual (Departmental Manual or DM) at 516 DM 6, Appendix 1; and 516 DM 2, Appendices 1 & 2. The Departmental Manual categorically excludes the issuance of permits involving fish, wildlife, or plants from further NEPA compliance review, when such permits cause no or negligible environmental disturbance. If it is determined that a CCAA can be categorically excluded from further NEPA compliance review, a written finding of this determination should be part of the administrative record for that document. The Service expects that most CCAAs will be categorically excluded from further NEPA compliance review. A CCAA screening form (Appendix 6) is provided to help applicants and Field Offices determine if any of the exceptions to a categorical exclusion will apply to a given CCAA.

Another consideration in meeting the requirements of this categorical exclusion is cumulative impacts. CEQ regulations define a cumulative impact as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions" (50 CFR 1508.7). When determining whether to categorically exclude a section 10 permit application, the Service must ensure that the impacts of the project, considered together with the impacts of other permitted projects, will not be "significant." For example, if numerous low-effect projects in a given species' habitat are categorically excluded, the Service must ensure that issuance of section 10 permits for these projects does not result, over time, in cumulative habitat losses that become significant.

CCAAs that are not categorically excluded will require preparation of an Environmental Assessment (EA). The purposes of an EA are to briefly analyze the impacts of a proposed action to determine the significance of the impacts and to determine whether development of an environmental impact statement (EIS) is needed; to analyze alternatives for proposals that involve unresolved conflicts concerning uses of available resources; and to aid an agency's compliance with achieving NEPA's purposes when preparation of an EIS is not necessary. An EA will contain a brief discussion or description of: (1) the purpose and need for the proposed action; (2) the nature of the proposed action; (3) alternatives to the proposed action that were considered; (4) the environmental impacts of the proposed action and its alternatives; and (5) a list of agencies and persons consulted in the NEPA review process. Public review procedures for EAs vary depending on the scope of the proposed action. The culmination of the EA process is either a Finding of No Significant Impact (FONSI) or a decision to prepare an EIS.

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If it is determined that implementation of the CCAA would not constitute a major Federal action significantly affecting the quality of the human environment, a FONSI, explaining the rationale for such finding of non-significance and stating that an EIS will not be prepared, is prepared and signed by the permit issuing official and made available to all interested parties for public review. A FONSI must be made available to the public in accordance with 40 CFR 1506.6

If the conclusion reached by an EA is that a particular CCAA will have a significant environmental impact, an EIS will be prepared. An EIS is a detailed written statement required by section 102(2)(C) of NEPA containing, among other things, an analysis of environmental impacts of a proposed action and alternatives considered, adverse effects of the project that cannot be avoided, alternative courses of action, short-term uses of the environment versus the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitment of resources (40 CFR 1508.11 and 40 CFR 1502). The Service's NEPA guidance for the development of an EIS is contained in 30 Administrative Manual 2-3, and Director's Order No. 11, dated April 18, 1985. If further assistance is necessary for developing an EIS, Field Offices should consult the appropriate Regional Office Environmental Coordinator.

i(b) Endangered Species Act

i(b)(1) Section 7/Critical Habitat

The potential issuance of an enhancement of survival permit that is associated with a CCAA is a Federal action that is subject to the consultation provisions of section 7 of the Act. Section 7(a)(2) of the Act requires all Federal agencies to ensure that "any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification" of designated critical habitat. The section 7 implementing regulations (50 CFR Part 402) require, among other things, analysis of the direct and indirect effects of a proposed action, the cumulative effects of other activities on listed species, and effects of the action on any designated critical habitat. Compliance with section 7 of the Act is the Federal agency's responsibility, not the property owner's (i.e., not the applicant's). The Service must, therefore, conduct an intra-Service (or internal) consultation or conference to ensure that issuance of the permit is not likely to jeopardize any listed species or destroy or adversely modify designated critical habitat. The Service will not enter into a CCAA unless the threats to and requirements of the covered species are well enough understood that we can determine that implementation of the conservation measures will be beneficial to the covered species and will not adversely affect listed species or critical habitat. The Service may enter into a CCAA if the information gaps related to the requirements of the covered species can be adequately addressed by incorporating adaptive management principles into the CCAA.

Intra-Service consultations and conferences consider the effects of the Service's actions on listed, proposed, and candidate species. Candidate species are treated as if they are proposed for

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listing for purposes of conducting an intra-Service section 7 conference. Although including candidate species in the Service's section 7 compliance efforts is not required by law, and therefore only advisory in nature, it is the Service's policy (March 1998 Consultation Handbook) to consider candidate species when making natural resource decisions. Therefore, candidate species and other unlisted species covered by a CCAA will be considered during section 7 conferencing. It is important to note that this includes covered, declining species that are not official candidates, because formal intra-Service conference should occur on the proposed issuance of any enhancement of survival permit, regardless of the designated status of the species. The conference will ensure that the covered species have been addressed by the Service with respect to section 7 requirements should they become listed after the permit has been issued.

The requirements of section 7 should not be a significant impediment with respect to the species covered by a CCAA, because the CCAA and associated permit standard require an expectation that benefits to the covered species will result. However, if a CCAA has the potential to affect other listed species, the impacts of the CCAA on those other species will have to be considered during the section 7 consultation. Therefore, the potential impacts on other listed species should be evaluated by the Service early in the CCAA development process and prior to making any commitments to the applicant or property owner. For more information on the section 7 consultation and conferencing process, refer to the March 1998 FWS/NMFS Consultation Handbook section on Intra-Service consultations.

In some cases, a CCAA may result in indirect effects to listed species. The implementing regulations of section 7 of the Act define indirect effects as "those that are caused by the proposed action and are later in time, but still are reasonably certain to occur." This would typically include effects on listed species outside the CCAA area, although it could include effects on listed species inside the CCAA area. If expected indirect effects are serious enough to result in jeopardy or adverse modification to critical habitat and they have not been adequately treated in the CCAA, the Service would have to deny the permit. Because CCAAs are intended to provide positive conservation benefits, the Service anticipates that most CCAAs will not cause indirect effects. However, the potential for any such effects will be carefully considered early in the CCAA negotiation process.

In addition to evaluating the effects of Federal actions on listed species, section 7(a)(2) prohibits the "destruction or adverse modification" of designated critical habitat for listed species by any action authorized, funded, or carried out by a Federal agency. The section 7 regulations define "destruction or adverse modification" as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." The regulations for section 4 of the Act (50 CFR 424.12) describe the "constituent elements" of critical habitat as "those that are essential to the conservation of the species" including, but not limited to, "roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or

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dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types."

Thus, when proposing to issue section 10 permits for CCAAs, the Service must ensure that the constituent elements of critical habitat will not be altered or destroyed by proposed activities to the extent that the value of the habitat for survival and recovery of the affected listed species would be appreciably reduced. To the extent that a proposed CCAA might result in impacts to critical habitat, such impacts will be described and evaluated in the biological opinion or conference opinion relating to the CCAA permit application. Because CCAAs are based on voluntary, proactive conservation management principles, it is unlikely that the conservation measures in a CCAA will result in an adverse modification of critical habitat.

However, the Service cannot guarantee property owners that critical habitat will not be designated on, or will be excluded from, the enrolled property covered by a CCAA if the covered species is listed in the future. While exclusion from a critical habitat designation is not out of the question on enrolled properties covered by CCAAs, the mechanism for such an exclusion has not yet been determined. The circumstances under which this might occur will be clarified once the Service develops and finalizes a policy for designating critical habitat.

i(b)(2) Issuance Criteria

In order for the Service to issue an enhancement of survival permit associated with a CCAA, we must, in a written Findings document, ensure the following criteria from the regulations are met. If the application fails to meet any of the criteria, the permit will be denied.

1. The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the CCAA.

The Service must determine that any take of the covered species authorized under the permit will be incidental to otherwise lawful activities and not the purpose of such activities. These activities would occur as a result of the applicant's implementation of the conservation actions described in the CCAA.

2. The CCAA complies with the requirements of the CCAA policy.

The Service must determine that the CCAA and application meet the requirements contained in the implementing regulations, the conservation measures and expected benefits to the covered species will meet the CCAA standard, and the CCAA complies with all other requirements of the CCAA policy.

3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species.

Through a biological or conference opinion, the Service must conclude that the direct and indirect effects of issuing the permit and authorizing incidental take of the covered

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species would not appreciably reduce the likelihood of survival and recovery in the wild of the covered or any other listed species, and not result in adverse modification of critical habitat.

4. Implementation of the terms of the CCAA is consistent with applicable Federal, State, and Tribal laws and regulations.

The Service must determine that the CCAA is consistent with all applicable Federal, State, and Tribal laws and regulations. This includes the Act and NEPA. The applicant is responsible for obtaining any other authorizations, if any, necessary under State, Federal, or local laws or regulations in order to carry out the activities covered in the CCAA. The validity of the permit will be conditioned upon observance of all applicable State, local, or other Federal law.

5. Implementation of the terms of the CCAA will not be in conflict with any ongoing conservation programs for species covered by the permits.

The Service must determine that approval of the CCAA and issuance of the permit will not be in conflict with any ongoing conservation programs for the covered species.

6. The applicant has shown capability for and commitment to implementing all of the terms of the CCAA.

The Service must ensure that the CCAA will be carried out as specified. Compliance with the CCAA is a condition of the permit. Signing of the legally binding CCAA by the applicant and the Service helps insure that the CCAA will be implemented and commits both parties to obligations under the CCAA and its associated permit terms and conditions. Implementation of the CCAA will be a condition of the permit, and a failure to perform obligations under the CCAA may be grounds for suspension or revocation of the permit.

i(c) NHPA

The issuance of an enhancement of survival permit for a CCAA pursuant to section 10(a)(1)(A) of the Act is as an “undertaking” subject to the requirements of Section 106 of the National Historic Preservation Act (NHPA). Section 106 of the NHPA and its implementing regulations at 36 CFR 800, require Federal agencies to take into account the effects of their undertakings on historic properties and cultural resources and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings through consultation with the appropriate State Historic Preservation Officers (SHPO). Historic and cultural resources can include historic properties, archaeological sites and resources, and other cultural resources (e.g., historic districts, historic and prehistoric landscapes, Native American sites, etc.).

Compliance with section 106 of the NHPA can be achieved in a variety of ways that depend on the type, extent, and complexity of activities that are proposed for authorization by the

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enhancement of survival permit. Compliance may be as simple as conducting a search of the SHPO's archaeological site files to determine if known historic and/or cultural resources are located within the area of potential effects on the enrolled property or as involved as the property owner or Service hiring someone to conduct surveys. In all cases, the steps taken in the NHPA compliance process must be documented either in the CCAA or in the administrative record. Service staff should contact their Regional Historic Preservation Officer (RHPO), a Service staff archaeologist, and then the RHPO (or designee since not all regions have RHPO's) can contact the SHPO so that the Service can determine the appropriate level of NHPA compliance for CCAAs that are in development. Compliance with NHPA is a necessary component of CCAA development and discussions with the RHPO or staff archaeologist, should be initiated early in the CCAA development process.

i(d) Public Notification/Confidentiality

As described in 50 CFR 17.22 and 17.32, we must publish a notice in the *Federal Register* of each application for an enhancement of survival permit. In that notice, we invite the submission of written data, views, or comments regarding the permit application. It is also our policy to make every CCAA available for public review and comment as part of this evaluation process.

Some property owners may resist the idea of their names being made public during the public comment period, and some property owners will be unwilling to proceed with a CCAA after learning about this requirement. Yet, the Service should make every effort to help property owners see the benefits of developing a CCAA, including the potential conservation benefits that will be achieved and the assurances that they will receive. Field Offices can provide property owners with example CCAAs that have been completed elsewhere and put property owners in contact with other property owners who have already signed CCAAs, which may assist in making hesitant property owners feel more comfortable about the public notification and comment process.

It is important that property owners understand that public notification is required prior to the Service's issuance of the requested permit. The Service will make the draft CCAA, the Service's draft NEPA document, and the property owner's permit application available to the public during the public comment period and will provide copies of these documents to any person who requests them. The Service's compliance with the public notification process may mean that the property owner's name, the location of the enrolled property, or other related information may be published in the *Federal Register* NOA and/or released directly to the persons who request the information. The Service will, however, protect a property owner's private information to the extent allowed by law by withholding certain information from persons who request the information. The Service can only withhold the information to the extent allowed or required by the Freedom of Information Act (FOIA) or Privacy Act.

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In general, information that describes what has been agreed to by the parties to the CCAA is available to the public, while information about the property owner may be protected to the extent that the information is not essential to the validity of the CCAA. In order to withhold from FOIA release information such as the property owner's name, the location of the enrolled property, or proprietary business data, the Service must, prior to withholding the information, receive notification from the property owner (applicant) requesting that the information be withheld and make a written determination that the privacy needs of the property owner (applicant) outweigh the information needs of the public. This determination must be maintained by the Service as part of the administrative record. Nevertheless, the Service will not release confidential, proprietary, or individual privacy information which is protected under FOIA or the Privacy Act. If the permit applicant is an individual (i.e., not a company or other institution), his or her date of birth, social security number, and other personal information must be blocked out or otherwise removed, or redacted in accordance with the Privacy Act and FOIA from any application or related information that is provided to the public. (See Appendix 7 and visit the Services' website at www.foia.fws.gov for more information on FOIA and the Privacy Act.)

ii. Required Documents

At the conclusion of the public comment period, the Field Office receives and addresses formal written comments from the public, modifies or revises the draft CCAA as necessary to address pertinent public comments, and transmits the CCAA permitting package to the Regional Office. The permitting package includes: (1) the revised or draft final CCAA; (2) the revised or draft final NEPA document; (3) the draft Biological Opinion; (4) the draft Findings document; and (5) a draft FONSI if an EA was written for NEPA compliance. The Field Office should also include a memo that provides the draft terms and conditions for the permit. The Regional Office reviews and edits the permitting package, and, if they are acceptable, prepares the final permitting package for surname and signature by the Regional Director. The final permitting package includes the five documents from the Field Office and the Environmental Action Statement (EAS) and permit, which are prepared by Regional Office staff.

iii. Permit Issuance or Denial

The permit (Form 3-201) must identify the covered species, stipulate the activities and take authorized, and indicate the location(s) where the activity or activities covered by the CCAA can be conducted (i.e., the enrolled property). The permit and its attached terms and conditions must contain sufficient information and clarity so that no question remains by the permittee or an enforcement officer as to the scope of the authorized taking. Permits, although provided to the participating landowner at the time of CCAA approval, will become effective for a species covered by a CCAA on the effective date of the final rule that lists the covered species.

The Service has the authority to impose permit terms and conditions that it believes are necessary to carry out the purposes of the permit, including, but not limited to, monitoring and

reporting requirements for determining whether the property owner is in compliance with the terms and conditions. In many cases, the permit terms and conditions will be the same as the CCAA's provisions, with the exception of the standard conditions for all permits. In other cases, the Service may also need to incorporate additional conditions derived from the reasonable and prudent measures identified in the section 7 consultation or conference. Permits should also include a condition that identifies the protocols the property owner will use for handling dead and/or injured specimens of listed species taken under the authority of the permit.

If the CCAA and associated documents do not satisfy the permit issuance criteria, the permit application will be denied. If this happens, the Service will notify the applicant in writing and will explain the reasons for the denial, the applicable regulations resulting in the denial, and the applicant's right to request reconsideration of the permit application. Field Offices should review 50 CFR 13.29 for more information on review procedures for a permit denial.

C. Phase 3 - Post-Permit Issuance

The post-permit issuance phase includes those activities involved in the CCAA's implementation, monitoring, and reporting. Implementation begins after the CCAA is signed, and the permit is issued. Each of the cooperators will have responsibilities in implementation of the CCAA.

i. Monitoring

The purpose of monitoring is to assist the Service with the collection of data to assess the effectiveness of the conservation measures, so monitoring requirements should be considered early in the CCAA development phase. There are two types of monitoring associated with CCAAs: compliance monitoring and biological monitoring. The level of monitoring necessary for a given CCAA will vary depending on the CCAA's design and goals.

Compliance monitoring is necessary to ensure that the conservation measures identified in the CCAA are being implemented and that the terms and conditions of the permit are being met. The Service has the authority to require terms and conditions in an enhancement of survival permit that it believes are necessary to ensure the permittee's compliance with the permit and CCAA. This authority allows the Service to establish reporting and monitoring requirements in the permit. However, this monitoring should be conducted in a cooperative manner with the permittee. Regular reports are typically required of permittees to help the Service determine whether the property owner is properly implementing the CCAA. These reports also provide the Service with a long-term administrative record documenting the progress of the CCAA and permit.

It is also important for the Service to make occasional field visits to make certain the CCAA is being properly implemented, to identify any unanticipated deficiencies or benefits, and to assist the permittee in developing corrective actions when necessary. The provisions for such visits

should be identified in the CCAA and permit. The Service is also typically responsible for notifying the property owner prior to any such visits.

Biological monitoring measures the habitat conditions and response of the covered species to the conservation measures. As with compliance monitoring, biological monitoring does not always have to be extensive or frequent. In some cases, occasional visits to the enrolled property will be sufficient. For large, watershed-type projects or programmatic CCAAs, monitoring of habitat and species may be based on studies developed with the programmatic permittee or other cooperators, but the monitoring should be designed to help the Service, the permittee, and any cooperators to understand the effects of the conservation measures, improve the conservation measures, and report on the outcomes of the conservation measures.

ii. Reporting

Reporting requirements are typically included in the CCAA and permit to ensure that the conservation measures are being properly implemented and to track the take that occurs. Federal permitting regulations (50 CFR 13.45) require annual reports unless otherwise specified by the permit, and the CCAA will often specify reporting requirements, which should be tailored to the specific conservation measures conducted under the CCAA. Annual reports may not be necessary for all CCAAs, but reporting should be frequent enough to allow the Service to track the implementation of the CCAA. Failure to submit the reports required by the permit is a violation of the permit and may lead to permit suspension or revocation, so it is important to specify when reports are due and the information that must be included in the reports. For CCAAs, it is important to note that monitoring and reporting should occur at specified intervals prior to the permit effective date, which is prior to the species being listed.

iii. Amendments

Any party may propose modifications or amendments to the CCAA, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of the other Parties. This notice should specify the proposed modification, the reason for it, and its expected results. In addition to amending the CCAA itself, the permit may be amended to accommodate changed circumstances in accordance with all applicable legal requirements, such as the ESA, NEPA, and the general permitting regulations at 50 CFR 13 and 17. The party proposing the permit amendment should provide a statement describing the proposed amendment and the reasons for it.

iii(a) Changes in Covered Species

The assurances given as part of a CCAA and its associated permit apply only to species specifically listed and discussed in the CCAA (i.e., the “covered species”). If the property owner wants to include a new, unlisted species in the CCAA and permit, the CCAA and permit can be amended to accomplish this. However, the Service would have to determine whether or not the conservation measures already identified in the CCAA are sufficient to meet the CCAA standard

for the new species or if modification of the CCAA's conservation measures would be necessary to meet the CCAA standard for the new species. In either case, the Service would consider the addition of a new species a major amendment, since the Service must make a determination relating the CCAA standard to the new species. This determination would involve the same level of analysis that was conducted for the covered species in the original CCAA. In making this determination, the Service will also consider whether or not the conservation measures for the original covered species encouraged occupancy of the enrolled property by the new species or if the new species was already present or expected to be present on the enrolled property.

iii(b) Changes in Enrolled Property

The assurances given as part of a CCAA and associated permit apply only to lands specifically covered in the CCAA (i.e., the "enrolled property"). If the property owner later wants to include additional lands in the CCAA or remove a portion of the enrolled property, the CCAA and/or permit can be amended, but the process for amending the CCAA and/or permit will likely vary depending on the significance of the proposed changes to the enrolled property. For instance, if the proposed change is a minor boundary change with no negative impact on the covered species, the Service may consider this a minor administrative amendment. Conversely, if the change includes adding hundreds of acres of land to the CCAA such that additional take of the covered species may occur from the day-to-day management of that land, the Service may consider this a major amendment requiring a complete re-evaluation of the CCAA. In all cases, the assurances provided by the permit will only be valid on lands that are part of the enrolled property.

iii(c) Changes in Ownership

A property owner who is a party to a CCAA and transfers ownership of the enrolled property to a new property owner must notify the Service in writing of the transfer; the current property owner and the new property owner may send such notification jointly. If the new property owner agrees to become a party to the original CCAA and permit, the Service will regard the new property owner as having the same rights, assurances, and obligations as the original property owner. In particular, actions taken by the new property owner that result in the take of the covered species would be authorized (following amendment of the CCAA and/or permit to reflect the new property owner) if the new property owner agrees to the terms and conditions of the original CCAA. Conversely, if the new property owner does not become a party to the original CCAA, the new property owner would neither incur any of the responsibilities of the CCAA nor receive any of the assurances from the CCAA and permit. The property owner does, however, have the opportunity to develop and enter into a new CCAA with the Service for the species and lands covered in the original property owner's CCAA, but this approach would require that the Service initiate a new and separate permitting process for the new CCAA. The transfer of all or a portion of the enrolled property to a new property owner does not provide the Service an opportunity to request modification of the CCAA and/or permit, if the new property owner has agreed to the terms of the original CCAA and permit and the permit transfer

conditions contained at 50 CFR 13.25 are met. Under these circumstances, the Service will accept the continuation of the original CCAA and permit, and merely make a minor amendment to the CCAA and/or permit reflecting the change in ownership name.

D. Phase 4 - Renewal, Expiration, and Termination of the CCAA

In these sections of the CCAA, the property owner and the Service establish and describe the procedures for renewal, expiration, and termination of the CCAA (See Appendix 3 for CCAA template language). The Service should make property owners aware that there are a variety of positive and negative implications (from the property owner's perspective) that are related to decisions they will make regarding CCAA duration, renewal, expiration, and termination. Some of these implications are discussed below.

i. CCAA Renewal

This section of the CCAA should specify whether or not the CCAA can be renewed and should establish and describe the procedures for renewal. At least 90 days prior to the expiration of the CCAA, the Service should contact the property owner to notify the property owner of the upcoming renewal opportunity for the CCAA. At this time, the property owner can either request that the Service renew the CCAA, or the property owner can allow the CCAA to expire. If the property owner wishes to renew the CCAA, the Service will have the opportunity to evaluate whether or not it wishes to renew the CCAA, yet is under no affirmative obligation to renew the CCAA.

It is generally advantageous for the property owner to enter into a CCAA with a long duration to ensure that the assurances are maintained for the long-term in the event that the covered species becomes listed. However, a property owner may, under certain circumstances, want to enter into a CCAA with a short duration; he or she must then renew the CCAA before its expiration in order to maintain the assurances. In such a case, the Service is obligated to reevaluate the CCAA and determine if the CCAA will continue to meet the CCAA standard at the time of renewal. If the status of the covered species has declined since the original CCAA was signed, an "as-is" renewal of the CCAA may no longer meet the CCAA standard, and additional conservation measures or conservation measures that are more extensive than those required in the original CCAA may be necessary.

ii. CCAA Expiration

This section of the CCAA should identify the expiration date of the CCAA and outline any stipulations or protocols that will govern the expiration. At least 90 days prior to the expiration of the CCAA, the Service should contact and notify the property owner of the upcoming expiration of the CCAA. At this time, the property owner can either allow the CCAA to expire or request that the Service renew the CCAA. In the event the property owner does not wish to

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renew, the CCAA will expire, the conservation activities may cease, and the property owner will no longer receive the assurances provided by the enhancement of survival permit.

iii. CCAA Termination

The CCAA policy gives property owners the discretion to terminate a CCAA, by allowing a participating property owner with good cause, to terminate the CCAA prior to its expiration date, even if the terms and conditions of the CCAA have not been realized. However, upon termination, the property owner must surrender the enhancement of survival permit, thus relinquishing his or her take authority (if the species has become listed) and the assurances granted by the permit. Good cause refers to unanticipated events such as a family medical emergency or financial hardship. The Permittee also may terminate the CCAA at any time for any other reason, but termination for reasons other than an uncontrollable circumstance shall extinguish the Permittee's authority to take species (if listed) or occupied habitat under the permit. The Service and the property owner should include stipulations in this section of the CCAA to govern the termination. For example, the CCAA should include a stipulation for the property owner to provide the Service with 30 days written notice prior to termination, and a stipulation that would allow the Service to relocate the species from the enrolled property prior to termination.

E. Responsibilities

i. Property Owner

The responsibilities of the property owner or applicant in developing a CCAA are:

- Develop, in coordination with the Service, a CCAA that meets the requirements of the Act and the CCAA Policy.
- Coordinate preparation and submission of permit application documents with Field Office.
- Submit a signed and completed permit application form (form 3-200.54) and the application fee (if required) to the Service Field Office.
- Implement all conservation measures and adhere to all permit conditions as required by the CCAA and its associated enhancement of survival permit, respectively.
- Submit all documentation, such as monitoring reports, as specified in the CCAA.
- Provide any required notifications that may be required by the CCAA and/or permit.
- Allow access to Service personnel as specified in the CCAA and/or permit.

ii. Service

The responsibilities of Service Field Offices in coordinating and developing CCAAs are:

- Contact property owners and provide them with CCAA-related information and materials.
- Provide technical assistance to landowners.
- Enter initial data into ECOS once CCAA discussions begin.

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- Negotiate draft CCAA with property owner.
- Submit early draft of proposed CCAA and draft permitting package to the Regional Office.
- Determine monitoring needs and schedule, and where appropriate, conduct or assist in conducting monitoring.
- Conduct Intra-Service Section 7 consultation.
- Prepare a written Findings document that documents and addresses public comments and justifies permit issuance criteria.
- Comply with NEPA- submit appropriate NEPA documentation to the Regional Office.
- Disseminate information on conservation efforts and result.
- Keep the Regional Office apprised of workload and demand for CCAAs.
- Report CCAA-related accomplishments.
- Coordinate closely with Partners for Fish and Wildlife program, to develop opportunities for joint projects as requested.
- Ensure coordination with State fish and wildlife agencies to identify opportunities for developing CCAAs.
- Conduct outreach activities to promote candidate conservation.
- Coordinate with property owners after permit issuance.
- Evaluate monitoring results and reports.

The responsibilities of the Regional Office in coordinating and developing CCAAs are:

- Conduct quality control of potential CCAAs.
- Ensure coordination among any Service programs that are involved in a particular CCAA.
- Identify workload and budget needs and forward them to the Washington Office.
- Report accomplishments and workload measures to the Washington Office.
- Submit *Federal Register* notices based on information provided from the Field Office.
- Coordinate with other Regional Offices on CCAAs that cross regional boundaries.
- Coordinate with Field Offices during development of permitting packages and associated documents.
- Issue enhancement of survival permits for CCAAs that meet the permit issuance criteria.
- Evaluate permit amendments and amend CCAAs and permits where necessary and appropriate.
- Evaluate monitoring results and reports.
- Enter information into and edit ECOS for tracking CCAAs.
- Determine Regional allocation of funds related to CCAA delivery.
- Coordinate programmatic CCAA permits.
- Conduct outreach activities to promote candidate conservation and publicize success stories.

The responsibilities of the Washington Office in coordinating and developing CCAAs are:

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- Develop policy, guidance, and training materials.
- Develop forms, formats, and standard operating procedures for CCAA implementation.
- Maintain consistency in CCAA implementation.
- Assist with interpretations of Policy.
- Review quality control activities of the Regions.
- Conduct bi-annual reviews of program implementation.
- Coordinate changes and/or modifications to the program resulting from new regulations and/or legislation.
- Develop efficient nationwide tracking system for CCAAs through ECOS.
- Alert Congress to success stories.
- Prepare budget requests to implement CCAAs in an effective and efficient manner.
- Allocate funding obtained for delivering CCAAs and candidate conservation activities.
- Develop national outreach strategies and materials.

Field Offices and Regional Offices must exercise care in situations where species cross regional boundaries. Those Regional Offices that share the distribution of a covered species must coordinate to ensure consistency in dealing with CCAAs. Field Office biologists should also maintain close contact with other Field Offices who may be working on similar CCAAs. Prior to finalizing the first draft of a CCAA, the Field Office should provide an early draft to their Regional CCAA/Permit Coordinator. After the Field Office and the Regional CCAA/Permit Coordinator concur on the content of the CCAA, the Regional CCAA/Permit Coordinator should provide a copy of the draft CCAA to the Regional CCAA/Permit Coordinator in each other region in which the species is found and request informal comment on the draft CCAA. These informal comments will be considered during the development of the proposed CCAA. When the *Federal Register* NOA is published, the Regional CCAA/Permit Coordinator will officially transmit the proposed CCAA to the Regional Director of each other region in which the species is found, and request written concurrence from those regions before the close of the comment period. If no concurrence is received from the other regions, the region developing the CCAA will contact each other region to confirm concurrence or non-concurrence. If concurrence between the regions cannot be reached, normal chain of command procedures will be followed to settle the issue.

IV. CONCEPTS TO CONSIDER

A. Addressing Listed Species

The CCAA Policy and regulations were developed only for species which are not federally listed by the Act (i.e., non-listed species). Simultaneous to the CCAA Policy, the Service also published the Safe Harbor Policy (64 FR 32717-32726), which facilitates the conservation of listed species on non-Federal lands and provides assurances to property owners willing to implement voluntary conservation actions for listed species on their property. While separate permit applications and agreements are necessary for CCAAs and Safe Harbor Agreements

(SHA), these agreements may be combined to include separate sections that accommodate both CCAA and SHA provisions or components, especially if the necessary conservation measures for the listed and non-listed species are similar. Therefore, if a listed species may be affected by a proposed CCAA, it may be possible to develop a SHA for the same conservation actions. Given that the permitting standards for developing a SHA and a CCAA are different (i.e., net benefit versus precluding the need to list, respectively), property owners and Service Field Offices must take great care to carefully document the required conservation measures for each type of agreement, how the combined agreement will meet the respective permitting standards, and how the covered species are addressed in the combined agreement. The Service will address combined agreements on a case-by-case basis, and Field Offices should coordinate closely with Regional Office, and the Washington Office, as appropriate.

B. Covering Plants

Section 9(a)(2)(B) of the Act prohibits the removal of endangered plants or the malicious damage or destruction of such plants on areas under Federal jurisdiction, and the damage or destruction of endangered plants on non-Federal areas in knowing violation of State law or regulation. The removal of threatened plants from areas under Federal jurisdiction is prohibited; however, the malicious damage or destruction of threatened plants on areas under Federal jurisdiction and the damage or destruction of threatened plants on non-Federal areas in knowing violation of State law or regulation or in the course of a violation of criminal trespass law are not prohibited (50 CFR 17.71). The Act's take prohibition for federally listed plants is, therefore, more limited than for listed animals.

Nevertheless, the Service recommends that property owners consider candidate and listed plants in CCAAs, because the section 7(a)(2) prohibition against jeopardy also applies to plants as well as animals. If the section 7 consultation or conference on a CCAA-related section 10 permit application concludes that issuance of the permit for wildlife species would jeopardize the existence of a listed plant species, the permit could not be issued. To avoid this outcome, the property owner should ensure that the conservation measures and other actions covered by the CCAA are not likely to jeopardize any federally listed plant species.

Even if the section 7 consultation or conference determines that the proposed CCAA and its associated permit are not likely to jeopardize the continued existence of any federally listed plant species, the property owner is still subject to any State laws that may protect such plants present within the CCAA's enrolled property that are on private or other non-Federal lands. The property owner has no further responsibility under Federal law however, to protect or manage the listed plants. In the spirit of the conservation planning process, however, the Service will encourage property owners to address recovery needs of declining, candidate, endangered, or threatened plants in CCAAs.

Although take of plants does not require a section 10 permit, the names of any plants addressed in the CCAA can be placed on the permit at the request of the property owner where the property owner's interests would be protected should the legal status of any plant change during the life of the permit as a result of changes to the Act. This approach is encouraged if the property owner requests it or if it otherwise increases the property owner's confidence in the long-term assurances provided by the permit.

C. Adaptive Management

The inclusion of adaptive management strategies in CCAAs allows for mutually agreed-upon changes to the conservation measures to occur in response to changing conditions or new information. The primary purpose of adaptive management is to examine alternate strategies for meeting the goals and objectives of the CCAA through research, evaluation, and/or monitoring, and then, if necessary, to adjust future actions according to what was learned in order to meet those goals and objectives. In an adaptive management framework, if the expected results of a management activity are not achieved, the management activity is either modified (if possible) or an alternative activity is undertaken in order to achieve the expected results.

When developing the adaptive management provisions and strategies in a CCAA, it is important that the timeframes and other milestones for evaluating the conservation measures and their outcomes in the context of adaptive management are clearly identified and agreed-upon by all parties. This will help those developing the CCAA avoid future misunderstandings if the goals and objectives are not met. Specific and detailed monitoring provisions in the CCAA are necessary to determine what the potential results of the management actions might be and how they might be observed and recognized in the field. Adaptive management provisions and strategies should, therefore, be fully described in the monitoring section of the CCAA.

The Service supports the use of adaptive management principles in CCAAs and associated enhancement of survival permits as a means to retain the flexibility necessary to ascertain and ensure the effectiveness of conservation measures both currently being implemented and those that are to be implemented in the future. This is especially important when there is some question if the initial conservation measures will meet the CCAA standard. However, the identification and use of adaptive management provisions and strategies will not likely be necessary in every situation, and those developing CCAAs should use their best judgment when determining if adaptive management is necessary to accomplish the goals and objectives of the CCAA. Refer to the 5-point policy guidance for more information on adaptive management (See 65 FR 35242-35257; June 1, 2000, Appendix 8).

D. Addressing Migratory Birds

The Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) prohibit the take of migratory birds and bald eagles, respectively. None of the regulations promulgated under the MBTA or BGEPA expressly provide for permits for

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incidental take. Because of this prohibition, questions have arisen as to whether an enhancement of survival permittee remains legally liable for the incidental take of listed species protected by the MBTA and BGEPA, if the take of the same species was authorized by an ESA section 10 permit.

It is Service policy that an enhancement of survival permit issued in association with a CCAA for migratory birds that become listed under the ESA in the future is sufficient to shield the CCAA permittee from liability under the MBTA and BGEPA for those species. For MBTA, this is accomplished by having the enhancement of survival permit also serve as a Special Purpose Permit authorized under 50 CFR 21.27. For BGEPA, it is accomplished by utilizing the Service's prosecutorial discretion to state the Service would not prosecute an incidental take under BGEPA if such take is in compliance with the enhancement of survival permit.

The following conditions must be satisfied before either of these protections apply: (1) any species to be so treated with respect to the MBTA and BGEPA must also be listed under the ESA, and (2) the incidental take of any such species must be authorized, subject to applicable terms and conditions, under section 10(a)(1)(A) of the ESA. The Service believes that this approach is warranted because the permittee already would have agreed to a package of conservation measures that have met the standards of the CCAA Policy.

In qualifying cases, the following language concerning MBTA and BGEPA protected species shall be included in the terms and conditions of a section 10 permit when the above conditions have been satisfied:

[For listed species other than the bald eagle] This permit also constitutes a Special Purpose Permit under 50 CFR § 21.27 for the take of [provide species' common and scientific names; species must be ESA-listed and may not include the bald eagle] in the amount and/or number and subject to the terms and conditions specified herein. Any such take will not be in violation of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712).

[For the bald eagle] The Service will not refer the incidental take of any bald eagle, *Haliaeetus leucocephalus*, for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712), or the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. §§ 668-668d), if such take is in compliance with the terms and conditions (including amount and/or number) specified herein.

For further information on the MBTA and BGEPA, consult your Regional Migratory Bird Office.

E. Level of NEPA Analysis

When thinking about the NEPA analysis as it relates to an enhancement of survival permit and a CCAA, it is important to be precise about the nature of the underlying action. The scope of the NEPA analysis covers the direct, indirect, and cumulative environmental effects of the proposed Federal action (i.e., issuance of an enhancement of survival permit) and anticipated future effects of implementation of the CCAA (including the take authorized through the CCAA). The specific scope of the NEPA analysis will vary depending on the nature of the activities described in the CCAA. In some cases, the anticipated environmental effects in the NEPA analysis that address the CCAA may be confined to effects on candidate and endangered species and other wildlife and plants, simply because there are no other significant effects. In other cases, the NEPA analysis will also focus on the effects of the actions on other wildlife and plants and will examine any alternatives or conservation strategies that might not otherwise have been considered. In other cases, the activities proposed in the CCAA may affect a wider range of impacts analyzed under NEPA, such as cultural resources or water quality. It is important to keep in mind, however, that the NEPA analysis for a CCAA should be directed towards analyzing direct, indirect, and cumulative effects that would be caused by the approval of the permit, that are reasonably foreseeable, and that are potentially significant.

F. Permit Revocation

The CCAA regulations supplement the general permit revocation criteria of 50 CFR 13.28. Specifically, CCAA regulations (50 CFR 17.22/32(d)(7)– see Appendix 9) state that an enhancement of survival permit issued under 50 CFR 17.22 (d) or 50 CFR 17.32 (d) may not be revoked for any reason except those set forth in 50 CFR 13.28(a)(1) through (4):

- (1) The permittee willfully violates any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, which involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity; or
- (2) The permittee fails within 60 days to correct deficiencies that were the cause of a permit suspension; or
- (3) The permittee becomes disqualified under §13.21(C) of this part; or
- (4) A change occurs in the statute or regulation authorizing the permit that prohibits the continuation of a permit issued by the Service;

or unless continuation of the permitted activity would be inconsistent with the criterion set forth in 50 CFR 17.22 (d)(2)(iii) and 50 CFR 17.32(d)(2)(iii), which states:

The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species.

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These provisions would allow the Service to revoke a properly implemented CCAA and enhancement of survival permit as a last resort in the narrow and unlikely situation in which an unforeseen circumstance results in likely jeopardy to a species covered by the permit, and then only if the Service and its cooperators have not been successful in remedying the situation through other means. The Service is firmly committed to use its resources to address any such unforeseen circumstances in CCAAs. Specifically, the CCAA Policy states that the Service is “prepared as a last resort to revoke a permit implementing a Candidate Conservation Agreement with Assurances where continuation of the permitted activity would be likely to result in jeopardy to a species covered by the permit; however, the Services would first have to exercise all possible means to remedy such a situation.”

The Service has a related responsibility to remain aware of the conservation status of species covered by CCAAs. If populations of species covered by CCAAs seem to be declining or other indications lead us to conclude that any covered species’ status cannot be improved, the Service must evaluate each subsequent CCAA that may be affected and determine if jeopardy conditions are approaching. If the species that is declining does not appear to be negatively affected by a CCAA (even though take is permitted on the covered lands), the Service should document this conclusion within the administrative record and can enter into the CCAA. However, the Service could not enter into a CCAA in a situation where entering into the CCAA would lead the species to jeopardy. Close monitoring of the species would then need to continue.

If modification or extension of the duration of the CCAA and permit to preclude jeopardy is not feasible, the Service will use its other authorities to avoid revoking the permit. Some options that may be available in particular circumstances include:

- a. Seeking the property owner’s consent to conduct capture/translocation efforts when feasible and appropriate;
- b. Offering to provide some compensation to the property owner to forgo the economic activity that may lead to jeopardy;
- c. Attempting to arrange for a third-party to acquire an interest in the property; or
- d. Identifying whether we may purchase an easement on the property or offer to purchase the property (or a portion thereof).

When jeopardy would be caused by habitat destruction or modification as opposed to take of individuals of the species, acquisition of the property through an easement or in-fee, rather than capture/translocation, may be necessary. Please refer to the March 2000, Director’s memorandum for further information on permit revocation.

G. Structuring a CCAA

Deciding how to structure a CCAA is an important decision that must be made early in the CCAA development phase. CCAAs can either be individual agreements with a single property owner, or they can be "programmatic" or "umbrella" agreements involving multiple property owners. The terms "programmatic" and "umbrella" are considered to be interchangeable in the CCAA Policy and this handbook, and the Service has generally used the term "programmatic" to describe any single CCAA that involves the Service and multiple property owners. Agreements that only involve the Service and one property owner are not programmatic agreements, since the assurances provided by the CCAA's enhancement of survival permit are not provided in a programmatic manner to other (i.e., multiple) property owners. Although there is no right or wrong structure to a CCAA, the number of property owners that could be enrolled in the CCAA tends to dictate the structure of the CCAA that is developed. Situations where more than one property owner is (or could be) involved would favor the development of programmatic agreements. The template CCAA in Appendix 3 can serve as a starting point for developing either a single property owner CCAA or a programmatic CCAA.

A CCAA with an individual property owner is often believed to be the simplest CCAA to develop. However, that may not always be true. When making the decision to enter into a CCAA with a single property owner, the Service needs also to consider whether or not the CCAA could be modified to become a programmatic CCAA. It takes roughly the same amount of time for the Service to review and process a programmatic CCAA as it does a single property owner CCAA (i.e., the steps are the same). Therefore, the Service could assume that where one property owner is interested in the conservation of unlisted species, there may be others, and developing a programmatic CCAA instead of numerous single property owner CCAAs for the same species would save the Service and the interested property owners effort and funding as other property owners come forward to participate under the umbrella of a programmatic CCAA. Another advantage would be that the Service would more quickly provide regulatory assurances to all participating property owners by using a programmatic approach. The effect on the property owner that initiated the CCAA would be negligible, since that property owner would likely become the first person to sign and receive a Certificate of Inclusion under the programmatic CCAA.

Certificates of Inclusion or other such written and signed instruments are subordinate agreements to the CCAA under which the property owner obligates himself or herself to implement the conservation measures specified in the CCAA. The regulations at CFR 13.25 say that you can be under the direct control and get authorization to take in three ways:

- 1) by being under the regulatory jurisdiction of the permittee where the permit provides that you and others like you may carry out the activity causing the take (13.25(d)(1)),
- 2) by getting a subpermit from the permittee (13.25(d)(2)), or
- 3) by getting a Certificate of Inclusion from the permittee (13.25(d)(2)).

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A Certificate of Inclusion, or other written instrument between the permittee and a landowner, is only needed when the permittee has insufficient regulatory authority to influence what a landowner does to the species on his/her property to address an identified threat.

The Service can develop programmatic CCAAs in several ways. The Service can enter into a programmatic CCAA with an appropriate State, Tribal, or local agency or other entity and issue an enhancement of survival permit to that entity that would allow enrollment of participating property owners and provide the assurances through existing authorities. For example, if a certain threat does exist, the State can choose to control it through laws or regulations or by issuing Certificates of Inclusion. To enter into an umbrella CCAA with the Service, a State does not have to have regulatory authorities in place, but will need to include in the CCAA a conservation measure that indicates how it will control the identified threat eventually.

If certain threats exist and the permit holder has no legal authority to control them, it may not be able to implement the conservation measures agreed upon. For example, if a State wildlife agency proposes conservation measures that commit to conserve a minimum acreage of prairie dogs in a certain percent of counties within the historic range of the species, the State may be able to ensure this commitment is met by issuing regulations that apply to landowners or conditioning permits to require sufficient conserved areas.

If the State does not have this sort of authority, then it may be able to provide Certificates of Inclusion for individual landowners in order to achieve those measures, in essence placing the responsibility on landowners to accomplish what the State overall does not have the authority to execute. In these types of programmatic CCAAs, the permittee (e.g., the permitted agency or entity) would issue a Certificate of Inclusion (see Appendix 11 for an example) to each property owner who satisfies the terms and conditions of and commits to implementing the conservation measures in the CCAA and the associated enhancement of survival permit (Appendix 10, Figure 2A). The regulatory authority may rest with more than a single State agency, so it may be appropriate in some States to include all agencies with authorities as signatories to the CCAA, or for the wildlife agency to be signatory and develop a Memorandum of Understanding among State agencies, or for the State to be signatory. In addition, the Service can issue permits to more than one such entity if all the entities are operating under the same CCAA to enroll property owners (Appendix 10, Figure 2B).

If a threat is determined to exist in only a portion of the State, where regulatory authorities are insufficient, Certificates of Inclusion may be needed only in that portion of the State. The common thread to umbrella or programmatic permits is that one way or another the Service needs to be assured that someone is responsible for ensuring that the conservation measures will be implemented (either by obtaining regulatory authority or issuing Certificates of Inclusions). In the event the species becomes listed, the Certificate of Inclusion holder will be able to act under the authority of the permit.

Alternatively, the Service can develop and implement a programmatic CCAA in which the Service enrolls participating property owners directly while providing them with regulatory assurances. This can be accomplished by the Service either issuing itself a permit (e.g., Field Office supervisor or species recovery coordinator) to enroll property owners via issuance of a Certificate of Inclusion or other legal written instrument (e.g., Cooperative Agreement or Contract) that provides the assurances (Appendix 10, Figure 1A) or by issuing each property owner an enhancement of survival permit under the programmatic CCAA (Appendix 10, Figure 1B).

It is important to note, however, that it is not always necessary for each property owner to implement each conservation measure that is covered in a programmatic CCAA, because implementation of every conservation measure on every enrolled property may not be necessary to meet the CCAA standard. For example, an unlisted, forest-dwelling butterfly is declining due to lack of suitable habitat and low numbers of populations. The Service can enter into a programmatic CCAA with the State wildlife agency (Permittee) that includes a wide variety of conservation measures that will work both to conserve the butterfly and reduce threats to it. These conservation measures include (1) thinning of trees to encourage herbaceous plant growth in the forest understory, (2) burning to maintain herbaceous plant growth, (3) planting of the butterfly's larval host plant(s) and food plant(s), and (4) reintroducing of the butterfly to suitable habitat. Property Owner 1 has existing suitable habitat for the butterfly because he burns regularly to reduce fire risks, but the butterfly is not present or capable of dispersing to the site on its own. Property Owner 1 would like to have the butterfly on the property and will allow the Permittee to move the species to the property, but only if the assurances provided by the CCAA are available to him. In order to meet the CCAA standard and receive the desired regulatory assurances, Property Owner 1 and the permittee would sign a Certificate of Inclusion wherein Property Owner 1 agrees to continue burning at an interval sufficient to maintain the butterfly's habitat and agrees to allow reintroduction of the species by the agency. It wouldn't be necessary for Property Owner 1 to do all the conservation measures included in the CCAA because it is not necessary on his lands. In doing so, Property Owner 1 would address only the threats to the species as they pertained to his property.

H. Tracking/Databases

Tracking CCAAs and permits for the purposes of reporting and coordination will be implemented through the Service's Endangered Species Program "Environmental Conservation Online System" (ECOS) database. Specific procedures for editing and managing the database are being developed and will be available through each Regional CCAA/Permit Coordinator. The ECOS Web site is -- <http://ecos.fws.gov>

Another purpose of tracking CCAAs and permits is to ensure that the Service and property owner are aware of significant milestones. For example, when a permit expires, the property owner will no longer have the regulatory assurances or authorization for take of the covered

species that was provided by the permit. Therefore, the Service should ensure that the property owner is aware of this approaching milestone and help the property owner determine if renewal of the CCAA is appropriate. CCAA tracking will also help identify trends and other changes in land ownership.

ECOS has the ability to implement a landscape tracking mechanism for CCAAs and permits. Under this process, habitat areas for a given species would be entered into the ECOS database with areas that have been granted CCAA assurances being specifically identified. Thus, future Service biologists would have the ability to evaluate the legal as well as the biological status of the landscape.

I. Comparison to Other Section 10 Tools

The CCAA, SHA, and HCP conservation tools differ because these conservation programs each have different goals, objectives, and situations to address. HCPs are used when take of a listed species will occur during an otherwise lawful activity, such as a housing development or a timber harvest. These adverse effects to the species must be minimized and mitigated to the maximum extent practicable. The mitigation measures should offset the impacts so that the long-term survivability of the species is not decreased. Whereas, a SHA is used when the activity proposed will produce a temporary conservation benefit for the listed species (i.e., net conservation benefit), such as letting an agriculture field go fallow, or restoring habitat. The CCAA tool was developed to encourage property owners to enter into an agreement that will benefit declining species before the species and its habitat become imperiled. Activities covered in CCAAs may look like otherwise lawful activities covered in HCPs, or they could be activities that produce temporary conservation benefits similar to SHAs. However, the key is that CCAA conservation measures preclude or remove any need to list the species. Each of these tools has been developed with the realization that the cooperation of non-Federal landowners is necessary for the recovery of both listed and declining species.

An important difference between SHAs and both HCPs and CCAAs, is that an SHA sets and maintains a baseline condition for the covered species that is established at the time the agreement is signed and which allows the property owner to return to that baseline at the expiration of the permit. Other differences lie in the timing of “take” of a species. For instance, take associated with an HCP is usually immediate with populations or habitat of the covered listed species being taken to below the existing condition, usually as a result of permanent habitat removal. Take associated with a SHA can be on-going take that results from the conservation measures that are implemented, the property owner’s other activities, or a return to the baseline condition that occurs after conservation benefits have accrued for a period of time. Take associated with a CCAA would occur only if an unlisted species that was covered by the CCAA became a listed species, and the property owner’s conservation measures or other activities resulted in take.

