



# Safe Harbor Agreements for Private Landowners

## What Is a Safe Harbor Agreement?

A Safe Harbor Agreement (SHA) is a voluntary agreement involving private or other non-Federal property owners whose actions contribute to the recovery of species listed as threatened or endangered under the Endangered Species Act (ESA). The agreement is between cooperating non-Federal property owners and the U.S. Fish and Wildlife Service (FWS) or the National Oceanic and Atmospheric Administration, which is responsible for most listed marine and anadromous fish species.

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

## How Does a SHA Contribute to Recovery?

Because many endangered and threatened species occur exclusively, or to a large extent, on privately owned property, the involvement of the private sector in the conservation and recovery of species is crucial. Property owners are often willing partners in efforts to recover listed species. However, some property owners may be reluctant to undertake activities that support or attract listed species on their properties, due to fear of future property-use restrictions related to the ESA. To address this concern, a SHA provides that future property-use limitations will not occur without the landowner's consent.

Central to this approach is that the actions taken under the SHA will provide a net conservation benefit that contributes to the recovery of



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*Texas cattle rancher Bob Long and Tim Schumann of the Partners Program of the U.S. Fish and Wildlife Service celebrate the success of a Safe Harbor Agreement to help endangered Houston toads. Looking on are Robert Long, Jr., and Adam Zerrenner of the Ecological Services Program of the Service. They are standing in front of a wetland that the Partners Program helped to create as habitat for the toads on the Long property.*

the covered species. The contribution toward recovery will vary from case to case, and the SHA does not have to provide permanent conservation for the enrolled property. The benefit to the species depends on the nature of the activities to be undertaken, where they are undertaken, and their duration. The finding includes a description of the expected net conservation benefit(s) and how the FWS reached that conclusion.

Examples of conservation benefits include:

- reduced habitat fragmentation;
- maintenance, restoration, or enhancement of existing habitats;
- increases in habitat connectivity;
- stabilized or increased numbers or distribution;

- the creation of buffers for protected areas; and
- opportunities to test and develop new habitat management techniques.

## How Does a Property Owner Benefit?

By entering into a SHA, property owners receive assurances that land use restrictions will not be required even if the voluntary actions taken under the agreement attract particular listed species onto enrolled properties or increase the numbers of distribution of those listed species already present on those properties. The assurances are provided by the FWS through an Enhancement of Survival Permit issued to the property owner, under the authority of section 10(a)(1)(A) of the ESA. This permit authorizes incidental take of species that may result from actions undertaken by the landowner under the SHA, which could include returning the property to the baseline

conditions at the end of the agreement. The permit also specifies that the FWS will not require any additional or different management activities by participants without their consent.

A SHA may be initiated by a property owner, or the FWS – in concert with State agencies or other Federal agencies – may approach a property owner with a proposal to voluntarily enter into an agreement. Although many SHAs and permits will involve only a single property owner, the FWS strongly encourages the development of “programmatically” SHAs and permits with State, local, or Tribal governments that, over time, will include multiple property owners.

The FWS works with interested property owners in applying for an Enhancement of Survival Permit and a SHA. The FWS also assists property owners in identifying actions that they can voluntarily undertake or forego to benefit listed species covered by the SHA and permit.

### **What Is the SHA Process?**

Generally, the steps are:

1. Contact the nearest FWS Ecological Services field office.
2. The property owner(s), with the aid of the FWS, gathers general information. This includes, but is not limited to, a map of the property, proposed management actions, information on the listed species on the property, and other pertinent information. (In the case of a programmatic SHA, the map shows the specific area within which individual property owners can enroll. These participating owners then provide applicable information for their property.)
3. The FWS (or approved cooperators) will describe the baseline conditions for the property to be enrolled in the SHA program in terms appropriate for the covered species. Baseline conditions can refer to population estimates and distribution, or to the habitat characteristics that sustain seasonal or permanent use by the species. Using the baseline determination, the property owner and FWS discuss land use objectives, assess habitat quality, and identify other information needed to develop an agreement that meets the SHA net conservation benefit standard.

4. Based on the information provided by the property owner, information gathered during site visits, and FWS technical assistance, the property owner (and any other pertinent entity, such as a State fish and game agency) develops a draft SHA.
5. The property owner applies to the FWS for an Enhancement of Survival Permit, with the draft SHA attached.
6. Once the FWS complies with applicable ESA provisions (internal review and public comment period on the permit application) and ensures that the permit criteria have been satisfied, the property owner is issued an Enhancement of Survival Permit and the SHA is finalized.

In the unexpected event that continuation of permitted activities will appreciably reduce the likelihood of survival and recovery of any listed species, the FWS may, as a last resort, revoke the permit. Prior to revocation, however, the FWS will, with the consent of the permittee, pursue all appropriate options to avoid revoking the permit.

### **How Long Does It Take to Develop a SHA?**

Many agreements can be developed within 6 to 9 months, although more complex agreements may take longer. A variety of factors influence the timeline, such as the number and characteristics of the species involved, the size of the area involved, the size of the project(s) or other activities to be conducted, the number of parties to the agreement, and other relevant factors.

### **Can a Property Owner Sell or Transfer Property Enrolled with a SHA?**

If a property owner sells or gives away lands enrolled in SHA, the FWS will honor the agreement and associated permit, providing the new owner agrees to become a party to the original SHA and permit.

### **What Happens When the SHA Expires?**

The SHA can be renewed for as long as the property landowner and FWS mutually agree. If the landowner does not renew the agreement, the assurances tied to the Enhancement of Survival Permit expire. The owner then is no longer protected from the “take” prohibitions of the ESA that are allowed under the permit.

### **What Is a Programmatic SHA?**

A programmatic SHA and associated permits authorize State, local, Tribal governments and other entities to enter into an agreement and hold the associated permit. This entity can then enroll individual property owners within a specific region, and convey the permit authorization and assurances to them through a “certificate of inclusion.” This programmatic approach is an efficient mechanism encouraging multiple non-Federal property owners to engage in the Safe Harbor program.

### **Who Should I Contact?**

If you would like more information, please contact the nearest FWS Ecological Services field office in your State. For their location, visit [www.fws.gov](http://www.fws.gov) and click on the Regional Boundaries tab at the top. Additional information regarding the SHA policy and regulations is available at [www.fws.gov/Endangered](http://www.fws.gov/Endangered). This site also includes descriptions of existing SHA agreements and a video featuring property owners participating in the Safe Harbor program.

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