

### **Appendix 3: Suggested Draft Template for Candidate Conservation Agreements with Assurances**

The draft template Candidate Conservation Agreements with Assurances (CCAAs) on the following pages is meant as a suggested format for CCAAs. Regions may modify this format as long as all necessary sections are included in each CCAA. In the following template, all text in bold font is standardized boilerplate language that we strongly recommend using in all CCAAs, regardless of what format is used.

**DRAFT TEMPLATE CANDIDATE CONSERVATION AGREEMENT WITH  
ASSURANCES**

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

**Property Owner:** [Insert name of Property Owner].

**Cooperator:** [Insert name of Cooperators].

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

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

**1. Responsibilities of the Parties**

[Identify and outline the responsibilities of each party involved in implementation of the CCAA.]

**2. Enrolled lands**

[Include county and describe boundaries of the property covered by the CCAA; use legal description if possible. If appropriate, included a map, noting the property's approximate size and location. The covered property may or may not include all property owned by the participating property owner].

**3. Authority and Purpose**

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

**The purpose of this CCAA is for the Service to join with** [insert name of participating property owner] **to implement conservation measures for the** [list the common and scientific

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name of the species to be covered by the CCAA] **by** [very briefly mention the measures and expected conservation benefit(s).]

[Note: Descriptions of species' status, reasons for decline, or references are not necessary to include in the CCAA, but will likely be appropriate to include in the Service's separate Conference Opinion.]

#### **4. Description of Existing Conditions**

[Describe the population levels of the covered species existing at the time the CCAA is being negotiated (if known or obtainable) and describe use of the property by the species (e.g., seasonal or permanent). Describe the existing habitat characteristics on lands or waters owned by the participating non-Federal property owner that sustain any current, permanent, or seasonal use by the covered species, including major plant species, soil type and moisture, and hydrology.]

#### **5. Conservation Measures**

**Property Owner:** [Describe the conservation strategy and the measures used to implement the strategy including the nature, extent, timing, and other pertinent details of the conservation measures that the property owner will undertake, including a timeline for implementation, and specify the types of land uses on the covered property that will allow the landowner to continue to meet the conservation goal specified in the CCAA. 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.]

**Service: The Service agrees to provide technical assistance in CCAA and permit application development.**

#### **6. Expected Benefits**

[Describe the benefits to the species and the habitat that are expected to accrue as a result of the implementation of the conservation measures and the conditions the property owner agrees to maintain or enhance.]

#### **7. Level/Type of Take/Impacts**

[Describe the Property Owner's planned management and development activities on the enrolled lands, and any possible take of individuals and/or impacts to suitable or potential habitat that may be associated with those activities during the CCAA's term; (i.e., identify the specific permit-covered activities which may result in take, and the area within which take would be authorized; describe any actions the Property Owner will take to avoid and/or minimize the likelihood of take.)]

**The Service recognizes that this level of take [specify level of take] is consistent with the overall goal of precluding the need to list the species, and that if the Conservation**

**Measures were implemented on other necessary properties, there would be no need to list the species.**

**8. Assurances Provided**

**Through this CCAA, the Service provides [insert name of participating property owner] assurances that no additional conservation measures or additional land, water, or resource use restrictions, beyond those voluntarily agreed to and described in the “Conservation Measures” section of this CCAA, will be required should the [insert the name of the covered species] become listed as a threatened or endangered species in the future. Unless otherwise stated, these assurances will be authorized with the issuance of an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act. The application for the enhancement of survival permit is included as Appendix [X] to this CCAA.**

**9. Assurances Provided to Property Owner in Case of Changed or Unforeseen Circumstances**

**The assurances listed below apply to the Property Owner. The assurances apply only where the enhancement of survival permit associated with the CCAA and the CCAA itself are being properly implemented, and only with respect to species adequately covered by the CCAA.**

**(1) *Changed circumstances provided for in the CCAA.* If additional conservation measures are necessary [describe the specific changed circumstances] to respond to changed circumstances and the measures were set forth in the CCAA’s operating conservation program, the Property Owner will implement the measures specified in the CCAA.**

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

**(3) *Unforeseen circumstances.***

**(A) If additional conservation measures are necessary to respond to unforeseen circumstances, the Director may require additional measures of the Property Owner, 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 Property Owner.**

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

- (1) Size of the current range of the affected species;**
- (2) Percentage of range adversely affected by the 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.**

#### **10. Monitoring Provisions**

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

#### **11. Compliance Monitoring**

**The Property Owner will be responsible for monitoring and reporting specified herein related to implementation of the CCAA and fulfillment of its provisions, including implementation of agreed-upon conservation measures, and take authorized by the permit. The Service, after reasonable prior notice to the Property Owner, may enter the enrolled lands to ascertain compliance with the CCAA.**

#### **12. Biological Monitoring**

[Describe any periodic surveys that will be conducted, by whom, and when they will be conducted to determine the status of populations, improved/restored habitats, management effectiveness, etc.] The CCAA will grant the Service and/or responsible party, after reasonable prior notice to the Property Owner, the right to enter the enrolled lands to conduct biological/effectiveness monitoring.

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

#### **13. Notification of Take Requirement**

**By signature of this CCAA, [insert name of participating property owner] agrees to provide the Service [insert name of other agency if CCAA is programmatic and involves Certificates of Inclusion] with an opportunity to rescue individuals of the covered species before any**

**authorized take occurs. Notification that take will occur must be provided to the Service at least [30] days in advance of the action.** [This language could be modified if permitted take is on an ongoing basis (e.g., as a result of mowing, timber harvest) and the Service agrees that notification can take the form of annual timber harvest plans, or other appropriate means of notification.]

#### **14. Duration of CCAA and Permit**

The CCAA, including any commitments related to funding under Service programs, will be in effect for a duration of [x] years following its approval and signing by the Parties. The section 10(a)(1)(A) permit authorizing take of the species will become effective on the date of the final rule listing a species and will expire when this CCAA expires or is otherwise suspended or terminated. The permit and CCAA may be extended beyond the specified terms prior to permit expiration through the permit renewal process and with agreement of the Parties.

#### **15. Modifications**

After approval of the CCAA, the Service may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, a landowner or successor in interest to the landowner, to compensate for changes in the conditions or circumstances of any species or ecosystem, natural community, or habitat covered by the CCAA except as stipulated in 50 CFR 17.22(d)(5) and 17.32(d)(5).

#### **16. Modification of the CCAA**

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

#### **17. Amendment of the Permit**

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

#### **18. Termination of the CCAA**

As provided for in Part 8 of the Service's CCAA Policy (64 FR 32726, June 17, 1999), the Property Owner may, for good cause, terminate implementation of the CCAA's voluntary management actions prior to the CCAA's expiration date, even if the expected benefits have not been realized. If the CCAA is terminated without good cause, however, the Property Owner is required to surrender the enhancement of survival permit at termination, thus relinquishing his

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or her take authority (if the species has become listed) and the assurances granted by the permit. The Property Owner is required to give [x] days written notice to the other Parties of its intent to terminate the CCAA, and must give the Service an opportunity to relocate affected species within [x] days of the notice.

### **19. Permit Suspension or Revocation**

The Service may suspend or revoke the permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation (50 CFR 13.28(a)). The Service may also, as a last resort, revoke the permit if continuation of permitted activities would likely result in jeopardy to covered species (50 CFR 17.22/32(d)(7)). The Service will revoke because of jeopardy concerns only after first implementing all practicable measures to remedy the situation.

### **20. Remedies**

Each party shall have all remedies otherwise available to enforce the terms of the CCAA and the permit. *In particular, the Service may seek specific performance of appropriate mitigation measures in the event the Property Owner terminates this CCAA or fails to comply with its terms.- Use as appropriate.* No party shall be liable in damages for any breach of this CCAA, any performance or failure to perform an obligation under this CCAA, or any other cause of action arising from this CCAA.

### **21. Dispute Resolution**

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

### **22. Succession and Transfer**

This CCAA shall be binding on and shall inure to the benefit of the Parties and their respective successors and transferees, (i.e., new owners) in accordance with applicable regulations (50 CFR 13.24 and 13.25). The rights and obligations under this CCAA shall run with the ownership of the enrolled property and are transferable to subsequent non-Federal property owners pursuant to 50 CFR 13.25. The enhancement of survival permit issued to the Property Owner is also transferable to the new owner(s) pursuant to 50 CFR 13.25. If the CCAA and permit are transferred, the new owner(s) will have the same rights and obligations with respect to the enrolled property as the original owner. The new owner(s) also will have the option of receiving CCAA assurances by signing a new CCAA and receiving a new permit. The Property Owner shall notify the Service in writing of any transfer of ownership, so that the Service can attempt to contact the new owner, explain the baseline responsibilities applicable to the property, and seek to interest the new owner in signing the existing CCAA or a new one to benefit listed species on the property. Assignment or transfer of the permit shall be governed by Service regulations in force at the time.

**23. Availability of Funds**

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

**24. Relationship to Other Agreements**

[If, appropriate, discuss the relationship of the CCAA to other agreements, such as Partners for Fish and Wildlife, Endangered Species Incentives Program, section 6 grants, cooperative agreements, etc.]

**25. No Third-Party Beneficiaries**

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

**26. Notices and Reports**

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

Property Owner  
Address

Field Supervisor, USFWS,  
Address

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

\_\_\_\_\_  
Property Owner

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

**References Cited**