

WEST GARY RECOVERY UNIT SAFE HARBOR AGREEMENT

This Safe Harbor Agreement (SHA) is entered into between The Nature Conservancy (the “Conservancy”) and the U.S. Department of the Interior, Fish and Wildlife Service (the “Service”); hereinafter collectively called the “Parties.” The purpose of this Agreement is to enable The Nature Conservancy to work with private landowners to restore and manage Karner blue butterfly habitat in the West Gary Recovery Unit (as identified in the Kbb Recovery Plan), with the ultimate goal of contributing to a viable metapopulation in this recovery unit. This Agreement follows the Service’s Safe Harbor Agreement policy (64 FR 32717) and regulations (64 FR 32706), both of which implement section 10(a)(1)(A) of the Endangered Species Act (ESA). This Safe Harbor Agreement meets the Service standard of producing a net conservation benefit for the Karner blue butterfly. The tracking number assigned to this SHA by the Service is [insert # once assigned].

Safe Harbor Agreements are voluntary arrangements between the Service and cooperating non-Federal landowners. This policy’s main purpose is to promote voluntary management for endangered and threatened species on non-Federal property while giving assurances to participating landowners that no additional future regulatory restrictions will be imposed. In return for the participants' efforts, the Service will authorize incidental take through the section 10(a)(1)(A) process of ESA. This permit allows participants to take individual listed plants or animals or modify habitat to return populations and habitat conditions to those agreed upon as baseline. The final SHA policy and associated regulations were published in the *Federal Register* on June 17, 1999.

Programmatic Safe Harbor Agreements authorize individual States, local governments, or non-governmental conservation organizations to implement Safe Harbor Programs. The Service provides a permit to the agency or organization, which can then offer individual landowners authorizations through a “certificate of inclusion.” Through this SHA, the Conservancy will receive an “umbrella” permit to cover individual private and non-Federal lands that are voluntarily enrolled in the West Gary Recovery Unit Safe Harbor Program.

For more information on Safe Harbor Agreements see Attachment A or visit the Service’s web site at: <http://endangered.fws.gov>.

1. INTRODUCTION

Karner blue butterfly (Kbb) was once a locally common species ranging from New England across the Great Lakes Region, extending as far west as Wisconsin and portions of eastern Minnesota. It is estimated that populations have dropped by 99% over the past 100 years, with 90 % of that loss occurring in the past 15 years (USF&WS). Habitat destruction, degradation and fragmentation are thought to be the leading causes of the decline.

In 1992 the Service placed Kbb on the endangered species list. As a result, the Service, in consultation with experts in the field of butterfly and oak barrens conservation, has prepared a recovery plan for Kbb. The Karner Blue Butterfly Recovery Plan can be accessed at: http://ecos.fws.gov/docs/recovery_plans/2003/030919.pdf. The plan identifies areas that offer the best opportunities to establish and maintain viable populations of Kbb throughout its current range. A series of natural area fragments in Gary, Hammond and East Chicago, Indiana - called *The West Gary Recovery Unit* – is identified as potentially supporting a viable metapopulation.

In Indiana, the Kbb was originally distributed across the northern tier of counties on outwash and lake deposited sands. Extant populations in Indiana are limited to dune and lakeplain communities associated with Lake Michigan. Although these populations were originally continuously distributed along the Lakeshore, they now occur as two distinct clusters, separated by downtown Gary and its associated industrial and residential development (Map 1). The eastern population cluster occurs mostly within the Indiana Dunes National Lakeshore, and occupies oak barrens communities found on the "high dunes" that characterize this portion of the Lakeshore. Because these oak barrens are largely protected and are actively managed to maintain the Karner blue as a component of the oak barrens community, this eastern population cluster is probably secure.

The western cluster of Kbb – The West Gary Recovery Unit - occupies the Toleston strandplain, a Holocene-aged dune/beach complex composed of over 100 low beach ridges and intervening swales. The beach ridges began to form approximately 5,000 years ago and are part of a continuous prograding shoreline. The ridges are formed by cyclical lake level fluctuations and are laid down at approximately 31-year intervals; the latest ridge was formed in the late 1980's.

The undulating dune and swale topography creates a myriad of hydrological conditions over very short distances. For example, xeric oak barrens may occupy a dune ridge top, while less than 10m away a natural pond occupies the swale. Between these two hydrological extremes the moisture gradient may support bands of vegetation reminiscent of open marsh, sedge meadow, and mesic prairie. These arrays of tightly packed habitats support some of the most diverse assemblages of plants and animals in the United States.

Over time, much of the natural landscape of the Toleston strandplain has been altered by industrial and residential development. Currently there are approximately 1,000 acres of dune and swale topography remaining in the West Gary recovery Unit, of this, roughly 650 acres is potentially suitable Kbb habitat. These fragmented natural areas are imbedded in a matrix of industrial and residential land use and range in size from fifteen to nearly 200 acres. These natural areas along with other potential Kbb habitat fall under a variety of different landowners and uses.

As recently as the early 1990's Karner blue butterflies survived at only two dune and swale remnants, Ivanhoe Nature Preserve and Tolleston Ridges Nature Preserve. At Ivanhoe Nature Preserve, the butterfly was found within scattered openings in the 40acre east unit until 1996, when two wildfires swept through almost all the occupied habitat. While the butterfly persisted at extremely low levels that summer, it disappeared from the site the following year.

The extinction of Kbb at Ivanhoe east highlighted some of the problems associated with managing this rare butterfly on small reserves. In total, there may have been less than 10 acres of Karner habitat at Ivanhoe east at the time of extinction. Fire-suppression and associated woody succession reduced the population to a scattering of small openings on the east unit and had eliminated all Kbb habitat from the western unit. Just as importantly, the preserve is beyond dispersal range from other Kbb populations, thus eliminating the possibility of natural recolonization.. The combination of these two factors created an unstable situation that allowed a single catastrophic event to eliminate the Ivanhoe Karner blue deme.

After several years of habitat restoration at Ivanhoe Nature Preserve, the Conservancy began a Kbb re-introduction program in 2001. The butterflies continue to persist in low numbers at the site. Kbb, presumably from Toleston Ridges Nature Preserve, colonized a restoration site at the DuPont natural area in 2002. They have been seen there in low but increasing numbers in each successive year. Despite recent success, Kbb continue to persist at limited habitat patches within only three relatively isolated natural areas.

Ecological fragmentation combined with complex landownership and land use patterns has created a difficult landscape for developing and implementing conservation strategies in the West Gary Recovery Unit. Establishing a viable metapopulation will require:

- Maximizing Kbb habitat in protected natural areas
- Creating supplemental habitat within dispersal range of existing natural areas
- Planning and implementing strategic restorations to enhance ecological connectivity between natural areas

These activities will involve public land management agencies, conservation organizations, and private landowners. The ability to integrate the ecological needs of Kbb with the current range of land uses and management practices is critical to success.

The purpose of this Agreement is to create a tool that will allow TNC and the Service to address the regional needs of Kbb by working with individual landowners to develop site specific restoration and management plans for a variety of properties. These plans will be designed to maximize Kbb habitat within the constraints of the site's landscape setting and current land use and management needs. In addition they will document baseline conditions, monitoring protocols, timeframes, and the legal and regulatory responsibilities of the participants. In addition the SHA will serve as a framework for coordinating Kbb conservation work in the West Gary Recovery Unit.

2. COVERED SPECIES

This Agreement covers the following Federally listed species, which are hereafter referred to as the "covered species".

Karner blue butterfly (*Lycaeides melissa samuelis* Nabokov)

3. DESCRIPTION OF ENROLLED LANDS

A. This agreement is designed to allow willing property owners to enroll appropriate private and non-federal governmental lands by means of a Certification of Inclusion (Attachment B) into a regional program under an umbrella section 10(a)(1)(A) permit issued to The Nature Conservancy. In addition, the Conservancy will develop individual restoration and management plans that address the specific conservation benefits that enrolled properties contribute to establishing a viable metapopulation (Attachment C). Therefore this document will not focus exclusively on specific parcels to be enrolled; rather it will describe the rationale and geographic limits for potential restoration and enhancement projects. In administering this program The Nature Conservancy will evaluate individual projects based on their contribution to a regional Kbb reserve design.

B. Reserve Design. The rationale for the West Gary Reserve design is based on the core-satellite metapopulation model described in Appendix E of the Kbb recovery plan. This model requires permanent core subpopulations that are less susceptible to extirpation because of the size and quality of their habitat patches. In this model, core sites are supplemented by satellite habitat patches that aid in dispersal and support temporary populations of the butterfly. Although individuals disperse throughout the landscape occupying available habitat, maintaining the core populations is essential for the persistence of the metapopulation. If satellite populations are extirpated, they are eventually recolonized from core populations; but if all core populations are extirpated, the satellites will likely fail as well.

C. Core Reserve Sites. Core reserve sites should be remnant natural areas that support extensive tracts of high quality to moderately degraded oak savanna. Each site should be large enough with sufficient habitat redundancy to support three individual demes of Kbb. Establishing permanent populations at core sites is critical to establishing a viable metapopulation in the West Gary Recovery Unit. The first priority is to enroll the potential core sites and appropriate adjacent properties or right-of-ways. Enrolling these properties in the SHA will eliminate any disincentives to the landowner for doing Kbb restoration while allowing them to balance ecological management requirements at preserves. In addition the SHA will supply a framework for coordinating Kbb conservation throughout the recovery unit.

The following sites represent the best opportunities to establish core populations of Kbb in the West Gary Recovery Unit (Attachment D). Although all three core sites currently support Kbb, the individual populations are limited in size and distribution by lack of appropriate habitat.

Ivanhoe Dune and Swale Complex

The Ivanhoe Dune and Swale Complex is composed of two units – Ivanhoe east (approximately 40 acres) and Ivanhoe west (approximately 80 acres). Ivanhoe east and west are state dedicated nature preserves owned and managed by The Nature Conservancy. The Conservancy developed a restoration and management

plan for Ivanhoe as part of the Kbb re-introduction program, it requires five years of monitoring following release.

DuPont Dune and Swale

The DuPont Corporation owns approximately 180 acres of remnant natural area adjacent to their East Chicago facility. The Nature Conservancy has a legal agreement with DuPont that allows for ecological management at the site. The DuPont Corporation agreed to give the State a conservation easement on the natural area as part of a Natural Resource Damage Claim. The details of the easement are yet to be negotiated.

Gibson Woods & Tolleston Ridges Complex

Gibson Woods (approximately 120 acres) and Tolleston Ridges (approximately 50 acres) are state dedicated nature preserves that are owned and managed by Lake County Parks and Recreation Department. The only remaining occupied Kbb habitat at the two preserves is on a mowed pipeline right-of-way at Tolleston Ridges.

D. Satellite Habitat Sites. Satellite sites should function as supplemental habitat patches that support temporary populations of butterflies and/or enhance gene flow between core areas. As such, satellite sites should be located within reasonable dispersal range of core habitat sites. The recovery plan recommends establishing habitat patches so that average nearest-neighbor distance is no more than 1 kilometer. Along with distance, the amount of available habitat also influences effective dispersal rates. Simply put, as the number of near by habitat patches increases, the more likely dispersing butterflies will find and colonize new sites. Conversely, the fewer and more distant the satellite sites, the less likely butterflies will find and occupy them.

Finally, heavily modified landscapes, like that of the West Gary Recovery Unit, can present physical impediments to dispersal such as highways, buildings and large expanses of inappropriate habitat. Given the landscape context and limited available restoration and enhancement opportunities, the 1 kilometer average distance is probably too great to ensure successful ecological interaction between sites. To increase the odds of success, satellite sites should be located within 500 meters of core sites with preference to given to sites located within 500 meters of more than one core site (Attachment E).

E. Summary. To summarize the criteria for assessing potential projects:

- Establishing permanent populations at core sites is critical to establishing a viable metapopulation in the West Gary Recovery Unit. The first priority is to enroll the potential core sites and adjacent properties or right-of-ways.
- The second priority is to enroll satellite sites that serve dual roles as supplemental habitat and stepping stone habitat patches that increase connectivity between two or more core areas. Ideally, these sites are located within 500 meters of more than one core site.
- Sites located within 500 meters of a single core area will be evaluated on their potential to support adequate resources to maintain populations of butterflies, which can buffer against catastrophic loss of core populations.

- Sites located further than 500 meters from a core site will be evaluated on a case by case basis, but will be considered a low priority.

This Agreement shall create no right on the part of landowners to enroll their property in the program. The Nature Conservancy reserves and retains the right to determine and select, based on its own discretion, which properties among those eligible (as defined in Section 3 C and D) for inclusion in the program shall be enrolled in the program.

4. BASELINE DETERMINATION

A. Current Conditions at Potential Core Sites

Ivanhoe Dune and Swale Complex – In the early 1990s Kbb occupied small habitat patches in the East Unit of the preserve. Recognizing the need to improve and expand available habitat the Conservancy and the Service began a cooperative restoration project at both the East and West Units. Despite these efforts the population was lost by 1998. After continued restoration, the Conservancy began reintroducing Kbb to the site in 2000. The butterflies continue to persist at the site in low numbers. In conjunction with reintroduction the Conservancy agreed to monitor butterfly populations and habitat conditions for five years.

DuPont Dune and Swale – The Conservancy began oak savanna restoration at the DuPont tract in the winter of 2000–2001; up to that point Kbb had never been recorded at the site. In the summer of 2001 Kbb larvae were found at a single habitat patch. Kbb have continued to persist at the site, expanding into newly restored habitat. No formal monitoring program has been established for the butterflies or habitat.

Gibson Woods and Tolleston Ridges Complex – Tolleston Ridges Nature Preserve has supported a small permanent population of Kbb for at least ten years. The butterflies are currently restricted to a mowed pipeline right-of-way at the south end of the property. No other appropriate habitat exists at the preserve. There is no formal monitoring program for Kbb or available habitat at Tolleston Ridges. Kbb were last seen at Gibson Woods Nature Preserve in 1979. Several small patches of marginal habitat persist at the site. In recent years The Nature Conservancy and Lake County Parks and Recreation Department began supplementing lupine populations at the site.

B. Establishing Baseline at Potential Core Sites. The following areas will be identified and mapped prior to enrollment: 1) All existing habitat patches that include a canopy opening of at least 20 meters and support a minimum of 500 stems of lupine and 2) All open areas with small patches of lupine and adult resources e.g., nectar and perching plants.

Because Karner populations fluctuate from year to year and there is not sufficient data to determine historic population levels, baseline should be determined on a presence–

absence basis. Specific monitoring protocols and schedules will be developed for each site as part of the restoration and management agreement, monitoring will be based on guidelines developed by the Kbb Recovery Team. Surveys should be conducted in conjunction with the habitat assessment.

C. Current Conditions at Potential Satellite Sites. Potential satellite sites range in quality from degraded remnant natural areas to highly disturbed sites. Although some of the remnant natural areas support small patches of lupine, currently there is not sufficient habitat to support temporary populations of the butterfly at any of the potential satellite sites. There are no known occurrences of Kbb outside of core preserves in the West Gary Recovery Unit.

D. Establishing Baseline at Satellite Sites. Although the same criteria for establishing baseline at core sites will apply to satellite sites, it is believed that all satellite sites will have a baseline of zero for both habitat and Kbb

E. Return to Baseline. Because it is anticipated that a variety of properties with varying KBB conservation objectives will be enrolled in the SHA, it is difficult to establish specific guidance for returning to baseline that will apply to all sites. Therefore, the restoration and management plans will include a section on the specifics of returning to baseline for each site. That section will establish a timeline for restoration and management activities based on the duration of the agreement, and describe the process for returning to baseline. Typically, the right to return to baseline will be effective after the agreed upon management activities have been fully implemented and the expected net conservation benefits have had time to accrue.

Because savannas are dynamic systems habitat conditions will naturally change over time. Return to baseline for habitat will not insure that specific habitat patches will remain, rather it will insure that there is no net loss in quality or quantity of Kbb habitat. Likewise, at sites with baseline greater than zero for Kbb, return to baseline will insure there is no net loss of occupied habitat.

5. MANAGEMENT ACTIVITIES

The Conservancy will work with landowners to enroll property in this program, requiring landowners (cooperators) to sign Certificates of Inclusion ensuring that the Conservancy and the Service will be able to carry out their responsibilities pursuant to this Agreement, and to undertake management activities as described in restoration and management plans developed specifically for individually enrolled properties. These plans will be based on guidelines for Kbb restoration and management activities established in the *Recovery Plan* and *Wisconsin Statewide Habitat Conservation Plan*, and should:

- Describe the nature, extent, timing, duration, and other pertinent details of the conservation measures to be implemented at the property
- Discuss the potential for incidental take associated with management activities and establish acceptable levels

- Establish who is responsible for carrying out specific activities
- Explain how the conservation measures are appropriate for the covered species and are expected to result in a net conservation benefit to the species on the enrolled property.

TNC will seek approval of the Service for implementation of any conservation measures not included in the *Recovery Plan* or *Wisconsin Statewide Habitat Conservation Plan* that could result in the take of Kbb.

A. Management Goals. The most important ecological goal relative to Kbb conservation is to expand available habitat in the core preserves. Ideally, habitat patches will include canopy openings of at least 20 meters and a minimum of 500 stems of lupine growing in both full sun and partial shade. This can be accomplished by 1) restoring open canopy structure in oak savanna areas, 2) controlling understory shrubs and saplings, and 3) supplementing lupine populations. After restoration, ongoing ecological management will be required to maintain early successional habitat conditions. The majority of tracts that comprise the core preserves are currently managed for conservation purposes. Karner related management activities will need to be integrated into the broader ecological objectives and management regimes for each site.

Restoration and management plans at satellite sites should generally be less complex than core sites. Although basic criteria for habitat patches exist, the size and quality of habitat will be designed for site specific conditions. Satellite sites located on utility or pipeline right-of-ways may require mowing.

The following are management options for restoring and maintaining Karner habitat. These activities are discussed in greater length in the recovery plan. They are all standard restoration and management practices used by the Conservancy. Individual sites will be assessed to determine appropriate restoration and management regimes that will be detailed in the restoration and management plans developed for each enrolled properties.

B. Management Activities

Mechanical Removal of Trees and Shrubs – Canopy structure is one factor in determining baseline for available habitat. Mechanical removal of trees and shrubs, with follow-up herbicide application, is an effective means to restore open canopy structure to fire suppressed oak savanna. Experienced restoration technicians can selectively remove mature trees, saplings and shrubs to mimic early successional habitat conditions. This option works well for quickly restoring structure to habitat patches without the negative impacts of fire on Kbb populations. Conversely, it is labor intensive and lacks the positive effects of fire, such as removing dead vegetation, scarifying seeds, and stimulating herbaceous plant growth. This option is best implemented in the dormant season. Incidental takes can be minimized by waiting for the ground to freeze.

Mechanical Suppression of Shrubs and Saplings – Mowing can be used as an alternative management option for prescribed fire. It is an effective method of suppressing the growth of woody species in the understory. However, without follow-up herbicide treatment the effects are generally temporary. For some woody species mowing will increase stem density over time. In order to minimize

incidental takes, this option is best implemented on frozen ground during the dormant season. This is also true for mowing as ROW maintenance.

Prescribed Fire – The use of fire as a management tool is discussed at length in the recovery plan. Kbb are dependent on the early successional habitat created by fire, yet fire can have a negative impact on local population. Balancing the negative and positive impacts of fire on Kbb is especially difficult in a highly fragmented landscape like the West Gary Recovery Unit. Fire plans should be designed for specific tracts. Fire will generally be used as a follow up management practice after habitat is restored through the mechanical measures described above. As a general rule, no more than one-third of the occupied habitat should be burned in a year at any given site. Fire is a critical tool for managing oak savannas. Balancing the needs of Kbb with other management objectives is critical.

Supplementing Lupine Populations – Stem density of lupine is another factor in determining baseline for available habitat. In most cases it will be necessary to supplement lupine populations to create appropriate habitat for Kbb. In some cases, satellite sites may not currently support any lupine.

Supplementing Nectar Sources – At some highly degraded sites it may be necessary to supplement populations of nectar plants. Some satellite sites may be designed specifically as dispersal corridors, in which case emphasis will be on establishing nectar sources and roosting habitat.

Reintroduction of Butterflies – At some core areas it will be necessary to reintroduce Kbb or supplement existing populations.

C. Conservation Benefits.

The net conservation benefit to Karner blue butterfly recovery will be:

- Developing and implementing restoration and management plans at core reserve sites will establish the conditions for multiple viable subpopulations of Kbb in the West Gary recovery unit. Disincentives to habitat restoration will be addressed by the SHA, allowing habitat quality for Kbb to be improved. Because the majority of core sites are in permanent conservation programs the benefits will likely exceed the duration of this Agreement.
- Creating satellite habitat patches will enhance ecological interactions between core sites and provide supplemental habitat for core populations for at least the duration of the agreement. Because the viability of the metapopulation is not dependent on the persistence of any individual satellite site, removing or adding tracts to the program should not dramatically affect the overall success of regional conservation efforts.

If successful, the SHA will help establish the West Gary Recovery Unit as a minimum viable population and will contribute to recovery and de-listing of the species.

6. OTHER REPONSIBILITIES OF THE PARTIES

A. In addition to carrying out the management activities set forth in paragraph 5, the Conservancy agrees to:

1. Notify the Service 15 days in advance of any planned activity that the Conservancy reasonably anticipates will result in “take” (i.e., death, injury, or other harm) of the covered species on the enrolled property, and provide the Service the opportunity to capture and/or relocate any potentially affected species, if appropriate. Emergency maintenance of utility or pipeline right-of-ways may preclude the Conservancy from providing 5 days advance notice to the Service of activities that may result in take of the species.
2. Carry out the following monitoring activities: At core sites conduct Pollard-Yates transects that cover all major habitat patches during second brood and map distribution of habitat patches that meet or exceed minimum habitat patch criteria as specified in paragraph 4B. At Satellite sites conduct habitat assessments based on criteria in paragraph 4B and presence/absence of butterflies.
3. Allow access to enrolled property upon reasonable notice to The Nature Conservancy and individual landowners by the Service or other agreed-upon party, to the enrolled property for purposes related to this Agreement, including any activities for which the party is responsible, including but not limited to, monitoring and capture and relocation of the covered species.
4. Notify the Service of any transfer of ownership, so that the Service can attempt to contact the new owner, explain the baseline responsibility applicable to the enrolled property, and seek to interest the new owner in signing the existing Agreement or a new one to benefit listed species on enrolled property.
5. Provide the Service with annual reports, due September 30th, that summarize monitoring results and status of enrolled properties.

B. In consideration of the foregoing, the Service agrees to:

1. Upon execution of the Agreement and satisfaction of all other applicable legal requirements, issue an enhancement of survival permit to the Conservancy in accordance with ESA section 10(a)(1)(A), authorizing take of the covered species as a result of lawful activities on the enrolled property in accordance with the terms of such permit. The term of the permit will be 15 years.
2. Provide the Conservancy technical assistance, to maximum extent practicable, when requested; and provide information on Federal funding programs.

7. AGREEMENT DURATION

The Agreement becomes effective upon issuance by the Service of the Section 10(a)(1)(A) enhancement of survival permit described in Part 6 hereof, and will be in effect for 15 years. The permit will have a term of 15 years.

8. ASSURANCES TO THE CONSERVANCY REGARDING TAKE OF COVERED SPECIES

Provided that such take is consistent with maintaining the baseline conditions identified in Part 5 hereof, the Section 10(a)(1)(A) permit referenced in Part 6 shall authorize the Conservancy to take the covered species incidental to otherwise lawful activities in the following circumstances:

1. Implementing the management activities identified in Part 5 hereof.
2. Carrying out any normal [e.g., agricultural, silvicultural, recreational, or other] activity on or adjacent to the enrolled property after management activities identified in Part 5 have been initiated.
- 3.. Making any lawful use of the enrolled property after the management activities identified in Part 5 have been fully implemented.

9. MODIFICATIONS

A. Modification of the Agreement. Either party may propose amendments to this Agreement, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, the other Party. 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 30 days of receipt of such notice. Proposed modifications will become effective upon the other Parties' written concurrence.

B. Termination of the Agreement. As provided for in Part 12 of the Service's Safe Harbor Policy (64 FR 32717), the Conservancy may terminate the Agreement for circumstances beyond the Conservancy's control. In such circumstances, the Conservancy and enrolled cooperators may return the enrolled property to baseline conditions even if the management activities identified in Part 5 have not been fully implemented, provided that the Conservancy gives the Service the notification required by Part 6.A.1 above prior to carrying out any activity likely to result in the taking of the covered species. If the Conservancy terminates the Agreement for any other reason, the permit referenced in Part 6.B.1 above shall immediately cease to be in effect. In returning to baseline and/or at the expiration of the permit, property owners do not retain any of the liabilities or benefits of the SHA. In particular, termination results in a corresponding loss of the permit's regulatory assurances.

C. Permit Suspension or Revocation. The Service may suspend or revoke the permit referred to in Part 6.B.1 above for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the permit if continuation of permitted activities would likely result in jeopardy to the covered species (50 CFR 13.28(a)). In such circumstances, the Service will exercise all possible measures to avoid revoking the permit.

D. Baseline Adjustment. The baseline conditions set forth in Part 4 above may, by mutual agreement of the Parties, be adjusted if, during the term of the Agreements and for reasons beyond the control of the Conservancy, the utilization of the enrolled property by the covered species or the quantity or quality of habitat suitable for or occupied by the covered species is reduced from what it was at the time the Agreement was negotiated.

10. OTHER MEASURES

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

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

C. Succession and Transfer. Should the Conservancy or cooperators enrolled by the Conservancy transfer their interests in enrolled property to a non-Federal entity, the Service will regard the new owner as having the same rights and responsibilities with respect to the enrolled property as the Conservancy or cooperator, if the new property owner agrees and commits in writing to become a party to this Agreement and the permit referenced in Part 6.A. above in place of the Conservancy.

D. Availability of Funds. Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement 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 Agreement 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. This Agreement does not call for provision of funding by the Service to the Conservancy. The Conservancy will use other funds available to it in carrying out its activities pursuant to this Agreement.

E. No Third-Party Beneficiaries. This Agreement 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 Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

F. Other Listed Species, Candidate Species, and Species of Concern. Although the Service regards it as unlikely, the possibility exists that other listed, proposed, or candidate species, or species of concern may occur in the future on the enrolled property as a direct result of the management actions specified in Part 5 above. If that occurs and the Conservancy so requests, the Parties may agree to amend the Agreement and associated permit to cover additional species and to establish appropriate baseline conditions for such other species.

G. Notices and Reports. Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the persons listed below, as appropriate:

The Nature Conservancy
[Name, address, phone number]

Field Supervisor,
U.S. Fish and Wildlife Service
[address, phone number]

Regional Director
U.S. Fish and Wildlife Service

[address, phone number]

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Safe Harbor Agreement to be in effect as of the date that the Service issues the permit referred to in Part 6.B.1 above.

[Note: may choose to have separate signature pages]

The Nature Conservancy

Date

Deputy [or] Regional Director
U.S. Fish and Wildlife Service

Date

ATTACHMENT B

DRAFT Safe Harbor Agreement Landowner Certificate of Inclusion Template

CERTIFICATE OF INCLUSION

This certifies that the property described as follows **[(description of portion of property covered by the Safe Harbor permit)]** owned by **[(cooperator's name)]**, is included within the scope of Permit No. **[(permit number)]**, issued by the U.S. Fish and Wildlife Service to **[(permittee)]**, on **[(date)]**, and expiring on **[(date)]** under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(A). Such Permit authorizes certain activities by participating landowners (Cooperators) as part of a Safe Harbor program to restore and enhance habitat for the **[(covered species)]**. Pursuant to that Permit and this Certificate of Inclusion, the holder of this Certificate is authorized to engage in any otherwise lawful activity on the above described property that may result in the incidental taking of **[(species)]**, as appropriate, subject to the terms and conditions of such Permit and the terms and conditions of the Safe Harbor Agreement entered into pursuant thereto by **[(permittee)]**, and **[(cooperator's name)]**, on **[(date)]**.

_____ Name of Permittee	_____ Date
_____ Signature of Participating Landowner	_____ Date
_____ Signature of FWS Representative	_____ Date