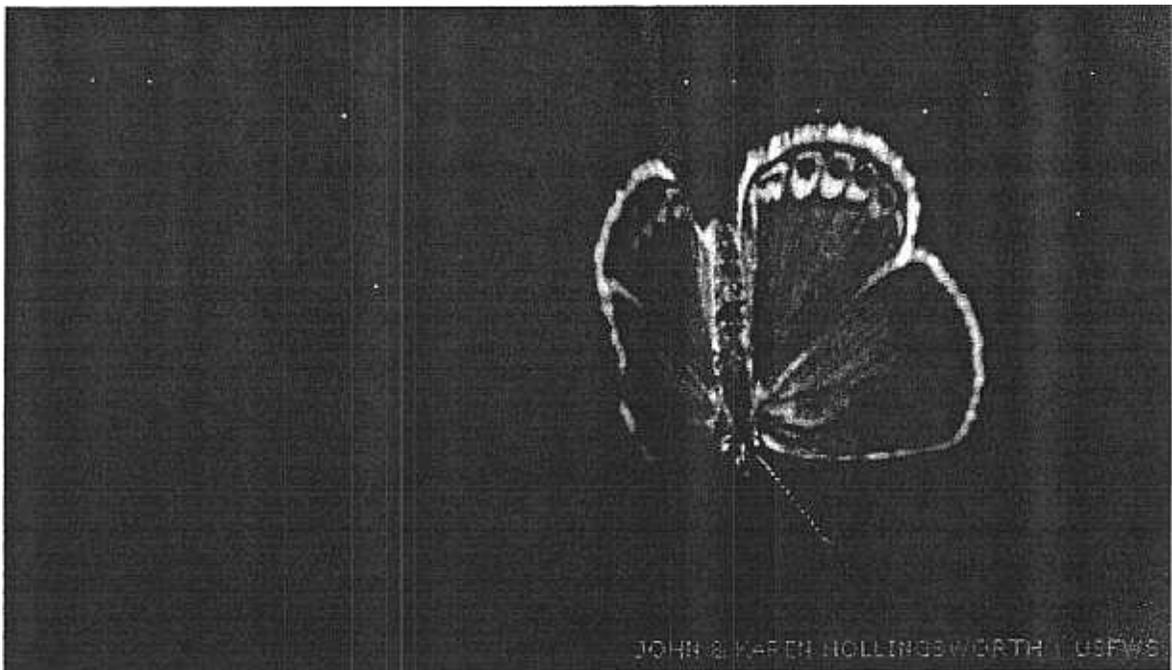


# SET OF FINDINGS

BETWEEN THE U.S. FISH AND WILDLIFE  
SERVICE AND THE NATURE CONSERVANCY  
FOR THE WEST GARY RECOVERY UNIT AND  
KARNER BLUE BUTTERFLY



**U.S. Fish and Wildlife Service**  
**Ecological Services**  
**June 2006**

FWS/AES-TE

Memorandum

**To:** Regional Director, Region 3

**Through:** Assistant Regional Director, Ecological Services  
Chief, Endangered Species

**From:** Regional HCP Coordinator

**Subject:** Set of Findings and Recommendations to issue a Safe Harbor Enhancement of Survival Permit to The Nature Conservancy for the Karner Blue Butterfly.

On August 23, 2005, the U.S. Fish and Wildlife Service (Service) received an application under Section 10 (a) (1) (A) of the Endangered Species Act of 1973, as amended (Act) from The Nature Conservancy, Lake County, Indiana, for a Safe Harbor Enhancement of Survival Permit (ESP). In accordance with the regulations, a Safe Harbor Agreement (SHA) accompanied the permit application. A Federal Register Notice announcing receipt of the permit application, and soliciting public comments on the application and the Service's National Environmental Policy Act determination, was published on September 20, 2005. The Service received one comment during public review.

The Bloomington Indiana Field Office and Regional Office staff concur that the application meets the regulatory and statutory standards required for issuance of the requested ESP, and offer the following Set of Findings, which recommends issuance of the ESP.

Attachment 1 of this document constitutes a Set of Findings for processing the application and describes the Service's rationale for making a recommendation to issue an ESP to the applicant.

If you have questions or concerns, please contact Mr. Tom Magnuson at (612)713-5467.

## **ATTACHMENT 1 – SET OF FINDINGS**

### **I. DESCRIPTION OF PROPOSAL**

The Nature Conservancy has submitted a SHA to address the regional needs of Karner Blue Butterfly (Kbb) by working with individual landowners to develop site-specific restoration and management plans for a variety of properties. The SHA would provide a mechanism for The Nature Conservancy to address the central problem thwarting development and implementation of conservation strategies in the West Gary Recovery Unit (WGRU), specifically ecological fragmentation combined with complex land ownership and land use patterns. In order to establish a viable metapopulation, The Nature Conservancy, through the SHA, would: a) maximize Kbb habitat in protected natural areas, b) create supplemental habitat within dispersal range of existing natural areas, and c) plan and implement strategic restorations to enhance ecological connectivity between natural areas, and d) capture, ship, house, feed, breed, rear larvae, overwinter, release, and monitor Kbb.

The Nature Conservancy seeks an Enhancement of Survival Permit (ESP) for the Kbb in conjunction with habitat management and restoration on TNC owned property and on property that would be enrolled under Certificates of Inclusion to the SHA within the WGRU in Lake County, Indiana. The project area encompasses approximately 2,847 acres of which approximately 650 acres comprise potentially suitable Kbb habitat. The majority of the area is high-density urban development that has no realistic potential as habitat. The Nature Conservancy's activities involve habitat maintenance and restoration on Core Areas where suitable Kbb habitat and in some cases butterflies currently exist and Satellite Habitat Sites, which currently have a baseline of zero. The Nature Conservancy worked closely with the Bloomington, Indiana, Field Office to develop their SHA.

A SHA submitted in accordance with the regulations at 50 CFR Part 17.22(c)(2) must meet certain issuance criteria. Following is an analysis of the adequacy of The Nature Conservancy's SHA in meeting these criteria.

### **II. ENHANCEMENT OF SURVIVAL PERMIT ISSUANCE CRITERIA – ANALYSIS AND FINDINGS**

#### **1. The taking will be incidental and in accordance with the terms of the SHA.**

The Service finds that the proposed take of Kbb will be incidental to otherwise lawful activities. Landowners would be permitted to take Kbb incidental to otherwise lawful future land use actions, provided they maintain the Kbb baseline responsibilities that existed at the time they agreed to participate in the SHA.

- 2 Implementing the SHA will provide a “net conservation benefit” to the listed species.**

As a prerequisite to enrolling property under this Agreement, each non-federal landowner must show that the enrollment of their property would result in a net conservation benefit for Kbb. TNC will identify management actions that will be undertaken to accomplish the expected net conservation benefit to the Kbb, describe where and when those benefits would be achieved, and document the agreed-upon time frames these management actions will remain in effect to achieve the anticipated net conservation benefit(s), per the terms of the SHA and ESP.

- 3. Direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species.**

The ESA's legislative history establishes the intent of Congress that this issuance criteria be identical to a regulatory finding of no “jeopardy” under section 7(a)(2) (see 50 CFR §402.03). As a result, issuance of this section 10(a)(1)(A) ESP was reviewed by the Service under section 7 of the ESA and a Biological Opinion was prepared. In the biological opinion, which is attached hereto and incorporated herein by reference, the Service concluded that issuance of the ESP is not likely to jeopardize the continued existence of the Kbb.

- 4. Implementation of the terms of the SHA will be consistent with applicable Federal, State, and Tribal laws and regulations.**

The Service and The Natural Conservancy have ensured, and will continue to ensure, that the SHA and the actions covered in the SHA are consistent with applicable Federal, State, local, and Tribal laws and regulations.

- 5. Implementation of the terms of the SHA will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit.**

The Service and The Natural Conservancy have ensured, and will continue to ensure, that the terms of the Agreement will not be in conflict with any ongoing conservation or recovery programs for the Kbb.

- 6. The Applicant has shown capability for and commitment to implementing all of the terms of the SHA.**

The Natural Conservancy is committed and capable to support the implementation of the SHA. At present, there is dedicated funding for the implementation of this program, and personnel within The Natural Conservancy have extensive experience with Kbb management. The Service believes that the Applicant will sufficiently manage implementation of the SHA.

### III. GENERAL CRITERIA AND DISQUALIFYING FACTORS - ANALYSIS AND FINDINGS

The Service has no evidence that the permit application should be denied on the basis of criteria and conditions set forth in 50 CFR § 13.21(b)-(c).

### IV. PUBLIC COMMENTS

In response to the September 20, 2005, Federal Register Notice, the Service received one public comment as follows:

#### Public Comment

“One issue of concern is that the draft agreement does not describe the process through which properties will be included under TNC’s incidental take permit, nor does it require any USFWS review of proposed inclusions, or define a minimum set of actions that will be taken on any or all properties to be included.” “One other minor concern is that Section 8 regarding the assurances provided by the Incidental Take Permit. It is clear that the SHA and permit provide TNC with incidental take authority, but nowhere in the document is it clear that landowners enrolling in the program would receive similar assurances. “

#### Service Response:

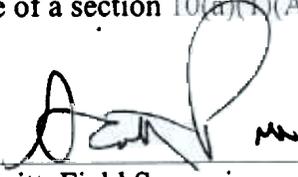
In response to the above comment, the Service amended the draft documents to include the following language change (see section(s) 3 and 8 in the SHA):

“The U.S. Fish and Wildlife Service will be given an opportunity to review proposed enrollments of property and if TNC receives no comments from USFWS within 10 working days, TNC will proceed with enrolling the identified property through a Certificate of Inclusion.”

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 and landowners enrolled through Certificates of Inclusion“ to take the covered species incidental to otherwise lawful activities..”

**V. RECOMMENDATIONS ON ISSUANCE OF PERMIT**

Based on our findings with respect to the ESP application, SHA, EA, and Biological Opinion, the issuance of a section 10(a)(1)(A) ESP to TNC is recommended.



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Scott Pruitt, Field Supervisor  
Bloomington Indiana Field Office

7/16/06

\_\_\_\_\_  
Date