

Safe Harbor Agreements for Private Property Owners

Questions and Answers

What are Safe Harbor Agreements?

Safe Harbor Agreements are voluntary arrangements between the U.S. Fish and Wildlife Service (the Service) or National Marine Fisheries Service and cooperating non-Federal landowners. The Agreements benefit endangered and threatened species while giving the landowners assurances from additional restrictions.

Through this process, coupled with an “enhancement of survival” permit, the Service will authorize any necessary future incidental take to provide participating landowners with assurances that no additional restrictions will be imposed as a result of their conservation actions.

Why is this policy necessary?

Because many endangered and threatened species occur primarily or exclusively on privately owned property, we believe it is critical to their protection to involve the private sector in their conservation and recovery. In fact, a General Accounting Office report concluded that at least 712 listed species occurred on private lands as of 1995. Previously, our efforts to enhance listed species on private lands through other agreements worried the cooperating landowners about future implications of enhancing or attracting listed species onto their properties. Landowners have been hesitant to manage their lands for the benefit of existing populations of listed species, to restore degraded habitat areas, to restore historic populations, or to strive to improve the status of populations within their lands because of fear of we could impose future additional regulations.

This policy’s main purpose is to promote voluntary management for listed species on non-Federal property

while giving assurances to participating landowners that no additional future regulatory restrictions will be imposed. This final policy and associated regulations were published in the *Federal Register* on June 17, 1999.

Who can participate?

Any non-Federal landowner can request the development of a Safe Harbor Agreement. These agreements are between the landowner and the Service or between the Service and other stakeholders (such as State natural resource agencies, Tribal governments, local governments, conservation organizations, businesses). Even if a landowner and the Service develop an Agreement, other stakeholders, at the landowner’s request, can participate in many ways in the development phases of the Agreement. However, the assurances only apply to the participating landowners and for lawful activities within the enrolled lands.

How does this policy affect individuals and institutions not associated with the Service?

Individuals and institutions will benefit by this policy. For years, non-Federal landowners have been seeking and insisting on assurances that their voluntary actions will not result in future land-use restrictions. This policy could help all non-Federal landowners interested in using their lands to aid conservation but who also fear subsequent penalties. However, the implementation of this policy nationwide is expected to increase the workload for the Service and our Private Lands Programs.

What assurances does the landowner receive?

The Service will provide assurances (by issuing an “enhancement of survival”

permit) that, when the Agreement’s term ends, the participating landowner may use the property in any otherwise legal manner that doesn’t move it below baseline conditions (see below). These assurances operate with the enrolled lands and are valid for as long as the participant is complying with the Safe Harbor Agreement and associated permit.

In return for the participant’s efforts, the Service will authorize incidental take through the section 10 (a)(1)(A) process of the Endangered Species Act (ESA). This permit would allow participants to take individual listed plants or animals or modify habitat to return population levels and habitat conditions to those agreed upon as baseline.

How are species benefitted?

Before entering into a Safe Harbor Agreement, we must make a finding that the covered endangered or threatened species will receive a “net conservation benefit” from the Agreement’s management actions. Examples of such benefits include:

- n reduction of habitat fragmentation;
- n maintenance, restoration, or enhancement of existing habitats;
- n increase in habitat connectivity;
- n maintenance or increase of population numbers or distribution;
- n reduction of the effects of catastrophic events;
- n establishment of buffers for protected areas; and
- n areas to test and develop new management techniques.

How is the Net Conservation Benefit used in an Agreement?

Before entering into any Safe Harbor Agreement, we must make a written finding that all covered species will receive a net conservation benefit from

the Agreement. The finding must clearly describe the expected net conservation benefits and how the Service reached that conclusion. Net conservation benefits must contribute, directly or indirectly, to the recovery of the covered species. This contribution toward recovery will vary and may not be permanent. The benefit to the species depends on the nature of the activities to be undertaken, where they are undertaken, and their duration.

What are the steps to develop a Safe Harbor Agreement and obtain permits?

Generally, the steps are:

1. Contact the nearest Fish and Wildlife Ecological Services Field Office and ask to speak to someone about the Safe Harbor Program.
2. You (the landowner), with the aid of the Service, must gather some general information. This includes, but is not limited to, a map of the property, proposed management actions, information on the listed species that occur on the property, and any other pertinent information.
3. We (or appropriate cooperators approved by you) will describe the baseline conditions for the enrolled property in terms appropriate for the covered species. Using the baseline determination, you and our staff will discuss land use objectives, assess habitat quality, and identify any other information needed to develop an Agreement that meets the standards of the policy.
4. Based on all the information you provide, information gathered during site visits, and the Service's technical assistance, you and our staff (and any other pertinent entity, such as a State Fish and Game agency) develop a Safe Harbor Agreement.
5. To apply for a permit, you would complete an "enhancement for survival" permit form, attach the Safe Harbor Agreement, and submit them to us. This is your complete application.
6. After we comply with all applicable ESA provisions (internal section 7 review and public comment period on your permit application), we will issue you a 10(a)(1)(A) permit. This permit will allow you to return your property to the baseline conditions at the end of the Agreement.

7. We develop and implement a monitoring program to assess the success of the management practices, including any potential incidental take from land-use changes or from the termination of the agreement.

How is the baseline determined?

We will describe the baseline of the enrolled property in terms appropriate for the target or covered species, such as number and location of individuals, if it can be determined. Probably the most common method will be a measurement of the habitat. For example, in a stream restoration project to benefit listed streamside songbirds, we may use the miles of occupied stream habitat being restored as the baseline measurement. We will also use other information, such as habitat characteristics that support the covered species and any other information that helps to document the current conditions.

How long does it take to develop an Agreement?

Many Agreements can be developed within 3-4 months. More complex Agreements may take at least 6-7 months. It depends on a number of factors including, but not limited to:

- n the species' ecology,
- n size of project,
- n number of parties to the Agreement,
- n state of scientific knowledge regarding the species, and
- n funding available for the Safe Harbor program.

Will there be any public notification of Safe Harbor Agreements?

As with other similar ESA permits, we will publish a notice in the *Federal Register* when we receive the permit application. We will announce receipt and availability of the application and Agreement. We will accept and consider comments from the public before making a final decision on issuance of the permit.

What if a non-covered listed species or newly listed species occupies enrolled lands?

This is where the Safe Harbor Program is most useful. If either event happens, the participant can request an amendment to the Agreement and/or the permit to add the species. The Service and the participant will agree on the enhancement or maintenance actions for the newly covered species, baseline conditions, and a net

conservation benefit to that species. We would revise the permit and Agreement to address the presence of additional listed species in much the same way as the originally covered species.

What if I sell my land? Are these agreements transferable?

If you sell or give away your enrolled lands, we will honor the Agreement, providing the new owner willingly signs the original Agreement or a new mutually agreeable one.

When an Agreement expires, how can it be renewed?

These Agreements can be renewed for as long as the landowner wishes and follows the terms of the Agreement.

How Many Safe Harbor Agreements have been developed?

As of August 1999, there were more than 40 Safe Harbor Agreements across the nation, encompassing more than one million acres.

What is a Statewide Agreement?

Statewide Agreements authorize individual States to implement Safe Harbor programs. We provide a permit to the State, which can then offer individual landowners authorizations through a "certificate of inclusion." This has tremendous potential for efficiently providing broad assurances to non-Federal landowners. These "programmatic" Agreements can be provided to other groups, such as local government or non-governmental conservation organizations. Statewide Agreements have been developed for the red-cockaded woodpecker in Texas, and South Carolina.

**U.S. Fish and Wildlife Service
Division of Endangered Species
4401 N. Fairfax Drive, Rm. 420
Arlington, VA 22203**

703/358-2171
<http://www.fws.gov>

September 1999

