

**SAFE HARBOR AGREEMENT WITH THE NATURE CONSERVANCY, AND
PRIVATE PROPERTY OWNERS FOR VOLUNTARY ENHANCEMENT/
RESTORATION ACTIVITIES BENEFITING OREGON SILVERSPOT BUTTERFLY
CENTRAL COAST POPULATIONS IN LANE COUNTY, OREGON**

This Safe Harbor Agreement (“Agreement”) is by and between the The Nature Conservancy, a District of Columbia non profit corporation (“TNC” or “Permittee”), and the **United States Fish and Wildlife Service**, an agency of the United States Department of the Interior (“Service”). This Agreement shall become effective on the date of execution by the Service.

1. RECITALS

1.1 PURPOSES OF THIS AGREEMENT: The purposes of this Agreement are (1) to establish a collaborative process to implement conservation measures for the Covered Species defined herein by preserving suitable habitat and providing for its restoration; and (2) to establish a legal basis for the issuance of an “Enhancement of Survival” permit that will authorize implementation of the conservation actions and other activities provided in this Agreement as well as the incidental take of Covered Species (as defined in Section 2, below) that results from activities that do not lower the baseline condition of the Enrolled Property (see definition of Enrolled Property below). The geographic scope of this Agreement may include all properties on the central coast of Oregon located in whole or in part within the ten-mile corridor surrounding Siuslaw National Forest managed sites, Bray Point and Rock Creek, as shown on attached **Figure A**, which is incorporated herein by reference.

1.2 SAFE HARBOR POLICY AND PROGRAM: This Agreement follows and is consistent with the Service’s Safe Harbor Agreement final policies (64 Federal Register (FR) 32717) and final regulations, and implements the intent of TNC and the Service to follow the procedural and substantive requirements of the Endangered Species Act of 1973, as amended (“ESA”) with respect to Safe Harbor Agreements. The Safe Harbor program encourages proactive conservation efforts by non-Federal landowners by providing them certainty that future property-use restrictions will not be imposed if those conservation efforts attract Covered Species to the Enrolled Property or result in increased numbers or distributions of species already present.

Under this Agreement, private lands may be enrolled through individual Cooperative Agreements (sometimes referred to as “CA”) between the Service, TNC and landowners (landowners may be referred to as “Cooperators”). Cooperators will be issued a Certificate of Inclusion (“CI”) which will allow activities on the Enrolled Property to be included within TNC’s Section 10(a)(1)(A) Enhancement of Survival permit (the “Permit”).

1.3 VALUE TO SPECIES AND HABITATS: Conservation and preservation of the Enrolled Property is valuable for the survival and recovery of the Covered Species, identified in Section 2 herein, because of the location of the Enrolled Property in the Central Oregon Coast,

where development pressure and recreational use have resulted in very few areas that remain as natural open space to support the habitats required by the Covered Species.

1.4 NET CONSERVATION BENEFIT: The Enrolled Property could be substantially improved for use by the Covered Species by prohibiting development therein and through the active management and conservation efforts by TNC and Cooperators, including habitat restoration and preservation described herein.

2. COVERED SPECIES

This Agreement covers the federally listed Oregon silverspot butterfly (*Speyeria zerene hippolyta*), which is hereafter referred to as "butterfly" or "Covered Species". When signed, this Agreement will serve as the basis for the Service to issue the Permit under the ESA section 10(a)(1)(A) for the take of covered, listed species associated with the potential future return of the Enrolled Property to its regulatory baseline (i.e. section 9 responsibility prior to the Agreement).

3. DESCRIPTION OF ENROLLED PROPERTY AND BASELINE CONDITIONS

3.1 ENROLLED PROPERTIES. Private landowners within the geographic scope of this Agreement as shown on Figure A are eligible to enroll their property in the program for a minimum of 10 years. Conservation efforts will be focused on this small region, especially on lands adjacent to the existing Covered Species population centers. This approach will concentrate the ecological benefits on butterfly nectaring, ovipositing, and breeding habitat. Lands suitable for inclusion will be those within the coastal meadow habitat corridor located at the interface of the Pacific Ocean and the spruce/hemlock forest. Open, grassy meadows within five miles (i.e. the documented dispersal distance of the covered species) of this corridor may be included if habitat quality and quantity is sufficient to support butterflies. Highway 101 bisects the entire 10-mile habitat corridor. This Agreement may be amended pursuant to its terms to include additional land applicable to the goals of this Agreement.

3.2 BASELINE CONDITION OF THE ENROLLED PROPERTY: TNC and the Service agree that the Safe Harbor baseline applicable to this Agreement is as follows and will be determined as described below: a mutually agreed upon baseline determination will be made for each property prior to issuing a Certificate of Inclusion, and will be specified in each CA.

Initial baseline determinations will be made by the Service or TNC based on the presence or absence of the butterfly's larval host plant, the early blue violet (*Viola adunca*), prior to restoration efforts. The peak blooming season for the early blue violet is between April and June and it is during this time period that it would be most appropriate to determine the regulatory baseline. The baseline for each CA must include an assessment of the number of early blue violets and/or the area occupied by early blue violets. Sites lacking early blue violets will have a baseline condition of zero. The baseline conditions will be based upon the number of early blue

violets and/or their areal coverage which reflect the potential number of Oregon silverspot butterflies that may occur at the site. The final baseline determination will be mutually agreed upon by TNC, the Service, and the Cooperators and a baseline determination, map, and description of enrolled properties will be provided in each CA.

4. RESTORATION AND MANAGEMENT ACTIONS

4.1 Restoration and Management Activities. TNC, or the Cooperator pursuant to a Cooperative Agreement, may conduct the following restoration and management activities which are intended to benefit coastal meadow Oregon silverspot butterfly habitat. Such activities may be applied adaptively to each Cooperator's Enrolled Property, and will be further detailed in the individual CAs.

4.1.1 Modifying Existing Vegetation. Suppress or remove invasive vegetation via a combination of techniques approved by the Service, TNC and the Cooperator. Mowing, brush cutting, grazing, burning, infrared or weed burner, smothering, and tilling are proposed management techniques. Suppression of invasive vegetation is intended to allow native nectar plants and early blue violet to be habitat components accessible to butterflies.

4.1.2 Planting Native Vegetation. Reseed and/or replant with native coastal meadow vegetation, including native nectar sources preferred by butterflies, including, but not limited to, Canada goldenrod (*Solidago canadensis*), dune goldenrod (*Solidago spathulata*) California aster (*Symphyotrichum chilense*), pearly everlasting (*Anaphalis margaritacea*), dune thistle (*Cirsium edule*), and yarrow (*Achillea millefolium*). Planting of native vegetation will occur when in TNC's judgment, suppression of invasive vegetation is at a level where native species could be successfully reintroduced. Establishing a native plant matrix is a key factor in making the essential habitat components of nectar and violets available for use by butterflies, and TNC shall provide a summary of such plant matrix in the annual reports to the Service.

4.1.3 Enhancing Early Blue Violet Populations. Grow seeds of early blue violet and outplant mature plants into habitat with a native grass and forb matrix to increase potential sources of larval food plant. Specifically enhancing or establishing early blue violet populations will be a key factor to encourage butterfly ovipositing and breeding activity.

The voluntary restoration and management actions listed above are intended to increase early blue violet densities, increase the nectar source availability and ultimately increase the number of Oregon silverspot butterflies by improving the quality of their habitat within an important dispersal corridor between two existing populations. Successful establishment of habitat will require multiple years of habitat manipulation, depending on the habitat condition and degree of exotic plant invasion on each property. This process is expected to take approximately two to three habitat management treatments and approximately two to three seasons.

Nothing in this Agreement prevents TNC, or the Cooperator after consultation with TNC and the Service, from implementing restoration and management activities not described in the Agreement, as long as such actions maintain the baseline conditions or enhance native coastal meadow habitat, and do not adversely affect the beneficial actions set forth in this Agreement.

4.2 Monitoring. Habitat restoration activities will be followed by post-project monitoring. Site inspections are likely to occur to determine long-term success of coastal meadow habitat restoration efforts. Reasonable advance notice of site inspections will always be provided to TNC and the Cooperator, as stated in the CA. Cooperators shall allow access to TNC or Service (or designee thereof) to conduct restoration and management actions and monitor habitat conditions to determine long-term success of such actions.

4.3 Annual Reports. Annual reports will describe restoration and management activities undertaken during the previous year and anticipated restoration and management activities for the upcoming year. The first report will be due on December 31, 2007.

5. RESPONSIBILITIES OF TNC

5.1 Cooperative Agreement Development.

5.1.1 TNC will apply for and hold the Permit and, as funding allows, enroll non-Federal landowners (Cooperators) with Certificates of Inclusion under the Permit when Cooperators sign CAs. The Service has provided the form of CA, attached as Appendix III, and the form of CI, attached as Appendix IV. Each CA will include, at a minimum: (1) tax map of the enrolled property; (2) identification on the map of any existing butterfly baseline responsibilities on that property (i.e., the mutually agreed upon baseline), including an accurate estimate or accounting of the number or aerial extent of early blue violets; (3) specific proposed habitat improvements and the term of the CA (10 year minimum); (4) monitoring requirements; (5) further details of the Cooperator's and TNC's respective responsibilities under the CA, such as responsibilities for compliance with legal requirements when conducting the specified management activities.

5.1.2 The Service will have 30 days to review each CA. If no comments are received within 30 days, the CA will be deemed approved by the Service and TNC may proceed to finalize the CA. TNC will make available to the Service, upon request, records and materials in its possession relating to the implementation of the program, including executed CAs.

5.1.3 Upon execution of each CA, individual Cooperators will be issued a Certificate of Inclusion under the Permit. The Certificate of Inclusion authorizes incidental take of butterflies exceeding baseline conditions as a result of lawful activities within the Enrolled Property for the Permit term.

5.2 Cost Share Administrator. TNC will serve as the administrator of contracts, services, materials acquisitions, and disbursement of the Service's cost-share for activities related to project completion, pending funding from the Service.

5.3 Cooperative Agreement Implementation. TNC will designate a Project Field Manager and will provide, subject to available funding: oversight of baseline property assessments of lands enrolled in the Agreement; implementation of management actions; compliance monitoring (as further described below); annual effectiveness (biological) monitoring; and technical assistance to the maximum extent practicable in developing and implementing management plans.

5.4 Compliance Monitoring and Reporting. Depending upon funding availability, TNC will implement compliance monitoring for management activities specified in each CA, as well as take authorized by the Permit. TNC will monitor butterfly habitat restoration within the CA area annually. In the event that TNC has reductions in staff, or funding for compliance or effectiveness monitoring is unavailable, the Service will fulfill the monitoring responsibilities outlined in this Agreement or find another party to assume these responsibilities. The annual report shall be due no later than December 31 of each year, and shall include the following:

5.4.1 Status of the Permit, including the number, locations, and total acres of enrolled properties;

5.4.2 Baseline conditions of newly Enrolled Property; and

5.4.3 Current status of Enrolled Property, including: (i) management actions implemented and outcomes if known; (ii) description of activities undertaken pursuant to this Agreement or related to butterfly management; and (iii) description of any activities that resulted in or may have resulted in incidental take of butterflies, such as habitat modification or destruction, burning, emergency actions taken to protect life or property, etc.

In no event shall TNC be liable to the Service for the inability to monitor due to lack of funding or staff, or for non-compliance of the Cooperator with the terms of the CA or this Agreement.

5.5 Potential Incidental Take. If butterflies are known or are believed to be present on the Enrolled Property and incidental take is reasonably expected to occur due to otherwise lawful activities, then TNC will make a reasonable estimate of the number and status of the butterflies present, and assess, in consultation with the Service, whether the Oregon silverspot butterflies should remain on the property or be relocated, if feasible. If warranted, TNC and the Service will recommend procedures (i.e. translocation of early blue violets and/or butterflies if appropriate) the Cooperator can take to avoid future incidental take based on incidental take described in past annual reports. Incidental take of butterflies could occur during management activities or when the Cooperator and/or TNC wish to bring the enrolled property back to baseline conditions. Removal of habitat components, specifically early blue violets, could result in incidental take if Oregon silverspot butterflies have been observed on or near the enrolled property.

6. COOPERATORS (LANDOWNERS) ROLE:

The minimum responsibilities of the Cooperator/Landowner are set forth in the Cooperative Agreement, the form of which is attached hereto as Appendix III.

7. JOINT RESPONSIBILITIES OF TNC AND COOPERATORS

7.1 REPORTING: TNC and Cooperators shall report to the Service in writing any observed mortalities, injuries, or diseases of Covered Species on the Enrolled Property within 14 days of observation.

7.2 NOTIFICATION OF PLANNED ACTIVITIES: TNC and Cooperators shall notify the Service 60 days in advance of any otherwise lawful activities planned to be undertaken on the Enrolled Property that TNC or the Cooperator reasonably anticipates could result in the take of Covered Species above the baseline determination. During such 60 day period, TNC and Cooperators shall consult with the Service to attempt to minimize the effects of the planned activities on Covered Species and will provide the Service the opportunity within such 60 day period to capture and/or relocate any potentially affected Covered Species.

7.4 COMPLIANCE WITH LAWS: Permit issuance will not preclude the need for TNC and Cooperators to abide by all other applicable Federal, State, and local laws and regulations that may apply, including but not limited to those imposed by relevant land use authorities.

8. SERVICE RESPONSIBILITIES

8.1 ISSUE PERMIT. The Service agrees to, upon execution of the Agreement and satisfaction of all other applicable legal requirements, issue the Permit, 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 Service will provide TNC and Cooperators technical assistance in preparing the permit application and individual CAs, and developing and implementing management plans, to the maximum extent practicable.

8.2 CONSULTATION. As needed, the Service will be responsible to seek out and incorporate input from non-federal landowners, TNC, Tribes, Oregon Parks and Recreation Department (OPRD), and other interested parties as the Service deems appropriate.

8.3 FUNDING INFORMATION. The Service will provide information to TNC and Cooperators on Federal funding programs and will work to secure funding for long-term monitoring to ensure that the conditions of each CA are being met, to evaluate effectiveness of restoration and management activities, and to evaluate baseline conditions of future Enrolled Property.

8.4 REVIEW OF COOPERATIVE AGREEMENTS. The Service will review and provide input on Certificates of Inclusion and CAs for landowners meeting the enrollment conditions of the Agreement. The Service will have 30 days from receipt to review and concur with the CA, or to decline concurrence, in which case the Service will provide a written explanation for its non-concurrence and TNC will not proceed with the CA. If the Service does not provide written notice of its decision to TNC within 30 days, TNC and the Cooperator may execute the CA, which, in turn, will cause issuance of a CI to the Cooperator.

9. INCIDENTAL TAKE PERMIT

9.1 ASSURANCES TO PERMITTEE: Provided such take does not lower the condition of the Enrolled Property below the baseline condition with respect to the number of Covered Species and their respective habitats currently located on the Enrolled Property as described herein, TNC and Cooperators, their agents and assigns, shall be authorized to take Covered Species on the Enrolled Property in the following circumstances:

9.1.1 Implementing the management activities identified in Part 4.1 hereof.

9.1.2 Carrying out any normal (e.g., agricultural, silvicultural, recreational, or other) activity on, or adjacent to, the Enrolled Property after restoration and management activities identified in this Agreement and the respective CAs have been initiated.

9.1.3 Making any lawful use of the Enrolled Property after the management activities identified in this Agreement and the respective CAs have been fully implemented.

The maximum number of Covered Species individuals that can be taken pursuant to this Agreement and the Permit will be no more than the number of additional Covered Species individuals resulting from an increase in the baseline conditions created through this Agreement. The net impact of the incidental take authorized under this program is, at the very most, a return to the *status quo ante* or baseline. In no event may habitat be impacted until 60 days after the Service has received written notice of potential take of Oregon silverspot butterflies in order to relocate any remaining early blue violets or Oregon silverspot butterflies from the area to be impacted, as deemed appropriate by the Service.

9.2 EFFECTIVE DATE: The Permit will take effect for Covered Species as of the date of the date of the last signature of this Agreement.

9.3 TERM OF AGREEMENT AND PERMIT: The duration of this Agreement and Permit is for a period of 35 years, unless earlier terminated pursuant to the terms of this Agreement.

9.4 PERMIT AMENDMENT: The Permit may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, 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.

9.5 PERMIT RENEWAL: The Permit may be renewed in accordance with all applicable legal requirements, and specifically those administered under the ESA and the Service's permit regulations (see 50 CFR 13.22). A Permit renewal request needs to be in writing at least 30 days prior to the permit's expiration, certify that all statements and information in the original application are still correct or include a list of changes.

9.6 SUSPENSION AND 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. The Service also, as a last resort, may revoke the Permit if continuation of permitted activities would likely result in jeopardy to covered species (50 CFR 13.28(a)). Prior to revocation, the Service shall exercise all possible measures to remedy the situation without suspending or revoking the Permit, and shall provide notice in writing to all Cooperators of the potential revocation.

10. MODIFICATIONS

10.1 ASSURANCES TO THE PERMITTEE: To the extent permitted by law, in accordance with 50 CFR 17.32(c)(5)(ii), the Service hereby provides assurances to the Permittee that the Service may not require additional or different management activities to be undertaken by the Permittee without the consent of the Permittee.

10.2 BASELINE ADJUSTMENT. Baseline conditions set forth in the respective CAs may, by mutual agreement of TNC, the Service and the applicable Cooperator, be adjusted if, during the term of the CA and for reasons beyond the reasonably foreseeable control of the Cooperator, 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 CA was executed.

10.3 MODIFICATIONS: Either TNC or the Service may propose modifications or amendments to this Agreement, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, either TNC or the Service, as applicable. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. TNC and the Service will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed minor modifications will become effective upon the written concurrence of TNC and the Service. Proposed major modifications will become effective upon completion of a major amendment process, which includes a 30-day public comment period.

10.4 TERMINATION OF AGREEMENT: As provided in Part 12 of the Service's Safe Harbor Policy (64 FR 32717) TNC may terminate this Agreement for circumstances beyond its control upon 60 days written notice to the Service and the Cooperators. In such event, the Cooperators shall be permitted to return the Enrolled Property to baseline conditions even if the

management and restoration activities described herein have not been fully implemented, provided that TNC gives the Service notice thereof as provided in Section 7.2 prior to carrying out any activity likely to result in the taking of a Covered Species. Termination for any other reason shall require 90 days prior written notice by TNC to the Service and each Cooperator. In that event, the Service will seek to obtain another person or entity to sign and take over the responsibilities under the Agreement, or have the individual Cooperators sign individual Agreements. If TNC terminates the Agreement for any other reason, the Permit shall immediately terminate.

10.5 CATASTROPHIC EVENTS: The Permittee and the Cooperator will not be held responsible for take below original baseline conditions in the event of major adverse habitat impacts (such as destruction of all or the majority of Covered Species population or habitat) resulting from catastrophic events including but not limited to "acts of God", or sudden actions of the elements such as hurricanes, rainstorms, severe drought, tsunamis, or insect/disease epidemics.

10.6 REMEDIES: TNC and the Service 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.

10.7 DISPUTES: TNC and the Service agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by both TNC and the Service.

10.8 INTERPRETATION: The CAs will incorporate the terms of this Agreement. Any inconsistency between this Agreement and any CA shall be governed by the terms of this Agreement.

11. MISCELLANEOUS

11.1 BINDING EFFECT: This Agreement and the Permit shall be binding on and shall inure to the benefit of TNC and the Service (including officers, directors, employees, lessees and agents thereof) and their respective successors and transferees, in accordance with applicable regulations (50 CFR 13.24 and 13.25). Assignment or transfer of the Permit shall be governed by Service regulations in force at the time.

The rights and obligations of the landowners under the CAs are transferable to subsequent non-Federal property owners pursuant to 50 CFR 13.25, upon consent of the successor or transferee of the land, execution of a new CA, and issuance of a CI. A new owner(s) will have the same rights and obligations with respect to the Enrolled Property as the original owner. Assignment or transfer of the Permit shall be governed by Service regulations in force at the time.

11.2 ANTI-DEFICIENCY ACT: 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 to require the obligation, appropriation, or expenditure of any

funds from the U.S. Treasury. TNC and the Service 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.

11.3 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 be deemed to authorize any third party to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of TNC and the Service with respect to third parties shall remain as imposed under existing law.

11.4 OTHER LISTED SPECIES: Other listed species may occur in the future on the Enrolled Property as a direct result of the management actions specified herein. If that occurs and TNC so requests, TNC and the Service may agree to amend the Agreement and associated permit to cover additional species and to establish appropriate baseline conditions for such other species.

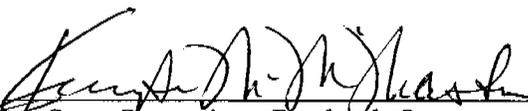
11.5 NOTICES: Any notices and reports required by this Agreement shall be delivered to the persons at the addresses listed below:

Director of Protection or Director of Coast and Marine
The Nature Conservancy
Oregon Field Office
812 SE 14th Avenue
Portland, OR 97214-2537
(503) 802-8100

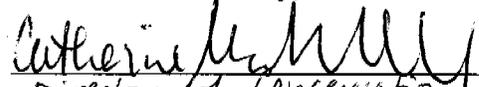
State Supervisor
Oregon Fish and Wildlife Office
U.S. Fish and Wildlife Service
2600 SE 98th Avenue, Suite 100
Portland, Oregon 97266
(503) 231-6179

This Agreement is to be effective as of the date of execution by the Service.

U.S. Fish and Wildlife Service

By:  6/14/07
Title: State Supervisor, Portland, Oregon Date

The Nature Conservancy, a District of Columbia non profit corporation

By:  6/12/2007
Title: Director of Conservation Programs Date

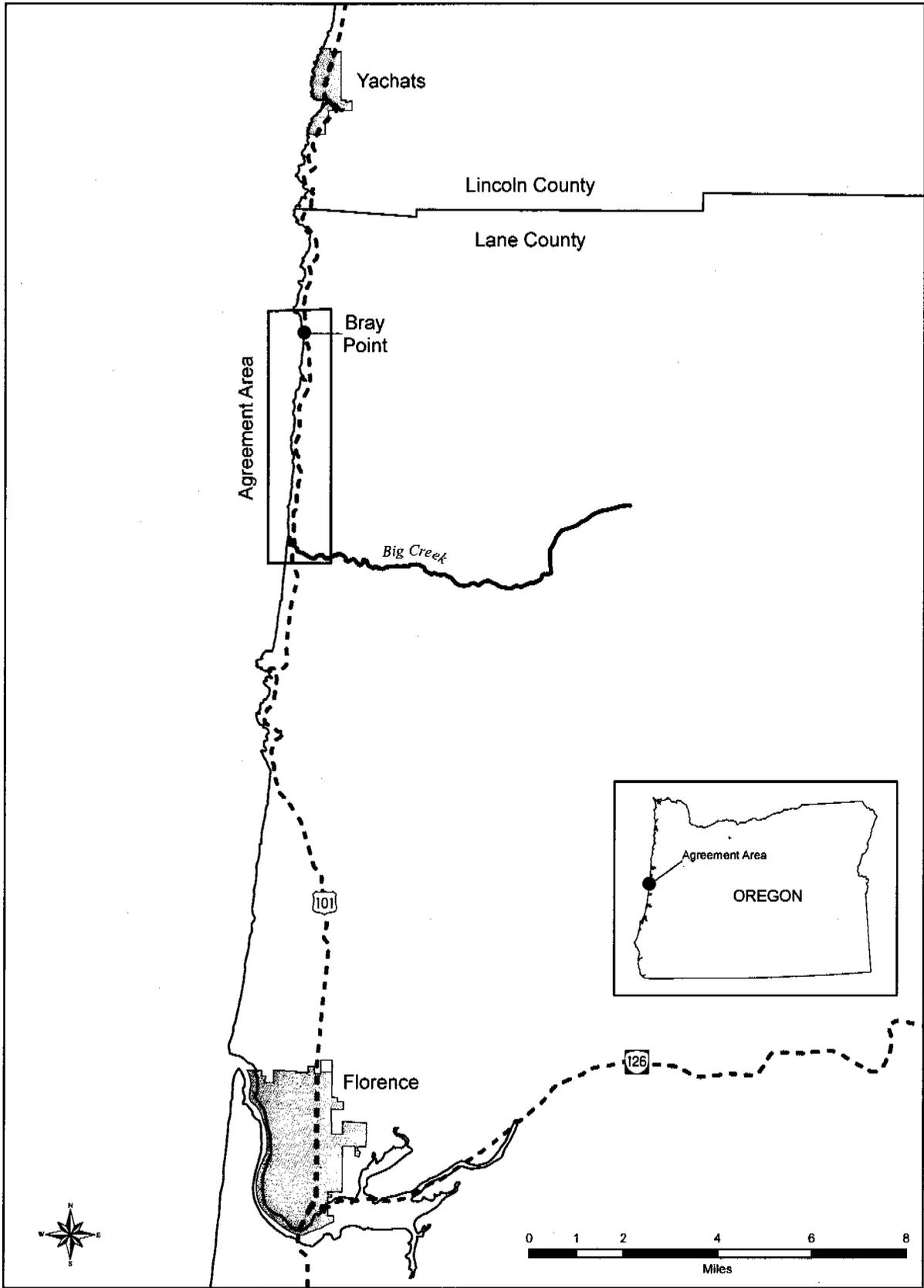
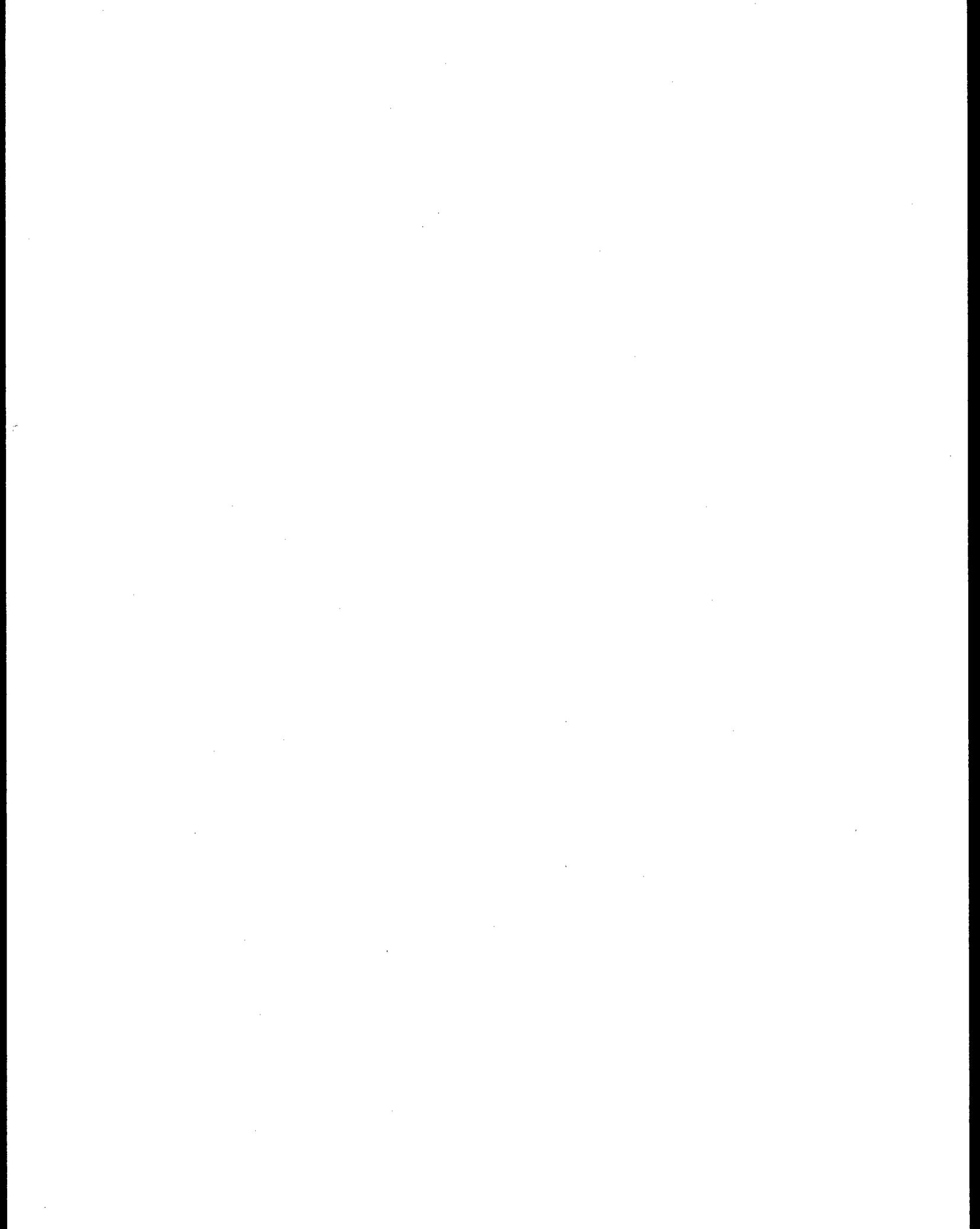


Figure A. Geographic area covered under the Oregon Silverspot Butterfly Safe Harbor Agreement, Bray Point to Big Creek, Lane County, Oregon



APPENDICES

1. Species Status and Biology

The Oregon silverspot butterfly (*Speyeria zerene hippolyta*) was listed as a threatened species with critical habitat in 1980 (USID 1980; 45 FR 44935). A recovery plan was completed in 1982 (USDI 1982) and a revised recovery plan was completed in 2001 (USDI 2001). The species recovery priority number is 3, indicating a high degree of threat and high recovery potential (USDI 1983; 48 FR 43098). Much of the following information was extracted from the revised recovery plan and unpublished reports from The Nature Conservancy to the U.S. Fish and Wildlife Service.

Threats to the species include loss of early successional, coastally-influenced grassland habitat containing early blue violet (*Viola adunca*) the caterpillar host plant, adult nectar sources and adult courtship areas. Invasion by exotic species, natural succession, fire suppression and land development have resulted in loss and modification of the species' habitat.

Historic Distribution and Habitat

Historically, Oregon silverspot butterflies occurred along the Pacific coast from southern Washington to northern California. At least 20 separate localities were known for the butterfly in the past. Currently the butterfly is known to have been extirpated from at least 11 colonies (2 in Washington, 8 in Oregon, and 1 in California). Of the remaining occupied sites, one is in Del Norte County (Lake Earl), two are in Lane County (Rock Creek-Big Creek and Bray Point), and two are in Tillamook County (Cascade Head and Mt. Hebo). The population at a sixth site in Clatsop County (Clatsop Plains) has declined in recent surveys with only one Oregon silverspot butterfly documented in 1998 (VanBuskirk 1993, 1998).

Oregon silverspot butterfly habitat in Lane County, Oregon is located on the Siuslaw National Forest at Bray Point south to Rock Creek and Big Creek. Bray Point and Rock Creek-Big Creek are located at opposite ends of a 5 mile corridor, bisected by Highway 101, comprised primarily by private residences and two small, undeveloped State waysides. Movement of Oregon silverspot butterflies has been documented between Bray Point and the Rock Creek-Big Creek area (VanBuskirk and Pickering 1999). Critical Habitat was designated between the mouths of Rock Creek and Big Creek in 1980 when this location supported the only known viable population of Oregon silverspot butterflies.

Current Status of the Species

The Nature Conservancy has conducted annual population censuses for Oregon silverspot butterflies at the four central coast sites in Oregon since 1990. These sites are: Cascade Head, Mount Hebo, Bray Point, and Rock Creek-Big Creek. Weekly censuses were summed to provide an index of abundance value for each site, which provides a conservative method to determine long-term trends and stability of the individual

populations at each site (see Table 1 for index of abundance values 1990-2005) (Pickering 2005).

TABLE 1. Oregon silverspot butterfly Index of Abundance values for the central coast sites, 1990-2005 (TNC 2005).					
Year	Mt. Hebo	Cascade Head	Bray Point	Rock Creek	TOTALS
1990	1100	1138	169	142	2549
1991	2888	790	280	113	4071
1992	2628	1295	265	242	4430
1993	1041	184	81	35	1341
1994	2200	284	81	65	2630
1995	3413	302	53	374	4142
1996	2507	302	146	356	3311
1997	2664	164	101	332	3261
1998	2743	57	46	257	3103
1999	4983	132	2	149	5266
2000	2111	160 (107)	9	108	2388
2001	1402	118	0	192	1712
2002	2272	34 (4)	2	139	2447
2003	2625	206 (161)	4	136	2971
2004	588	36	2 (50)	131(47)	757
2005	657	147 (132)	0	55	859
MEAN	2238	334	78	177	2827

Oregon silverspot butterfly populations at the four central coast sites exhibited a marked decline in 1993, and 2004 following unfavorable weather conditions (Pickering 1998, 2005). The Mount Hebo population has remained the largest population of all four central coast sites and in 2005 showed an increase following a large drop in 2004. The Cascade Head population has been augmented 4 times in recent years to counter the potential effects of genetic inbreeding on a small isolated population (numbers of augmented adult butterflies are in parentheses, but were included in the index counts). The Rock Creek population index of abundance value decreased significantly in 2005, potentially indicating the need for future augmentations at this site also. Bray Point values remain extremely low, with 0 detected during the 2005 census, with just one incidental observation that year.

Very little is currently known about Oregon silverspot populations in Del Norte County, California. California Department of Fish and Game estimated that there were 62 Oregon silverspot butterflies on State land (U.S. Army Corps of Engineers 2000). Surveys conducted in 2003 found a maximum of 81 butterflies observed along 4250 meters of transects over a one week period within the Pacific Shores subdivision, where the density of silverspot butterflies averaged roughly 5 OSB/ha (Wright 2003). In 2005, approximately 120 butterflies were observed during the census.

The status of the Clatsop Plains Oregon silverspot butterfly population is unknown, but suspected extirpated. The last butterfly observed on Camp Rilea was in 1995 and the last seen on nearby private lands was in 1998. In annual surveys since that time no butterflies have been observed, though survey efforts have declined over time.

2. Net Conservation Benefit

The biological goal of the conservation measures set forth in this Agreement is to provide a net conservation benefit to Oregon silverspot butterfly. By reducing competition from invasive plant species, and restoring native vegetation, we hope to improve early blue violet (larval host plant) and native nectar sources of the Oregon silverspot butterfly. Active management for these plant species will directly and indirectly impact Oregon silverspot butterfly populations.

Techniques to increase early blue violet densities and restore marine terrace and coastal headland "salt spray" meadows and are still evolving, thus, the Service anticipates that it will take time for Oregon silverspot butterfly populations to respond to the habitat restoration efforts. All recovery actions will be done in accordance with the Revised Recovery Plan of the Oregon silverspot butterfly (USFWS 2001).

To achieve a net conservation benefit for Oregon silverspot butterfly, methods of invasive plant species control will be continually refined in order to meet the changing landscape. As invasive species are reduced, early blue violets and native nectar plant sources are expected to respond positively. Native plant species (including early blue violet) may also be planted to replenish a depleted seed bank. Increased densities may result in greater numbers of OSB over time, providing that concurrent habitat management actions occur at nearby population centers.

The cooperator agrees to voluntarily manage the enrolled lands to produce a cumulative net conservation benefit to the covered species by implementing conservation measures to increase native habitat quality. The net conservation benefit will contribute, directly or indirectly, to recovery of the covered species, after taking into account the length of the Agreement and any off-setting adverse effects of authorized take. Although the Agreement may not permanently conserve or recover species populations or their habitats, it provides for important short-term benefits to the species, including but not limited to the following: restoring degraded marine terrace and "salt spray" meadow habitat which support the OSB; increase connectivity of OSB populations on the Oregon central coast; and, creating areas for testing and implementing new conservation strategies.

The Parties anticipate this Agreement will result in an increased distribution of the covered species within the enrolled lands. Without this cooperative effort, these lands would not otherwise be utilized by the species in the foreseeable future. The Agreement is a mutually beneficial relationship between a government agency and a private landowner to benefit endangered and threatened species. Therefore, the cumulative impact of this Agreement and the activities it covers, which are facilitated by the authorized take, will provide a net conservation benefit to the species.

3. Cooperative Agreement Template

COOPERATIVE AGREEMENT for Oregon Silverspot Butterfly Central Coast Populations in Lane County, Oregon

1. PARTIES AND PURPOSE. This Cooperative Agreement (“CA”) is between the **United States Fish and Wildlife Service**, an agency of the United States Department of the Interior (“Service”); **The Nature Conservancy** (“TNC”), a District of Columbia non profit corporation; and **[Property owner]** (“Cooperator”). This agreement is intended to promote good land stewardship by assisting the Cooperator in carrying out actions to benefit the Oregon silverspot butterfly (*Speyeria zerene hippolyta*) on land owned by the Cooperator. Participation in this Cooperative Agreement is a prerequisite for obtaining a Certificate of Inclusion issued as part of the agreement between TNC and the Service titled “Safe Harbor Agreement with The Nature Conservancy and Private Property Owners for Voluntary Enhancement/Restoration Activities Benefiting Oregon Silverspot Butterfly Central Coast Populations in Lane County, Oregon” (the “Agreement”).

The Agreement and this CA do not release the Cooperator from the responsibility to avoid “take” of any federally-listed species that already occupy portions of the property which is the subject of this CA.

This Cooperative Agreements includes, at a minimum:

- (1) A map of the enrolled property;
- (2) Identification on the map of any existing butterfly baseline responsibilities on the property;
- (3) Identification on map of proposed habitat improvements;
- (4) Term of the Cooperative Agreement (10 year minimum); and
- (5) Further detail of the landowner's (Cooperator's) and TNC's responsibilities under the Cooperative Agreement.

2. ENROLLED PROPERTY. The Cooperator owns property at **[tax map key information]** in Lane County, Oregon, that that has the potential to be used by Oregon silverspot butterflies. TNC will enroll **[# acres]** of this property (the “[landowner’s name] Property” or “Enrolled Property”) under the Agreement, as shown on the attached property map (**Tax map**).

3. BASELINE CONDITIONS. The baseline determination includes an assessment of Oregon silverspot butterfly larval habitat (expressed as area occupied by early blue violets or number of violets (*Viola adunca*)). The baseline for the _____ Property is set at **[#]** of early blue violets and/or **[#]** area of early blue violets.

Force majeure events such as hurricanes, rainstorms, severe drought, fires, or insect/disease epidemics are beyond the reasonable control of the Cooperator, and could either extirpate Oregon silverspot butterflies from enrolled lands or render Oregon silverspot butterfly habitat on enrolled lands unsuitable for continued occupation. These events may reduce Oregon silverspot butterfly numbers or habitat (expressed as area occupied by early blue violets) below original baseline conditions through no fault of or negligence of the Cooperator. The Service recognizes that baseline determinations and population levels may drop temporarily below baseline due to uncontrollable circumstances, even during normal environmental circumstances (i.e. Oregon silverspot butterflies may disperse to and from the site between years and early blue violets may not sprout and/or bloom annually.) In such circumstances the Cooperator, TNC, and the Service may agree to revise the Cooperative Agreement baseline conditions to reflect the new circumstances.

4. CONSERVATION MEASURES

4.1 Intended Outcome. The purpose of the Agreement and this CA is to re-establish Oregon silverspot butterfly habitat on non-Federal lands within the dispersal corridor linking two existing populations on Siuslaw National Forest lands. Successful re-establishment of violets and/or nectar plants and suppression of non-native vegetation on key parcels along this corridor may facilitate butterfly dispersal between managed sites by providing breeding habitat and nectar sources. The biological goal of this Agreement is to aid in Oregon silverspot butterfly recovery by restoring several sub-populations and, at a landscape level, a viable metapopulation. To accomplish this, it is essential that the Cooperator, the Service, and TNC work together to provide good habitat and positive stewardship for Oregon silverspot butterflies. Management activities undertaken pursuant to this CA are intended to result in additional habitat being available to Oregon silverspot butterflies.

The [Name of Cooperator] property is a [# of acre(s)] parcel ... [describe the property, management goals, its management, vegetation, location, and potential for this Agreement.]

4.2 General Activities. TNC will coordinate a variety of management activities pursuant to the Agreement for Oregon silverspot butterflies in Lane County, Oregon. These management activities may include the following: 1) modifying existing vegetation, 2) planting native vegetation, and 3) enhancing early blue violet populations. General restoration and management activities are described in the Agreement.

4.3 Specific Activities on _____ Property. Management activities specific to the [last name of Cooperator] Property include the following:

List all of the restoration and management activities here
TNC will provide an annual work plan tailored to each property.

As long as the Cooperator implements the above restoration and management activities and the baseline levels are maintained, the Cooperator may develop, farm, ranch, harvest timber, or make any other lawful use of the enrolled property, even if loss of Oregon silverspot butterflies or occupied habitat above the established baseline levels occurs.

4.4 Other Management Activities. Nothing in this Agreement prevents the Cooperator from implementing land management activities not described in this CA, including improving habitat for Oregon silverspot butterflies, as long as (1) the Cooperator has consulted with TNC prior to implementation, and (2) such activities maintain the baseline conditions or enhance native coastal meadows habitat, and do not adversely affect the beneficial actions set forth in this CA.

4.5 Emergency Actions. Emergency situations caused by anticipated natural disasters (e.g., hurricanes, fire, excessive rainfall, extreme drought, insect infestations, or epidemic disease) may require Cooperator to initiate certain emergency actions that may result in take of Oregon silverspot butterflies. Prior to taking any such emergency actions, the Cooperator will notify TNC and make reasonable accommodations for survey and/or relocation of Oregon silverspot butterflies and/or early blue violets, possibly with the assistance of the Service. If prior notification is not reasonably possible, the Cooperator will take into account known locations of Oregon silverspot butterflies and early blue violets, and avoid impacts to the maximum extent possible during his/her emergency actions. The Cooperator will notify TNC within 10 working days of taking emergency actions, including the measures taken to avoid impacts to Oregon silverspot butterflies.

5. RESPONSIBILITIES OF THE PARTIES

The Cooperator and TNC agree to carry out certain responsibilities under this Cooperative Agreement. The Cooperator understands that in order to fulfill the responsibilities of the Safe Harbor Agreement, TNC must report to the Service all implementation and monitoring activities related to Oregon silverspot butterflies management in accordance with the Safe Harbor Agreement.

5.1 Cooperator:

5.1.1 Implement (or allow to be implemented) the restoration and management activities specified herein in compliance with all federal, state and local laws, including, but not limited to, physical delineation of the habitat area on the ground if and as deemed necessary by TNC or the Service.

5.1.2 Provide the Service and TNC with written notice six months (or, per Service approval, sufficient notice to move violets or adult butterflies, if applicable) in advance of any planned activity that TNC or the Cooperator reasonably anticipates will result in "take" (i.e., death, injury, or other harm) of the covered species, above the baseline conditions, on the

_____ Property, and provide the Service the opportunity to capture and/or relocate any potentially affected species, if appropriate. For situations involving the potential for bodily injury, loss of life, or significant property damage (including, e.g., responses to address surface drainage of roads and septic system repair), the Cooperator may incidentally take species without prior notice. However, the Cooperator will provide notice to the Service and TNC as soon as practicable before or immediately following those actions. Post-action notice will not exceed 10 days.

5.1.3 Upon reasonable notice, allow access to the _____ Property by the Service, TNC, and their approved contractors, for purposes related to this Agreement, including, but not limited to, biological and compliance monitoring, technical assistance, baseline determinations, management actions, and capture and relocation of the covered species.

5.1.4 Notify the Service and TNC of any transfer of ownership at least 90 calendar days prior to the intended transfer, so that the Service and/or TNC can attempt to contact the new owner, explain the baseline responsibilities 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 the _____ Property.

5.1.5 Report to the Service and TNC any dead, injured, or ill specimens of the covered species observed on the _____ Property.

5.1.6 Within 14 days, inform TNC and the Service when Oregon silverspot butterflies are known or suspected to be present on the _____ Property.

5.1.7 Assist TNC in compiling an annual report on activities on the _____ Property related to Oregon silverspot butterflies management and any activities that resulted in or may have resulted in incidental take of Oregon silverspot butterflies on the _____ Property.

5.1.8 Consider adaptive management recommendations that TNC may present to the Cooperator.

5.1.9 Seek technical assistance from TNC on appropriate action if considering implementing Covered Species habitat restoration activities not specified herein.

5.2 TNC's responsibilities include the following:

5.2.1. Apply for and hold the Permit, subject to the terms of the Safe Harbor Agreement.

5.2.2 TNC will assist the Cooperator in ensuring that the management activities specified in this Cooperative Agreement to be implemented by the Cooperator comply with all relevant local, state, and federal regulations and statutes, and with the terms of the Agreement.

5.2.3 Designate a Project Field Manager for the _____ Property.

5.2.4 Provide oversight of baseline condition assessment.

5.2.5 Provide technical assistance to the maximum extent practicable in implementing management activities.

5.2.6 Provide 48 hours advance notification to the Cooperator before any visit by TNC and/or Service staff to the _____ Property.

5.2.7 In situations where there is the potential for take in connection with activities on the property, consult with Cooperator and the Service to determine the number and status of Oregon silverspot butterflies present, and assess whether the butterflies above baseline conditions should remain on the Enrolled Property or be relocated.

5.2.8 Depending upon funding availability, monitor and report the implementation of agreed-upon management activities and terms of this Cooperative Agreement, as well as take authorized by the Permit. In the event that TNC has reductions in staff or funding for compliance or effectiveness monitoring, the Service will try to fulfill the monitoring responsibilities outlined in this Agreement.

5.2.9 Report to the Service any dead, injured, or ill specimens of the Covered Species observed on the _____ Property.

5.2.10 With assistance from the Cooperator provide annual reports due December 31 to the Service describing the current status of _____ Property, including: (i) an assessment of butterflies and their habitat, (ii) management actions implemented and outcomes if known, and (iii) descriptions of activities required by the CA and/or related to butterflies management and any activities that resulted in or may have resulted in incidental take of butterflies.

6. **AGREEMENT DURATION.** Obligations under this Cooperative Agreement will be in effect for a minimum of 10 years from the date it is executed. Upon signing the Cooperative Agreement, a Certificate of Inclusion will be issued to the Cooperator under Permit [permit reference number]. The Certificate of Inclusion will authorize incidental take of Oregon silverspot butterflies from [date] to [date], above a determined

baseline condition, within the remaining duration of the 35-year term of the Permit at the time the Certificate of Inclusion is issued. Copies of the Cooperative Agreement and Certificate of Inclusion will be held by TNC and those completed within the annual reporting cycle will be submitted to the Service attached to the annual reports.

7. INCIDENTAL TAKE.

7.1 Definition. Take is defined as actions or attempted actions to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect such species. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. "Harass" is further defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns including, but not limited to, breeding, feeding or sheltering. Incidental take is any take of federally-listed wildlife or State-listed wildlife and plants that is incidental to, but not the purpose of, otherwise lawful activities. Oregon silverspot butterfly adults, eggs, and larvae may not be captured, collected, or otherwise directly "taken" as this form of take is not considered to be incidental to other activities.

7.2 Allowed Land Uses. Under the terms of this Cooperative Agreement, the Cooperator is authorized to make use of their Enrolled Property in any lawful manner that does not result in reducing the population and/or occupied habitat of Oregon silverspot butterflies below the established baseline conditions. Such uses may include, but are not limited to: driving vehicles, building or fence construction, grazing of livestock, gardening, forestry, hunting, farming, mowing, or cultivation of agricultural crops. The Cooperator may continue current land-use practices, undertake new ones, or make any other lawful use of the property, even if such use results in the take of Oregon silverspot butterflies or loss of occupied habitat in excess of baseline amounts, provided the actions do not affect the beneficial actions set forth in this Cooperative Agreement.

8. FUNDING. Funding for management activities undertaken by the Cooperator will be the responsibility of the Cooperator. TNC and/or the Service will inform the Cooperator of potential funding opportunities through State or Federal grant programs that may be relevant. Cooperator shall not be responsible for funding management activities undertaken by TNC and/or the Service.

9. MODIFICATION OF COOPERATIVE AGREEMENT. TNC or the Cooperator may propose modifications or amendments to this Cooperative Agreement by providing written notice to the other party and obtaining their written concurrence. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results, and a copy shall be provided to the Service for comment. The parties will make their best efforts to respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications will become effective upon the parties' written concurrence.

10. TERMINATION OF THE COOPERATIVE AGREEMENT.

10.1 As provided for in section 12 of the Service's Safe Harbor Policy (64 FR 32717), the Cooperator may, upon 60 days prior written notice to TNC and the Service, terminate this CA prior to the expiration date for circumstances beyond the Cooperator's control provided that the baseline conditions have been maintained and the Service is provided an opportunity to relocate affected species during the 60 day period after the notice is received. Upon termination, the Cooperator must relinquish the CI to TNC, and Covered Species management on the Cooperator's lands will terminate. Such termination will not affect the Cooperator's authorization under the Permit to take any species individual or occupied habitat that is not part of the Cooperator's baseline at the time of termination.

10.2 The Cooperator also may terminate this CA upon 60 days prior written notice for any other reason, but termination for reasons other than circumstances beyond the control of the Cooperator shall extinguish the Cooperator's authority to take species or occupied habitat under the CI and Permit, and the status of Covered Species on the _____ Property will be determined as of the termination date of the CA for purposes of compliance with the Endangered Species Act.

11. CERTIFICATE OF INCLUSION SUSPENSION OR REVOCATION. The Service may suspend or revoke a Cooperator's Certificate of Inclusion if Cooperator breaches the obligations under the CA and fails to cure the breach in a timely manner, and the effect of the breach is to materially diminish the likelihood that the Cooperative Agreement will achieve its goals.

12. SUCCESSION AND TRANSFER This CA shall be binding on and shall insure to the benefit of the parties (including officers, directors, employees, lessees and agents thereof) and their respective successors and transferees, in accordance with applicable regulations (50 CFR 13.24 and 13.25). The rights and obligations under this CA are transferable to subsequent non-Federal property owners pursuant to 50 CFR 13.25, upon consent of the successor or transferee of the land, execution of a new CA, and issuance of a CI. A new owner(s) will have the same rights and obligations with respect to the Enrolled Property as the original owner.

13. MUTUAL RELEASE. TNC and Cooperator hereby release and shall hold each other harmless from any liability arising from or related to this CA or activities undertaken on the _____ Property pursuant to this CA.

14. NOTIFICATION. Communication and correspondence required by this Cooperative Agreement should be directed to the addresses below. Names and addresses may be changed upon written notice to all parties.

Oregon Coast Stewardship Ecologist
The Nature Conservancy
Oregon Coast Office
2499 North Bank Road
Otis, Oregon 97368
(541) 994-5564

State Supervisor
Oregon Fish and Wildlife Office
U.S. Fish and Wildlife Service
2600 SE 98th Avenue, Suite 100
Portland, Oregon 97266
(503) 231-6179

Dated effective as of the last date of signature below.

THE UNITED STATES FISH AND WILDLIFE SERVICE

By _____
Title _____
Date _____

THE NATURE CONSERVANCY,
a District of Columbia non profit corporation

By _____
Title _____
Date _____

COOPERATOR:

Date _____

4. 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 Oregon silverspot butterfly. 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 Oregon silverspot butterflies, 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 The Nature Conservancy, and the Service on [(date)], that becomes binding upon [**Cooperator's name**], on the date and signature herein.

Name of Permittee

Date

Participating Landowner

Date

