

Part 610 – National Environmental Compliance Handbook

Subpart H – Exhibits

610.141 Landowner Conservation Tools Available from the USFWS

LANDOWNER CONSERVATION TOOLS (INCLUDING ASSURANCES) AVAILABLE FROM FWS

	Candidate Conservation Agreement (CCA)	Candidate Conservation Agreement with Assurances (CCAA)	Safe Harbor Agreement (SHA)	ESA Section 6 Agreement with a Cooperating State Agency	Memorandum of Agreement or Memorandum of Understanding	4(d) special rule by FWS under the ESA
Purpose of the Tool	Voluntary, proactive, formal agreement to conserve any non-federally listed species of interest to FWS.	Voluntary, proactive, formal agreement to conserve a species to the point at which listing is not necessary. Because FWS can't guarantee the targeted species won't be listed, a CCAA provides regulatory assurances as an incentive for conservation should it become listed.	Voluntary, proactive, formal agreement to conserve listed species. SHA requires a net conservation benefit to the target species which directly or indirectly promotes recovery of the species. SHA also provides regulatory assurances as an incentive to implement conservation measures.	Provides a mechanism for cooperation between FWS and States in the conservation of threatened, endangered, and candidate species. Through section 6 of the ESA, FWS is authorized to enter into cooperative agreements with any State that establishes and maintains an "adequate and active" program for the conservation of endangered and threatened species. Once a State agency enters into such an agreement, FWS is authorized to provide Federal assistance to the State to assist in the development of programs for the conservation of endangered and threatened species or to assist in the monitoring of candidate and recovered species. Federal assistance, provided in the form of grants, can be used to support management,	Any formalized agreement initiated and executed by FWS with any other (federal, non-federal; RCD; NGOs; private landowners, etc.) entity to further listed species conservation. Several examples of this technique have been developed throughout the US and in instance the courts upheld this approach (e.g., Grizzly Bear).	The 4(d) rules are an ESA mechanism for protecting "threatened" species. They propose a means by which states, tribes, government entities, developers, private citizens & others can obtain conditional exemptions under the ESA as set forth at the time of listing. This tool is species specific.

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				outreach, research, planning, acquisition, and monitoring projects that have direct conservation benefits for listed species, and to assist in the monitoring of candidate and recovered species.		
Service Authorities	Section 2 of the ESA; Section 7 (a)(1) of the ESA	Section 10 of the ESA; Section 7(a)(1) of the ESA	Section 10 of the ESA; Section 7(a)(1) of the ESA	Section 6 of the ESA; Section 7(a)(1) of the ESA	Section 2 of the ESA; FWS internal Section 7(a)(1) responsibilities	Section 4(d) of the ESA allows FWS to structure a listing action for a threatened species that includes specific provisions for exemptions under Section 9 “take” prohibitions.
Participants	Anyone (Federal and non-federal; RC&D; NGOs, private landowners, etc)	Anyone (Federal and non-federal; RC&D; NGOs, private landowners, etc). Federal agencies can participate but not get assurances.	Anyone (Federal and non-federal; RC&D; NGOs, private landowners, etc). Federal agencies can participate but not get assurances.	Only State agencies with a current cooperative agreement with the FWS are eligible to receive Federal financial assistance directly through the program. However, any entity may work cooperatively with the State to assist in meeting the conservation goals and objectives of the program. Participants can include a variety of entities within state government. These have included Governor’s Office (Idaho), State Wildlife Agencies, and State Agricultural Agencies. Unclear who else can be a participant?	Anyone (discretion to FWS)	Any agency or entity that conducts the actions identified in the listing rule which has been tailored for the specific species. These entities need to become engaged early in the FWS listing process to ensure that these exemptions are included in the rule.
Species Covered	Agreed-upon species (cannot include listed)	Agreed-upon species (cannot include listed)	Listed species only.	Species covered by State Cooperative Agreements with the FWS.	Listed species under FWS jurisdiction.	Only applies to threatened species.

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Role of States	Have significant role since they are the natural lead for non-federally listed species.	Have significant role since they are the natural lead for non-federally listed species. States can be administrator/Permittee for programmatic CCAAs.	Federally listed species are likely state listed species and may be included in State Wildlife Action Plans. States can be administrator/Permittee for programmatic SHAs.	States have great potential to create their own conservation programs within the spirit and intent of section 6 of the ESA. These agreements can include potentially any program type subject to the general criteria of section 6.	Federally listed species are likely state listed species and may be included in State Wildlife Action Plans. States can be signatories with FWS.	States may have parallel listing process. States can also provide information and technical assistance to create the 4(d) exemptions.
Assurances to signatories	None	Yes, landowners participating would not be asked to do more than agree to in the CCAA should the covered species become listed in the future.	Yes, landowners participating will not be asked to commit additional land or financial compensation during the term of the SHA. Further, landowners can return to baseline at the end of the SHA term.	No regulatory assurances are implicit with a section 6 agreement. However, if the state would propose a conservation program that included regulatory assurances like those in a CCAA or SHA, then FWS would have the discretion to “agree-to” those program by approving the section 6 agreement. The state-developed conservation programs could identify/include any other entity (such as NRCS) as part of the implementation of these conservation programs (e.g., NRCS is an agent of the state).	FWS would have the discretion to “agree-to” measures that offer regulatory assurances (incidental take during management, incidental take for return to baseline) as part of the MOU/MOA. FWS is using the section 7 consultation process to evaluate the effects of these assurances as part of the federal scope of the action.	While the following technique has not been utilized it has great potential. The use of a positive, voluntary, recovery-oriented program, similar to Safe Harbor, could be built into 4 (d) rule making at the time of listing which will include categories of actions that will not create jeopardy.

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Benefit for species	Increase habitat. Improve population numbers & distribution.	Increase habitat. Improve population numbers & distribution. Potentially improve the status to the point at which listing is not necessary by FWS.	Contributes to recovery of the species for the duration of the SHA.	Increase habitat. Improve population numbers & distribution. Contributes to species recovery. Potentially improve the status to the point at which listing is not necessary by FWS.	Can promote voluntary recovery oriented programs for listed species.	Can promote voluntary recovery oriented programs for listed species.
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Benefits/Adverse impacts to Landowners	Intrinsic benefits of conserving species. Potentially reduce costs to landowners should the species be listed. The agreement can be used as potential funding platform from FWS grant programs for cost share in conservation actions. No regulatory assurances. No take authorization.	The CCAA “locks-in” a landowner’s responsibility with respect to conservation measures even if the species becomes listed. The agreement can be used as potential funding platform from FWS grant programs for cost share in conservation actions. If the Permittee is the state (or other party) holding a programmatic agreement, they are the intermediary between the Service and	Landowners can return to baseline. Landowners will not be required to do anything more than agreed to in the SHA. The agreement can be used as potential funding platform from FWS grant programs for cost share in conservation actions. If the Permittee is the state (or other party) holds a programmatic agreement, then landowner doesn’t have to deal with FWS. Public review process involving a	No federal register notices. Landowner doesn’t have to deal with FWS. Landowners may work directly with the State to identify and develop project proposals. Federal assistance provided in the form of grants, can be used to support management, outreach, research, planning, acquisition, and monitoring projects that have direct conservation benefits for listed species, and to assist in the monitoring of candidate and recovered species. Leverages state funding to implement conservation programs. We don’t see any adverse impacts.	FWS internal consultation expedites implementation of conservation practices because the process precludes the development of a BA. The MOU /MOA process has the potential to include regulatory assurances.	ESA exemption as per the rule. <i>Benefit for Action Agencies: 4(d) rule can preclude the need to consult under Section 7</i>

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		landowner. Public review process involving a federal register notice. Further, landowner information potentially subject to FOIA.	federal register notice. Further, landowner information potentially subject to FOIA.			
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<p>Type of take authorization.</p>	<p>No take authorization.</p>	<p>Take authorization is effective should the species become listed.</p>	<p>Authorization is effective at time the SHA is signed. Authorization includes the ability to return to baseline, take during the implementation of management actions, and other forms of take explicitly mentioned in the SHA.</p>	<p>Section 6 Agreements allow state conservation agencies to develop programs which allow incidental take. (Specifically: State conservation agency which is operating a conservation program pursuant to the terms of a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, and any qualified employee or agent of a State Conservation Agency which is a party to that agreement and is designated by that agency for such purposes, may, when acting in the course of their official duties, take those threatened species of wildlife which are covered by an approved cooperative agreement to carry out conservation programs. Further, the State conservation agency, or designated agent, may, when acting in the course of their official duties, take those endangered species which are covered by an approved cooperative agreement in accordance with 50 CFR 17.21(5))</p>	<p>Internal Section 7 consultation results in an incidental take statement which is transferred to the parties of the Agreement by explicitly mirroring it within the agreement (e.g. documents are connected).</p>	<p>Built into the rule</p>
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Does the FWS have regulations or policy that govern this action?	Depends. If the CCA is designed to influence a listing decision, then the FWS would have to evaluate it in accordance to its PECE policy. In summary, the PECE policy requires an analysis of (1) the certainty of effectiveness of the Agreement on conservation of the species and (2) the certainty of implementation of the Agreement (e.g. level of formal commitment by the parties).	Yes. Final regulations for this action are found in Part 50 of the CFR (Section 10 of the ESA). Additionally, FWS has a CCAA Policy published in 1999 that indicates that the enhancement of survival permit process (e.g. Section 10 permit) is the most appropriate way (but not the only way).	Yes. Final regulations for this action are found in Part 50 of the CFR (Section 10 of the ESA). FWS has a SHA Policy published in 1999 that indicates that the enhancement of survival permit process (e.g. Section 10 permit) is the most appropriate way (but not the only way).	Yes, section 6 of the ESA, the codified regulations at 50 CFR Part 81, and FWS Manual Chapter 521FW4.	Other than Section 7 of the ESA, FWS does not have any formal policies on this tool. By signing the agreement FWS must complete internal consultation to ensure that the agreement would not violate the 7(a)(2) jeopardy standard.	Yes, ESA Section 4 listings have a relatively complex process and standard format on rule making. Special conditions that exempt certain actions or groups of actions could be built into any 4(d) rule at the time of listing. However the use of SHA/CCAA and/or their assurances have never been used inside a 4(d) rule.