



Safe Harbor Agreement Incidental Take License Information Package



Hawaiian stilt, ae'o, *Himantopus mexicanus knudseni* - Photo: Garret Lau

State of Hawai'i
Department of Land and Natural Resources
Division of Forestry and Wildlife

Includes:
State SHA Fact Sheet
State SHA Process
State SHA Application
Federal SHA Fact Sheet



Safe Harbor Agreement Incidental Take Licenses

Quick Facts

- Voluntary agreement between private land owners and government agencies to encourage conservation efforts on private lands that contribute to the net recovery of threatened and endangered species.
- Provides private landowners assurances that future property-use limitations will not be required even if voluntary actions under the agreement increases the numbers or distribution of listed species.
- Determines a baseline number of species or habitat found on the property prior to entering a SHA.
- ITLs provide a means to authorize take that is incidental to activities that are otherwise legal.
- ITLs must be accompanied by an approved SHA.
- SHAs provide measures for avoidance, minimization, mitigation, monitoring, and net recovery benefit to the affected species.



Hawaiian goose, nēnē, (*Branta sandvicensis*) Photo: DLNR

Parties involved in SHAs and ITLs

- Applicant
- Department of Land and Natural Resources
- US Fish and Wildlife Service
- Endangered Species Recovery Committee
- Board of Land and Natural Resources
- Attorney General
- Public

For more information contact:
Division of Forestry and Wildlife
808-587-0166



Safe Harbor Agreement Incidental Take License Development Process

1. Application

- a. Applicant submits application

2. Draft

- a. Staff provides technical assistance for compliance with statutory requirements
- b. Draft SHA developed
- c. Staff reviews draft SHA for compliance with statutory requirements
- d. Staff advises applicant as to whether SHA meets statutory requirements and provides technical assistance for amendments if needed

3. Review

- a. Public
 - i. Application and draft SHA noticed in Office of Environmental Quality Control Environmental Notice bulletin
 - ii. 60 day public comment period
 - iii. Public hearing held on the affected island(s)
- b. Endangered Species Recovery Committee (ESRC)
 - i. Request for ESRC review and comments
 - ii. ESRC conducts site visit

4. Revisions

- a. Staff provides technical assistance for revisions to draft if needed

5. Approval

- a. Compliance with Chapter 343, Hawai'i Revised Statutes, if needed
- b. ESRC
 - i. Request for review and recommendation of approval to Board of Land and Natural Resources (BLNR)
- c. BLNR
 - i. Request for approval
- d. Chairperson
 - i. Signatory and ITL issuance, if BLNR approval received



Application Safe Harbor Agreement Incidental Take License



Submit information pursuant to this application to the Division of Forestry and Wildlife:

State of Hawai'i
Department of Land and Natural Resources
Division of Forestry and Wildlife
1151 Punchbowl Street Room 325
Honolulu, HI, 96813
808-587-0166
Attention: Endangered Species Incidental Take License Program

Contact information for applicant (and consultant if applicable):

Name _____
Address _____
Phone _____
Email _____

Pursuant to Hawai'i Revised Statutes Chapter 195D-22, identify the following:

1. The geographic area of the proposed Safe Harbor Agreement: Island, District, TMK, or other formal legal description, Property Recordation (Bureau of Conveyances or Land Court).
2. The proposed timeframe for the project.
3. The ecosystems, natural communities, or habitat types within the property.
4. The endangered, threatened, proposed, and candidate species known or reasonably expected to occur in the ecosystems, natural communities, or habitat types within the property.
5. The measures or actions to be undertaken to protect, maintain, restore, or enhance those ecosystems, natural communities, or habitat types within the area that are expected to benefit the species covered under the agreement.
6. If known, please submit the common and scientific names of the listed, proposed, and candidate species sought to be covered by the agreement, and take levels expected for each species. Please attach copies of any pertinent studies for the project area, or a description of studies that are currently underway, if any. If current (baseline) population is known, please include documentation.
7. Identify an adequate funding source for the proposed measures and actions planned to be undertaken under the Safe Harbor Agreement.



Check box if waiving confidentiality provided under Chapter 195D-24 Hawai'i Revised Statutes.



Safe Harbor Agreements for Private Landowners

What Is a Safe Harbor Agreement?

A Safe Harbor Agreement (SHA) is a voluntary agreement involving private or other non-Federal property owners whose actions contribute to the recovery of species listed as threatened or endangered under the Endangered Species Act (ESA). The agreement is between cooperating non-Federal property owners and the U.S. Fish and Wildlife Service (FWS) or the National Oceanic and Atmospheric Administration, which is responsible for most listed marine and anadromous fish species.

In exchange for actions that contribute to the recovery of listed species on non-Federal lands, participating property owners receive formal assurances from the FWS that if they fulfill the conditions of the SHA, the FWS will not require any additional or different management activities by the participants without their consent. In addition, at the end of the agreement period, participants may return the enrolled property to the baseline conditions that existed at the beginning of the SHA.

How Does a SHA Contribute to Recovery?

Because many endangered and threatened species occur exclusively, or to a large extent, on privately owned property, the involvement of the private sector in the conservation and recovery of species is crucial. Property owners are often willing partners in efforts to recover listed species. However, some people may be reluctant to undertake activities that support or attract listed species on their properties, due to concern about future use limitations related to the ESA. To address this concern, a SHA provides that future property-use limitations will not occur without the landowner's consent.

Central to this approach is that the actions taken under the SHA will provide a net conservation benefit that contributes to the recovery of the



Alisa Shuhl/USFWS

Texas cattle rancher Bob Long and Tim Schumann of the Partners for Fish and Wildlife Program of the U.S. Fish and Wildlife Service celebrate the success of a Safe Harbor Agreement to help the endangered Houston toad. Looking on are Robert Long, Jr., and Adam Zerrenner of the Ecological Services Program of the Service. They are standing in front of a wetland that the Partners Program helped to create as habitat for the toad on the Long property.

species included in the agreement. The contribution toward recovery will vary from case to case, and the SHA does not have to provide permanent conservation for the enrolled property. The benefit to the species depends on the nature of the activities to be undertaken, where they are undertaken, and their duration. The SHA and associated documents include a description of the expected net conservation benefit(s) and how the FWS reached that conclusion.

Examples of conservation benefits include:

- maintenance, restoration, or enhancement of existing habitats;
- reduced habitat fragmentation; increases in habitat connectivity;
- stabilized or increased numbers or distribution;

- the creation of buffers for protected areas; and
- opportunities to test and develop new habitat management techniques.

How Does a Property Owner Benefit?

By entering into a SHA, property owners receive assurances that land use limitations will not be required even if the voluntary actions taken under the agreement attract particular listed species onto enrolled properties or increase the numbers or distribution of those listed species already present on those properties. The assurances are provided by the FWS through an Enhancement of Survival Permit issued to the property owner, under the authority of section 10(a)(1)(A) of the ESA. This permit authorizes incidental take of species that may result from actions undertaken by the landowner under the SHA, which could include

returning the property to the baseline conditions at the end of the agreement. The permit also specifies that the FWS will not require any additional or different management activities by participants without their consent.

A SHA may be initiated by a property owner, the FWS or a State agency. Although many SHAs and permits will involve only a single property owner, the FWS strongly encourages the development of “programmatically” SHAs and permits with State, local, or Tribal governments that, over time, will include multiple property owners.

The FWS works with interested property owners to develop a SHA and to apply for an Enhancement of Survival Permit. The FWS also assists property owners in identifying actions that they can voluntarily undertake or forego to benefit listed species covered by the SHA and permit.

What Is the SHA Process?

Generally, the steps are:

1. Contact the nearest FWS Ecological Services field office.
2. The property owner(s), with the aid of the FWS, gathers general information. This includes, but is not limited to, a map of the property, proposed management actions, information on the listed species on the property, and other pertinent information. (In the case of a programmatic SHA, a map shows the specific area within which individual property owners can enroll. These participating owners then provide applicable information for their property.)
3. The FWS (or approved cooperators) will describe the baseline conditions for the property to be enrolled in the SHA in terms appropriate for the covered species. Baseline conditions can refer to population estimates and distribution, or to the habitat characteristics that sustain seasonal or permanent use by the species. Using the baseline determination, the property owner and FWS discuss land use objectives, assess habitat quality, and identify other information needed to develop an agreement that meets the SHA net conservation benefit standard.
4. Based on the information provided by the property owner; information gathered during site visits, and FWS

technical assistance, the property owner (and any other pertinent entity, such as a State fish and game agency) develops a draft SHA.

5. The property owner applies to the FWS for an Enhancement of Survival Permit, with the draft SHA attached.
6. Once the FWS complies with applicable ESA provisions (internal review and public comment period on the permit application) and ensures that the permit criteria have been satisfied, the property owner is issued an Enhancement of Survival Permit and the SHA is finalized.



Clifton Ladd, Loomis Partners, Inc.

“The toad has really become a big part of our community. It’s also given us a way to advertise our community: leave the traffic of Houston and come to Bastrop. . . the toad did!”

— *Bob Long, Texas rancher; leading the way for Safe Harbor Agreements for this endangered species*

In the unexpected event that continuation of permitted activities will appreciably reduce the likelihood of survival and recovery of any listed species, the FWS may, as a last resort, revoke the permit. Prior to revocation, however, the FWS will, with the consent of the permittee, pursue all appropriate options to avoid revoking the permit.

How Long Does It Take to Develop a SHA?

Many agreements can be developed within 6 to 9 months, although more complex agreements may take longer. A variety of factors influence the timeline, such as the number and characteristics of the species involved, the size of the area involved, management or other activities to be conducted, the number of parties to the agreement, and other relevant factors.

Can a Property Owner Sell or Transfer Property Enrolled with a SHA?

If a property owner sells or gives away lands enrolled in SHA, the FWS will honor the agreement and associated permit, providing the new owner agrees to become a party to the original SHA and permit.

What Happens When the SHA Expires?

The SHA can be renewed for as long as the property landowner and FWS mutually agree. If the landowner does not renew the agreement, the assurances tied to the Enhancement of Survival Permit expire. The owner then is no longer protected from the “take” prohibitions of the ESA that are allowed under the permit.

What Is a Programmatic SHA?

A programmatic SHA and associated permits authorize State, local, Tribal governments and other entities to enter into an agreement for a single or multiple species and hold the associated permit. This entity can then enroll individual property owners within a specific region, and convey the permit authorization and assurances to them through a “certificate of inclusion.” This programmatic approach is an efficient mechanism encouraging multiple non-Federal property owners to collectively engage in conservation actions that benefit the recovery of species.

Who Should I Contact?

If you would like more information, please contact the nearest FWS Ecological Services field office in your State. For their location, visit www.fws.gov and click on the Regional Boundaries tab at the top. Additional information regarding the SHA policy and regulations is available at www.fws.gov/Endangered. This site also includes descriptions of existing SHA agreements and a video featuring property owners participating in the Safe Harbor program.

**U.S. Fish & Wildlife Service
Endangered Species Program
4401 North Fairfax Drive, Room 420B
Arlington, VA 22203
703/358-2171
<http://www.fws.gov/Endangered/>**

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