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**ALABAMA**

**STATE-WIDE**

**RED-COCKADED WOODPECKER**

**SAFE HARBOR AGREEMENT**

February 2005

**ALABAMA STATE-WIDE RED-COCKADED WOODPECKER  
SAFE HARBOR AGREEMENT**

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# **SAFE HARBOR AGREEMENT**

## **1.0 Introduction**

This Alabama Statewide Red-Cockaded Woodpecker Safe Harbor Agreement (Agreement), effective and binding on the date of the last signature below, is between the Alabama Department of Wildlife and Fisheries (ADCNR-WFF) and the U.S. Fish and Wildlife Service (Service) hereinafter referred to collectively as “the Parties”:

**Permittee:** Alabama Department of Wildlife and Fisheries (ADCNR-WFF)

**Service:** U.S. Fish and Wildlife Service (Service)

**Agreement/Tracking Number:** TO BE IDENTIFIED BY SERVICE’S RO

**Agreement Duration:** The duration of this Agreement is ninety-nine (99) years. The duration of the enhancement of survival permit (Permit) issued in conjunction with this Agreement also is ninety-nine (99) years.

**This Agreement covers the following property:** All non-federal lands within the State of Alabama. However, the property of each non-federal landowner (also known as a “Cooperator”) enrolled under this Agreement is considered “enrolled property” as defined in the Service’s Safe Harbor Policy.

**This Agreement covers the following species:** Red-cockaded woodpecker (*Picoides borealis*) (RCW). The RCW, a Federally-listed endangered species, is the only species for which incidental take authority is sought under this Agreement and the associated Permit. For purposes of this Agreement, the RCW is considered the “covered species” as defined in the Service’s Safe Harbor Policy.

## **2.0 Authority and Purpose**

This Agreement was developed to address both the conservation needs of RCWs in the State of Alabama and the concerns of Alabama’s non-federal landowners. It is the result of the cooperative efforts of the Parties, Members of the Steering Committee for the Alabama Statewide Red-cockaded Woodpecker Safe Harbor Agreement, Members of the Scientific Advisory Committee for the Alabama Statewide Red-cockaded Woodpecker Safe Harbor Agreement, and advisors.

Members of the Steering Committee for the  
ALABAMA STATEWIDE RED-COCKADED WOODPECKER  
SAFE HARBOR AGREEMENT

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Mr. Frank Boyd, The Wildlife Society  
Mr. Pat Byington, Bama Environmental News  
Mr. Kent Davenport, U.S. Forest Service  
Mr. Paul Franklin, Audubon Society  
Ms. Brigetta Giles, Alabama Forestry Commission  
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Dr. Robert Hastings, Alabama Natural Heritage Program<sup>SM</sup>  
Mr. Rhett Johnson, Longleaf Alliance  
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Mr. Gary Moody, The Wildlife Society  
Mr. Chris Oberholster, The Nature Conservancy  
M. N. Pugh, Alabama Wildlife and Freshwater Fisheries Division  
Mr. Bruce Springer, Alabama Forestry Commission

Members of the Scientific Advisory Committee for the  
ALABAMA STATEWIDE RED-COCKADED WOODPECKER  
SAFE HARBOR AGREEMENT

Mr. Tim Albritton, Natural Resources Conservation Service  
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Ms. Dagmar Thurmond, USDA Forest Service

Advisors:

Mr. Ralph Costa, U.S. Fish and Wildlife Service  
Mr. Barry Hart, Alabama Natural Heritage Program<sup>SM</sup>  
Ms. Lori McNease, U.S. Fish and Wildlife Service

## **2.1 Authority**

Sections 2, 7 and 10 of the Endangered Species Act (ESA) of 1973, as amended, allow the Service to enter into this Agreement. Section 2 of the ESA states that encouraging interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs is a key to safeguarding the Nation's heritage in fish, wildlife and plants. Section 7 of the ESA requires the Service to review programs that it administers and to utilize such programs in furtherance of the purposes of the ESA. By entering into this Agreement, the Service is utilizing its Endangered Species and related programs to further the conservation of the Nation's fish and wildlife resources. Lastly, section 10(a)(1) of the ESA authorizes the Service's issuance of enhancement of survival permits for listed species.

## **2.2 Purpose**

The purpose of this "programmatic" Agreement between the Service and ADCNR-WFF and the associated Permit is to facilitate collaboration between the Parties and non-federal landowners in the implementation of conservation measures for RCWs. Through this Agreement the Parties seek to conserve and maintain the existing number of occupied RCW clusters in Alabama and to encourage the development of new RCW clusters on enrolled properties. Through this Agreement, ADCNR-WFF and non-federal landowners will be authorized to enter into Safe Harbor Management Agreements (SHMA) in which the landowners would agree to beneficially manage for RCW habitat on their properties by implementing specific RCW conservation management measures. In exchange for entering into SHMAs, landowners will receive a Certificate of Inclusion (Certificate) that would authorize the incidental take of any RCW group and/or RCW habitat that is above the landowner's baseline responsibilities.

## **3.0 Goals and Objectives**

This Agreement has the following goals:

1. to provide a net conservation benefit to RCWs in the State of Alabama; and
2. to provide Safe Harbor Assurances to non-federal landowners in the State of Alabama.

This Agreement has the following objectives:

1. to encourage non-federal landowners to undertake voluntary conservation measures that will benefit RCWs;
2. to provide an increase in the number of RCW groups on non-federal land in Alabama;
3. to provide an increase in the amount of RCW habitat on non-federal land;
4. to provide an increase in the number of landowners intentionally managing for suitable RCW habitat;
5. to provide an increase in public support for RCW conservation and endangered species management by demonstrating government agency sensitivity, cooperativeness, and flexibility in response to past and current criticism of environmental regulations and

private property rights that have focused on ESA-related habitat management restrictions;  
and

6. to reduce the landowner's risk and uncertainty from RCWs on his/her land.

#### **4.0 Net Conservation Benefits**

Some net conservation benefits to RCWs that are expected to result from this Agreement include:

1. currently occupied nesting and foraging habitat will be maintained at current levels to assist in meeting recovery goals and in maintaining population stability;
2. existing RCW populations will be increased through the installation of artificial nesting and roosting cavities;
3. new groups and populations of RCWs will be created through population expansion (naturally or via recruitment clusters) and translocation efforts;
4. RCW populations will be augmented through translocation of surplus sub-adults to acceptable recipient sites;
5. suitable RCW habitat will be enhanced, restored, and/or created on enrolled properties;
6. pine forest fragmentation will be decreased and habitat connectivity will be increased from habitat enhancement, restoration, and/or creation efforts;
7. information will be collected on RCW population productivity and demographics in Alabama; and
8. landowners' fear of having RCWs on their forest lands will be reduced through the implementation of outreach efforts, thereby minimizing the number of landowners who will intentionally manage against suitable RCW habitat.

It is likely that most SHMAs resulting from this Agreement will provide more than one of the net conservation benefits listed above. Since each SHMA must identify the net conservation benefit(s) that will be achieved through the implementation of its conservation measures, this list of conservation benefits will be incorporated into each SHMA. The net conservation benefits that would be applicable to a particular SHMA will be specifically identified in that SHMA.

### **5.0 Background**

#### **5.1 Description of Covered Species**

The RCW is a territorial, nonmigratory cooperative breeding bird species that evolved in a mature pine, fire-maintained ecosystem. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among the North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees is called a cluster. RCWs forage almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height (DBH). Foraging habitat is generally contiguous with the cluster. The number

of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available.

The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 States. The absence of natural fires that once perpetuated open pine habitat has led to midstory encroachment and continues to be a major threat to RCW populations range-wide (Van Balen and Doerr 1978, Hovis and Labisky 1985, Conner and Rudolph 1989 and 1991, Costa and Escano 1989, Loeb et al. 1992, Baker 1995, Escano 1995, Masters et al. 1995). The species, however, is still widely distributed (presently occurs in 11 southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest known populations occur on federally owned lands such as military installations and National Forests

## **5.2 Description of Existing Conditions**

Prior to European settlement, an estimated 60 to 74 million acres were dominated by longleaf pine, which spanned across the uplands of the coastal plains and Piedmont from Virginia to central Florida and west to eastern Texas (Frost, 1993; Conners et al., 2001; Johnson, 2002). In Alabama and Georgia, longleaf-dominant stands extended well into mountainous regions where open longleaf pine woodlands occurred extensively on south slopes and ridges just over a century ago (see Mohr, 1901; Harper, 1943). In the United States today, approximately 3 percent of the natural, albeit second or third growth, longleaf pine forest remains (Frost, 1993), and in Alabama, roughly 5 percent (about 500,000 acres) of its pre-settlement 10 million acres of longleaf remain (Johnson, 2002).

Historically, the RCW was widely distributed in Alabama with reported occurrences from 40 counties (Jackson, 1971; Hooper et al., 1980). It is believed that less than 15 counties continue to support RCWs. The majority of RCWs remaining in AL today are on publicly owned lands such as military bases, national wildlife refuges, and national forests with the vast majority of occurrences in national forests. As of 2003, the Oakmulgee Ranger District, Talladega National Forest, reported 96 active clusters followed by the Conecuh National Forest with 19, and the Shoal Creek Ranger District, Talladega National Forest, with 8 (Dagmar Thurmond, personal communication).

Geographically and demographically isolated RCW groups in fragmented habitats that are not managed for the species' benefit have a low probability of persistence. The probability of persistence is affected not only by habitat deterioration and demographic uncertainty, but also by proximity and connectedness to other populations to facilitate dispersal between populations. Very small populations of at least 10 groups may persist over the short term (i.e., 20 years) if their individual foraging habitats are aggregated by shared boundaries (Crowder et al. 1998). However, a population of five or fewer groups would likely be extirpated without intensive habitat management and immigration in the same number of years. The need for an accurate, concise population census is important to the survival of these isolated groups. Without the knowledge of their existence and the specific habitat management that they require, these populations are likely to decline, and may eventually cease to exist (Costa and Walker 1995).



Small, isolated, and genetically important RCW groups do exist on non-federally owned lands in Alabama, however, exact numbers are not currently known. It is anticipated that, through the involvement of non-federal landowners in this Agreement, a better understanding of the current status of RCW populations on non-federal land will be achieved. Landowners and managers have expressed interest in, and support for, a mechanism that will provide long-term conservation benefits while removing some ESA related restrictions.

## **6.0 Safe Harbor Management Agreements and Certificates of Inclusion**

Upon the entering into this Agreement and the issuance of the associated Permit, ADCNR-WFF is authorized to begin implementation of this programmatic Agreement by enrolling non-federal landowners through SHMAs and Certificates.

### **6.1 Enrollment Procedures**

As a prerequisite to enrolling property under this Agreement, each non-federal landowner must show that the enrollment of their property would result in a net conservation benefit for RCWs. For instance, ADCNR-WFF shall not enter into a SHMA with a landowner who is applying for safe harbor on property located solely in a saltwater marsh environment. On the other hand, ADCNR-WFF shall consider a landowner who is applying for safe harbor on property that currently is, or that has the potential to be, an upland pine environment.

In order to enroll a suitable property under the terms of this Agreement, ADCNR-WFF and the non-federal landowner must enter into a SHMA (Appendix 1), wherein the landowner would agree to, among other things, beneficially manage for RCW habitat on their property by implementing specified conservation strategies and measures that satisfy the provisions and intent of this Agreement (See Section 7.1). Upon entering into a SHMA, the non-federal landowner will be issued a Certificate (Appendix 2) under ADCNR-WFF's Permit. The Certificate will provide regulatory assurances to the landowner based on the baseline condition(s) of the landowner's property (See Appendices 2 and 5). The expiration date(s) of the signed SHMA(s) and the associated Certificate(s) will be no later than the expiration date of ADCNR-WFF's Permit. Non-federal landowners will have the option to sign up for shorter periods of time as long as a net conservation benefit could be established for the duration of their respective SHMA(s).

A Landowner wishing to enroll their property in a SHMA with ADCNR-WFF should follow the recommended steps below:

1. ADCNR-WFF and an interested landowner should meet and discuss the terms and conditions of this Agreement;
2. The landowner should develop a SHMA (Appendix 1) with ADCNR-WFF designed to beneficially manage their property for RCWs by implementing measures that are sufficient to meet the provisions and intent of this Agreement;
3. Both ADCNR-WFF and the landowner must sign the SHMA for it to be valid;

4. Once ADCNR-WFF and a landowner sign the SHMA, the landowner will be issued a Certificate (Appendix 2), which contains the landowner's authorization to take above-baseline RCWs and habitat, and provides other regulatory assurances.

At the point of signing the Certificate and SHMA, the landowner becomes a Cooperator and/or Property Owner for purposes of implementation of this Agreement and as defined herein.

## **6.2 Content of SHMAs**

Each SHMA shall, among other things:

- a. Specify the species and/or habitats covered, including foraging habitat conditions (stands, basal area, etc), and identify the enrolled property (such as total acreage being enrolled, existing habitats, property boundaries, appropriate maps depicting foraging partitions for each baseline cluster and property boundaries) covered by the SHMA;
- b. Fully describe the agreed-upon baseline conditions that will be maintained for the covered species on the enrolled property;
- c. Identify how the baseline was determined, when and how the baseline surveys were conducted, and whether the baseline was established based on already-known information or other factors;
- d. Identify management actions in accordance with Section 7.1 of this Agreement that would be undertaken to accomplish the expected net conservation benefit to the covered species, where and when the benefits would be achieved, and the agreed upon time frames these management actions will remain in effect to achieve the anticipated net conservation benefits;
- e. Describe any incidental take associated with the management actions during the term of the SHMA;
- f. Incorporate a notification requirement that provides ADCNR-WFF and/or the Service the opportunity to translocate individuals of the covered species before the occurrence of any habitat altering activity that could result in authorized incidental take;
- g. Describe the activities that would be expected to return the enrolled property to baseline conditions and the extent of incidental take that would likely result from such activities;
- h. Identify a schedule for monitoring the baseline conditions of the enrolled property, implementation of terms and conditions of the SHMA, and any incidental take as authorized in the Certificate, and the parties responsible for such monitoring activities;
- i. Incorporate a requirement for the enrolled landowner or their agent to obtain any necessary state or federal permits if purposeful take, such as capturing, banding, reintroducing, etc., is planned; and
- j. Incorporate a procedure for notifying and transferring the Certificate to any successor in interest, where appropriate.

## **7.0 Agreement Implementation**

### **7.1 Conservation Strategy/Measures**

In order to accomplish the goals and objectives of this Agreement, the Parties agree that all SHMAs must incorporate one or more of the following conservation strategies or measures in order to provide important benefits to RCW populations. ADCNR-WFF will ensure that the following actions, when included in a SHMA, will provide a net conservation benefit to RCWs on the enrolled property either immediately or in the near future.

1. Prescribed Fire – ADCNR-WFF can enroll a landowner under a SHMA if the landowner agrees to maintain or increase the use of prescribed fire under any of the following circumstances once the property is enrolled:
  - a) by conducting prescribed fires on a regular or recurring basis within the occupied RCW habitat areas of the property and continuing to maintain or enhance the areas through the use of such fires. These actions will provide an immediate net conservation benefit to RCWs.
  - b) by conducting prescribed fires on a regular or recurring basis within those areas of the property that are potentially suitable nesting or foraging habitat in order to restore or enhance the areas as RCW habitat. This action will provide an immediate net conservation benefit to RCWs.
  - c) by conducting prescribed fires on a regular or recurring basis in areas of the property that are unsuitable RCW habitat for a period of time sufficient for the areas either to become occupied by RCWs or to become potentially suitable nesting or foraging habitat for RCWs. The net conservation benefit from this action will not be achieved until the areas where the prescribed fires were conducted either become occupied by RCWs or become potentially suitable nesting or foraging habitat. Under this action, a landowner might be required to implement other conservation measures, such as a forest management strategy, to achieve a net conservation benefit for RCWs.
  
2. Forest Management - ADCNR-WFF can enroll a landowner under a SHMA if that landowner agrees to maintain or implement a forest management strategy or plan on the enrolled property that would provide the required foraging and/or nesting habitat for RCWs. In general, this would entail the use of timber harvest rotations of greater than thirty (30) years for foraging habitat and greater than sixty (60) years for nesting habitat, the use of uneven-aged silvicultural treatments, and/or the integration of other management activities (e.g., burning or hardwood control), which are necessary to maintain the open, mature pine forests that are preferred by RCWs. An eligible forest management strategy or plan would include a landowner agreeing to include one or more of the following in a SHMA:
  - a) implementation or maintenance of a forest management strategy or plan that maintains or enhances occupied RCW habitat. This action would provide an immediate net conservation benefit to RCWs.
  - b) implementation or maintenance of a forest management strategy or plan that maintains or enhances existing habitat that is potentially suitable nesting or

foraging habitat. This action would provide an immediate net conservation benefit to RCWs.

- c) implementation or maintenance of a forest management strategy or plan that restores habitat to a condition that will, in the future, provide potentially suitable nesting or foraging habitat. The net conservation benefit of this action would not be achieved until the areas where the forest management strategy or plan was implemented or maintained became either occupied by RCWs or potentially suitable nesting or foraging habitat for RCWs.

3. Hardwood Midstory Control – ADCNR-WFF can enroll a landowner under a SHMA if that landowner agrees to control hardwood midstory encroachment in pine forest stands on the enrolled property through one of the following methods:

- a) mechanical or chemical methods or prescribed fire to control hardwoods in occupied habitat. Any of those actions would provide an immediate net conservation benefit for RCWs.
- b) mechanical or chemical methods or prescribed fire to control hardwoods in potentially suitable nesting or foraging habitat. Any of those actions would provide an immediate net conservation benefit to RCWs.
- c) mechanical or chemical methods on a regular or recurring basis to control hardwoods in habitat that is currently unsuitable for RCWs. However, under either of these actions, the landowner would be required to agree to control hardwoods for a period sufficient for the habitat either to become occupied by RCWs or to become potentially suitable nesting or foraging habitat. The net conservation benefit of either of these actions would not be achieved until the areas where hardwood control was conducted either became occupied by RCWs or became potentially suitable nesting or foraging habitat.
- d) lawn mowing methods to maintain herbaceous understory in pine forest stands on the enrolled property. Lawn mowing methods would include using tractors with bush hogs to cut hardwood saplings up to 1-inch. Lawn mowing in occupied and potentially suitable nesting or foraging habitat would provide an immediate net conservation benefit to RCWs. In unsuitable habitat, the landowner would be required to agree to mow for a period sufficient for the habitat either to become occupied by RCWs or to become potentially suitable nesting or foraging habitat. The net conservation benefit would not be achieved through this action until the areas where mowing was conducted either became occupied by RCWs or became potentially suitable nesting or foraging habitat. Under this action, the landowner also might be required to implement other conservation measures, such as a forest management strategy, to achieve a net conservation benefit to RCWs.

4. RCW Cavity Installation and Maintenance - ADCNR-WFF can enroll a landowner under a SHMA if that landowner agrees to install artificial cavities and/or maintain natural or artificial cavities on the enrolled property. The landowner would agree to maintain suitable cavities by installing restrictor plates (Carter 1990) and/or artificial cavities, which should include cavity inserts (Allen 1991) and drilled cavities (Copeyon 1989) on the enrolled property. A landowner should only use restrictor plates on natural cavities if there is a

known problem with enlargement by pileated woodpeckers (*Dryocopus pileatus*), red-bellied woodpeckers (*Melanerpes carolinus*), or red-headed woodpeckers (*Melanerpes erythrocephalus*) or if there is a good possibility, based on past experience, that cavities might be damaged. Restrictor plates should also be used on all cavity inserts and previously installed drilled cavities. The landowner would agree, under the appropriate circumstances, to do one of more of the following:

- a) install restrictor plates and artificial cavities in occupied clusters that are cavity-deficient (i.e., each RCW present does not have its own complete cavity in which to roost). This action would provide an immediate net conservation benefit to RCWs.
- b) install restrictor plates and artificial cavities on the enrolled property so that each cluster would have a minimum of four (4) suitable cavities. This action would provide an immediate net conservation benefit to RCWs.
- c) install and maintain artificial cavities at appropriate sites in potentially suitable, unoccupied nesting habitat with at least four (4) suitable cavities installed per site. This would provide an immediate net conservation benefit to RCWs.

5. RCW Population Management - ADCNR-WFF can enroll a landowner under a SHMA if that landowner agrees to implement one of the following population management activities on the enrolled property. Translocations are an important population management tool for small or disjunct populations and should be used only in conjunction with aggressive management of nesting and foraging habitat. The use of translocation for any purpose requires a permit from ADCNR-WFF and the Service, and must be conducted according to the guidelines in the RCW Recovery Plan, 2<sup>nd</sup> Revision (USFWS 2003). RCWs eligible for translocation, as defined in the RCW Recovery Plan, 2<sup>nd</sup> Revision (USFWS 2003) are herein referred to as “surplus.” Population management activities will occur through one of the following methods:

- a) translocate pairs of surplus sub-adults into unoccupied, suitable nesting habitat on the enrolled property upon receiving prior approval for any such translocation from ADCNR-WFF and the Service. This activity would provide a net conservation benefit to RCWs upon the translocation of the surplus sub-adults to the unoccupied, suitable nesting habitat.
- b) translocate surplus sub-adult(s) into habitat on the enrolled property that is occupied by a single (male or female) bird upon receiving prior approval for any such translocation from ADCNR-WFF and the Service. This activity would provide a net conservation benefit to RCWs upon the translocation of the surplus sub-adult(s) to the enrolled property.
- c) allow ADCNR-WFF and/or the Service to remove surplus sub-adult(s) from the enrolled property to augment other populations if such removal of sub-adult(s) would not affect the landowner’s baseline responsibilities. This activity would provide a net conservation benefit to RCWs upon the removal of the surplus sub-adult(s) by ADCNR-WFF and/or the Service.

6. Future Conservation Measures – There may be a time in the future when the Service identifies a conservation measure(s), based on future RCW research, that is critical to the conservation of the RCW. In such event, ADCNR-WFF and the Service would allow enrolled landowners,

with concurrence from both ADCNR-WFF and the Service, to choose such conservation measure(s) as their voluntary RCW management action(s). The selection of any such measure(s) would provide an immediate net conservation benefit to RCWs.

## **7.2 Baseline Considerations**

### **7.2.1 Baseline Conditions**

The Safe Harbor Policy defines “baseline conditions” as “population estimates and distribution and/or habitat characteristics and determined area of the enrolled property that sustain seasonal or permanent use by the covered species at the time the Safe Harbor Agreement is executed.” Under this Agreement, the participating landowner is responsible for determining his/her RCW baseline by evaluating the size of the stand, the stand age, the density of pines, the density of large pines, the fire history (hardwood midstory), the season in which the survey is performed, and the proximity to cavity trees from territorial boundaries. ADCNR-WFF will express baseline responsibilities in terms of the number of active clusters and the amount and quality of foraging habitat. Using the proper surveys, described below, the landowner may differentiate the number of active clusters into potential breeding groups and solitary bird (typically male) groups.

### **7.2.2 Determining Baseline Conditions**

The first step in determining the baseline conditions is to determine if suitable RCW habitat exists on the landowner’s property or if a known RCW group exists within one-half-mile of the property (landowner knowledge and LNHP database can be used to determine the distance to known sites). Suitable foraging habitat consists of pine or pine-hardwood (50 percent or more pine) stands thirty (30) years of age or older (USFWS 2003). If this type of habitat is not present, and there are no RCW groups within one-half-mile of the property, further assessment of the property is not necessary, and the landowner’s baseline will be zero.

If a RCW group exists within one-half-mile of the landowner’s property and the landowner has the responsibility of maintaining a portion of the foraging habitat for the RCW cluster, as required by the RCW Recovery Plan, 2<sup>nd</sup> Revision (USFWS 2003), the portion of the foraging habitat that the landowner is required to maintain will be incorporated into the landowner’s baseline.

If suitable nesting habitat is present on a property, the landowner will be required to determine whether RCW groups exist on the property by conducting surveys for cavity trees in stands that contain suitable nesting habitat. The RCW Recovery Plan, 2<sup>nd</sup> Revision (USFWS 2003), identifies the following as the types of forested stands that must be surveyed for RCW cavity trees:

1. Pine and pine-hardwood stands over sixty (60) years of age;
2. Pine and pine-hardwood stands under sixty (60) years of age containing scattered or clumped pine trees over sixty (60) years of age;

3. Hardwood-pine over sixty (60) years of age adjacent to pine and pine-hardwood stands over thirty (30) years of age; and
4. Pine stands containing sawtimber, including stands thought to be generally less than sixty (60) years of age but containing scattered or clumped trees over sixty (60) years of age.

Accurate surveys are essential for determining baseline conditions. To limit undetected cavity trees and misjudged activity status, personnel experienced in the management and/or monitoring of the covered species must be used to conduct baseline surveys. Baseline numbers are subject to approval by ADCNR-WFF.

Potential nesting habitat (pines greater than or equal to sixty (60) years old) must be surveyed by running line transects through stands and visually inspecting all medium-sized and large pines for evidence of cavity excavation by RCWs. Transects must be spaced so that all trees are inspected. Necessary spacing will vary with habitat structure and season from a maximum of one hundred (100) yards between transects in very open pine stands to fifty (50) yards or less in areas with dense midstory. Transects should be run north-south because many cavity entrances are oriented in a westerly direction (USFWS 2003).

When cavity trees are found on an enrolled property, their locations must be recorded in the field using a Global Positioning System unit, an aerial photograph, and/or a field map. Activity status, cavity stage (start, advanced start, or complete cavity), and any entrance enlargement also must be assessed and recorded when the cavity trees are located. More intense surveying also must be conducted within 1500 feet of each cavity tree to locate all cavity trees in the area. Later, cavity trees are to be assigned into clusters based on observations of RCWs as described below (USFWS 2003).

A landowner who wishes to differentiate the number of active clusters in their baseline into the number of potential breeding groups and the number of solitary male groups will be required to complete group checks as described in the RCW Recovery Plan, 2<sup>nd</sup> Revision (USFWS 2003). To perform group checks, trained personnel experienced in the management and/or monitoring of the covered species and approved by ADCNR-WFF, must track or “follow” each group for a half an hour to an hour, immediately after the birds exit their cavities in the morning, to determine group size. Group size is determined by observation of bird behavior and groups are classified as: a) two or more birds or b) a solitary bird.

Groups of 2 or more birds that remain together and peacefully interact during the breeding season are assumed to represent potential breeding groups. ADCNR-WFF and/or the Service will ensure that a landowner accurately classifies RCW groups. Groups roosting extra-territorially in clusters occupied by one or more residents, captured clusters, and territorial conflicts can confuse an observer and result in erroneous group classification. Where there is doubt as to whether group membership exists, ADCNR-WFF will require the “follow” (described above) to be repeated and/or the “follow” time to be increased until all doubt as to the group membership is removed. Two observers may be required if two clusters are located very close together or if cavity trees within a cluster are spread over a large area.

Group checks will be considered valid only if they are implemented during the breeding season because groups of two or more birds at other times of the year may or may not represent potential breeding groups. The method for group checks is labor intensive (one group per observer per day at best), and complete population censuses are possible only in small populations or with multiple observers. A landowner who is unwilling or unable to perform group checks will assume, for his/her baseline responsibility, that each active cluster is occupied by a potential breeding group.

Each landowner shall identify how the baseline was determined, when and how the baseline surveys were conducted, as well as whether the baseline was established based on already-known information or other factors.

The Parties to this Agreement and the landowner must concur with the baseline determination for a property. In instances where ADCNR-WFF, the Service, or their respective agents have not taken part directly in the baseline determination, concurrence with the determination is mandatory.

### **7.2.3 Maintaining Baseline Groups**

The baseline responsibilities/constraints of the landowner are to provide all the overstory necessary to maintain the cavity trees and the foraging area for all RCW groups discovered by the baseline survey of the landowner's property. If no groups are discovered during the baseline surveys, and there are no known groups on neighboring lands, there are no baseline responsibilities and constraints. Baseline responsibilities may include providing foraging areas for known groups on neighboring lands as described in Section 7.2.2 above.

Specifically the landowner's baseline responsibilities, as derived from the RCW Recovery Plan, 2<sup>nd</sup> Revision (USFWS 2003), are to:

1. Protect active and inactive cavities and cavity start trees, within active baseline clusters, from harvesting. ADCNR-WFF can provide assistance in locating and marking all cavity and start trees at its discretion. ADCNR-WFF and the Service must review on a case-by-case basis the removal of any other active or inactive cavity tree. In the event that the location of any active cavity tree(s) changes over time such that one or more cavity tree(s) becomes established within a construction area, the landowner may be allowed to remove those cavity trees. For each active cavity tree removed in the construction area, a minimum of two (2) artificial cavities (drilled or inserts) must be installed elsewhere on the lot (at least 200 feet from the building site) four (4) months prior to initiation of construction.
2. Manage each cluster as a timber stand comprising at least ten (10) contiguous acres, if currently present on the enrolled landowner's property, with the purpose of retaining potential cavity trees. If ten (10) contiguous acres are not currently present on the enrolled landowner's property, the landowner would retain all of the potential cavity trees within the cluster.
3. Maintain cluster boundaries of at least two hundred (200) feet from a cavity tree.
4. Provide at least 50 ft<sup>2</sup> of basal area per acre of pine trees  $\geq 10$  inches DBH in active baseline clusters if the trees are currently present on the enrolled landowner's property.



5. Protect cavity trees from fire during prescribed burning. Precautions should be taken to minimize the risk of igniting cavity trees. Cooperators are required to rake litter at least ten (10) to twenty (20) feet away from the base of cavity trees, depending on the fuel load. Other precautions include wetting cavity trees or limiting burning to high moisture conditions. Any active cavities damaged by prescribed fire will be immediately replaced within the cluster boundaries by installing 2 artificial cavities (inserts or drilled).
6. Provide at least 3000 ft<sup>2</sup> of basal area in pine trees (including the trees in the cluster)  $\geq$ 10 inches DBH for foraging habitat on a minimum of seventy-five (75) acres, if the trees are currently present on the enrolled landowner's property. If 3000 ft<sup>2</sup> of basal area of pine trees  $\geq$ 10 inches DBH is not available for foraging habitat, the landowner will maintain the existing pines inside the foraging area and provide the 3000 ft<sup>2</sup> of basal area of pine trees greater than 10 inches DBH as soon as possible. Foraging habitat for each RCW group must be contiguous to the cluster stand with no gaps between stands exceeding two hundred (200) feet.
7. Conduct timber harvesting within the active baseline clusters only between August 1<sup>st</sup> and March 31<sup>st</sup>, or as otherwise approved by ADCNR-WFF and the Service. If there is a need to harvest timber within an active cluster outside this window of time, the enrolled landowner should notify ADCNR-WFF thirty (30) days in advance of the desired starting harvest date. ADCNR-WFF will determine the stage of nesting activity within the cluster and advise the enrolled landowner of appropriate precautions. Timber harvesting would not be permitted during nest initiation, when the female is in the process of laying eggs, when the nesting cavity contains viable eggs or young, or before the fledglings are capable of sustained flight. Possible exceptions to these prohibitions could be when emergency harvest, due to insect infestations, natural disasters, or other disasters, as described in Section 7.4, below, is necessary.
8. Refrain from constructing any new roads and/or utility right of ways within active baseline clusters.
9. Provide reasonable protection for RCW groups from human activities that may incidentally cause injury or death in active baseline clusters
10. Take reasonable precautions when conducting silvicultural or other activities within active baseline clusters to avoid injury to cavity and cavity start trees. Reasonable precautions would include, but are not limited to, directional felling away from cavity trees, logging during dry conditions to minimize soil compaction, removing logs carefully to avoid scraping or otherwise damaging residual trees, and avoiding fire line plowing around cavity trees.

## 7.2.4 Baseline Adjustment

### 7.2.4.1 Loss of Baseline Groups

In spite of management and protection efforts, there may be circumstances, through no fault of the landowner, where groups that gave rise to the landowner's baseline responsibilities cease to exist on the enrolled property. If RCW baseline groups cease to exist on the enrolled property, the enrolled landowner **will not** be held accountable for the loss of the RCW baseline groups provided each of the following have occurred:

1. The RCW groups have remained absent from the enrolled property for a minimum of five (5) years;
2. The RCW cluster remains inactive for a minimum of five (5) years; and
3. The loss of the RCW baseline group occurred through no fault of the landowner and in spite of total compliance with the SHMA.

A landowner's RCW baseline can be reduced for each RCW group that meets all three (3) of the criteria listed above. However, the landowner must request a baseline reduction from ADCNR-WFF. The landowner must allow ADCNR-WFF and/or the Service access to the enrolled property to conduct an investigation, if ADCNR-WFF and/or the Service so choose. If ADCNR-WFF and/or the Service determine the group eligible for removal from the baseline, ADCNR-WFF will modify the SHMA and Certificate to reflect the change in baseline responsibilities. The enrolled property will not obtain a reduction in baseline, however, if a RCW group moves to a new cluster on the same enrolled property. The enrolled property can get a reduction if a cluster moves onto neighboring property as long as the above criteria are followed. A landowner may be required, however, to provide foraging habitat if the owner on the neighboring property is unable to do so.

#### **7.2.4.2 Shifting Baseline**

RCW baseline responsibilities will be associated with specific active clusters in existence at the time the landowner enters into the SHMA. Participating landowners may, with ADCNR-WFF's consent, shift their baseline responsibilities to a new active cluster that has formed on their property subsequent to the signing of the SHMA. When a new active cluster is formed on an enrolled property, it may replace any other cluster harboring a group of similar or lesser demographic status (i.e., potential breeding pair can replace solitary bird or same sex groups) that was within the landowner's original RCW baseline responsibility, provided each of the following conditions are met:

1. The enrolled landowner is in total compliance with his/her SHMA.
2. The enrolled landowner has maintained his/her baseline as specified in the SHMA.
3. The enrolled landowner has replaced:
  - a) A baseline potential breeding group with another potential breeding group, or
  - b) A baseline solitary bird group is replaced with either a potential breeding group or a solitary bird group.
4. The enrolled landowner has replaced a baseline potential breeding group with an above-baseline potential breeding group that has been in existence for at least six (6) months, including a breeding season (April to July), prior to the replacement.
5. The enrolled landowner has replaced baseline clusters with above-baseline clusters and will provide suitable nesting and foraging habitat as defined in the Standard for Managed Stability set forth in Appendix 5 of the RCW Recovery Plan, 2<sup>nd</sup> Revision.
6. The enrolled landowner has replaced solitary bird groups prior to replacing potential breeding groups when possible.
7. The enrolled landowner agrees to maintain the entire foraging and nesting habitat needed for the new group.

ADCNR-WFF must concur in writing prior to a landowner's shifting his/her RCW baseline requirements from one group to another. Where possible, flexibility will be used by ADCNR-WFF with concurrence from the Service. Upon ADCNR-WFF's concurrence to transfer RCW baseline responsibilities, sufficient documentation (i.e., maps reflecting change) of the shift in baseline will be placed in the enrolled property's file at the ADCNR-WFF headquarters in Montgomery, ADCNR-WFF.

### **7.3 Incidental Take**

The authorization for a participating landowner to incidentally take RCWs under this program is contingent upon the landowner's having maintained their baseline responsibilities for RCW groups and habitat that were present at the time the SHMA was signed. The only take that will be authorized under this Agreement and associated SHMAs is take of above-baseline RCWs. It is important to note that such taking may or may not ever occur on an enrolled property and it is unlikely that RCWs would utilize the habitat involved if not for the voluntary management practices of the participating landowner. One of the expectations underlying this Agreement is that, while landowners will be permitted to carry out activities that could result in the take of above-baseline group(s) on their land, landowners, nonetheless, may choose not to engage in such activities or not to do so for many years.

An enrolled landowner will be allowed to develop, harvest trees upon, or make any other lawful use of his/her property, even if such use results in the incidental take of above-baseline RCWs or RCW habitat, provided that each of the following qualifications and conditions are met:

1. The enrolled landowner is in total compliance with their SHMA;
2. The enrolled landowner has maintained his/her RCW baseline as specified in the SHMA;
3. The enrolled landowner will only engage in take that is incidental to otherwise lawful activities;
4. The enrolled landowner conducts a supplemental survey immediately (no more than one hundred-eighty (180) days but no less than thirty (30) days) prior to any activity that may result in the incidental taking of above-baseline RCWs or RCW habitat and provides ADCNR-WFF with the results of the survey no later than thirty (30) days prior to the commencement of any such activity. Only the specific area that will be treated requires this supplemental RCW survey. However, no surveys will be required within one (1) year of the baseline survey, unless recruitment clusters have been established in the area that will be affected by the activity.
5. The enrolled landowner will engage in the proposed activities that could result in the incidental take of RCWs only during their non-reproductive season (August 1<sup>st</sup> through March 31<sup>st</sup> of following year) unless otherwise authorized by ADCNR-WFF; and
6. The enrolled landowner will not undertake any activity that could result in incidental take of RCWs until the landowner has provided ADCNR-WFF with at least sixty (60) days written notice of the landowner's intention to conduct such activity in order to allow ADCNR-WFF, the Service and/or their respective agents the opportunity to translocate the affected RCW group(s) to a suitable recipient site.

The preceding qualifications and conditions will be included in each SHMA.

Notwithstanding the minimum 60-day notice requirement in number 6 above, the landowner should provide as much notification to ADCNR-WFF as possible. Upon receipt of the landowner's notice, ADCNR-WFF will contact the Service's Ecological Services Field Office in Daphne, Alabama. ADCNR-WFF, the Service and/or their agents shall give a coordinated and concerted effort to respond to that notice. However, should ADCNR-WFF, the Service and/or their agents fail to respond to the landowner within the 60-day time frame, the landowner may proceed with the proposed activity.

## **7.4 Emergency Salvage Harvest Situations**

Emergency situations, such as natural disasters or insect infestations, may require that emergency (salvage) harvesting begin with less than sixty (60) days notice as set forth in Section 7.3. For above-baseline groups, the enrolled landowner will notify ADCNR-WFF or its approved agent in writing at least three (3) days prior to conducting an emergency harvest. ADCNR-WFF, the Service, and/or their respective agents shall have this 3-day time period to translocate above-baseline impacted birds. The landowner shall not initiate such harvest until three (3) days after ADCNR-WFF has received notice.

For emergency situations involving baseline groups/clusters, the landowner will notify ADCNR-WFF and/or the Service before emergency (salvage) harvesting begins. ADCNR-WFF and the Service will evaluate each case on an individual basis, and both must concur on the appropriate management actions.

## **8.0 Monitoring and Reporting**

### **8.1 ADCNR-WFF's Monitoring and Reporting Responsibilities**

ADCNR-WFF will annually monitor for SHMA implementation and compliance. Specifically, ADCNR-WFF will contact each enrolled landowner annually to evaluate whether the landowner is implementing and maintaining the conservation measures specified in the landowner's SHMA. ADCNR-WFF will also identify any modifications of the conservation measures that may be necessary, and discuss other pertinent issues with the landowner regarding RCW management and/or the SHMA. Additionally, ADCNR-WFF will visit at least fifty percent (50%) of all enrolled properties annually to verify that conservation measures have been implemented and that the landowner is otherwise in compliance with its SHMA (the fifty percent (50%) will include all enrolled properties where incidental take was proposed or occurred). ADCNR-WFF shall maintain accurate records for each property enrolled under this Agreement and shall make these records available to the Service upon the Service's written request.

ADCNR-WFF will submit an annual written report to the Service, no later than March 31<sup>st</sup> for the preceding calendar year ending December 31<sup>st</sup>, detailing the activities conducted under this Agreement and the associated Permit. The annual report shall include accurate information and records of the following:

1. Any increase in the number of RCW groups on each enrolled landowner's property.
2. The number of acres of property enrolled under this Agreement.
3. The number of landowners enrolled under this Agreement.
4. A summary of all incidental take that has or will occur on enrolled landowners' properties.
5. A list of each landowner that is in noncompliance with their SHMA.
6. A list of all SHMAs that have been terminated.
7. Any other information, as agreed to by the Parties, that is required or appropriate for the monitoring of this Agreement.

## **8.2 Enrolled Landowners' Monitoring and Reporting Responsibilities**

Each landowner shall submit a monitoring report to ADCNR-WFF on an annual basis for the term of his/her SHMA (Appendix 3). ADCNR-WFF shall provide a template for the monitoring report to each landowner as part of his/her SHMA. The landowner will be required to submit a completed template to ADCNR-WFF annually by January 31<sup>st</sup>.

## **9.0 Responsibilities**

### **9.1 The Service**

In addition to the responsibilities that may be set forth elsewhere in this Agreement, the Service agrees to provide technical assistance and funding, if available, to ADCNR-WFF and/or enrolled landowners to assist with implementation of the Agreement and/or the SHMAs.

The Service will comply with the National Environmental Policy Act (NEPA) and its Daphne, Alabama Office shall be responsible for submitting the appropriate NEPA documents to the Service's Regional Office. The Service will also evaluate the monitoring results and reports submitted to it by ADCNR-WFF and coordinate closely with ADCNR-WFF after Permit issuance to ensure compliance with the terms and conditions of this Agreement and the associated Permit.

### **9.2 ADCNR-WFF**

In addition to the responsibilities that may be set forth elsewhere in this Agreement, ADCNR-WFF will be responsible for execution and implementation of this Agreement. ADCNR-WFF reserves the option to contract for management and other activities covered under this Agreement with other qualified parties with prior approval from the Service.

ADCNR-WFF, the Service and/or their respective agents will obtain the enrolled landowner's permission prior to entering their enrolled property for the purposes of ascertaining accuracy of the baseline conditions, compliance with the SHMA, and for censusing, banding and translocating RCWs.

ADCNR-WFF will increase the public's awareness of this Agreement through a combination of public meetings, workshops, press releases, and direct consultations with landowners.

ADCNR-WFF will enter into SHMAs with eligible landowners in accordance with this Agreement and the associated Permit. ADCNR-WFF shall not be under an affirmative obligation, however, to enroll a landowner during any period of time when ADCNR-WFF does not have the financial or personnel resources to do so. ADCNR-WFF agrees to notify the Service of any suspension of enrolling landowners under this Agreement. ADCNR-WFF reserves the right to enroll landowners at a later date once sufficient financial or personnel resources are available. ADCNR-WFF shall notify the Service upon determining that there exist sufficient financial or personnel resources to resume enrolling landowners under this Agreement.

ADCNR-WFF shall be responsible for meeting all of its obligations under this Agreement relating to SHMAs for enrolled landowners (e.g., providing annual report templates and monitoring of the enrolled properties). ADCNR-WFF will provide the Service with monitoring reports as required by this Agreement and the associated Permit.

### **9.3 Shared Responsibilities of the Parties**

The Parties will meet on an as-needed basis, at least annually (by December 31<sup>st</sup>), to review the information contained in the monitoring reports and/or to discuss any matters related to this Agreement or the Permit. Those meetings will provide an opportunity for resolutions of disputes regarding the implementation and compliance with the Agreement and the Permit, and to discuss amendments or modifications to the Agreement or Permit. The Parties will mutually agree on the date, time, and location of these meetings as well as on a list of potential attendees and potential discussion topics other than those topics previously mentioned in this section.

The Parties will ensure that the Agreement and the actions covered in the Agreement are consistent with applicable Federal, State, local, and Tribal laws and regulations. The Parties will ensure that the terms of the Agreement will not be in conflict with any ongoing conservation or recovery programs for the covered species.

The Service and ADCNR-WFF, at their own discretion and with an enrolled landowner's permission, can provide technical, financial, and other assistance to an enrolled landowner in order to facilitate implementation of the conservation measures covered by a SHMA.

### **9.4 Enrolled Landowners**

An enrolled landowner will be responsible for any costs associated with baseline surveys and agreed upon management practices, and is responsible for complying with all terms set forth by the SHMA. The enrolled landowner will also meet on an as-needed basis with ADCNR-WFF and/or the Service to discuss any matters related to his/her SHMA and Certificate. The Party/Parties and the enrolled landowner will mutually agree upon the date, time and location of the meetings. Additionally, the enrolled landowner must grant ADCNR-WFF and/or the Service or their respective agents' permission to enter the enrolled property for the purposes of ascertaining accuracy of the baseline conditions, compliance with the SHMA, and for censusing, banding and translocating RCWs.

## **10.0 Assurances to Enrolled Landowners**

Through this Agreement and the associated Permit, the Service provides ADCNR-WFF with certain regulatory assurances that, through Certificates, are conveyed to enrolled landowners. Those assurances, which apply to ADCNR-WFF and any enrolled landowner, are set forth in Appendix 5 to this Agreement and shall be incorporated verbatim into each SHMA and Certificate issued by ADCNR-WFF.

## **11.0 Agreement Management**

### **11.1 Modifications and Amendments**

#### **11.1.1 Modification and Amendment of the Agreement**

Either Party to this Agreement may propose modifications and amendments to the Agreement by providing notice to the other Party. Such notice shall include a statement of the reason for the proposed modification/amendment and an analysis of its anticipated effect(s) on the environment, the covered species, and on operations under this Agreement. Proposed minor modifications and amendments to this Agreement must be provided to the other Party in writing. The non-proposing Party shall have sixty (60) days in which to evaluate and approve or disapprove the proposed minor modification/amendment. A proposed minor modification/amendment shall be deemed approved and effective sixty (60) days after receipt of written notice of the same unless the non-proposing Party provides in writing its disapproval of the proposed modification or unless the Service gives written notice that the proposed modification must be processed as a formal amendment because the Service has determined that such modification/amendment would result in outcomes that are significantly different from those analyzed for this Agreement, including, but not limited to, modifications and/or proposed amendments that would either result in a different level or type of take than analyzed in this Agreement or that would result in a change to the cumulative conservation benefits to the covered species such that the Service's standard for safe harbor agreements is not met.

Minor modifications to this Agreement shall include, but are not limited to the following: (a) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning; (b) correction or updating of any maps or exhibits; (c) correction or updating of information to reflect previously approved amendments to the Permit or modifications to the Agreement; (d) minor changes to survey, monitoring, or reporting protocols; and, (e) conservation measures modified through adaptive management, if applicable.

Formal modifications/amendments may necessitate further review and analysis, including public notification in the *Federal Register*, public comment period, and other administrative compliance actions as required by the ESA, and any other applicable laws, regulations, policies and directives.

### **11.1.2 Modification and Amendment of the Permit**

ADCNR-WFF can seek amendment of the associated Permit in the manner specified in 50 C.F.R. § 13.23. The Service reserves the right to amend the Permit and any Certificates issued by ADCNR-WFF to enrolled landowners for just cause at any time during the term of the Permit or Certificate, upon written finding of necessity, provided that any such amendment of the Permit or Certificate shall be consistent with the requirements of 50 C.F.R. § 17.22( c)(5) or 50 C.F.R. § 17.32( c)(5), should the latter section become applicable.

### **11.1.3 Modification and Amendment of SHMA(s) and Certificates of Inclusion**

ADCNR-WFF and an enrolled landowner can seek amendment of the SHMA and associated Certificate by submitting a written request in the manner specified in 50 C.F.R. § 13.23, provided, however, that ADCNR-WFF can only effect such modifications and amendments that are minor. If, however, in accordance with the criteria in Section 11.1.1, ADCNR-WFF determines that the proposed modification/amendment constitutes a formal amendment, ADCNR-WFF shall immediately forward the requested amendment to the Service for review and processing and notify the enrolled landowner of such action.

The Service reserves the right to amend a SHMA and associated Certificate issued by ADCNR-WFF to an enrolled landowner for just cause at any time during the term of the Certificate, upon written finding of necessity, provided that any such amendment shall be consistent with the requirements of 50 C.F.R. § 17.22(c)(5) or 50 C.F.R. § 17.32( c)(5), should the latter section become applicable.

Minor modifications to a SHMA and associated Certificate shall include, but are not limited to the following: (a) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning; (b) correction or updating of any maps or exhibits; (c) correction or updating of information to reflect previously approved amendments or modifications to this Agreement and associated Permit, if applicable, and to the SHMA and associated Certificate; (d) minor changes to survey, monitoring, or reporting protocols; and, (e) conservation measures modified through adaptive management, if applicable.

## **11.2 Termination of the Agreement**

ADCNR-WFF may terminate this Agreement by providing the Service with at least a sixty (60) day advance written notice of such termination. ADCNR-WFF acknowledges that terminating the Agreement will result in a corresponding termination of its Permit and the loss of the regulatory assurances and RCW incidental take authority provided to ADCNR-WFF and its enrolled landowners through Certificates. ADCNR-WFF agrees to relinquish the Permit to the Service as soon as possible after terminating the Agreement.

The Service will not terminate this Agreement for any reason except for cause in accordance with the provisions of 50 C.F.R. §13.28(a)(1) through (4), 50 C.F.R. §17.22(c)(7) and 50 C.F.R. §17.22(c)(2)(iii) or in accordance with the laws and regulations in force at that time.



## **11.3 Termination of SHMAs**

### **11.3.1 Enrolled Landowner**

An enrolled landowner or its enrolled successor in interest must give ADCNR-WFF sixty (60) day written notice, by certified letter, of its intent to terminate a SHMA and give ADCNR-WFF and/or the Service an opportunity to relocate individuals of the covered species within thirty (30) days of such written notice. As provided for in Part 12 of the Service's Safe Harbor Policy (64 FR 32717), an enrolled landowner may terminate a SHMA prior to the expiration date of the SHMA for circumstances beyond the landowner's control. Provided that the baseline conditions have been maintained, the landowner, subject to the previously mentioned notice requirement and opportunity to relocate individuals of the covered species, may return the enrolled property to baseline conditions, even if the expected net conservation benefits have not been realized. If the landowner is unable to continue implementation of the management activities, plans and stipulations of the SHMA, whether due to catastrophic destruction of the species population numbers or habitat or due to unforeseen hardship, the landowner must relinquish its Certificate of Inclusion to ADCNR-WFF. Species management on the landowner's property would return to its status prior to the signing of the SHMA (i.e., original baseline). If a landowner has not returned its property to baseline conditions at the time of termination of its SHMA, and the number of RCW groups has increased, the additional groups will be protected by the take prohibitions of Section 9 of the ESA because the landowner's take authorization (via the Certificate of Inclusion) will have become invalid upon termination of the SHMA. If the landowner terminates a SHMA for any other reason, the Certificate of Inclusion shall immediately cease to be in effect.

### **11.3.2 ADCNR-WFF and the Service**

ADCNR-WFF has the right to cancel any SHMA where the landowner is found to be in non-compliance with the terms and conditions of their SHMA. If a landowner is found to be in non-compliance with their SHMA, ADCNR-WFF will issue a written letter of non-compliance to the landowner. The landowner shall have sixty (60) days from receipt of the letter to rectify the non-compliance issue(s). If the issue(s) is not resolved to the satisfaction of ADCNR-WFF by the end of the 60-day period, ADCNR-WFF shall terminate the landowner's SHMA and associated Certificate, which contain the landowner's assurances.

Should an enrolled landowner fail to comply with the terms of their SHMA, and ADCNR-WFF is unwilling and/or unable to terminate the landowner's SHMA, the Service reserves the right to utilize the provisions of the previous paragraph of this section at its discretion or to review and/or terminate the landowner's SHMA.

## **12.0 Permit Suspension or Revocation**

The Service will not terminate the Permit associated with this Agreement except for cause in accordance with the provisions of 50 C.F.R. §13.28(a)(1) through (4), 50 C.F.R. §17.22(c)(7) and 50 C.F.R. §17.22(c)(2)(iii) or in accordance with laws and regulations in force at the time of such suspension or revocation.

### **13.0 Renewal of Agreement**

This Agreement can be renewed with or without modification upon the approval of both Parties.

### **14.0 Renewal of SHMAs**

With the exception of SHMAs of short duration, ADCNR-WFF shall be authorized to renew any SHMA and Certificate with or without modification with the written approval of ADCNR-WFF and the enrolled participating landowner, provided that this Agreement and its associated Permit are still in effect and the duration of any SHMA and Certificate renewal will not exceed the duration of this Agreement. For SHMAs of short duration, ADCNR-WFF may be required to reevaluate the SHMA upon the landowner's notice of intent to renew or at the time of expiration to determine whether the SHMA will continue to provide a net conservation benefit. In such instances, additional conservation measures or conservation measures that are more extensive than those in the original SHMA may be required. In addition, the Service must not object to any SHMA renewal.

### **15.0 Succession and Transfer**

Enrolled landowners who enter into SHMAs with ADCNR-WFF shall have the right to transfer their rights and obligations under the SHMA to non-federal entities provided the landowner agrees to the following, which shall be part of all SHMAs. A landowner will be required to notify ADCNR-WFF by written certified letter at least thirty (30) days in advance of any such transfer or as soon as practicable, but prior to such transfer, if ownership of all or a portion of the enrolled property is to be transferred to another owner. If the enrolled landowner transfers full or partial ownership of the enrolled property, ADCNR-WFF and the Service will regard the new landowner as having the same rights and obligations as the enrolled landowner under the SHMA and the associated Certificate, if the new property owner agrees in writing to become a party to the original SHMA. Upon agreeing to become a party to the original SHMA, actions taken by the new property owner that result in the incidental take of above-baseline RCW group(s) would be authorized if the new landowner maintains the terms and conditions of the original SHMA and the associated Certificate. If the new landowner does not become a party to the SHMA, the new landowner would neither incur responsibilities under the Agreement nor receive any safe harbor assurances relative to this Agreement. If a new landowner agrees to become a party to the original SHMA and associated Certificate, the new landowner's baseline will remain the same as that of its predecessor landowner.

It will be the sole responsibility of the enrolled landowner to inform their successor(s) in interest or potential buyers that the property is enrolled under this Agreement. However, after any notification of change in ownership of the enrolled property, ADCNR-WFF, at its discretion, will attempt to contact the new or prospective landowner to explain the original SHMA, this Agreement, and determine whether the new landowner will become a party to the original SHMA, enter a new SHMA, or cease enrollment under this Agreement.

## **16.0 Cessation of Issuance of SHMA(s)**

The idea and expectation of this program is to maintain or increase the number of RCW groups in ADCNR-WFF. However, it is conceivable that existing groups will simply redistribute in a new configuration. This could occur if the habitat restoration undertaken as part of the SHMA(s) were to induce birds located in existing viable clusters to abandon those clusters and relocate to safe harbor managed habitat. If, despite efforts to ensure that the effect of this program is a net increase of RCW groups, ADCNR-WFF determines that the program is redistributing existing birds without any net benefit to RCW conservation, ADCNR-WFF, upon written notice to the Service, will cease entering into any new SHMA(s).

## **17.0 Neighboring Landowners**

The Parties recognize that the successful implementation of management actions on enrolled properties may impact neighboring landowners. The Parties also recognize that some landowners may be reluctant to initiate management actions that may have land, water, and/or natural resource use implications to neighboring landowners. Therefore, if an enrolled landowners voluntary conservation actions result in listed species occupying adjacent properties that are not enrolled in an SHMA, ADCNR-WFF and the Service will use the maximum flexibility allowed under the Service's Safe Harbor Policy to address that issue. In general, ADCNR-WFF and the Service will make every reasonable effort to include the neighboring landowner as a signatory party to the SHMA or to a separate SHMA and associated Certificate, using the procedure set forth in Section 6.0 of this Agreement. Other potential actions available to ADCNR-WFF and the Service include, but are not limited to, granting incidental take authority to owners of neighboring lands where occupation is a result of the SHMA.

## **18.0 Dispute Resolution**

The Parties agree to work together in good faith to resolve any disputes that might arise from this Agreement and/or any SHMA(s) entered into in accordance with this Agreement. The Parties also agree to engage in dispute resolution procedures if funding is available. See Section 19.0 of this Agreement.

## **19.0 Availability of Funds**

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 by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this Agreement to expend any Federal agency appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

## **20.0 Remedies**

Each Party shall have all remedies otherwise available to enforce the terms of this Agreement and the Permit.

## **21.0 No Third-Party Beneficiaries**

Neither this Agreement nor the associated SHMA(s) that will be entered into in accordance with this Agreement create any new right or interest in any member of the public as a third-party beneficiary. Neither this Agreement nor the associated SHMA(s) that will be entered into in accordance with this Agreement shall authorize anyone not a party to this Agreement and the associated SHMA(s) to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement and/or the associated SHMA(s). The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

## **22.0 Other Federally Listed Species**

Although ADCNR-WFF and the Service regard it as unlikely, the possibility exists that other listed, proposed, candidate species, or species of concern may occur in the future on properties enrolled under this Agreement as a direct result of the management actions specified herein. Should such occur, and ADCNR-WFF and/or the enrolled landowner so requests, the Parties may agree to amend the Agreement and any associated SHMA(s) to cover the additional species and to establish appropriate baseline conditions for other such species. Should the Parties decide to seek to amend the Agreement and/or any associated SHMA(s), the Service will follow the applicable legal requirements, including, but not limited to, the ESA, the National Environmental Policy Act, the Administrative Procedures Act, and the Service's Safe Harbor Policy and implementing regulations set forth in the Code of Federal Regulations.

Surveys for other federally listed species will not be required of SHMA participants in order to enroll under this original Agreement. However, they will be informed that according to Section 9 of the Act, they will be subject to restrictions against take of any Federally-listed animal not covered by their respective Certificates. Federally-listed plants are considered legal property of the landowner and, therefore, according to the Safe Harbor Policy, are not subject to "take" restrictions. If other Federally-listed species are known to exist on the enrolling property, then ADCNR-WFF and the Service will consult with and assist the landowner in tailoring his/her management actions to avoid take of the species and to minimize any disturbance to the species.

## **23.0 Conservation Banking**

Neither this Agreement nor an associated SHMA shall limit an enrolled landowner's ability to develop a conservation bank on their enrolled property. Landowners interested in pursuing this option must follow the Service's policy for the establishment, use, and operation of conservation banks.

## **24.0 Additional Conservation Measures**

Nothing in this Agreement shall be construed to limit or constrain either Party or an enrolled landowner from implementing management actions not provided in this Agreement as long as such actions maintain the original baseline conditions of the SHMA and do not affect the beneficial actions set forth in this Agreement and/or any associated SHMA.

## **25.0 National Historic Preservation Act - Section 106**

NOTE: THIS WILL BE DEVELOPED ON A STATE-BY-STATE BASIS IN CONCERT WITH RICHARD WARNER (ES STAFF ARCHAEOLOGIST)

Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 470 *et seq.*) requires Federal agencies to take into account the effects of their undertakings on properties eligible for inclusion in the National Register of Historic Places (NRHP). An undertaking is defined as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency, those carried out with federal financial assistance, those requiring a federal permit, license or approval, and those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency. The Service's proposed issuance of an enhancement of survival permit to ADCNR-WFF to support implementation of this Agreement is a federal undertaking subject to section 106 of the NHPA. As such, ADCNR-WFF and/or the Service must consult with the State Historic Preservation Officer (SHPO) and Federally recognized Native American Tribes, consider their comments on the potential impacts to historic properties resulting from the undertaking, and endeavor to incorporate their comments into project planning.

As part of NHPA compliance, the Service will define the Area of Potential Effects (APE) associated with the proposed undertaking (i.e., issuance of the enhancement of survival permit to ADCNR-WFF). The APE is the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties. The Service's determination regarding the APE and finding of effect is subject to comment from the SHPO and Federally recognized tribes.

The RCW Recovery Plan, 2<sup>nd</sup> Revision defines "cluster" as "the aggregation of cavity trees previously and currently used and defended by a group of RCWs, or this same aggregation of cavity trees and a 200-foot wide buffer of continuous forest." For the purpose of this Agreement the minimum area encompassing a cluster is 10 acres. This is generally the aggregate of cavity trees and a 200-foot buffer zone.

The Service has determined that the RCW cluster(s) that exist on an enrolled landowner's property at the time the landowner signs a SHMA (i.e. baseline clusters) are the APE(s) for this Agreement. This definition of the APE was based on the fact that, before enrolling in a SHMA, landowners can conduct any type of ground-disturbing activity outside of the baseline clusters as long as sufficient foraging habitat is maintained to support those clusters. Conversely, activities within existing clusters are significantly restricted due to the protections afforded RCWs by the

ESA. Therefore, the baseline clusters are the only areas in which adverse effects to historic properties, such as archaeological sites, could increase as a result of implementation of this Agreement. Any archaeological surveys conducted for NHPA compliance will be restricted to the area inside the APE, unless the enrolled landowner consents in writing to ADCNR-WFF or the Service to expand the survey boundaries.

The process that will be utilized by ADCNR-WFF to determine an enrolling landowner's responsibilities relative to the NHPA are set forth in Appendix 4 to this Agreement.

## **26.0 Access to Enrolled Landowners' Property**

It is also important for ADCNR-WFF and/or the Service to make occasional field visits to make certain the SHMA is being properly implemented, to identify any unanticipated benefits or deficiencies, and to assist enrolled landowners in developing corrective actions when necessary.

The landowner shall allow the Parties or other properly permitted persons designated by the Parties to enter the enrolled property for the general purposes specified in Title 50 Code of Federal Regulations § 13.21(e)(2) as well as for law enforcement purposes. Non-law enforcement personnel and non-law enforcement properly permitted and qualified persons designated by the Parties shall be allowed to enter upon the enrolled property at reasonable hours and times.

## **27.0 Subordination of SHMAs**

Each SHMA entered into under this Agreement shall be subordinate to this Agreement. This Agreement is incorporated by reference into each SHMA entered into under this Agreement.

## **28.0 Notices and Reports**

Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered in the prescribed manner to the persons listed below, as appropriate:

M. N. Pugh, Director  
Alabama Department of Conservation and Natural Resources  
Division of Wildlife and Freshwater Fisheries  
64 North Union Street  
Montgomery, AL 36130  
Phone: (334) 242-3465  
Fax: (334) 242-3032

Sam Hamilton, Regional Director  
1875 Century Blvd., Suite 400  
Atlanta, GA 30345  
Phone: (404) 679-4000  
Fax: (404) 679-4006

**29.0 Authorizing Signatures**

IN WITNESS WHEREOF, THE PARTIES HERETO have, as of the last signature below, executed this Safe Harbor Agreement to be in effect as of the date that the Service issues the associated Enhancement of Survival Permit.

\_\_\_\_\_  
M. N. Pugh  
Director, ADCNR-WFF

\_\_\_\_\_  
Date

\_\_\_\_\_  
Sam Hamilton, Regional Director  
U.S. Fish & Wildlife Service

\_\_\_\_\_  
Date

### **30.0 Glossary**

Active cavity- A completed cavity or start exhibiting fresh pine resin associated with cavity maintenance, cavity construction, or resin well excavation by a RCW.

Active cavity tree- Any tree containing one or more active cavities.

Active cluster- A cluster containing one or more active cavity trees.

APE- Area of potential effect

Artificial cavity- Cavities that are manually placed in selective trees (these can be drilled or inserts).

Baseline- The number of birds and/or foraging habitat that is present on non-federal land at the time of signing the SHMA.

Cavity tree- Any tree that has a hole excavated in it by a RCW. This can also be an artificial cavity.

Certificate of Inclusion- This will be the legal method of including non-federal landowners under ADCNR-WFF's Safe Harbor Permit.

Cluster- The aggregation of cavity trees previously and currently used and defended by a group of woodpeckers, or this same aggregation of cavity trees and a 200 foot wide buffer of continuous forest. Here, the second definition is used. For management purposes, the minimum area encompassing the cluster is 10 acres.

Covered species- The species for which Safe Harbor assurances are provided, in this case the red-cockaded woodpecker (*Picoides borealis*).

DBH- Diameter at breast height/ the height at which trees are typically measured (4.5 feet).

Enhancement of survival permit- A permit issued under the authority of section 10(a)(1)(A) of the ESA.

Enrolled property- The property described in Exhibit A of the enrolled landowner's SHMA, and afforded Safe Harbor assurances under the ADCNR-WFF Statewide RCW Safe Harbor Agreement.

ESA- Endangered Species Act

Growing season- Growing season is generally from March through October.

Inactive cluster- A cluster that contains no active cavity trees.

NHPA- National Historic Preservation Act

Non-growing season- Non-growing season is generally from November through February.



NRHP- National Register of Historic Places

Property Owner - Also known as the Cooperator for purposes of this Agreement, it is defined in 50 CFR 17.3

RCW- Red-cockaded Woodpecker

Recruitment cluster- A cluster of artificial cavities (usually 4) in suitable nesting habitat, located close to existing groups.

Restrictors- Metal plates used to prevent or repair enlargement of cavity entrances.

Service- U.S. Fish and Wildlife Service

SHA- Safe Harbor Agreement

SHMA-Safe Harbor Management Agreement

SHPO- State Historic Preservation Officer

USFWS- U.S. Fish and Wildlife Service

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# APPENDIX 1

## Safe Harbor Management Agreement For Alabama's Statewide Red-cockaded Woodpecker Safe Harbor Program

### I. Introduction

This Safe Harbor Management Agreement (SHMA), effective and binding on the date of last signature below, is between the Alabama Department of Wildlife and Fisheries (ADCNR-WFF) and the participating landowner, (Cooperator's Name) \_\_\_\_\_ (Cooperator) (hereinafter referred to as the Parties).

#### **SHMA/Tracking Number:**

\_\_\_\_\_ [ADCNR-WFF shall provide a tracking number for each SHMA it enters into.]

#### **SHMA Duration:**

The duration of this SHMA is for \_\_\_ years. This time period is believed sufficient to allow a determination that the net conservation benefit(s) specified in the SHMA will be met.

**This SHMA covers the following property:** The property covered by this SHMA is described in Section V.B of this document and delineated in Exhibit A to this SHMA. The property also shall be referred to as the "enrolled property" in accordance with the U.S. Fish and Wildlife Service's (Service) Safe Harbor Policy.

**This SHMA covers the following species:** Red-cockaded woodpecker (*Picoides borealis*) (RCW). The RCW, a Federally-listed endangered species, is the only species for which incidental take authority is sought under this SHMA and the associated Certificate of Inclusion (Certificate). For purposes of this SHMA, the RCW is considered the "covered species" as defined in the Service's Safe Harbor Policy.

### II. Authority and Purpose

Sections 2, 7 and 10 of the Endangered Species Act (ESA) of 1973, as amended, together with the ADCNR-WFF Statewide Red-Cockaded Woodpecker Safe Harbor Agreement (SHA) entered into between the Service and ADCNR-WFF and the associated Enhancement of Survival Permit (Permit) issued to ADCNR-WFF by the Service, are the authority that allow ADCNR-WFF and the Cooperator to enter into this SHMA.

The purpose of this SHMA is for the Parties to collaborate in order to implement conservation measures for the RCW on the enrolled property that will provide a net conservation benefit to the RCW in the State of Alabama. Under this SHMA, the Cooperator agrees to undertake the activities and procedures described herein on the enrolled property for the benefit of the RCW.

In association with this SHMA, the Cooperator will receive a Certificate of Inclusion (Certificate), which will allow the Cooperator to carry out lawful activity on the enrolled property that may result in the incidental take<sup>1</sup> of RCW(s) or RCW habitat that is above the Cooperator's baseline responsibilities, subject to all of the following:

1. The Cooperator agrees to maintain the baseline responsibilities/constraints specified in the SHMA;
2. The Cooperator agrees to provide for habitat enhancement activities also specified in the SHMA;
3. The Cooperator shall, via a certified letter, notify ADCNR-WFF at least 60-days prior to commencing any activities that may result in the incidental taking of RCWs; and
4. The Cooperator will provide ADCNR-WFF the opportunity to translocate affected non-baseline RCWs.

### **III. Net Conservation Benefits**

The Cooperator's voluntary conservation measures and management activities will provide one or more of the following net conservation benefits to RCWs on the enrolled property either immediately or in the near future:

1. currently occupied nesting and foraging habitat will be maintained at current levels to assist in meeting recovery goals and in maintaining population stability;
2. existing RCW populations will be increased through the installation of artificial nesting and roosting cavities;
3. new groups and populations of RCWs will be created through population expansion (naturally or via recruitment clusters) and translocation efforts;
4. RCW populations will be augmented through translocation of surplus sub-adults to acceptable recipient sites;
5. suitable RCW habitat will be enhanced, restored, and/or created on enrolled properties;
6. pine forest fragmentation will be decreased and habitat connectivity will be increased from habitat enhancement, restoration, and/or creation efforts;
7. information will be collected on RCW population productivity and demographics in Alabama; and
8. landowners' fear of having RCWs on their forest lands will be reduced through the implementation of outreach efforts, thereby minimizing the number of landowners who will intentionally manage against suitable RCW habitat.

The above specific net conservation benefit(s) will be provided to the RCW by the conservation measures and management activities of the Cooperator, as set forth below in Section IV A.

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<sup>1</sup> An incidental take is the "take" of any federally listed wildlife species that is incidental to, but not the purpose of, otherwise lawful activities (see definition of "take") [ESA section 10(a)(1)(B)]. For example, deliberately shooting or wounding a listed species would not be considered an incidental take. Conversely, the destruction of endangered species habitat for development generally would be construed as incidental and would be authorized by an Incidental Take Permit.

## **IV. SHMA Implementation**

### **A. Conservation Strategy/Measures**

The Cooperator agrees to enhance habitat for RCWs by allowing or providing for one or more of the following management activities:

1. Prescribed burning.
2. Implement forest management practices that enhance habitat for existing baseline groups or provide habitat for additional groups of RCWs (thinning, longer rotations, regeneration that favors pine species).
3. Providing hardwood midstory control.
4. Install artificial cavities in baseline and/or recruitment clusters.
5. Population management.
6. Future conservation measures as may be identified

See Section V for specific management activities that the Cooperator agrees to undertake<sup>2</sup>

### **B. Baseline Considerations**

The baseline conditions that will be maintained on the enrolled property are described below in Section V.

#### **1. RCW Surveys**

Unless all Parties have previously agreed upon the Cooperator's baseline, a baseline survey will be conducted prior to signing the SHMA to inventory all existing RCW groups to establish baseline responsibilities. The survey will only include RCWs, unless the Cooperator specifically requests other species to be surveyed. The Cooperator will be responsible for any costs associated with surveys (baseline or supplemental). The results of the surveys shall be the property of the Cooperator and shall be used only at the Cooperator's discretion. However, no SHMA will be signed until the baseline survey is reviewed and approved by ADCNR-WFF. Supplemental surveys as specified in Section C that are required prior to activities that may result in incidental take must be submitted to ADCNR-WFF at least sixty (60) days prior to commencing such activities.

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<sup>2</sup>The Cooperator will be required to describe the nature, extent, timing, and other pertinent details of the conservation measures that he/she will voluntarily undertake to provide a net conservation benefit, including a schedule for implementation of the conservation measures. The Cooperator will also describe how the conservation measures will benefit the RCW.

The first step in determining the baseline conditions is to determine if suitable RCW habitat exists on the landowner's property or if a known RCW group exists within one-half-mile of the property (landowner knowledge and the ALNHP database will be used to determine the distance to known sites). Suitable foraging habitat consists of pine or pine-hardwood (50 percent or more pine) stands 30 years of age or older (USFWS 2003). If this type of habitat is not present, and there are no RCW groups within one-half-mile of the property, further assessment is not necessary, and the landowner's baseline will be zero.

If a RCW group exists within one-half-mile of the landowner's property and the landowner has the responsibility of maintaining a portion of the foraging habitat for the RCW cluster, as required by the RCW Recovery Plan, 2<sup>nd</sup> Revision (USFWS 2003) that portion of the foraging habitat will be incorporated into the landowner's baseline.

RCWs select and require old-growth pines for cavity excavation. If suitable nesting habitat is present, the landowner will determine if RCW groups exist on their property. The landowner will conduct surveys for cavity trees in stands that contain suitable nesting habitat. The RCW Recovery Plan, 2<sup>nd</sup> Revision (USFWS 2003) identifies the forested stands that must be surveyed for RCW cavity trees, they include:

1. Pine and pine-hardwood stands over sixty (60) years of age.
2. Pine and pine-hardwood stands under sixty (60) years of age containing scattered or clumped pine trees over sixty (60) years of age.
3. Hardwood-pine over sixty (60) years of age adjacent to pine and pine-hardwood stands over thirty (30) years of age.
4. Pine stands containing saw-timber, including stands thought to be generally less than sixty (60) years of age, but containing scattered or clumped trees over sixty (60) years of age.

Accurate surveys are essential for determining baseline conditions. To limit undetected cavity trees and misjudged activity status, personnel experienced in the management and/or monitoring of the covered species should be used to conduct baseline surveys. Baseline numbers are subject to approval by ADCNR-WFF.

Potential nesting habitat (pines greater than or equal to sixty (60) years old) is surveyed by running line transects through stands and visually inspecting all medium-sized and large pines for evidence of cavity excavation by RCWs. Transects must be spaced so that all trees are inspected. Necessary spacing will vary with habitat structure and season from a maximum of 100 yards between transects in very open pine stands to 50 yards or less in areas with dense midstory. Transects should be run north-south, because many cavity entrances are oriented in a westerly direction (USFWS 2003).



When cavity trees are found, their location must be recorded in the field using a Global Positioning System unit, aerial photograph, and/or field map. Activity status, cavity stage (start, advanced start, or complete cavity), and any entrance enlargement also must be assessed and recorded at this time. If cavity trees are found, more intense surveying also must be conducted within 1500 feet of each cavity tree is conducted to locate all cavity trees in the area. Later, cavity trees are assigned into clusters based on observations of RCWs as described below (USFWS 2003).

A landowner who wishes to differentiate the number of active clusters in their baseline into the number of potential breeding groups and the number of solitary male groups will be required to complete group checks as described in the RCW Recovery Plan, 2<sup>nd</sup> Revision (USFWS 2003). To perform group checks, trained personnel experienced in the management and/or monitoring of the covered species approved by ADCNR-WFF, must track or “follow” each group for a half an hour to an hour, immediately after the birds exit their cavities in the morning, to determine group size. Group size is determined by observation of bird behavior and groups are classified as:

- a) two or more birds,
- b) solitary bird.

Groups of 2 or more birds that remain together and peacefully interact during the breeding season are assumed to represent potential breeding groups. ADCNR-WFF and the Service will ensure that landowners accurately classify RCW groups. Groups roosting extra-territorially in clusters occupied by one or more residents, captured clusters, and territorial conflicts can confuse the observer and result in erroneous group classification. If any doubt as to group membership exists, ADCNR-WFF will require the “follow” (described above) to be repeated and/or the “follow” time to be increased until all doubt as to the group membership is removed. Two observers may be necessary if two clusters are located very close together or if cavity trees within a cluster are spread over a large area.

Group checks are valid only if implemented during the breeding season. Groups of two or more birds at other times of the year may or may not represent potential breeding groups. The method is labor intensive (one group per observer per day at best) and complete population censuses are possible only in small populations or with multiple observers. Landowners unwilling or unable to perform group checks will assume each active cluster is occupied by a potential breeding group for their baseline responsibility. The Cooperator shall identify how the baseline was determined, when and how the baseline surveys were conducted, or if the baseline was established based on already-known information or other factors.

## **2. Baseline Responsibilities and Constraints**

A Cooperator with baseline responsibilities greater than zero (0) is required to provide all the overstory necessary to maintain RCW cavity trees and the foraging area for all RCW groups that were discovered on the enrolled property through the baseline survey of the Cooperator’s property. The Cooperator’s baseline responsibilities also may include providing foraging habitat for known groups of RCW on neighboring lands as described in the section addressing responsibility for foraging habitat for clusters on neighboring lands. A Cooperator whose

baseline has been determined to be zero (0) is not subject to the baseline responsibilities and constraints that follow.

Where applicable, a Cooperator's baseline responsibilities and constraints, as derived from the RCW Recovery Plan, 2<sup>nd</sup> Revision (USFWS 2003), are to:

1. Protect active and inactive cavities and cavity start trees, within active baseline clusters, from harvesting. ADCNR-WFF can provide assistance in locating and marking all cavity and start trees at its discretion. ADCNR-WFF and the Service must review on a case-by-case basis the removal of any other active or inactive cavity tree. In the event that the location of any active cavity tree(s) changes over time such that one or more cavity tree(s) becomes established within a construction areas, the landowner may be allowed to remove those cavity trees. For each active cavity tree removed in the construction area, a minimum of two (2) artificial cavities (drilled or inserts) must be installed elsewhere on the lot (at least 200 feet from the building site) four (4) months prior to initiation of construction
2. Manage each cluster as a timber stand comprising at least ten (10) contiguous acres, if currently present on the enrolled property, with the purpose of retaining potential cavity trees. If ten (10) contiguous acres are not currently present on the enrolled property, the Cooperator will retain all of the potential cavity trees within the cluster.
3. Maintain cluster boundaries of least two hundred (200) feet from a cavity tree.
4. Provide at least 50 ft<sup>2</sup> of basal area per acre of pine trees  $\geq 10$  inches in diameter at breast height (DBH) in active baseline clusters if the trees are currently present on the Cooperator's land.
5. Protect cavity trees from fire during prescribed burning. Precautions should be taken to minimize the risk of igniting cavity trees. Cooperators are required to rake litter at least ten (10) to twenty (20) feet away from the base of cavity trees, depending on the fuel load. Other precautions include wetting cavity trees or limiting burning to high moisture conditions. Any active cavities damaged by prescribed fire will be immediately replaced within the cluster boundaries by installing 2 artificial cavities (inserts or drilled).
6. Provide at least 3000 ft<sup>2</sup> of basal area in pine trees (including the trees in the cluster)  $\geq 10$  inches DBH for foraging habitat on a minimum of 75 acres, if the trees are currently present on the enrolled property. If 3000 ft<sup>2</sup> of basal area of pine trees  $\geq 10$  inches DBH are not available for foraging habitat, the landowner will maintain the existing pines inside the foraging area and provide the 3000 ft<sup>2</sup> of basal area of pine trees greater than ten (10) inches DBH as soon as possible. Foraging habitat for each RCW group must be contiguous to the cluster stand with no gaps between stands exceeding two hundred (200) feet.
7. Conduct timber harvesting within the active baseline clusters only between August 1<sup>st</sup> and March 31<sup>st</sup>, or as otherwise approved by ADCNR-WFF. If there is a need to harvest timber within an active cluster outside this window of time, the Cooperator should notify ADCNR-WFF thirty (30) days in advance of the desired starting harvest date. ADCNR-WFF will determine the stage of nesting activity within the cluster and advise the Cooperator of appropriate precautions. Timber harvesting is not permitted during nest initiation, when the female is in the process of laying eggs, when the nesting cavity contains viable eggs or young, or before the fledglings are capable of sustained flight. Possible exceptions to these prohibitions could be when emergency harvest is necessary due to insect infestations, natural disasters, or other disasters.

8. Refrain from constructing any new roads and/or utility right of ways within active baseline clusters.
9. Provide reasonable protection for RCW groups from human activities that may incidentally cause injury or death in active baseline clusters.
10. Take reasonable precautions when conducting silvicultural or other activities within active baseline clusters to avoid injury to cavity and cavity start trees. Reasonable precautions would include, but are not limited to, directional felling away from cavity trees, logging during dry conditions to minimize soil compaction, removing logs carefully to avoid scraping or otherwise damaging residual trees, and avoiding fire line plowing around cavity trees.

ADCNR-WFF will not require the Cooperator to abide by stricter habitat requirements for baseline groups of RCWs should the Service revise the guidelines for managing RCWs on private lands. Should the habitat requirements be reduced, this SHMA will be modified to reflect the new guidelines.

### **3. Baseline Responsibility for Foraging Habitat for Clusters on Neighboring Lands**

Where a RCW group exists within one-half-mile of the enrolled property and the Cooperator has the responsibility for maintaining a portion of the foraging habitat for that RCW cluster, as required by the RCW Recovery Plan, 2<sup>nd</sup> Revision, that portion of the foraging habitat will be incorporated into the Cooperator's baseline. The map, which is Exhibit B to this SHMA, shall identify known non-enrolled property RCW groups for which the Cooperator agrees to provide habitat as part of the Cooperator's baseline responsibilities. Exhibit B sets forth the Cooperator's responsibilities with respect to providing foraging habitat for such non-enrolled property groups.

### **4. Baseline Adjustment**

#### **a. Loss of Baseline Groups**

In spite of management and protection efforts, there may be circumstances, through no fault of the Cooperator, where groups that gave rise to the Cooperator's baseline responsibilities cease to exist on the enrolled property. If RCW baseline groups cease to exist on the enrolled property, the Cooperator will not be held accountable for the loss of the RCW baseline groups provided each of the following have occurred:

1. The RCW groups have remained absent from the enrolled property for a minimum of five (5) years;
2. The RCW cluster remains inactive for a minimum of five (5) years; and
3. The loss of the RCW baseline group occurred through no fault of the Cooperator and in spite of total compliance with this SHMA.

The Cooperator's RCW baseline can be reduced for each RCW group that meets all of the three (3) criteria listed above. However, the Cooperator must request a baseline reduction from ADCNR-WFF, in writing. The Cooperator also must allow ADCNR-WFF and/or the Service access to the enrolled property to conduct an investigation, if ADCNR-WFF and/or the Service so choose. If ADCNR-WFF and/or the Service determine that a group is eligible for removal

from the Cooperator's baseline, ADCNR-WFF will modify this SHMA and the associated Certificate to reflect the change in baseline responsibilities.

The Cooperator is not eligible for a reduction in baseline if a RCW group moves to a new cluster on the same enrolled property. The Cooperator can seek a reduction if a cluster moves onto neighboring property provided that the criteria above are satisfied. A Cooperator may be required, however, to provide foraging habitat if the owner on the neighboring property is unable to do so.

### **b. Shifting Baseline**

The Cooperator may, with ADCNR-WFF's consent, shift its baseline responsibilities to a new active cluster that has formed on the enrolled property subsequent to the signing of this SHMA. When a new active cluster is formed on the enrolled property, the new cluster may replace any other cluster harboring a group of similar or lesser demographic status (i.e., potential breeding pair can replace solitary bird or same sex groups) that was within the Cooperator's original RCW baseline responsibility provided each of the following conditions are met:

1. The Cooperator is in total compliance with this SHMA.
2. The Cooperator has maintained their baseline as specified in this SHMA.
3. The Cooperator has replaced:
  - a. A baseline potential breeding group with another potential breeding group; or
  - b. A baseline solitary bird group is replaced with either a potential breeding group or a solitary bird group.
4. The Cooperator has replaced a baseline potential breeding group with an above-baseline potential breeding group that has been in existence for at least six (6) months, including a breeding season (April to July), prior to the replacement.
5. The Cooperator has replaced baseline clusters with above-baseline clusters and will provide suitable nesting and foraging habitat as defined in the Standard for Managed Stability set forth in Appendix 5 of the RCW Recovery Plan, 2<sup>nd</sup> Revision (USFWS 2003).
6. The Cooperator has replaced solitary bird groups prior to replacing potential breeding groups when possible.
7. The Cooperator will maintain the entire foraging and nesting habitat needed for the new group.

ADCNR-WFF must concur in writing with a proposed baseline shift prior to the Cooperator's shifting his/her RCW baseline requirements from one group to another. ADCNR-WFF will exercise flexibility, where possible, upon the Service's concurrence, when considering requests for baseline shifts. Upon issuance of ADCNR-WFF's concurrence to transfer RCW baseline responsibilities, sufficient documentation (i.e., maps reflecting change) of the shift in baseline will be placed in the enrolled property's file at the ADCNR-WFF headquarters in Montgomery, AL.

## 5. Enhancement Activities for Baseline RCW Groups

The Cooperator agrees to undertake activities to maintain and enhance the habitat (foraging and nesting habitat) of all active baseline groups indicated on the map labeled Exhibit A.

1. The Cooperator agrees to manage active baseline clusters as follows:
  - a. maintain overstory stocking in a cluster between 50 and 80 ft<sup>2</sup> of pine basal area per acre ( $\geq$  10 inches DBH) if the trees are currently present or when they become available. Small areas of regeneration may occur within a cluster provided cavity entrances are not obstructed.
  - b. maintain hardwood basal area in a cluster below 10 ft<sup>2</sup> per acre. All hardwoods within fifty (50) feet of cavity trees will be removed.
  - c. maintain a minimum average spacing of 25 feet between trees within the cluster, except where closer spacing already exists and thinning is not permitted.
  - d. allow no hardwood midstory or, if a hardwood midstory is present, maintain it as sparse and less than seven (7) feet in height.<sup>3</sup>
2. The Cooperator agrees to maintain at least the minimum foraging habitat of 3000 ft<sup>2</sup> of basal area in pine trees that are at least thirty (30) years old with a DBH  $\geq$  10 inches on a minimum of 75 acres (including the cluster stand) for each active baseline cluster as follows:
  - a. maintain overstory stocking for foraging habitat between 40 ft<sup>2</sup> and 70 ft<sup>2</sup> of basal area per acre. Stands managed on an uneven-aged basis may have patches of regeneration or residual stands of older trees higher than 70 ft<sup>2</sup> of basal area per acre.
  - b. maintain average pine basal area of pines  $<$  10 inches DBH less than 20 ft<sup>2</sup> per acre.
  - c. limit total stand basal area, including overstory hardwoods, to less than 80 ft<sup>2</sup> per acre.
  - d. allow no hardwood midstory or, if a hardwood midstory is present, maintain it as sparse and less than seven (7) feet in height (See footnote 3).
3. The Cooperator could allow ADCNR-WFF and/or the Service as well as their respective agents to translocate surplus sub-adult RCWs off the enrolled property in order to augment other populations, if they so choose and such removal of sub-adults will not affect the Cooperator's baseline responsibilities.

## C. Incidental Take of Above-baseline Groups and/or Foraging and Nesting Habitat

Through the Certificate issued in association with this SHMA, the Cooperator shall be allowed to develop, harvest trees upon, or make any other lawful use of the enrolled property, even if such use results in the incidental take of above-baseline RCWs or RCW habitat, provided each of the following qualifications and conditions are met:

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<sup>3</sup> The RCW Recovery Plan's guidance on hardwood midstory refers to the hardwood midstory as a whole, which allows some flexibility for individuals of that midstory that may exceed seven (7) feet in height. The term sparse is used to describe the midstory of desirable RCW foraging habitat. A more subjective habitat assessment (i.e., sparse) allows land managers flexibility to account for the variability found within most forested systems. Additionally, prescribed burning and other activities to reduce brush and midstory competition will be required no more than once every other year after midstory is under control.

1. The Cooperator must be in total compliance with this SHMA.
2. The Cooperator must have maintained their RCW baseline as specified in this SHMA.
3. The Cooperator will only engage in take that is incidental to otherwise lawful activities.
4. The Cooperator will conduct a supplemental survey immediately (no more than one hundred-eighty (180) days but no less than thirty (30) days) prior to any activity, which may result in the incidental taking of above-baseline RCWs or RCW habitat, and provide ADCNR-WFF with the results of the survey thirty (30) days prior to the commencement of any such activity. Only the specific area that will be treated requires this supplemental RCW survey. However, no surveys will be required within one (1) year of the baseline survey, unless recruitment clusters have been established in the area that will be affected by this activity.
5. The Cooperator will engage in the proposed activities that could result in the incidental take of RCWs only during the non-reproductive season (August 1<sup>st</sup> through March 31<sup>st</sup> of the following year) unless otherwise authorized by ADCNR-WFF.
6. The Cooperator shall not undertake any activity that could result in the take of RCWs until the Cooperator has provided ADCNR-WFF with at least sixty (60) days notice of its intention to conduct such activity in order to allow ADCNR-WFF, the Service and/or their respective agents the opportunity to translocate the affected RCW group(s) to a suitable recipient site.

Notwithstanding the 60-day notice requirement in number 6 above, the landowner should provide as much notification to ADCNR-WFF as possible. Upon receipt of the landowner's notice, ADCNR-WFF will contact the Service's Ecological Services Field Office in Daphne, Alabama. ADCNR-WFF, the Service and/or their agents shall give a coordinated and concerted effort to respond to that notice. However, should ADCNR-WFF, the Service and/or their agents fail to respond to the Cooperator within the 60-day time frame, the Cooperator may proceed with the proposed activity.

Prescribed burning and installation of artificial cavities shall be allowed during the RCW nesting season if necessary for the continued survival of the group. Such action shall not require notification to ADCNR-WFF.

#### **D. Monitoring and Reporting**

ADCNR-WFF will annually provide the Cooperator with a template monitoring report to be completed by the Cooperator and returned to ADCNR-WFF by January 31<sup>st</sup> of each calendar year. Specifically, the Cooperator agrees that each monitoring report shall:

1. Identify the monitoring schedule by:
  - a. Submitting monitoring reports and denoting whether data provided is from the Cooperator, professional scientist or other specific individual or entity.
  - b. Identifying when the agreed upon conservation measures were or will be implemented and when the results were or will be evaluated.
2. Describe the implementation of the conservation measures by:
  - a. Identifying the conservation measures that the Cooperator agreed to perform during the annual monitoring period.
  - b. Identifying the conservation measures that were implemented during the annual monitoring period.

- c. Discussing any problems with the implementation of the conservation measures during the monitoring period.
- 3. Describe any incidental take that occurred during the reporting period including:
  - a. A description of the land-use activities that might result in incidental take of RCWs.
  - b. A discussion of the actual or potential incidental take expected for above-baseline RCWs and/or RCW habitat.
  - c. A description of the activities that returned or could be expected to return the enrolled property to baseline conditions.
- 4. Describe any new or above-baseline clusters discovered during the reporting period including:
  - a. A description of the conservation measures associated with the new or above-baseline clusters.
  - b. A map with the location(s) of all new cluster(s).
  - c. A description of the cluster (i.e., total number of cavities, cavity stages, activity status, species, and DBH of each cavity tree).

Each annual report also must include:

- 1. A description of any non-compliance issues with the SHMA as well as all measures employed by the Cooperator to remediate such non-compliance issues.
- 2. An accurate map depicting the entire enrolled property (noting any changes, additions, deletions, or other modifications) made to any portions of the property affected by implementation of the SHMA.
- 3. A summary of any modifications or amendments submitted and approved/denied during the reporting period, including a narrative summary of any changes made to the baseline responsibilities.
- 4. A description of any incidental take that occurred during the reporting period.
- 5. A report of all management activities conducted within the enrolled property for the reporting period, including hardwood control and methods used (i.e., mechanical, fire, herbicides), timber harvest, prescribed burning, cavity installations, acreage affected by the management activities, and RCW banding activities (i.e., band numbers and color combinations, age, sex, location, and dates of banding). The date that each action was conducted also shall be included in the annual report.

Each annual report must contain a certification from a responsible official who supervised or directed the preparation of the report. The certification shall read as follows:

*“Under penalty of law, I \_\_\_\_\_ certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted in this report is true, accurate, and complete.”*

### **E. Emergency Salvage Harvest Situations**

Emergency situations, such as natural disasters or insect infestations, may require that emergency (salvage) harvesting begin with less than sixty (60) days notice as set forth in the preceding section C. For above-baseline groups, the Cooperator shall notify ADCNR-WFF or its approved

agent in writing at least three (3) days prior to conducting an emergency harvest. ADCNR-WFF, the Service, and/or their respective agents shall have this 3-day time period to translocate above-baseline impacted birds. The Cooperator shall not initiate such harvest until three (3) days after ADCNR-WFF has received notice.

For emergency situations involving baseline groups/clusters, the Cooperator will notify ADCNR-WFF and/or the Service before emergency (salvage) harvesting begins. ADCNR-WFF and the Service will evaluate each case on an individual basis, and both ADCNR-WFF and the Service must concur on the appropriate management actions

## **F. Neighboring Landowners**

ADCNR-WFF and the Service recognize that the successful implementation of management actions on enrolled properties may impact neighboring landowners. Non-participating private landowners are not covered under the Cooperator's Certificate. If, however, the Cooperator's voluntary conservation actions result in listed species occupying adjacent properties, ADCNR-WFF and the Service will use the maximum flexibility allowed under the ESA to address the neighboring properties under the Cooperator's SHMA and associated Certificate. ADCNR-WFF and the Service's potential actions include, but are not limited to, granting take authority to owners of neighboring lands where occupation is expected as a result of the Cooperator's SHMA. Implications to neighboring landowners with non-enrolled lands will be determined on a case-by-case basis. In general, ADCNR-WFF and the Service will make every reasonable effort to include the neighboring landowner as a signatory party to the Cooperator's SHMA or to enter into a separate SHMA and Certificate with the neighboring landowner, using the procedures set forth in Section 6.1 of the ADCNR-WFF Statewide RCW SHA.

## **G. Succession and Transfer**

By signature of this SHMA, the Cooperator agrees to notify ADCNR-WFF in writing at least thirty (30) days in advance of the Cooperator's transfer of all or a portion of the Cooperator's interest in the enrolled property. ADCNR-WFF and the Service will regard the new owner of the enrolled property as having the same rights and obligations as the Cooperator under this SHMA, if the new property owner agrees in writing to become a party to the original SHMA. See Section 15.0 of the ADCNR-WFF Statewide RCW SHA.

It is the sole responsibility of the Cooperator to inform their successor(s) in interest or potential buyer(s) of the property that it is enrolled under this SHMA. Upon transfer of the property to another, ADCNR-WFF will attempt to contact the new landowner to explain the original SHMA and the ADCNR-WFF Statewide RCW SHA, to seek to interest the new owner in becoming a party to this SHMA, and, if necessary, to add the new owner as a party to this SHMA or to enter into a new SHMA with the new owner.

## **H. Assurances to Cooperators**

Through this SHMA and Certificate, ADCNR-WFF will provide the Cooperator with the regulatory assurances as set forth in Appendix 5 of the Agreement and issue the Cooperator a



Certificate containing the regulatory assurances language contained in Appendix 2 of the Agreement.

**I. Other Federally Listed Species**

Although ADCNR-WFF and the Service regard it as unlikely, the possibility exists that other listed, proposed, or candidate species, or species of concern may occur in the future on the enrolled property as a direct result of the management actions specified in this SHMA. Should such occur, and the Cooperator so requests, ADCNR-WFF shall notify and consult with the Service regarding any proposed amendment(s) to the ADCNR-WFF Statewide RCW SHA (See Section 22.0 of the ADCNR-WFF Statewide RCW SHA).

The Cooperator is not required to conduct surveys for other Federally-listed species. However, cooperators will be informed that according to Section 9 of the Act, they will be subject to restrictions against “take” of any Federally-listed animal not covered by the Cooperator’s Certificate. The term “take” as defined by the ESA, means to harass, harm, pursue, hunt, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Federally-listed plants are considered legal property of the landowner and according to the Service’s Safe Harbor Policy, are not subject to “take” restrictions.

**V. Specification of Cooperator’s Baseline Conditions and Management Actions**

**A. Baseline Numbers**

Number of potential breeding groups: \_\_\_\_\_  
Number of solitary groups: \_\_\_\_\_  
Number of active clusters: \_\_\_\_\_  
Number of inactive clusters: \_\_\_\_\_  
Amount of foraging habitat for each cluster: \_\_\_\_\_  
(attach additional pages)  
Amount of foraging habitat on neighbor’s property if any: \_\_\_\_\_

**B. Description of the Enrolled Property**

To follow is a complete description of the property, including current habitat conditions (such as pine stocking levels, understory, midstory and overstory densities) and total acreage, that is enrolled under and covered by this SHMA. Legal description(s) will be used if possible and a map of the property will be provided (attach additional pages if necessary).

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## Prescribed Fire

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree  
to conduct prescribed fires on a regular or recurring basis within areas of the enrolled property that are occupied RCW habitat. These areas will be maintained or enhanced by prescribed fire. This will provide an immediate net conservation benefit.

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree  
to conduct prescribed fires on a regular or recurring basis within areas of the enrolled property that are potentially suitable nesting or foraging habitat. The use of prescribed fire will restore or enhance the areas as RCW habitat. This will provide an immediate net conservation benefit.

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree  
to conduct prescribed fires on a regular or recurring basis within areas of the enrolled property that are currently unsuitable habitat, but, in this situation, I also agree to conduct the prescribed fires for a period sufficient for the habitat to either become occupied by RCWs or to become potentially suitable nesting or foraging habitat. The net conservation benefit will not be achieved until the areas where prescribed fires were conducted either become occupied by RCWs or become potentially suitable nesting or foraging habitat. This also means I may have to implement other conservation measures, such as a forest management strategy that could benefit RCWs, in order for a net conservation benefit to be achieved.

## Forest Management

An eligible forest management strategy or plan would include any of the following circumstances:

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree  
to implement or maintain a forest management strategy or plan that maintains or enhances occupied RCW habitat. This will provide an immediate net conservation benefit.

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree  
to implement or maintain a forest management strategy or plan that maintains or enhances existing habitat that is potentially suitable nesting or foraging habitat. This will provide an immediate net conservation benefit.

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree  
to implement or maintain a forest management strategy or plan that restores habitat to a condition that will, in the future, provide potentially suitable nesting or foraging habitat. The net conservation benefit will not be achieved until the areas where the forest management strategy or plan was implemented or maintained either become occupied by RCWs or become potentially suitable nesting or foraging habitat.

## **Hardwood Midstory Control**

\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree

to control hardwoods in occupied habitat through the use of mechanical or chemical methods or through the use of prescribed fire. This will provide an immediate net conservation benefit.

\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree

to control hardwoods in potentially suitable nesting or foraging habitat through the use of mechanical or chemical methods or through prescribed fire. This will provide an immediate net conservation benefit.

\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree

to control hardwoods on a regular or recurring basis within areas of the enrolled property that are currently unsuitable RCW habitat, but, in this situation, I also agree to control hardwoods for a period sufficient for the habitat to either become occupied by RCWs or to become potentially suitable nesting or foraging habitat. The net conservation benefit will not be achieved until the areas where hardwood control is conducted either become occupied by RCWs or become potentially suitable nesting or foraging habitat. This also means that I may have to implement other conservation measures, such as a forest management strategy that could benefit RCWs, in order for a net conservation benefit to be achieved.

\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree

to maintain herbaceous understory in pine forest stands on the enrolled property through the use of lawn mowing methods. Lawn mowing methods will include tractors with bush hogs cutting up to 1-inch hardwood saplings. Lawn mowing will provide an immediate net conservation benefit in occupied and potentially suitable nesting or foraging habitat. In unsuitable RCW habitat, the landowner will agree to mow for a period sufficient for the habitat either to become occupied by RCWs or to become potentially suitable nesting or foraging habitat. The net conservation benefit will not be achieved until the areas where mowing is conducted either become occupied by RCWs or become potentially suitable nesting or foraging habitat. This also means that I may have to implement other conservation measures, such as a forest management strategy that could benefit RCWs, in order for a net conservation benefit to be achieved.

## **RCW Cavity Installation and Maintenance**

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree

to install artificial cavities on the enrolled property in occupied clusters that are cavity-deficient (i.e., each RCW present does not have its own complete cavity in which to roost). This will provide an immediate net conservation benefit.

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree

to install restrictor plates and artificial cavities on the enrolled property such that each cluster has a minimum of four (4) complete, quality cavities. This will provide an immediate net conservation benefit.

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree

to install and maintain artificial cavities at appropriate sites on the enrolled property in potentially suitable, unoccupied nesting habitat and that at least four (4) complete cavities are installed per site. This will provide an immediate net conservation benefit.

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree  
to do cavity maintenance on natural and/or artificial cavities on the enrolled property. This will ensure that cavities do not go unused because of water or other deficiencies. This will provide an immediate net conservation benefit.

**RCW Population Management**

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree  
to translocate pairs of unrelated surplus sub-adults into unoccupied, suitable habitat on the enrolled property provided that such translocations are approved by ADCNR-WFF and the Service prior to their implementation. The net conservation benefit will be achieved upon the translocation of the surplus sub-adults to the recipient site(s).

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree  
to translocate surplus sub-adults into habitat on the enrolled property that is occupied by a single (male or female) RCW provided that such translocations are approved by ADCNR-WFF and the Service prior to their implementation. The net conservation benefit will be achieved upon the translocation of the surplus sub-adult(s) to the recipient site(s).

\_\_\_\_\_ YES, I agree \_\_\_\_\_ NO, I do not agree  
to allow ADCNR-WFF and/or the Service to remove surplus sub-adults from the enrolled property to augment other populations if such removal of sub-adults will not affect the landowner's baseline responsibilities. The net conservation benefit will be provided upon the removal of the surplus sub-adults by ADCNR-WFF and/or the Service.

**E. Time Frames for Management Actions**

The following are the time frames in which the Cooperator agrees to implement and maintain the management actions specified in the preceding Section D and the time that the management actions will remain in effect:

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**F. Other Conservation Measures**

If necessary, the Cooperator agrees to perform the following additional conservation measures for the RCW on the enrolled property:

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**G. Incidental Take**

The following incidental take of RCW(s) may be associated with the management actions that the Cooperator has agreed to undertake under this SHMA:

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Notwithstanding the foregoing, the Cooperator agrees that the proposed activities that may result in incidental take of RCWs will be **conducted only during the non-reproductive season (August 1<sup>st</sup> through March 31<sup>st</sup> of the following year)**, unless otherwise authorized by ADCNR-WFF.

**H. Returning to Baseline Conditions**

The following activities would be expected to return the enrolled property to baseline conditions. The Cooperator will also describe the extent of incidental take that would likely result from those activities:

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**I. Monitoring Schedule for the Enrolled Property**

The Cooperator agrees that the enrolled property will be monitored for the purposes set forth in Section IV(D) of this SHMA on the following basis:

Monthly: \_\_\_\_\_  
\_\_\_\_\_  
Yearly: \_\_\_\_\_  
\_\_\_\_\_  
Other: \_\_\_\_\_  
\_\_\_\_\_

The following person(s) will conduct the monitoring of the enrolled property: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Cooperator agrees to provide the required annual report to LWDF by January 31st each year that this SHMA is in effect.

**J. Conservation Benefits**

This SHMA will provide the following net conservation benefits: Check all that apply.

\_\_\_\_\_ Occupied nesting and foraging habitat are expected to be maintained at current levels, which will help maintain population stability.

\_\_\_\_\_ Existing RCW populations will increase through the installation and maintenance of artificial nesting and roosting cavities.

\_\_\_\_\_ New RCW groups and populations will be created naturally or via recruitment clusters and translocation efforts.

\_\_\_\_\_ RCW populations will be augmented through translocation of surplus sub-adults to acceptable sites.

\_\_\_\_\_ Suitable RCW habitat will be enhanced, restored, and/or created on the enrolled property.

\_\_\_\_\_ Pine forest fragmentation will decrease and habitat connectivity will increase as a result of habitat enhancement, restoration, and/or creation efforts.

\_\_\_\_\_ Information on RCW population productivity and demographics in Alabama will be obtained.

\_\_\_\_\_ The Cooperator’s fear of RCWs on their forest lands will be reduced through outreach efforts resulting from this SHMA, thus minimizing the number of landowners that would intentionally manage against suitable RCW habitat.

\_\_\_\_\_ Additional, list the benefit(s) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**F. Obtaining Other Necessary State and Federal Permits for Purposeful Take**

The Cooperator agrees that they and/or their agent must obtain any necessary state or federal permits to engage in purposeful take of RCW(s), such as capturing, banding, reintroducing, etc., if such is planned. The Cooperator agrees to provide a list of the names of the purposeful take permit holder(s) and the corresponding permit number(s) prior to the Cooperator engaging in any such activities on the enrolled property.

**VI. SHMA Management**

**A. Modification and Amendment of SHMA**

Either ADCNR-WFF or the Cooperator may propose modifications and amendments to this SHMA by providing notice to the other. Such notice shall include a statement of the reason for the proposed modification/amendment, possible effects to the RCW, and its anticipated effect(s) on operations under this SHMA. Proposed minor modifications and amendments to this SHMA must be provided to the other party in writing. The non-proposing party shall have sixty (60) days in which to evaluate and approve or disapprove the proposed minor modification/amendment. A proposed minor modification/amendment shall be deemed approved and effective sixty (60) days after receipt of written notice of the same, unless the non-proposing party provides in writing its disapproval of the proposed modification. If ADCNR-WFF determines, in accordance with Section 11.1.3 of the ADCNR-WFF Statewide RCW SHA, that the proposed modification/amendment constitutes a formal amendment, ADCNR-WFF shall immediately forward the requested amendment to the Service for review and processing and notify the Cooperator of such action.

Minor modifications to this SHMA shall include, but are not limited to the following: (a) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning; (b) correction or updating of any maps or exhibits; (c) correction or updating of information to reflect previously approved amendments to the Permit or modifications to the SHMA; (d) minor changes to survey, monitoring, or reporting protocols; and (e) conservation measures modified through adaptive management, if applicable.



## **B. Modification and Amendment of the Certificate of Inclusion**

The Cooperator can seek amendment of the associated Certificate by submitting a written request to ADCNR-WFF in the manner specified in 50 C.F.R. § 13.23, provided, however, that ADCNR-WFF can only effect such modifications and amendments that are minor. If, however, in accordance with Section 11.1.4 of the ADCNR-WFF Statewide RCW SHA, ADCNR-WFF determines that the proposed modification/amendment constitutes a formal amendment, ADCNR-WFF shall immediately forward the requested amendment to the Service for review and processing and notify the Cooperator of such action.

The same criteria for minor modifications set forth in the preceding section A are applicable to amendments of the associated Certificate.

The Service reserves the right to amend a Certificate issued by ADCNR-WFF to a Cooperator for just cause at any time during the term of the Certificate, upon written finding of necessity, provided that any such amendment shall be consistent with the requirements of 50 C.F.R. § 17.22( c)(5) or 50 C.F.R. § 17.32( c)(5), should the latter section become applicable.

## **C. Termination of SHMA**

### **1. By the Cooperator**

#### **11.3.1 Enrolled Landowner**

An enrolled landowner or its enrolled successor in interest must give ADCNR-WFF sixty (60) day written notice, by certified letter, of its intent to terminate a SHMA and give ADCNR-WFF and/or the Service an opportunity to relocate individuals of the covered species within thirty (30) days of such written notice. As provided for in Part 12 of the Service's Safe Harbor Policy (64 FR 32717), an enrolled landowner may terminate a SHMA prior to the expiration date of the SHMA for circumstances beyond the landowner's control. Provided that the baseline conditions have been maintained, the landowner, subject to the previously mentioned notice requirement and opportunity to relocate individuals of the covered species, may return the enrolled property to baseline conditions, even if the expected net conservation benefits have not been realized. If the landowner is unable to continue implementation of the management activities, plans and stipulations of the SHMA, whether due to catastrophic destruction of the species population numbers or habitat or due to unforeseen hardship, the landowner must relinquish its Certificate of Inclusion to the ADCNR-WFF. Species management on the landowner's property would return to its status prior to the signing of the SHMA (i.e., original baseline). Such termination would not affect the landowner's authorization under the Certificate of Inclusion to take any species individual or occupied habitat that is not part of the landowner's baseline at the time of termination of the SHMA. The landowner may terminate its SHMA due to circumstances beyond its control after giving the required notice. The landowner also may terminate the SHMA at any time for any other reason, but termination for reasons other than for circumstances beyond the landowner's control, shall extinguish the landowner's authority to take species or occupied habitat under the Certificate of Inclusion. If a landowner has not returned its property to baseline conditions at the time of termination of its SHMA, and the number of RCW groups

has increased, the additional groups will be protected by the take prohibitions of Section 9 of the ESA because the landowner's take authorization (via the Certificate of Inclusion) will have become invalid upon termination of the SHMA. If the Cooperator terminates a SHMA for any other reason, the Certificate of Inclusion shall immediately cease to be in effect.

## **2. By ADCNR-WFF and the Service**

ADCNR-WFF has the right to terminate this SHMA where the Cooperator is found to be in non-compliance with the terms and conditions of this SHMA. If the Cooperator is found to be in non-compliance with this SHMA, ADCNR-WFF will issue a written letter of non-compliance to the Cooperator. The Cooperator shall have sixty (60) days from receipt of the letter to rectify the non-compliance issue(s). If the issue(s) is not resolved to the satisfaction of ADCNR-WFF by the end of the 60-day period, ADCNR-WFF shall terminate this SHMA and the associated Certificate, which contain the regulatory assurances.

Should the Cooperator fail to comply with the terms of this SHMA, and ADCNR-WFF is unwilling and/or unable to terminate this SHMA, the Service reserves the right to utilize the provisions of the previous paragraph of this section at its discretion or to review and/or terminate this SHMA.

## **3. By Termination of the ADCNR-WFF Statewide RCW SHA**

Should the Service or ADCNR-WFF terminate the ADCNR-WFF Statewide RCW SHA, this SHMA shall also terminate concurrently with the effective date on which the ADCNR-WFF Statewide RCW SHA and associated Permit are terminated.

## **D. Suspension or Revocation of the Certificate**

The Service reserves the right to terminate the Certificate associated with this SHMA for cause in accordance with the provisions of 50 C.F.R. §13.28(a)(1) through (4), 50 C.F.R. §17.22(c)(7) and 50 C.F.R. §17.22(c)(2)(iii) or in accordance with laws and regulations in force at the time of such suspension or revocation.

## **E. Renewal of SHMA**

Unless this SHMA is determined by the Service and ADCNR-WFF to be one of short duration, ADCNR-WFF can renew this SHMA and the associated Certificate with or without modification. Such renewal will be effective upon the written approval of ADCNR-WFF and the Cooperator, provided the following conditions exist at the time of renewal: 1) the ADCNR-WFF Statewide RCW SHA and the associated Permit are still in effect; 2) the duration of the renewal does not exceed the duration of the ADCNR-WFF Statewide RCW SHA; and 3) the Service does not object to such renewal.

For SHMAs of short duration, ADCNR-WFF may be required to reevaluate the SHMA upon the Cooperator's notice of intent to renew or at the time of expiration to determine whether the SHMA will continue to provide a net conservation benefit to the RCW. In such instances,

additional conservation measures or conservation measures that are more extensive than those in this SHMA may be necessary.

#### **F. Access to Enrolled Property**

It is also important for ADCNR-WFF and/or the Service to make occasional field visits to make certain the SHMA is being properly implemented, to identify any unanticipated benefits or deficiencies, and to assist enrolled landowners in developing corrective actions when necessary.

The landowner shall allow the ADCNR-WFF and/or the Service or other properly permitted persons designated by ADCNR-WFF and/or the Service to enter the enrolled property for the general purposes specified in Title 50 Code of Federal Regulations § 13.21(e)(2) as well as for law enforcement purposes. Non-law enforcement personnel and non-law enforcement properly permitted and qualified persons designated by ADCNR-WFF and/or the Service shall be allowed to enter upon the enrolled property at reasonable hours and times.

#### **G. Financial Assistance**

If funds become available for managing RCWs on non-federal lands, ADCNR-WFF shall seek to give the Cooperator priority access to those funds to help offset the costs of undertaking enhancement activities. Any financial assistance given to the Cooperator must be used for current or future activities and not applied to past activities. Activities including, but not limited to, baseline surveys, midstory control, pre-commercial thinning, prescribed burning, artificial cavity installation, cavity maintenance and demographic monitoring can be considered for financial assistance.

#### **H. Additional Conservation Actions**

Nothing in this SHMA shall be construed to limit or constrain the Cooperator from implementing management actions not provided in this SHMA so long as such actions maintain the original baseline conditions and do not affect the beneficial actions set forth in this SHMA.

#### **I. Subordination of SHMA**

This SHMA is subordinate to the ADCNR-WFF Statewide RCW SHA, which is incorporated, in its entirety, by reference into this SHMA.

#### **J. Notices and Reports**

Any notices and reports, including monitoring and annual reports, required by this SHMA shall be delivered in the prescribed manner to the persons listed below, as appropriate:

M. N. Pugh, Director  
Alabama Department of Conservation and Natural Resources  
Division of Wildlife and Freshwater Fisheries

64 North Union Street  
Montgomery, AL 36130  
Phone: (334) 242-3465  
Fax: (334) 242-3032

**VII. Signatures and Information**

**Administrator:**

M. N. Pugh, Director  
Alabama Department of Conservation and Natural Resources  
Division of Wildlife and Freshwater Fisheries

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Cooperator:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Physical Address: \_\_\_\_\_

Cellular Phone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Exhibit A: Map of enrolled property

Exhibit B: Map of RCW clusters within 0.5 miles of the enrolled property (if any exist)

## APPENDIX 2

### CERTIFICATE OF INCLUSION in Alabama's Statewide Red-cockaded Woodpecker Safe Harbor Agreement and Enhancement of Survival Permit

This certifies that the property described as follows \_\_\_\_\_  
\_\_\_\_\_(description of the portion of the property covered by the Safe Harbor  
permit) owned by (Cooperator's name) \_\_\_\_\_, is  
included within the scope of Permit No. \_\_\_\_\_, issued by the U.S. Fish and Wildlife  
Service (Service) on \_\_\_\_\_(date) to the ADCNR-WFF, 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  
red-cockaded woodpecker (*Picoides borealis*) (RCW). 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 above-  
baseline RCWs, 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 ADCNR-WFF,  
and \_\_\_\_\_(Cooperator's name), on \_\_\_\_\_(date).

Additionally, this Certificate provides the landowners with the following regulatory assurances:

“If additional conservation measures are necessary to respond to unforeseen circumstances, the Service may require additional measures of the Permittee (and/or participating Cooperator(s)) only if such measures are limited to modifications within the SHMA's conservation strategy for the affected species, and only if those measures maintain the original terms of the SHMA (and Certificates issued therein) to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources available for development or use under the original terms of the SHMA (and Certificates issued therein) without the consent of the Permittee (and affected participating or affected Cooperator(s)).”

The Service will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The Service will consider, but not be limited to, the following factors:

- Size of the current range of the affected species;
- Percentage of range adversely affected by the Agreement;
- Percentage of range conserved by the Agreement;
- Ecological significance of that portion of the range affected by the Permit;
- Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the SHMA; and

- Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

These assurances allow the enrolled landowner to alter or modify the enrolled property, even if such alteration or modification results in the incidental take of the RCW to such an extent that the take returns the RCW to the originally agreed upon baseline conditions. These assurances may apply to the entire enrolled property or to portions of the enrolled property as designated or otherwise specified in the SHMA. These assurances are also contingent on the enrolled landowner's compliance with the obligations of the SHMA. Further, the assurances apply only to this particular SHMA, only if the SHMA is being properly implemented, and only with respect to species covered by the SHMA.

These authorizations and assurances expire on (Date Permit Expires)\_\_\_\_\_

---

(Date) (Name of Permittee)

---

(Date) (ADCNR-WFF Representative)

---

(Date) (Cooperator/Participating landowner)

# APPENDIX 3

## Annual Monitoring Report for the Safe Harbor Management Agreement Between The ADCNR-WFF and \_\_\_\_\_ (Cooperating landowner)

Cooperator's Name: \_\_\_\_\_  
Permit Tracking Number: \_\_\_\_\_ Baseline RCW Number: \_\_\_\_\_

Safe Harbor Management Agreement Approved By: ADCNR-WFF  
Covered Species: Red-cockaded woodpecker (*Picoides borealis*) (RCW)  
Physical Address of Property: \_\_\_\_\_  
\_\_\_\_\_

Signature of Cooperator: \_\_\_\_\_  
Date of Report Completion: \_\_\_\_\_  
For Period: \_\_\_\_\_

Summary of actions since last report. Please check all appropriate boxes.

### Section II. Habitat Management

Part I. Midstory Control	
Part II. Cavity Installation	
Part III. Recruitment Clusters	
Part IV. Total Management Acres	

### Section III. Population Status Data

Number Active Cluster Has Risen	
Number of RCWs Has Risen	

### Section IV. Competition/Predation

### Section V. Research

### Section VI. Injury and Mortality

### Section VII. Baseline of Zero

<sup>1</sup>For definitions of management and conservation actions see Attachment 1.

# Annual RCW Population Data Report

## Section I. Basic Site Information

A. Ownership (circle one): State    Private    Other (explain) \_\_\_\_\_

B. Site Name \_\_\_\_\_

C. Name of Individual Filling Out This Form \_\_\_\_\_

D. E-mail Address \_\_\_\_\_ E. Phone Number \_\_\_\_\_

Addresses:

F. Office responsible for monitoring if any:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

G. Reporting period: \_\_\_\_\_

H. Name of individuals/organization and phone numbers (list all individuals) if not an employee of the site, who:

H.1. Collected the RCW population monitoring data \_\_\_\_\_

Phone Number \_\_\_\_\_

H.2. Installed artificial cavities \_\_\_\_\_

Phone Number \_\_\_\_\_

H.3. Installed competition/predation devices \_\_\_\_\_

Phone Number \_\_\_\_\_

H.4. Translocated RCWs \_\_\_\_\_

Phone Number \_\_\_\_\_

H.5. Conducted any research indicated in Section VIII \_\_\_\_\_

Phone Number \_\_\_\_\_

**If your baseline is zero, move to Section VII.**



## **Section II. Habitat Management Data**

### **Part I. Midstory Control**

Was there any midstory control done on the property this reporting period? \_\_\_\_yes \_\_\_\_no  
If yes, complete A below, and if no, move on to Section I Part II.

A. Active and inactive clusters treated for midstory control/maintenance:

	Active	Inactive
Total treated (any method)	acres	acres
Number treated with fire	acres	acres
Number treated with chemicals	acres	acres
Number treated with mechanical means	acres	acres
Number treated manually	acres	acres

Total acres prescribed burned this reporting year

\_\_\_\_\_

Acres burned in growing season (generally March - October)

\_\_\_\_\_

Acres burned in non-growing season (generally November - February)

\_\_\_\_\_

### **Part II. Cavity Installation/Maintenance**

Were any new cavities installed on the property this year? \_\_\_\_yes \_\_\_\_no

If yes, answer questions B through K and if no, move on to Section I, Part III.

Were any cavities reconditioned/cleaned? Yes\_\_\_\_ No\_\_\_\_ If yes how many?

\_\_\_\_\_

#### **Questions B through E refer to ACTIVE clusters**

B. Number of active clusters where artificial cavities were installed  
(either drilled or inserts)

\_\_\_\_\_

C. Number of starts drilled in active clusters

\_\_\_\_\_

D. Number of drilled cavities installed in active clusters

\_\_\_\_\_

E. Number of inserts installed in active clusters

\_\_\_\_\_

**Questions G through K refer to INACTIVE clusters**

F. Number of inactive clusters where artificial cavities were installed  
(either drilled or inserts)  
\_\_\_\_\_

G. Number of starts drilled in inactive clusters  
\_\_\_\_\_

H. Number of drilled cavities installed in inactive clusters  
\_\_\_\_\_

I. Number of inserts installed in inactive clusters  
\_\_\_\_\_

J. Total number of inactive clusters available last January  
\_\_\_\_\_

K. Number of inactive clusters available last year that were active in reporting period  
\_\_\_\_\_

**Part III. Recruitment Clusters**

Were there any recruitment clusters established on the property this year? \_\_\_\_yes \_\_\_\_no  
If yes, answer questions L through R and if no, move on to Section I, Part IV.

L. Number of recruitment clusters established (established means  
artificial cavities/starts provisioned, midstory controlled, foraging habitat identified)  
\_\_\_\_\_

M. Number of drilled artificial cavities installed in recruitment clusters  
\_\_\_\_\_

N. Number of inserts installed in recruitment clusters  
\_\_\_\_\_

O. Number of starts drilled in recruitment clusters  
\_\_\_\_\_

P. Total number of recruitment clusters available for RCWs last reporting period  
\_\_\_\_\_

Q. Number of recruitment clusters established last reporting period that became  
active this year  
\_\_\_\_\_

R. Number of recruitment clusters noted in Part IV-Q with:

1. solitary birds \_\_\_\_\_

2. potential breeding pairs \_\_\_\_\_

3. unknown demography \_\_\_\_\_

4. captured status \_\_\_\_\_ (adjacent clusters occupied by one group)

**Part IV. Total Management Acres**

S. Total acres (nesting and foraging) that are designated for RCW management on your site? \_\_\_\_\_

**Section III. Population Status Data**

A. Number of Active Clusters	
B. Number of Active Cavity Trees	
C. Number of Potential Breeding Groups	
D. Number of Solitary Birds	

E. Year of last complete (100%) systematic survey for new RCW cavity trees/clusters on the site \_\_\_\_\_

F. Number of acres of the enrolled property systematically searched for new RCW cavity trees/clusters the year of this report (attach map of survey area) \_\_\_\_\_

G. Year of last complete (100%) status (active or inactive) survey of all known active and recruitment clusters \_\_\_\_\_

H. Percent of known active and recruitment clusters examined for status (active or inactive) the year of this report \_\_\_\_\_%

I. What is your site's population goal? \_\_\_\_\_ Number of active clusters \_\_\_\_\_

J. Number of above baseline RCW groups? \_\_\_\_\_

-----Notes-----

Cluster status definitions:

**Active:** 1 or more active cavities in the cluster during the breeding season of the reporting year.

**Inactive:** a cluster that is suitable for RCW occupancy and that has been active in the last 5 years, but has no active cavities during the breeding season of the reporting year.

**Recruitment:** reconditioned abandoned cluster, or newly created cluster, suitable for RCW occupancy and less than 5 years have elapsed since reconditioning or creation. Recruitment clusters become Active clusters upon breeding season occupancy.

**Abandoned:** a cluster that has not been active in the last 5 years, including recruitment clusters that were established greater than 5 years ago and have never been active. Abandoned clusters may also include clusters that have been inactive and not been managed for several years and are proposed for removal from long-term management. Abandoned clusters don't count as part of the monitoring obligation. All clusters proposed to be classified as abandoned should be submitted to the USFWS; permission is required from the US FWS to permanently eliminate them from management.

**Clusters Under Management:** all active, inactive and recruitment clusters (does not include deleted clusters).

**Definition of % sample** = # clusters checked for activity status ÷ # clusters under management x 100.

## **Section IV. Competition/Predation**

Were there any cavity restrictor plates installed on the property this year? \_\_\_\_yes \_\_\_\_no  
 If yes, answer A through I, if no, go to G.

	Restrictors <sup>1</sup>
A. Number of active clusters with this device on one or more trees	
B. Number of active cavity trees with this device	
C. Number of inactive clusters with this device on one or more trees	
D. Number of inactive cavity trees with this device	
E. Number of recruitment clusters with this device on one or more trees	
F. Number of recruitment cavity trees with this device	

G. Number of active clusters where flying squirrels were removed \_\_\_\_\_

G.1. Number of flying squirrels removed \_\_\_\_\_

H. Number of inactive clusters where flying squirrels were removed \_\_\_\_\_

H.1. Number of flying squirrels removed \_\_\_\_\_

I. Number of recruitment clusters where flying squirrels were removed \_\_\_\_\_

I.1. Number of flying squirrels removed \_\_\_\_\_

<sup>1</sup>Restrictors = Cavity Restrictors

## **Section V. Research**

Check each box that corresponds to research activities that are occurring in your RCW population. Also, answer any questions associated with each activity. Use additional copies of this sheet if more entries are required for any category. If the exact age of RCW(s) is unknown use the following age categories: adult, sub-adult, nestling, or unknown.

NOTE: All of the following activities require a U.S. Fish and Wildlife Service Section 10(a)(1)(A) permit.

### **Egg collections**

Total number collected \_\_\_\_\_ Number of nests involved \_\_\_\_\_

### **Birds placed in an aviary**

Band#      Number of days in aviary      Sex      Age      Release results

\_\_\_\_\_ provide above information for each bird placed in aviary

### **Radio transmitters attached**

Band#      Age      Sex

\_\_\_\_\_ provide above information for each bird with a transmitter attached

### **Chicks cross-fostered**

Number of nests involved \_\_\_\_\_ Number of chicks moved \_\_\_\_\_

### **Pit tags implanted**

Band#      Age      Sex

\_\_\_\_\_ provide above information for each bird with a pit tag implanted

### **Cameras installed in cavities or on or adjacent to cavity trees**

Number of nest cavities with cameras in them \_\_\_\_\_

Number of non-nest cavities with cameras in them \_\_\_\_\_

Number of cavity trees with cameras on them \_\_\_\_\_

**Section V (Continued). Research**

**Modified inserts installed**

- Number of active clusters with modified inserts \_\_\_\_\_
- Number of active cavity trees with modified inserts \_\_\_\_\_
- Number of inactive cavity trees with modified inserts \_\_\_\_\_
- Number of recruitment clusters with modified inserts \_\_\_\_\_
- Number of recruitment cavity trees with modified inserts \_\_\_\_\_

**Blood samples collected**

- Number of groups involved \_\_\_\_\_
- Number of adults sampled \_\_\_\_\_
- Number of chicks sampled \_\_\_\_\_

**Parasite and/or disease research**

- Number of groups involved \_\_\_\_\_
- Number of adults sampled \_\_\_\_\_
- Number of chicks sampled \_\_\_\_\_
- Number of cavities sampled \_\_\_\_\_

**Section VI. Injury and Mortality**

Section 10 permit holders please note that your permit contains separate requirements for immediate notification in case of injury or mortality. Please observe those reporting requirements in addition to the annual summary information requested below.

*A. Fill in the information below for each bird injured. For how injured, please choose one of the following: trapping, banding, research related (list specific cause), translocation, competition/predation device, artificial cavity (drilled or insert), other. If other, please provide an explanation.*

**Age of RCW injured**

<b><u>(Nestling, sub-adult, adult)</u></b>	<b><u>Sex</u></b>	<b><u>How injured</u></b>	<b><u>Date injured</u></b>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(add additional copies of this sheet if necessary)

**Section VII. Baseline of zero**

Number of above-baseline clusters \_\_\_\_\_  
Number of potential breeding pairs \_\_\_\_\_  
Number of solitary birds \_\_\_\_\_  
  
Number of acres where midstory was controlled \_\_\_\_\_  
Please describe method of control \_\_\_\_\_  
  
Number of recruitment clusters \_\_\_\_\_  
Number of artificial cavities in each recruitment cluster \_\_\_\_\_  
Number of artificial cavities that are inserts \_\_\_\_\_  
Number of artificial cavities that are drilled \_\_\_\_\_  
Number of artificial cavities where maintenance was performed \_\_\_\_\_  
Number of artificial cavities where restrictors<sup>1</sup> were installed \_\_\_\_\_  
\_\_\_\_\_

**Date Annual Report is Due:** On or before January 31st for the prior calendar year.

**Date Annual Report was Received:** \_\_\_\_\_

**Date Annual Report was Reviewed:** \_\_\_\_\_

**Signature of Reviewer:** \_\_\_\_\_

**Printed Name and Phone # of Reviewer:** \_\_\_\_\_

“Under penalty of law, I \_\_\_\_\_ certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted in this report is true, accurate, and complete.”

\_\_\_\_\_  
Signature of Reporter

\_\_\_\_\_  
Date

<sup>1</sup>Restrictors = Cavity Restrictors

## Attachment 1

### Management and Conservation Actions:

1. Prescribed Fire – The landowner shall maintain or increase his/her use of prescribed fire on the enrolled property under the following circumstances:
  - a) The landowner agreed to conduct prescribed fires on a regular or recurring basis within areas of the enrolled property that are occupied RCW habitat that will be maintained or enhanced by the prescribed fire.
  - b) The landowner agreed to conduct prescribed fires on a regular or recurring basis within areas of the enrolled property that are potentially suitable nesting or foraging habitat. The use of the prescribed fire will restore or enhance the areas as RCW habitat.
  - c) The landowner agreed to conduct prescribed fires on a regular or recurring basis in unsuitable RCW habitat, but, in this situation, the landowner also agreed to conduct the prescribed fires for a period of time sufficient for the habitat to either become occupied by RCWs or to become potentially suitable nesting or foraging habitat. The net conservation benefit will not be achieved until the areas where prescribed fires were conducted either become occupied by RCWs or become potentially suitable nesting or foraging habitat. This may also mean that the landowner may have to implement other conservation measures, such as a forest management strategy that could benefit RCWs, in order for a net conservation benefit to be achieved.
2. Forest Management – The landowner shall maintain or implement a forest management strategy or plan on the enrolled property that would provide the habitat RCWs require. In general, this entails the use of timber harvest rotations of greater than 30 years for foraging habitat and greater than 60 years for nesting habitat, the use of uneven-aged silvicultural treatments, and/or the integration of other management activities (e.g., burning or hardwood control) that are necessary to maintain the open, mature pine forests RCWs prefer. An eligible forest management strategy or plan would include any of the following circumstances:
  - a) The landowner agreed to implement or maintain a forest management strategy or plan that maintains or enhances occupied RCW habitat.
  - b) The landowner agreed to implement or maintain a forest management strategy or plan that maintains or enhances existing habitat that is potentially suitable nesting or foraging habitat.
  - c) The landowner agreed to implement or maintain a forest management strategy or plan that restores habitat to a condition that will, in the future, provide potentially suitable nesting or foraging habitat. The net conservation benefit will not be achieved until the areas where the forest management strategy or plan was implemented or maintained either become occupied by RCWs or become potentially suitable nesting or foraging habitat.
3. Hardwood Midstory Control – The Landowner agreed to control hardwood midstory encroachment in pine forest stands on the enrolled property through the use of mechanical or



chemical methods or through the use of prescribed fire and the hardwood midstory control will occur under any of the following circumstances:

- a) The landowner agreed to control hardwoods in occupied RCW habitat through the use of mechanical or chemical methods or through the use of prescribed fire.
- b) The landowner agreed to control hardwoods in potentially suitable nesting or foraging habitat through the use of mechanical or chemical methods or through prescribed fire.
- c) The landowner agreed to control hardwoods on a regular or recurring basis in unsuitable RCW habitat, but, in this situation, the landowner also agreed to control hardwoods for a period sufficient for the habitat to either become occupied by RCWs or to become potentially suitable nesting or foraging habitat. The net conservation benefit will not be achieved until the areas where hardwood control is conducted either become occupied by RCWs or become potentially suitable nesting or foraging habitat. This means that the landowner may have to implement other conservation measures, such as a forest management strategy that could benefit RCWs, in order for net a conservation benefit to be achieved.
- d) The landowner agreed to maintain herbaceous understory in pine forest stands through the use of lawn mowing methods. Lawn mowing methods will include tractors with bush hogs cutting up to 1-inch hardwood saplings. Lawn mowing will provide an immediate net conservation benefit in occupied and potentially suitable RCW nesting or foraging habitat. In unsuitable RCW habitat, the landowner agreed to mow for a period of time sufficient for the habitat to either become occupied by RCWs or to become potentially suitable nesting or foraging habitat. The net conservation benefit will not be achieved until the areas where mowing is conducted either become occupied by RCWs or become potentially suitable nesting or foraging habitat. This may also mean that the landowner may have to implement other conservation measures, such as a forest management strategy that could benefit RCWs, in order for a net conservation benefit to be achieved.

4. RCW Cavity Installation and Maintenance – The landowner agreed to install artificial cavities and/or maintain natural and artificial cavities on the enrolled property. The landowner agreed to maintain suitable cavities by installing restrictor plates and/or artificial cavities, which includes inserts and drilled cavities, on the enrolled property. The installation and maintenance of the cavities occurred under any of the following circumstances:

- a) The landowner agreed to install restrictor plates and/or artificial cavities on the enrolled property in occupied clusters that are cavity-deficient (i.e., each RCW present does not have its own complete cavity in which to roost).
- b) The landowner agreed to install restrictor plates and/or artificial cavities on the enrolled property such that each cluster has a minimum of four (4) complete, quality cavities.
- c) The landowner agreed to install and maintain artificial cavities at appropriate sites on the enrolled property in potentially suitable, unoccupied nesting habitat and at least four (4) complete cavities are installed per site.

5. RCW Population Management – The landowner agreed to implement certain population management activities on the enrolled property and the population management activities occurred under any of the following circumstances:
- a) The landowner agreed to translocate pairs of surplus sub-adults into unoccupied, suitable habitat on the enrolled property, and such translocations are approved by ADCNR-WFF and the Service prior to their implementation.
  - b) The landowner agreed to translocate surplus sub-adult(s) into RCW habitat on the enrolled property that is occupied by a single (male or female) RCW, and such translocations are approved by ADCNR-WFF and the Service prior to their implementation.
  - c) The landowner agreed to allow ADCNR-WFF and/or the Service to remove surplus sub-adults from the enrolled property to augment other populations if such removal of sub-adults will not affect the landowner's baseline responsibilities. The net conservation benefit will be provided upon the removal of the surplus sub-adults by ADCNR-WFF and/or the Service.

6. Future Conservation Measures – There may be a time in the future when the Service identifies a conservation measure that, based on future RCW research, is critical in the recovery of the RCW. In such event, ADCNR-WFF and the Service will allow enrolled landowner's, with concurrence from both ADCNR-WFF and the Service, to choose such conservation measure(s) as their voluntary RCW management action(s). The selection of any such measure(s) would provide an immediate net conservation benefit to RCWs.

## **APPENDIX 4**

### **National Historic Preservation Act-Section 106**

Note: WILL BE SPECIFIC TO EACH AGREEMENT – THIS IS HOW IT USUALLY READS:

The ADCNR-WFF will utilize the following processes to determine an enrolling landowner's responsibilities relative to the National Historic Preservation Act (NHPA):

1. Enrolling landowners with no active or inactive red-cockaded woodpecker (RCW) clusters on their property at the time of enrollment in a Safe Harbor Management Agreement (SHMA) will have no responsibility relative to NHPA, because there is no Area of Potential Effect (APE) (i.e., no baseline RCW clusters). Therefore, no archaeological surveys or further consultation between ADCNR-WFF and the U.S. Fish and Wildlife Service (Service) will be required.
2. Enrolling landowners, whose baseline clusters are known to not contain sites that are eligible or potentially eligible for the NRHP based on archaeological survey work conducted prior to or concurrent with the enrollment in the SHMA, will have no responsibility relative to NHPA, because there will be no adverse effects to NRHP eligible properties. The enrolling landowner shall provide ADCNR-WFF and/or the Service proper documentation of the finding of the archaeological survey. Consequently, no archaeological surveys or further consultation between ADCNR-WFF and/or the Service will be required. The enrolling landowner could undertake any management actions within the APE, including those that result in ground disturbance, provided that all other obligations in this Agreement and the enrolling landowner's SHMA have been satisfied.
3. In cases where previous archaeological survey work has not been conducted within the APE (i.e., baseline RCW clusters) or where enrolling landowners are incapable or unwilling to conduct the archaeological survey work necessary to determine the presence of historic properties, enrolling landowners who agree in the SHMA to avoid ground-disturbing activities within baseline clusters will have no responsibility relative to NHPA, because there will be no likely effects on historic properties even if they were present within the APE. Therefore, no archaeological surveys or further consultation between ADCNR-WFF and/or the Service would be required until and unless ground disturbing activities were planned in the APE. The voluntary limitation on ground-disturbing activities by the landowner would only apply to baseline clusters (i.e., a very small area in most cases and, aside from the larger, corporate timber owners, very few landowners will likely be affected). The following activities shall not be considered ground-disturbing relative to activities in the APE:

Forest site preparation, such as disking and planting of seedlings, that involves scarification or other soil disturbance if such soil disturbance is limited to the area within 8 inches of the soil surface (i.e., the area of the historic plow zone).

- a. Removal of trees by manual felling, mowing, use of herbicides, manual uprooting with hand tools, and prescribed burning when hand constructed fire breaks or existing features, such as ditches, levees, roads, water, firelines, and habitats, contain the fire and there is no excavation or plowing of new fire lines that penetrate deeper than 8 inches below the current soil surface.

- b. Timber harvest when removal of logs does not result in soil disturbance below 8 inches of the current soil surface.
- c. Maintenance of existing roads, such as grading, cleaning ditches, repairing, brushing, or replacing culverts, guards, and gates, within an RCW cluster if the maintenance occurs within the existing road profile (i.e., in the same location and maintaining the same width).
- d. Other activities which are non-ground disturbing, such as predator control, installation of artificial cavities or cavity restrictors, or any other activity in which soil disturbance is limited to the area within 8 inches of the soil surface (i.e., the area of the historic plow zone).

The following activities shall be considered ground disturbing:

- a. Soil disturbance, plowing, or excavation that extends more than 8 inches below the current soil surface, such as root raking, windrowing, and bedding.
- b. Skidding or cabling of logs, removal of hardwoods, or creation of firebreaks that creates ruts, ditches, or other soil disturbances which extend below 8 inches of the current soil surface.
- c. Construction of new roads, widening of existing roads, or road maintenance activities that involve the installation of new features outside of the road's existing profile.

4. Enrolling landowners whose activities identified in the SHMA will include unavoidable ground-disturbing activities within the APE (i.e., the baseline RCW clusters) must determine, with the assistance of the Alabama State Historic Preservation Officer (SHPO), ADCNR-WFF, and the Service, whether the APE has been surveyed for historic properties and whether sites eligible, potentially eligible, or are on the NRHP are known to exist within the APE. The initial step in this determination will be a query by either the SHPO, ADCNR-WFF, or the Service (these parties will decide on a case-by-case basis who will conduct this query) of the SHPO archaeological sites files to determine whether archaeological surveys of the APE have been conducted and, if so, whether or not any NRHP potentially eligible or eligible sites are located within the APE. If no archaeological surveys have been conducted within the APE, ADCNR-WFF and/or the Service shall determine if archaeological surveys are necessary (i.e., in some cases surveys may not be necessary due to the location of the APE on a landform that is unsuitable for historic properties) and, if surveys are necessary, discuss the survey requirements and other options (e.g., avoidance or protection) available with the enrolling landowner. Any necessary archaeological surveys must be conducted prior to implementation of the landowner's ground-disturbing activities.

All historic properties identified during surveys of the APE that are determined to be potentially eligible or eligible for the NRHP will be protected from ground-disturbing activities by the enrolled landowner pending an evaluation of the landowner's activities by ADCNR-WFF and/or the Service relative to NHPA. The enrolled landowner will submit to ADCNR-WFF and/or the Service a document or letter that outlines the landowner's planned activities within the APE, including the specific measures and/or silvicultural practices that would be conducted. This document will be used in the evaluation conducted by ADCNR-WFF and/or the Service to make

a determination of effect concerning the planned activities to the relevant historic property, which will include the identification of proposed measures to avoid or minimize adverse effects to the historic property. The determination of effect would then be sent to the SHPO for comment. ADCNR-WFF and/or the Service will consult with the SHPO on their determination of effect, and, if either receives concurrence from the SHPO, ADCNR-WFF and/or the Service will provide the enrolled landowner and/or their agent with recommendations to minimize adverse effects to the historic property within the APE.

## **Appendix 5**

### **Assurances to Enrolled Landowners**

The following assurances are provided to the ADCNR-WFF) and the Cooperator(s). The following shall be incorporated verbatim into each safe Harbor Management Agreement (SHMA):

“If additional conservation measures are necessary to respond to unforeseen circumstances, the Service may require additional measures of the Permittee (and/or participating Cooperator(s)) only if such measures are limited to modifications within the SHMA’s conservation strategy for the affected species, and only if those measures maintain the original terms of the SHMA (and Certificates issued therein) to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources available for development or use under the original terms of the SHMA (and Certificates issued therein) without the consent of the Permittee (and affected participating landowner(s)).”

The U.S. Fish and Wildlife Service will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The U.S. Fish and Wildlife Service will consider, but not be limited to, the following factors:

- Size of the current range of the affected species;
- Percentage of range adversely affected by the Agreement;
- Percentage of range conserved by the Agreement;
- Ecological significance of that portion of the range affected by the Permit;
- Level of knowledge about the affected species and the degree of specificity of the species’ conservation program under the Agreement; and
- Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

These assurances allow the enrolled landowner to alter or modify the enrolled property, even if such alteration or modification results in the incidental take of the RCW to such an extent that the take returns the RCW to the originally agreed upon baseline conditions. These assurances may apply to the entire enrolled property or to portions of the enrolled property as designated or otherwise specified in the SHMA. These assurances are also contingent on the enrolled landowner’s compliance with the obligations of the SHMA. Further, the assurances apply only to this particular SHMA, only if the SHMA is being properly implemented, and only with respect to species covered by the SHMA.