



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R1–ES–2017–N161; FXES1114010000–189–FF01E00000]**

**Proposed Graysmarsh Safe Harbor Agreement for the Taylor’s Checkerspot  
Butterfly, Clallam County, Washington**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** Graysmarsh, LLC, hereafter referred to as the applicant, has applied to the U.S. Fish and Wildlife Service (Service, us) for an enhancement of survival permit (permit) pursuant to the Endangered Species Act of 1973, as amended. The permit application includes a draft safe harbor agreement (SHA). The permit would authorize incidental take of the endangered Taylor’s checkerspot butterfly. We have prepared a draft environmental action statement (EAS) for our preliminary determination that the SHA and permit decision may be eligible for categorical exclusion under the National Environmental Policy Act (NEPA). We invite the public to review and comment on the permit application, draft SHA, and the draft EAS.

**DATES:** To ensure consideration, please send your written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may view or download copies of the draft SHA, and draft EAS and obtain additional information on the internet at <http://www.fws.gov/wafwo/> or obtain hard copies or a CD-ROM by calling the phone number listed below. You may submit

comments or requests for more information by any of the following methods:

- *Email*: wfwocomments@fws.gov. Include “Graysmarsh SHA” in the subject line of the message.

- *U.S. Mail*: Mark Ostwald, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Southeast, Suite 102, Lacey, WA 98503.

- *In-Person Drop-off, Viewing, or Pickup*: Call 360–753–9564 to make an appointment (necessary for viewing/pickup only) during regular business hours at Washington Fish and Wildlife Office (address above).

**FOR FURTHER INFORMATION CONTACT:** Mark Ostwald, U.S. Fish and Wildlife Service (by mail at the address in **ADDRESSES**), telephone 360–753–9564. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** Graysmarsh, LLC, hereafter referred to as the applicant, has applied to the U.S. Fish and Wildlife Service (Service, us) for an enhancement of survival permit (permit) pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; ESA), as amended. The permit application includes a draft safe harbor agreement (SHA), which covers 1,105 acres managed by the applicant in Clallam County, Washington. The proposed term of the permit and the SHA is 50 years. The permit would authorize incidental take of the endangered Taylor’s checkerspot butterfly (*Euphydryas editha taylori* (TCB)) in exchange for habitat conservation actions that are expected to provide a net conservation benefit for the species. We have prepared a draft environmental action statement (EAS) for our preliminary determination that the SHA and permit decision may be eligible for

categorical exclusion under the National Environmental Policy Act (43 U.S.C. 4321 et seq.; NEPA). We invite the public to review and comment on the permit application, draft SHA, and the draft EAS.

## **Background**

SHAs are intended to encourage private or other non-Federal property owners to implement beneficial conservation actions for species listed under the ESA. SHA permit holders are assured that they will not be subject to increased property use restrictions as a result of their proactive actions to benefit listed species. Incidental take of listed species is authorized under a SHA permit pursuant to the provisions of section 10(a)(1)(A) of the ESA. For an applicant to receive a permit through an SHA, the applicant must submit an application form that includes the following:

(1) The common and scientific names of the listed species for which the applicant requests incidental take authorization;

(2) A description of how incidental take of the listed species pursuant to the SHA is likely to occur, both as a result of management activities and as a result of the return to baseline; and

(3) A description of how the SHA complies with the requirements of the Service's Safe Harbor policy.

For the Service to issue a permit, we must determine that:

(1) The take of listed species will be incidental to an otherwise lawful activity and will be in accordance with the terms of the SHA;

(2) The implementation of the terms of the SHA is reasonably expected to provide a net conservation benefit to the covered species by contributing to its recovery, and the

SHA otherwise complies with the Service's Safe Harbor Policy (64 FR 32717, June 17, 1999);

(3) The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species;

(4) Implementation of the terms of the SHA is consistent with applicable Federal, state, and tribal laws and regulations;

(5) Implementation of the terms of the SHA will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit; and

(6) The applicant has shown capability for and commitment to implementing all of the terms of the SHA.

The Service's Safe Harbor Policy (64 FR 32717) and the Safe Harbor Regulations (68 FR 53320, 69 FR 24084) provide important terms and concepts for developing SHAs. The Service's Safe Harbor policy and regulations are available at the following web site: <http://www.fws.gov/endangered/laws-policies/regulations-and-policies.html>.

### **Proposed Action**

The applicant has submitted a draft SHA for the TCB that covers approximately 1,105 acres of land (enrolled property) in Clallam County, Washington. The enrolled property is primarily operated as a commercial lavender and berry farm ("u-pick farm"), and a private recreational area and homestead. There are also some non-agricultural areas of mowed grasslands, marsh, and forest.

The applicant worked closely with the Service to establish the baseline and develop the SHA. Habitat surveys for the TCB have shown there are 40.5 acres of TCB

baseline habitat within the enrolled property. The baseline habitat contains three habitat types: upland grass and forb occupied by the covered species (15.3 acres), and a buffer consisting of emergent marsh/wetland (18.7 acres) and beach upland (6.5 acres). For specific details about baseline conditions, see the draft SHA.

Within the 40.5 acres, the applicant will perform habitat management activities for the benefit of the TCB. Within the area occupied by the TCB, the applicant will maintain and potentially enhance habitat. This will include annual hand removal of Scotch broom (*Cytisus scoparius*) until it is considered eradicated. Additional non-desirable vegetation may also be removed if necessary. Plantings of certain vegetation to benefit the TCB may also occur. The applicant will maintain fencing and signage to impede illegal public trespass onto baseline habitat.

The applicant will conduct annual surveys of the TCB during its flight period and also monitor the status of baseline habitat relative to the metrics described in the SHA. Additional monitoring will also include observations regarding public access, describing any research and data collection, and any emerging issues that could influence the success of the SHA. The applicant will monitor and report in years 1, 3, and 5 of the SHA, and every 3 years thereafter (except for adult TCB surveys, which will be conducted annually).

These activities will require the applicant to enter habitat occupied by the TCB as needed over the course of the year, but mainly during the spring flight season for the TCB. Depending on the timing, these activities could result in take of TCB larva and possibly adult butterflies, mainly as a result of inadvertent trampling. Continued removal of Scotch broom and other invasive plant species and the planting of target host plants

could result in temporary disturbance of TCB habitat and also result in take if TCB is present in the affected areas. The timing and extent of these activities will occur in a manner to minimize incidental take. There is also a low potential for take of TCB to occur within other areas of the property as a result of interactions between agricultural activities and adult butterflies. Examples of the potential for incidental take include inadvertent harm during routine agricultural operations, mainly associated with annual seeding (plowing and disking) of barley, mowing lawns, moving and replacing irrigation lines, and managing and harvesting berries.

### **National Environmental Policy Act Compliance**

The development of the draft SHA and the proposed issuance of an enhancement of survival permit is a Federal action that triggers the need for compliance with the NEPA (42 U.S.C. 4321 et seq.). We have prepared a draft EAS to analyze the impacts of permit issuance and implementation of the SHA on the human environment in comparison to the no-action alternative. We have made a preliminary determination that issuing the permit and implementing the SHA would have minor or negligible impacts to the environment, and thus the proposed SHA and permit actions are eligible for categorical exclusion under NEPA. The basis for our preliminary determination is contained in the EAS, which is available for public review (see **ADDRESSES**).

### **Public Comments**

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, new information, or comments from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested party via this notice on our proposed Federal action.

## **Public Availability of Comments**

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All comments received from organizations, businesses, or individuals representing organizations or businesses are available for public inspection in their entirety. Comments and materials we receive will be available for public inspection by appointment, during normal business hours, at our office (see **ADDRESSES**).

## **Next Step**

The Service will evaluate the permit application, draft SHA, and public comments submitted thereon to determine whether the permit application meets the requirements of section 10(a)(1)(A) of the ESA and NEPA regulations. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and full consideration of all comments received during the comment period. If we determine that all requirements are met, we will issue the applicant an enhancement of survival permit under section 10(a)(1)(A) of the ESA.

**Authority**

We provide this notice pursuant to section 10(c) of the ESA (16 U.S.C. 1531 et seq.), its implementing regulations (50 CFR 17.22), and NEPA (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR 1506.6).

**Theresa E. Rabot,**

*Deputy Regional Director, Pacific Region,*

*U.S. Fish and Wildlife Service.*

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