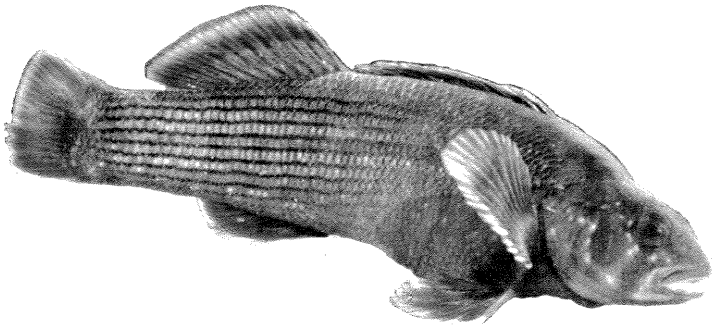
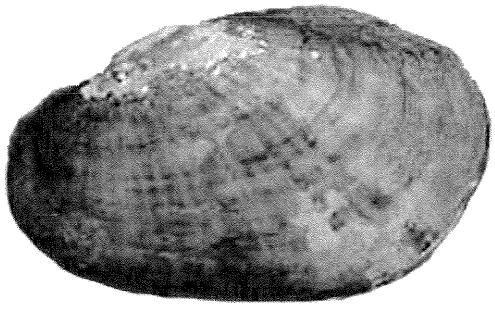
PROGRAMMATIC SAFE HARBOR AGREEMENT And PROGRAMMATIC CANDIDATE CONSERVATION AGREEMENT WITH ASSURANCES

for the Speckled Pocketbook and Yellowcheek Darter in the upper Little Red River Watershed, AR





BETWEEN THE ARKANSAS GAME & FISH COMMISSION, THE NATURE CONSERVANCY'S ARKANSAS FIELD OFFICE, NATURAL RESOURCES CONSERVATION SERVICE, AND THE U.S. FISH AND WILDLIFE SERVICE

The Nature Conservancy

SAVING THE LAST GREAT PLACES ON EARTH

NRCS Natural Resources Conservation Service

PROGRAMMATIC SAFE HARBOR AGREEMENT
AND
PROGRAMMATIC CANDIDATE CONSERVATION AGREEMENT

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1.0 Introduction

This Agreement is part of an application for an Enhancement of Survival Permit (Permit) associated with a programmatic Safe Harbor Agreement (SHA) for the endangered speckled pocketbook (*Lampsilis streckeri*) and an application for a Permit associated with a programmatic Candidate Conservation Agreement with Assurances (CCAA) for the yellowcheek darter (*Etheostoma moorei*). Both the SHA and CCAA and associated Permit will target non-federal lands in the upper Little Red River Watershed of Arkansas whose owners are willing to engage in voluntary conservation actions for the two species.

This Agreement has elements encompassing the regulatory requirements of both the Safe Harbor and the Candidate Conservation Agreement with Assurances programs available under the Endangered Species Act (ESA). This Agreement, effective and binding on the date of the last Party signature, is between the Arkansas Game and Fish Commission (AGFC), The Nature Conservancy (TNC), Natural Resources Conservation Service (NRCS), and U. S. Fish and Wildlife Service (FWS), hereinafter collectively called the "Parties".

This Agreement incorporates conservation actions that are designed to benefit both of the covered species. However, because of the differences in the implementing regulations governing SHAs and CCAAs (and the associated issuance criteria for the associated ESA authorities for issuance of a Permit), this Agreement consists of two distinct program components, a SHA and a CCAA. The administration of each of the components is governed, however, by this Agreement.

The Parties who will implement this Agreement are:

AGFC: Director
2 Natural Resources Drive
Little Rock, Arkansas 72205
(501)776-0218 (Voice)
(501)223-6461 (Fax)

TNC: State Director
601 North University Ave.
Little Rock, AR 72205
(501)663-6699(Voice)
(501)663-8332 (Fax)

NRCS: State Conservationist
Room 3416 Federal Bldg, 700 W. Capitol
Little Rock, AR 72201
(501)301-3173 (Voice)
(501)301-3188 (Fax)

FWS: Supervisor, Arkansas Ecological Services Office
110 South Amity Road, Suite 300
Conway, Arkansas 72032
(501)513-4470 (Voice)
(501)513-4480 (Fax)

SHA Tracking Number: TE 138910
CCAA Tracking Number: TE 138911

Agreement Duration: The duration of this Agreement is thirty (30) years. The duration of the Permit issued in conjunction with approval of the Agreement will be thirty-five (35) years.

This Agreement covers the following property: All eligible non-federal lands within the upper Little Red River watershed ("covered area"): Cleburne, Pope, Searcy, Stone, and Van Buren Counties in north central Arkansas. Once enrolled under the procedures outlined herein, the affected lands will be considered "enrolled property" as defined in the FWS' Safe Harbor Agreement Final Policy (USFWS and NMFS 1999) and/or as defined in the FWS' Candidate Conservation Agreement with Assurances Final Policy (USFWS and NMFS 1999).

Upon entering into a Property Owner Management Agreement (POMA)[1], a non-federal landowner will become a "Cooperator" for purposes of this Agreement.

This Agreement covers the following species:

Speckled Pocketbook (*Lampsilis streckeri)* – This species was listed as endangered under the ESA on February 28, 1989.

Yellowcheek darter (*Etheostoma moorei)* – This species was elevated to its current status as a candidate species in October 2001.

Collectively, these are known as the "covered species" as defined in the FWS' Safe Harbor Agreement Final Policy (USFWS and NMFS 1999) and/or as defined in the FWS' Candidate Conservation Agreement with Assurances Final Policy (USFWS and NMFS 1999).

2.0 Authority and Purpose

2.1 Authority

Sections 2, 7, and 10 of the ESA, and the Fish and Wildlife Coordination Act allow the FWS to enter into this Agreement. Section 2 of the ESA states that encouraging 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 FWS to review programs that it administers and to utilize such programs in

[1] Property Owner Management Agreements are described and discussed in Part 6 of this Agreement.

furtherance of the purposes of the ESA, and section 10(a)(1) of the ESA authorizes the FWS' issuance of permits. This Agreement, which is entered into pursuant to the FWS' Final Safe Harbor Policy (64 *Federal Register* 32717) and the implementing regulations for Safe Harbor Agreements at 50 CFR 17.22(d) and 50 CFR 17.32(d), implements the intent of the Parties to follow the procedural and substantive requirements of section 10(a)(1)(A) of the ESA. By entering into this Agreement, the FWS, in collaboration with the other Parties, is utilizing the Safe Harbor Program to further the conservation of the Nation's fish, wildlife, and plants.

Further, this Agreement is entered into pursuant to the FWS' CCAA final policy (64 *Federal Register* 32726) and the implementing regulations for CCAAs at 50 CFR 17.22(d) and 50 CFR 17.32(d), and implements the intent of the Parties to follow the procedural and substantive requirements of section 10(a)(1)(A) of the ESA. By entering into this CCAA, the FWS is utilizing its Candidate Conservation Program to further the conservation of the Nation's fish, wildlife, and plants.

2.2 Purpose

The purpose of this Agreement is for the Parties to implement conservation measures for the covered species in the upper Little Red River watershed: Cleburne, Pope, Searcy, Stone, and Van Buren Counties in north central Arkansas. The conservation measures will be implemented by the Parties and by Cooperators, and will generally consist of stream, riparian zone, and watershed protection and restoration (e.g. bank stabilization, fencing, tree planting), reintroduction, and management of habitat.

The purpose of the programmatic aspects of this Agreement is to ensure that a consistent use of biological performance standards is available to all interested non-federal landowners within the affected watershed. All of the signatory parties have an interest in using existing programs and partnerships throughout the covered area to advance the purposes of this Agreement and to provide financial and technical assistance (where available) to interested landowners willing to conduct voluntary conservation measures that benefit the covered species, water quality, and general habitat conditions. Additionally, this Agreement between the Parties is to facilitate collaboration between the Parties and Cooperators in the implementation of conservation measures for covered species.

3.0 Conservation Goals and Objectives

The conservation goals of this Agreement are to protect, enhance, and expand habitat availability (stream bed and banks), reduce sediment and pollutant runoff thereby enhancing water quality and instream habitat (water and stream bed) and allow for subsequent natural population expansion or, if necessary, reintroduction of the covered species in the upper Little Red River watershed. Under this Agreement, Cooperators adjacent to the Archey, Middle, South, and Devils (including Turkey and Beech Forks) Forks will make habitat available to the covered species and will assist with habitat conservation for a (minimum) period of 10 years or the remainder of the 30-year Agreement, which ever is the longer duration. Cooperators within the watershed, but not adjacent to one of the forks, will manage their property in a manner which utilizes best management practices that reduce sediment and pollutant runoff thereby enhancing water quality and habitat (water and stream bed) for the covered species.

3.1 Importance of Private Lands

Nearly all of the stream reaches that are currently or may potentially be used by the covered species occur on privately owned land in the upper Little Red River watershed. There are approximately 331 individuals, corporations, or entities that collectively own approximately 87,000 acres adjacent to the streams. The long term survival of the covered species is dependent on habitat on private lands.

Aquatic species are not only affected by loss of instream habitat, but also by activities on lands adjacent to streams and within the watershed that subsequently affect water quality and habitat. The majority of lands in the upper Little Red River watershed are privately owned. However, a large portion of the upper South Fork subwatershed is publicly owned by the U. S. Forest Service and AGFC. A major step in the conservation of the covered species in the upper Little Red River watershed, therefore, is to encourage their presence and management on private lands. This Agreement sets a goal of restoring aquatic and terrestrial (riparian) habitat and utilizing best management practices to reduce sediment and pollutant runoff in the upper Little Red River watershed in order to allow for the expansion of the covered species through natural reproduction/recolonization or reintroduction, if necessary. By including all properties in the upper Little Red River watershed in the covered area of this Agreement, the covered species are much more likely to establish viable population(s) and inhabit unoccupied reaches in each of the forks. There is a reasonable likelihood that the covered species may subsequently occupy any or all of the properties enrolled under this Agreement that are adjacent to a fork of the Little Red River. Although the species will never occupy properties that are not adjacent to a fork, management of these properties directly impacts water quality and habitat occupied by the covered species; therefore the inclusion of these properties within the scope of the Agreement is critical to achieving the Agreement's stated goals. Protection should cover a large enough area, including public and private lands, such that activities in the watershed no longer adversely affect the streams.

To date, very few landowners in the focus watersheds have been contacted concerning this Agreement. However, those that have been contacted are very supportive and eager to enroll in the Agreement and provide habitat for the covered species on their lands. This Agreement will be administered and implemented by the Parties. The Agreement would provide for future support of the covered species' conservation and provide landowners with funding (when available and authorized) to restore, create, and/or enhance suitable habitat on their land.

4.0 Regulatory Standards of the Agreement

4.1 Safe Harbor Program Goals and Standards

As identified in the FWS' Safe Harbor Agreement Final Policy (USFWS and NMFS 1999), the FWS must determine that the effect of the proposed voluntary conservation measures for a species covered by a safe harbor agreement would produce a net conservation benefit to the species. Net conservation benefits must contribute, directly or indirectly, to the recovery of the covered species. This contribution towards recovery may vary and may not be permanent. The benefits to the species depend on the nature of conservation measures, the activities to be

undertaken, where they are undertaken, and their duration. The net conservation benefit is the standard that all SHAs must meet (i.e., the SHA standard).

The Parties reasonably expect this Agreement to result in protection, enhancement, and restoration of instream habitat, improved water quality, reduced erosion and sedimentation, improved riparian habitat, and improved land use practices on enrolled properties during the period that the Agreement is valid and operational. For as long as management activities are carried out on the enrolled properties, or the habitat created persists, enrolled lands will benefit the conservation of speckled pocketbook. Without this cooperative federal and state government and private effort, it is unlikely that the Cooperators' enrolled properties would be used in the foreseeable future to enhance and/or restore speckled pocketbook populations (or its habitat). Therefore, the cumulative impact of this Agreement and the activities it covers, which are facilitated by the assurances of the Permit and any associated Certificate of Inclusions[2], is expected to provide a net conservation benefit to speckled pocketbook.

Given the uncertainty as to which areas speckled pocketbook will inhabit in the four forks, this Agreement is necessary to ensure adequate monitoring of speckled pocketbook and to improve recruitment success outside of existing populations. Activities described in this Agreement will increase the probability that speckled pocketbook will expand their range (within the upper Little Red River watershed) and survive and recruit new cohorts once settled into those stream reaches. It will also allow adequate monitoring to determine distribution, abundance, and recruitment success of speckled pocketbook populations. Because one of the main threats to speckled pocketbook is lack of suitable habitat, one goal of the Speckled Pocketbook Recovery Plan (USFWS 1991) is to restore historic habitat through cooperative agreements for the species with partners and to reestablish speckled pocketbook populations in stream reaches that do not currently support them. This Agreement will help address these objectives through activities that increase the likelihood that a viable population will develop on non-federal lands in the upper Little Red River watershed. The Agreement will also be an example of a mutually beneficial relationship between government agencies and non-governmental entities that benefit endangered species and provide evidence that such species can coexist with current land use practices.

The actions proposed under this Agreement are of limited duration making the Agreement's benefits appear transitory. However, the habitat maintained through commitments created by this Agreement will not necessarily cease to exist upon expiration or termination of this Agreement or the resulting POMAs. Cooperators may choose not to bring enrolled properties back to baseline at the point of termination of their POMAs, or at any other time in the future. If new Cooperators continue to enroll under this Agreement over an extended period of time, the net effect will be an increasing matrix of lands being maintained for speckled pocketbook conservation, with a net conservation benefit to the species.

4.2 CCAA Program Goals and Standards

As identified in the FWS' Candidate Conservation Agreement with Assurances Final Policy (USFWS and NMFS 1999), the FWS must determine that the conservation measures and the expected benefits, when combined with those benefits that would be achieved if it is assumed

[2] Certificates of Inclusion are described and discussed in Part 6 of this Agreement.

that similar conservation measures were also implemented on other necessary properties, would preclude or remove the need to list the yellowcheek darter. This is the standard that all CCAAs must meet (i.e., the CCAA standard).

Conservation benefits for yellowcheek darter from implementation of the CCAA are expected in the form of enhancement and restoration of instream and riparian habitat that is intended to contribute to an increase and reestablishment of the yellowcheek darter population in the upper Little Red River watershed upstream of Greers Ferry Reservoir. In addition, conservation of yellowcheek darter would be enhanced by improving and encouraging cooperative yellowcheek darter management efforts between the Parties and Cooperators who own and control most of the yellowcheek darter habitat.

In the covered area, riffles with a mixture of gravel, cobble, and boulder substrates provide suitable habitat for yellowcheek darter, particularly when the effects of unmanaged cattle access, erosion, pollutants, sedimentation, and other forms of habitat alteration have been reduced by management of adjacent areas; riffle habitat is the most important habitat for yellowcheek darter. Under the CCAA, Cooperators would provide conservation benefits to yellowcheek darter by maintaining or enhancing instream and riparian habitat by a variety of means.

Riparian areas with adequate deciduous vegetation are important to help protect instream habitat for the yellowcheek darter. Under the CCAA component of this Agreement, funding may be available for riparian habitat protection and enhancement projects. Cooperators could be compensated for fencing riparian areas, or otherwise managing grazing to enhance riparian habitat, and for planting shrubs or trees to enhance recovery of riparian habitat. Compensation could be in the form of funding for fence construction, creation of alternative livestock watering areas, direct compensation for loss or reduced use of an area, or planting riparian shrubs or trees.

Yellowcheek darter conservation would be enhanced by providing ESA regulatory assurances such that, should the Cooperator participate and attract yellowcheek darter to their property or maintain and enhance conditions within the watershed, the Cooperator would not incur additional land use restrictions. Without regulatory assurances, landowners might be unwilling to participate in the CCAA if they are concerned about land use restrictions were the species be listed in the future.

In summary, the benefits to yellowcheek darter from conservation measures under the CCAA are expected to occur from enhancement of all types of habitat believed to be important for yellowcheek darter in the upper Little Red River watershed, as well as a reduction in the magnitude of existing threats to the species and its habitat requirements. The combination of these habitat related activities and the CCAA's regulatory assurances is expected to facilitate cooperative relationships with landowners that will result in an overall benefit to yellowcheek darter conservation and a likely increase in yellowcheek darter population sizes. In order to successfully increase yellowcheek darter populations to historic abundance, the current populations of the species will have to expand and/or additional fish will have to be released. This will require cooperation from non-federal landowners who own most of the suitable yellowcheek darter habitat in the upper Little Red River watershed. By reducing a landowner's concerns related to the potential regulatory burdens from the listing of yellowcheek darter, cooperation with and support from landowners for expansion of the yellowcheek darter population should be enhanced. Without the support of non-federal landowners, the yellowcheek

darter conservation effort in upper Little Red River watershed probably would not be successful. Ultimately, the CCAA is expected to provide a significant contribution to the successful conservation of yellowcheek darter in the upper Little Red River watershed.

If the level of habitat improvement or protection, and ultimately successful conservation of yellowcheek darter, expected under this Agreement were accomplished throughout the range of the species, the FWS believes that the need to list the species would likely be precluded or removed. For example, yellowcheek darter populations have been extirpated or severely reduced in the Little Red River drainage basin. By 1999, yellowcheek darter occupied less than 60 percent of their historic range in the Little Red River watershed. If the conservation measures of this Agreement are implemented so that suitable yellowcheek darter habitat is provided throughout currently unoccupied areas within the historic range of the species (in the form of CRP or some other habitat restoration effort) and yellowcheek darter are successfully reestablished in these areas, the need to list the species would likely be precluded or removed.

5.0 Background

5.1 Description of Covered Species

5.1.1 Speckled Pocketbook (*Lampsilis streckeri*)

The speckled pocketbook is a medium-sized (3.2 inches in length) freshwater mussel with a thin, dark-yellow or brown shell with chevron-like spots and chain-like rays (Frierson 1927, Harris and Gordon 1990). The shells exhibit sexual dimorphism (males and females differ), with females becoming broader and more evenly rounded posteriorly.

The reproductive cycle of the speckled pocketbook is similar to that of other native freshwater mussels. Males release sperm into the water column; the sperm are then taken in by the females through their siphons during feeding and respiration. The females retain the fertilized eggs in their gills until the larvae (glochidia) fully develop. The mussel glochidia are released into the water, and within a few hours/days, must attach to the appropriate species of fish, which they parasitize for a short time while they develop into juvenile mussels.

The speckled pocketbook is gravid during August with the release of glochidia in late February through early June. Winterringer (2002) tested 22 fish species for their potential suitability as fish host. Glochidia successfully transformed on sunfishes from the Middle Fork Little Red River (Centrarchidae), with greatest success occurring with the green sunfish (*Lepomis cyanellus*).

The speckled pocketbook is endemic to the Little Red River basin in north central Arkansas. The species' historic range included the main stem Little Red River and the four forks (Archey Fork, Middle Fork, South Fork, and Turkey/Beech/Devils Fork complex; U. S. Fish and Wildlife Service 1991). A portion of the historic range was inundated by the construction of Greers Ferry Reservoir. Channel alterations in the Archey and South Forks (Harris *et al.* 1997; Davidson and Wine 2004) have further reduced suitable habitat for this species. The current known range is restricted to the Middle Fork Little Red River from the influence of Greers Ferry Reservoir upstream to the confluence of Little Red Creek (63 river miles), the South Fork Little Red River extending upstream of Arkansas Highway 95 to near the western boundary of Gulf Mountain

Wildlife Management Area and the Ozark National Forest (14 river miles), the Archey Fork from approximately one mile upstream of Arkansas Highway 65 to the confluence of Castleberry Creek (16 river miles), the lower Turkey Fork (2 river miles), Beech Fork (11 river miles) and Big Creek (10 river miles). The speckled pocketbook occurs in coarse sand and sand/gravel bottoms with a constant flow of water. A secondary habitat type occurs in pools with crevices between large rocks and boulders which have some accumulation of sand/gravel (Clarke 1987, Harris 1993, Winterringer 2002).

Based upon current knowledge and a 2004/2005 threats assessment (Davidson and Wine 2004; Davidson 2005) conducted by the FWS, gravel mining, unrestricted cattle access into streams, water withdrawal for agricultural and recreational purposes (i.e. golf courses), lack of adequate riparian buffers, construction and maintenance of county roads, and non-point source pollution arising from a broad array of activities appear to be degrading suitable habitat for speckled pocketbook. Eroding stream banks are depositing sediment in downstream reaches resulting in a reduction of habitat quantity and/or quality. Thirty-five eroding stream banks have been identified in the Middle Fork, 14 in South Fork, six in Archey Fork, and one in Beech Fork. Unrestricted cattle access in the Middle and South Forks also threatens to degrade water quality and habitat. Muskrats and turtles are known to prey on speckled pocketbook. Numerous dead speckled pocketbook with bite marks have been reported from the Middle Fork. Channelization of the lower Archey and South Forks has degraded habitat downstream and upstream of the project area. The construction of Greers Ferry Reservoir has resulted in the permanent loss of habitat due to inundation and cold water releases from the dam.

Since Davidson and Wine (2004) and Davidson (2005) threats assessment, a new and potentially major threat is evolving in the upper Little Red River watershed. The Fayetteville Shale is an unconventional natural gas reservoir located on the Arkansas side of the Arkoma Basin encompassing nearly a quarter of the state and the entire upper Little Red River watershed. It is unknown at this time how significant an impact exploration and production will have on the speckled pocketbook and its habitat. Approximately 2,000 new gas wells are expected to be drilled by the end of 2008. Copious amounts of water are required for drilling and could lead to dewatering or decreased base flows in the upper Little Red River watershed depending upon the source of water used for production. Additional concerns include habitat fragmentation, increased sedimentation, pollutant runoff, and spills.

5.1.2 Yellowcheek Darter (*Etheostoma moorei*)

The yellowcheek darter, *Etheostoma moorei* (Raney and Suttkus), is one of only two members of the subgenus *Nothonotus* known to occur west of the Mississippi River (Wood 1996). It is an endemic fish species found only in the four headwater streams of the Little Red River (Middle Fork, South Fork, Archey Fork, and Turkey/Beech/Devils Fork complex) above Greers Ferry Lake in north-central Arkansas (Robison and Harp 1981; Attachment 1). Yellowcheek darter prefer high gradient riffles, with boulder/cobble/gravel bottoms, and clear water with high oxygen content and are rarely found in pools or slow moving water (McDaniel 1984; Wine *et al.* 2000). The yellowcheek darter lives four to five years and grows to about three inches long. It prefers to eat black fly larvae but also consumes mayflies, stoneflies, and other aquatic insect species. Spawning occurs late May through June in cobble or gravel riffles (McDaniel 1984; Wine and Blumenshine 2002). During spawning, female yellowcheek darter bury themselves in

fine gravel/sand substrates (often behind large cobble or boulders) with only their heads and caudal fin exposed. A male yellowcheek darter will position himself above the buried female and fertilize her eggs as she releases them in a vibrating motion (Wine and Blumenshine 2002). The clutch size and nest defense behavior are unknown.

The yellowcheek darter was first collected in 1959 from the Devils Fork Little Red River and was eventually described using 228 specimens from three tributaries of the Little Red River: Middle, South and Devils forks (Raney and Suttkus 1964). Much of the known range of this species was destroyed in 1964 due to inundation caused by the Greers Ferry Dam (Robison and Buchanan 1988). Raney and Suttkus (1964) suggested that the remaining upstream reaches of these four headwater streams would serve as yellowcheek darter sanctuaries. Indeed, a status survey 15 years later found that the yellowcheek darter was the most abundant riffle fish within its endemic range (Robison and Harp 1981). Robison and Harp (1981) estimated population sizes at 36,000 for Middle Fork, 14,000 for South Fork, 5,000 for Archey Fork and 5,000 for the Turkey Fork, with all four drainages collectively supporting a population of ca. 60,000 individuals. The authors acknowledged that estimates for the Middle, Archey, and Turkey Forks were less accurate than for the South Fork due to less intensive sampling. However, during a later study of population genetics of yellowcheek darter, Mitchell (1999) observed that yellowcheek darters had become extremely difficult to capture. In one typical example, only one yellowcheek darter was produced by four researchers kick seining for four hours in Beech Fork. Similar results were seen at other sites within the historic range of the species where they were once the most abundant riffle species. A subsequent status survey of yellowcheek darter populations demonstrated a decline in population sizes over the last twenty years (from 60,000 to less than 10,000 ± 5,000 individuals; Wine *et al.* 2000). The yellowcheek darter was designated as a candidate species for listing in 2001 by the FWS.

Weston and Johnson (2005) estimated yellowcheek darter populations within the Middle Fork to be between 15,000 and 40,000 individuals, and between 13,000 and 17,000 individuals in the South Fork. Such increases would indicate remarkable adaptability to changing environmental conditions. However, it should be noted that estimates were based upon mark/recapture estimates using the Jolly-Seber method which requires high numbers of recaptured specimens for accurate estimations. Recaptures were extremely low during that study (24 out of 409 specimens); therefore, population estimates were highly variable and confidence in the resulting estimates is low. It was also noted that the yellowcheek darter appears to be a relatively non-mobile species, with 19 of 22 recaptured darters found within nine meters of their original capture position after periods of several months.

As with the speckled pocketbook, based upon current knowledge and a 2004/2005 threats assessment (Davidson and Wine 2004; Davidson 2005) conducted by the FWS, gravel mining, unrestricted cattle access into streams, water withdrawal for agricultural and recreational purposes (e.g. golf courses), lack of adequate riparian buffers, construction and maintenance of county roads, and non-point source pollution arising from a broad array of activities appear to be degrading suitable habitat for yellowcheek darter. Eroding stream banks are depositing sediment in downstream reaches resulting in a reduction of habitat quantity and/or quality. Thirty-five eroding stream banks have been identified in the Middle Fork, 14 in South Fork, six in Archey Fork, and one in Beech Fork. Unrestricted cattle access in the Archey, Middle, and South Forks also threatens to degrade water quality and habitat (Davidson and Wine 2004; Davidson 2005). Channelization of the lower Archey and South Forks has degraded habitat downstream and

upstream of the covered area and the construction of Greers Ferry Reservoir resulted in permanent loss of habitat due to inundation and cold water releases from the dam.

In the Middle and South Forks, low population estimates and stochastic extirpations of yellowcheek darter correspond to increased threats such as unrestricted cattle access, eroding streambanks, and unrestricted gravel mining. This is especially evident in upper portions of these streams which are much more susceptible to low water levels in late summer months. However, similar declines in yellowcheek darter population sizes have been documented in Archey and Turkey/Devils/Beech Forks where effects of cattle access, eroding streambanks, and gravel mining are relatively discountable.

Drought is also a potential problem for the yellowcheek darter. Riffle habitats have periodically dried during the past decade, reducing habitat availability. Drought may be exacerbated by man-made changes to the stream channel for flood control (i.e. channelization) and other purposes. Stress caused by low stream flows during drought years may increase susceptibility to disease in yellowcheek darter populations. Low water levels also increase predation by birds and mammals (Schlosser 1990).

Since Davidson and Wine (2004) and Davidson (2005) threats assessment, a new and potentially major threat is evolving in the upper Little Red River watershed. The Fayetteville Shale is an unconventional natural gas reservoir located on the Arkansas side of the Arkoma Basin encompassing nearly a quarter of the state and the entire upper Little Red River watershed. It is unknown at this time how significant an impact exploration and production will have on the yellowcheek darter and its habitat. Approximately 2,000 new gas wells are expected to be drilled by the end of 2008. Copious amounts of water are required for drilling and could lead to dewatering or decreased base flows in the upper Little Red River watershed depending upon the source of water used for production. Additional concerns include habitat fragmentation, increased sedimentation, pollutant runoff, and spills.

Research projects involving the yellowcheek darter include a high resolution genetics study to build on genetics work done by Mitchell *et al.* (2002), seasonal habitat variation identification, and artificial propagation. Conservation Fisheries, Inc. (CFI) of Knoxville, Tennessee is currently perfecting propagation techniques for the yellowcheek darter. Greers Ferry and Norfork National Fish Hatcheries and Mammoth Spring State Hatchery (all located in Arkansas) have expressed interest in captive propagation and grow out of yellowcheek darter for possible reintroduction efforts. However, successful reintroduction of the species is unlikely to occur unless suitable habitat is restored and protected within the historic range of the species. Recent population estimates seem to indicate a capacity for populations to rebound based on natural reproduction and recolonization of unoccupied habitat, making the need for reintroduction after habitat restoration uncertain.

5.2 Description of Existing Conditions within the Covered Area

The concepts of baseline and existing conditions as defined in the FWS' Safe Harbor and CCAA regulations (respectively) will be considered essentially identical for purposes of implementation of this Agreement. This is supported by the similarities of the covered species' life histories, anticipated benefits from implementation of landowner-directed conservation measures, and the

ability to effectively gauge and measure the progress of achieving the goals and standards of this Agreement as outlined in Parts 3 and 4 above.

The factors that will be considered in determining whether a landowner's property is eligible for enrollment under this Agreement are the existence of riparian habitat (width, length, type of vegetation, fenced or not fenced) on the property, current or recommended land use practices (best management practices), and presence/absence of other existing agreements on the property. The amount of occupied suitable habitat (instream area) or number of individuals (population estimate ± standard error) could fluctuate naturally or through no fault of the Cooperator and will therefore not be used to establish existing conditions for this Agreement. The Parties expect that, through the implementation of conservation measures that protect, enhance, or restore riparian habitat and stream banks and the implementation of best management practices on enrolled properties, instream habitat will be protected, enhanced, or restored through the course of this Agreement. Each POMA entered into under this Agreement will specify the existing conditions for the particular covered property (Attachments 2 and 3).

5.3 Description of Lands Eligible for Enrollment

The Agreement will focus on non-federal lands within the upper Little Red River watershed. The upper Little Red River watershed, at 558,615 acres, supports a diversity of stream habitats some of which may be suitable for the covered species. However, the Agreement will focus on those non-federal lands adjacent to the forks of the Little Red River that have apparently suitable habitat for either species. Such habitat includes stream reaches where water persists throughout the year in the Archey, Middle, South, and Devils (including Turkey and Beech Forks) Forks. The Parties reasonably expect that the covered species may occupy enrolled property(ies) adjacent to the forks of the Little Red River as a result of management actions undertaken through this Agreement and the associated POMAs. The Parties do not expect the covered species to occur on enrolled property(ies) not adjacent to the forks of the Little Red River, but management actions on these properties will beneficially affect both species.

It is expected that each property enrolled under this Agreement will meet the respective regulatory standards as outlined in Part 4 of this Agreement. For a property to be enrolled under this Agreement, a POMA will be completed and signed by one or any combination of the Parties and the landowner. Each POMA will include a map of the property, its acreage, a description of stream and riparian habitat types, and best management practices (current and/or recommended) found on the portion of property to be enrolled. In addition, current land use practices, existing development, and expected land use changes and development will be described.

6.0 Property Owner Management Agreements and Certificates of Inclusion

Upon the effective date of this Agreement and the issuance of the associated Permit, the Parties are authorized to begin implementation of the Agreement by enrolling eligible non-federal landowners through POMAs and Certificates of Inclusion (Certificates).

6.1 Enrollment Procedures

As a prerequisite to enrolling property under this Agreement, a non-federal landowner must demonstrate that the enrollment of their property and the implementation of certain agreed-upon conservation measures outlined below would reasonably be expected to meet the conservation standards as set forth in this Agreement (see Part 4.0, above). Lands can be enrolled under this Agreement and the associated permit whether or not the landowner receives funding from the Parties for implementation of the landowner's POMA.

In order to enroll a property under this Agreement, one or more of the Parties and the non-federal landowner must enter into a POMA (Attachments 2 and 3), wherein the landowner would agree to, among other things, implement specified conservation strategies and measures that satisfy the provisions and intent of this Agreement (See Part 7.1). Upon entering into a POMA, the non-federal landowner will be issued a Certificate of Inclusion (Attachments 4 and 5) stepped down from the Permit. The Certificate of Inclusion will provide regulatory assurances to the landowner. The expiration date(s) of each of the signed POMA(s) and the associated Certificate(s) will be no later than the expiration date of the Permit. At the point the eligible landowner and a Party or Parties to this Agreement execute the POMA and the Certificate; the landowner will become a "Cooperator" for purposes of this Agreement and the associated Permit. (Cooperators will have the option to sign up for varying periods of time (minimum 10 years). Cooperators will sign up for a minimum 10 years or the duration of the Agreement, whichever is the longer duration.)

A Cooperator wishing to enroll their property in a POMA should follow the steps below:

1. An interested property owner should meet and discuss the terms and conditions of this Agreement with one or more of the Parties;

2. The property owner, with assistance from one or more of the Parties, should develop a POMA (Attachments 2 and 3) designed to beneficially manage their property for the covered species through the implementation of measures that are sufficient to meet the provisions and intent of this Agreement;

3. At least one of the Parties to this Agreement and the landowner must sign the POMA for it to be valid;

4. Once the Party and a landowner sign the POMA, the POMA will become effective and binding. The landowner will then be issued a Certificate of Inclusion (Attachments 4 and 5), which will provide a specific authorization to take the covered species, as well as contain the regulatory assurances as outlined in Part 10.0 of this Agreement and in Attachments 7 and 8.

6.2 Content of the Property Owner Management Agreement (POMA)

Attachments 2 and 3 of this Agreement are template POMAs for the Safe Harbor Program and the CCAA Program, respectively, which outline the minimal content necessary for a POMA. Each of the Parties to this Agreement will utilize the applicable template or templates to enroll eligible non-federal landowners.

7.0 Agreement Implementation

7.1 Conservation Strategy/Measures

In early 2005, a multi-agency team developed the *Conservation Strategy for the Speckled Pocketbook and Yellowcheek Darter* to aid in the implementation of proactive land conservation measures, standards, and guidelines that will help to ensure that adequate and systematic conservation approaches for the covered species are identified and implemented. This was the first step in a watershed level approach to restore stream habitat in the entire upper Little Red River watershed for the covered species. The strategy identifies eight major conservation actions, time frames, and responsible partners to undertake the actions for conservation of the covered species.

Some components of the "conservation strategy" have been or are currently being implemented by the Parties or related partners. For instance, the Arkansas Department of Environmental Quality has established 11 water quality monitoring stations in the watershed. These data are crucial for biological monitoring and determining water quality trends prior to and post implementation of conservation actions. Public outreach already has begun with assistance from the Upper Little Red River Watershed Alliance. There are landowners currently enrolled in programs such as Wildlife Habitat Incentive Program and Partners for Fish and Wildlife that have expressed interest in continuing their conservation efforts through the Agreement.

The purpose of this Agreement is to provide a mechanism for implementing the conservation strategy through some level of monitoring and management for the covered species and to encourage voluntary habitat maintenance by Cooperators who enroll under this Agreement. This Agreement and associated POMAs will collectively and individually increase the amount of habitat available and improve water quality for the covered species and the ability of the FWS, AGFC, TNC, and NRCS to monitor the species while giving assurances to Cooperators that future uses of their property will not be restricted by the presence of the covered species.

Actions that a Cooperator may agree to undertake to provide conservation benefits to the covered species may include, but are not limited to, the following:

1) Control of Livestock Access

   a) Fencing
   b) Alternative water sources

2) Protection, Enhancement, or Restoration of Terrestrial Habitats

   a) Habitat easements
   b) Stream buffer establishment
   c) Stream buffer maintenance
   d) Installation and maintenance of erosion control measures
   e) Foregoing detrimental land use practices

3) Protection, Enhancement, or Restoration of Aquatic Habitats

a) Stream easements
b) Stream de-channelization
c) Installation of in-stream habitat features
d) Stream bank stabilization
e) Road crossing stabilization

4) Species Reintroduction

5) Other Conservation Measures

There may be a time in the future when the FWS identifies other conservation measures, based on future research, that are critical to the conservation of either or both of the covered species. In such event, the Parties would allow a Cooperator, with the concurrence from all Parties, to choose such conservation measures as their voluntary management actions. Additionally, existing Cooperators under this Agreement would be allowed to add these other conservation measures to their existing POMA, subject to Part 11.0 of this Agreement.

7.2 Phasing

This Agreement is divided into Phase I and Phase II components. Phase I covers the initial 3-6 month period following the effective date of this Agreement and Permit issuance, when basic information would be gathered with respect to habitats, land ownership, and the covered species distribution within the covered area. Phase I is intended to provide basic information necessary to support Phase II, which is the long-term (30-year) implementation or management phase of the Agreement.

Phase I:

During Phase I, the AGFC, TNC, and FWS will be responsible for gathering additional information concerning the covered species within the covered area, and specifically regarding how their distribution and anticipated habitat use corresponds to individual properties. This task will likely involve review and updating of current information on distribution of the covered species in the upper Little Red River watershed plus fieldwork to obtain additional distribution and habitat information as required. There will be no direct funding for this effort. The FWS and AGFC will be responsible for oversight of Phase I.

Phase II:

Phase II is the 30-year implementation component of this Agreement. The Parties will provide funding, when available and authorized, under the various ESA Programs, Partners for Fish and Wildlife Program, Farm Bill Programs, Stream Team Program, and other state and private sources. The Parties will implement and administer this Agreement. Non-federal landowners can

enroll their properties under the Agreement through the use of POMAs and be included as Cooperators under the associated Permit through a Certificate of Inclusion.

7.3 Existing Conditions/Baseline Considerations

The existing condition (and/or baseline conditions) for each eligible Cooperator entering into a POMA will be based on riparian habitat (width, length, type of vegetation, degree of canopy and ground cover, fenced or not fenced), current or recommended land use practices (best management practices), and existing agreements on the property. Additionally, the extent of bare ground and exposed erodible soils adjacent to riparian zones will be used to determine existing (and/or baseline) conditions on enrolled properties since such habitats may significantly affect sediment transport into streams. The amount of occupied suitable habitat (instream area) or number of individuals (population estimate ± standard error) could fluctuate naturally or through no fault of the Cooperator and, therefore, will not be used to establish existing conditions for purposes of implementation of either the SHA or CCAA components of this Agreement

7.3.1 Determining Existing/Baseline Conditions

Each POMA will specify the baseline for the particular property that is to be enrolled. Factors that will be considered in determining the baseline conditions on a prospective enrolled property are riparian habitat (width, length, type of vegetation, degree of canopy and ground cover, fenced or not fenced), current or recommended land use practices (best management practices), and existing agreements on the property. Additionally, the extent of bare ground and exposed erodible soils adjacent to riparian zones will be used to determine existing (and/or baseline) conditions on enrolled properties since such habitats may significantly affect sediment transport into streams. Instream habitat will not be used to describe baselines due to the inherent natural variability (bed load movement and meandering) that is likely to occur in the streams over the course of this Agreement and individual POMAs. In addition, Cooperators have no control over natural changes to instream habitat or to changes that may be caused or exacerbated by activities on properties upstream or downstream of their enrolled properties. The Parties expect that through the implementation of conservation measures that protect, enhance, or restore riparian habitat and stream banks and best management practices on enrolled properties, instream habitat will be protected, enhanced, or restored through the term of this Agreement and any associated POMAs.

7.3.2 Maintaining Existing Conditions/Baseline Responsibilities for Each Eligible Cooperator

The baseline responsibilities/constraints of a Cooperator are to maintain existing fences, riparian habitat, and best management practices as determined by the initial coordination between one or more of the Parties and the Cooperator. These responsibilities will be outlined in the Cooperator's POMA. Specifically, the Cooperator's baseline responsibilities will be, but are not limited to, the following:

1. Maintain existing riparian habitat within 100 feet of perennial and intermittent stream banks and 30 feet of ephemeral stream banks.

2. Ensure riparian vegetation remains intact during and after vegetation management activities, such as harvesting, prescribed burning, road or fire line construction, and pesticide application.

3. Ensure movement of fish and other aquatic organisms in streams are not obstructed by construction of new road crossings, culverts, or other human-caused obstructions.

4. Refrain from undertaking activities that adversely affect hydrologic function (*i.e.* stream flow, water quality, physical habitat, etc.).

5. Maintain existing fences in a state sufficient to prevent livestock access to riparian areas and streams except at designated water access locations.

6. Adhere to Arkansas Forestry Commission recommended best management practices for water quality protection.

7. Follow existing terms and conditions related to existing easements or conservation agreements on property.

7.3.3 Adjustments to Existing Conditions/Baseline

In spite of management and protection efforts, there may be circumstances, through no fault of the Cooperator, where habitat that gave rise to the Cooperator's baseline responsibilities ceases to exist on the enrolled property. If the covered species habitat ceases to exist on an enrolled property, the affected Cooperator will not be held responsible for the loss, provided such cessation was not the result of the Cooperator or Cooperator's agent(s) action(s).

Where habitat conditions have ceased to exist on an enrolled property, and it is determined by the Parties that the circumstances producing this change were unforeseen and/or beyond the control of the affected Cooperator, the Cooperator has the option to request an adjustment to existing conditions and/or a baseline reduction from the Parties. Upon making such request to the Parties, however, the Cooperator must allow the Parties access to the enrolled property to conduct an investigation, if the Parties choose to do so. If the Parties determine that the Cooperator is eligible for an adjustment or reduction, the Parties will modify the Cooperator's POMA and Certificate to reflect the change.

7.3.4 Special Circumstances/Conflicts between the SHA and CCAA Standards

Note that some circumstances may occur between the use of the baseline concept in the SHA component of this Agreement and the concept of existing conditions in the CCAA component of this Agreement. This may be especially relevant where a Cooperator desires to terminate the POMA and Certificate to exercise his/her regulatory assurances.

Each POMA shall include a detailed description of the existing habitat characteristics of the lands and/or waters on the enrolled property that sustain any current, permanent, or seasonal use by the covered species. The description will include the vegetation type, the major plant species and their percent cover, the soil type(s) and their moisture regimes, the hydrology of the area, and any other relevant characteristics. These factors should be described quantitatively, when

possible. A thorough qualitative description can be provided, however, where no quantitative data exist. In addition, if existing characteristics of the enrolled property help support populations of the covered species on other lands or waters (i.e., outside the enrolled property), these characteristics should also be described. Because the CCAA and SHA regulatory standards of this Agreement differ, circumstances may exist wherein a return to baseline conditions available under the SHA assurances of this Agreement may place the Cooperator at risk in achieving and/or maintaining the concurrent CCAA standard for that same enrolled property. The Parties believe, however, that this set of circumstances will be rarely encountered, as each POMA executed under either or both the SHA and CCAA authorities will clearly articulate where potential conflicts may exist between the applicable assurances and conservation standards. The Parties to this Agreement will work together to quickly and effectively resolve such situations to the mutual benefit of the covered species and the affected Cooperator(s).

7.4 ESA Regulatory Assurances and Incidental Take

Through this Agreement and the associated Permit, the FWS will provide certain regulatory assurances that will be passed onto the Cooperators through their POMAs and Certificates of Inclusion. Those following assurances shall be incorporated verbatim into each POMA and Certificate issued by the Parties.

7.4.1 Description of Safe Harbor Assurances

Under the terms of this Agreement, a Cooperator will be authorized to make use of their enrolled property in any manner that does not result in reducing the population and/or quantity and quality of habitat for the speckled pocketbook below the established and documented baseline responsibilities set for in the POMA. The Cooperator's Certificate will authorize take incidental to otherwise lawful activities on the enrolled property from the time the POMA becomes effective until expiration of the Certificate. Such activities may include, but are not limited to: driving vehicles, building or fence construction, grazing of livestock, gardening, forestry, hunting, farming, mowing, or cultivation of agricultural crops. A Cooperator may continue current land-use practices, undertake new practices, or make any other lawful use of the enrolled property, even if such use results in the incidental take of the speckled pocketbook or the loss and/or degradation of habitat above the Cooperator's baseline responsibilities provided that each of the following qualifications and conditions are met:

1. The Cooperator is in total compliance with its POMA;
2. The Cooperator has maintained his/her speckled pocketbook baseline responsibilities as specified in the POMA;
3. The Cooperator will only engage in take that is incidental to otherwise lawful activities; and,
4. The Cooperator will not undertake any activity that could result in incidental take until the Cooperator has provided each of the Parties to this Agreement with at least sixty (60) days written notice of the Cooperator's intention to conduct such activity.

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

Notwithstanding the minimum 60-day notice requirement in number 4 above, the Cooperator should provide as much advance notification to the Parties as possible. All Parties and/or their

agents shall give a coordinated and concerted effort to respond to said written notice. Should the Parties fail to respond to the Cooperator within the 60-day time frame, and provided that each of the preceding qualifications and conditions of 1-4 above has been satisfied, the Cooperator may proceed with the proposed activity.

In consideration of the level of incidental take authorized by the Permit, the Parties expect that the goals of this Agreement will be met. Incidental take events are likely to occur sporadically, both geographically and temporally, but it is not expected to nullify and eliminate the cumulative accrued net conservation benefit(s) to the speckled pocketbook that are expected to occur from implementation of this Agreement and the associated POMAs.

Attachment 7 to this Agreement provides the template for each Cooperator's Safe Harbor Assurances and shall be used by the Parties when approving POMAs and issuing Certificates.

7.4.2. Description of CCAA Assurances

Should the yellowcheek darter become listed as threatened or endangered, under the terms of this CCAA, the Cooperators are authorized to make use of their enrolled property in any manner that does not result in reducing the population and/or quantity and quality of habitat for the species such that the CCAA standard is no longer met. The Permit associated with this Agreement and the resulting Certificate will authorize take of yellowcheek darter resulting from lawful activities within the enrolled properties, from the time the POMA and Certificate are signed until expiration. Such activities may include, but are not limited to: driving vehicles, building or fence construction, grazing of livestock, gardening, forestry, hunting, farming, mowing, or cultivation of agricultural crops. The Cooperators may continue current land-use practices, undertake new ones, or make any other lawful use of their properties, even if such uses result in the incidental take of yellowcheek darter or loss and/or degradation of habitat in excess of the CCAA standard.

In consideration of the level of incidental take authorized by the Permit, the Parties expect that the goals of this Agreement will be met. Incidental take is only applicable once the species become listed under the ESA. Even if the yellowcheek darter becomes federally protected under the ESA, the extent of incidental take events will likely occur sporadically, both geographically and temporally, but it is not expected to nullify and eliminate the cumulative accrued conservation benefit(s) to yellowcheek darter produced from implementation of this Agreement and the associated POMAs.

Attachment 8 to this Agreement provides the template for each Cooperator's CCAA assurances and shall be attached and incorporated into each POMA and Certificate.

8.0 Monitoring and Reporting

8.1 Compliance Monitoring

The Parties and/or their agents may visit an enrolled property to ensure compliance with this Agreement and the Cooperator's POMA, as well as to provide technical assistance, as necessary.

8.2 Biological Monitoring

8.2.1 Monitoring Program for the Speckled Pocketbook

When the Parties to this Agreement or a Cooperator report the presence of a member of the covered species on an enrolled property, or where the species are otherwise known to be present, the FWS and AGFC have the option of assessing the status and abundance of the species on the enrolled land prior to the Cooperator's implementation of the conservation actions set forth in the Cooperator's POMA. In addition to the aforementioned monitoring, select sites (as appropriate based on stream size) in each fork will be sampled by the Parties at least once every five years to monitor the species population and/or habitat trends. This will allow the Parties to ascertain the success of any implemented conservation actions.

Additionally, the Arkansas Department of Environmental Quality has established eleven (11) water quality monitoring stations in the watershed for the duration of this Agreement. AGFC, and possibly the FWS, will monitor total stream communities once every five years for the duration of this Agreement. Biological monitoring using electroshocking equipment will be conducted during the non-reproductive season. Sampling of the fish community is important as it may provide an indicator of success of this Agreement, as the abundance and distribution of the covered species is dependent upon sunfish, which the speckled pocketbook needs in order to complete its life cycle. Protecting, maintaining, and enhancing sunfish populations is important to successful recruitment of the speckled pocketbook.

8.2.2 Monitoring Program for the Yellowcheek Darter

When Parties to this Agreement or a Cooperator report the presence of yellowcheek darter on an eligible property, or yellowcheek darter are otherwise known to be present, FWS and AGFC will monitor yellowcheek darter by sampling enrolled lands prior to conservation recommendation implementation. In addition to the aforementioned monitoring, select sites (as appropriate based on stream size) in each fork will be sampled once every five years to monitor yellowcheek darter population trends. This will allow the Parties to ascertain the success of any conservation actions. Relative abundance of yellowcheek darter will be calculated using catch per unit effort to maximize efficiency of sampling and avoid undue stress to the species. Additionally, AGFC, and possibly the FWS, will monitor total stream fish communities once every five years for the Agreement's duration. Biological monitoring using electrofishing gear will not be conducted during yellowcheek darter reproductive season (late May through June).

8.3 Biannual Reports

The Parties to this Agreement or each Cooperator must assist with the compilation of a biannual report on the implementation of this Agreement and all POMAs. The FWS will be the lead Party in collecting and assimilating the Biannual Report. Reports will cover the period from October 1 to September 30 each year and are due December 1, biannually. Copies of the report will be made available to each Party and Cooperator, who requests a copy of the report. The report will list all of the properties that are enrolled under this Agreement, current ownership of each enrolled property, presence or absence of the covered species on each property, including when that presence or absence was determined, quantity and quality of habitat, and the status and implementation of the best management practices on each enrolled property. All POMAs and Certificates, as well as any supporting management plans executed during the reporting period, will be available to the FWS upon request. The Biannual Report will also include: (a)

information on the results of biological and compliance monitoring; (b) overall status of the covered species; (c) a discussion of the implementation of the conservation actions; (d) a discussion and evaluation of any compliance actions; and (e) identification and explanation of any incidental take event of the covered species.

9.0 Responsibilities

The responsibilities of a Cooperator shall be detailed in its POMA. At a minimum, however, each POMA will include all of the responsibilities set forth in the applicable template, Attachment 2 and/or 3.

The Parties to this Agreement agree to work cooperatively on issues necessary to further the purposes of this Agreement. Each Party is tasked with and accountable for certain responsibilities as outlined below. However, all Parties agree that the implementation of this Agreement should be undertaken as a collaborative effort. Moreover, nothing in this Agreement shall limit the ability of the federal and state conservation authorities to perform their lawful duties, including, but not limited to, conducting investigations as authorized by statute, regulation, and/or by court guidance and direction.

Specific responsibilities of Parties to this Agreement are as follows:

9.1 AGFC shall:

a) Implement and administer this Agreement including: covered species monitoring, coordinating and/or assisting with covered species habitat management efforts on Cooperators' properties, enrolling Cooperators under this Agreement, and reintroduction(s) of the covered species, where necessary.

b) With the assistance of the prospective Cooperator, complete the applicable POMA Form(s) (Attachments 2 and 3) and ensure that the landowner's proposed actions meet the applicable regulatory standards and goals of this Agreement, including providing an adequate quantity and quality of instream and riparian habitat, maintaining existing suggested land use practices, and continuing maintenance of the property in accordance with any other existing agreement(s) to which the prospective enrollee is a signatory.

c) At least 60 days prior to enrolling a landowner under this Agreement, AGFC will provide the draft POMA and any associated conservation measures or habitat management plans to each of the other Parties for review and comment. The Parties shall have the opportunity to review and comment on the proposed POMA prior to the draft POMA being forwarded to the prospective Cooperator. (For those conservation practices identified by the Parties as completely beneficial to the covered species (as determined under section VII of the *Conservation Strategy for the Speckled Pocketbook and Yellowcheek Darter*), this step is optional.)

d) Upon receiving written concurrence from each of the other Parties, AGFC shall enter into the POMA with the landowner (now a Cooperator) and issue to the Cooperator a Certificate of Inclusion. The POMA shall become effective and binding on the date of

the last signature to the POMA. The Certificate of Inclusion shall become effective only after it has been signed and dated by a Party to this Agreement.

e) Upon receipt of a completed proposed POMA form from FWS, TNC, and/or NRCS, AGFC shall, within 14 days, notify each of the other Parties of its concurrence or non-concurrence in enrolling the prospective Cooperator.

f) If AGFC objects or has concerns regarding any proposed POMA, AGFC shall work cooperatively with all of the other Parties to resolve these concerns within a reasonable time period.

g) Provide to the Cooperator and each Party to this Agreement copies of the executed POMA and Certificate of Inclusion.

h) Provide technical assistance to Cooperators, to the maximum extent practicable, when requested.

i) Inform the FWS of any known covered species mortalities or injuries within five working days of receiving notice from a Cooperator of such event.

j) Conduct compliance and biological monitoring, as described in Part 8.0 of this Agreement, and provide assistance in preparing and submitting to FWS a biannual report that describes the findings of such monitoring.

k) If warranted, recommend procedures the Cooperators can follow to avoid future incidental take that might have been described in past biannual reports.

l) Work with the Parties and Upper Little Red River Conservation Group on potential improvements to the administration, goals, and conservation measures of this Agreement, as necessary and appropriate.

m) Inform the FWS when a Cooperator gives a 60 day notice (as per Part 7.4.1) that the Cooperator intends to carry out an activity that is likely to result in the incidental take of covered species, so as to give the FWS the opportunity to work with AGFC on the relocation of any affected members of the covered species.

n) Inform the FWS when a Cooperator is not in compliance with the terms and conditions of its POMA and/or this Agreement and of any measures employed to remediate the non-compliance.

o) Provide necessary ESA Private Landowner Incentive Program funding to Cooperators in accordance with this Agreement when such funding is authorized and available.

p) Provide state program funding when available for the covered species and/or Agreement implementation in accordance with this Agreement.

q) Monitor stream fish communities once every 5 years for the duration of the Agreement.

r) Provide data collected from enrolled Cooperators, surveys, and monitoring to the FWS in a timely manner to allow FWS to compile biannual reports on implementation of the Agreement.

9.2 NRCS shall:

a) Implement and administer this Agreement including coordinating Cooperators' habitat management efforts for the covered species and enrolling only those prospective Cooperators who are interested in NRCS technical assistance or Farm Bill programs.

b) With the assistance of the prospective Cooperator, complete the applicable POMA Form(s) (Attachments 2 and 3) and ensure that the landowner's proposed actions meet the applicable regulatory standards and goals of this Agreement, including providing an adequate quantity and quality of instream and riparian habitat, maintaining existing suggested land use practices, and continuing maintenance of the property in accordance with any other existing agreement(s) to which the prospective enrollee is a signatory.

c) At least 60 days prior to enrolling a landowner under this Agreement, NRCS will provide the draft POMA and any associated conservation measures or habitat management plans to each of the other Parties for review and comment. The Parties shall have the opportunity to review and comment on the proposed POMA prior to the draft POMA being forwarded to the prospective Cooperator. (For those conservation practices identified by the Parties as completely beneficial to the covered species (as determined under section VII of the *Conservation Strategy for the Speckled Pocketbook and Yellowcheek Darter*), this step is optional.)

d) Upon receiving written concurrence from each of the other Parties, NRCS shall enter into the POMA with the landowner (now a Cooperator) and issue to the Cooperator a Certificate of Inclusion. The POMA shall become effective and binding on the date of the last signature to the POMA. The Certificate of Inclusion shall become effective only after it has been signed and dated by a Party to this Agreement.

e) Upon receipt of a completed proposed POMA form from FWS, TNC, and/or AGFC, NRCS shall, within 14 days, notify each of the other Parties of its concurrence or non-concurrence in enrolling the prospective landowner.

f) If NRCS objects or has concerns regarding any proposed POMA, NRCS shall work cooperatively with all of the other Parties to resolve these concerns within a reasonable time period.

g) Provide to the Cooperator and each Party to this Agreement copies of the executed POMA and Certificate of Inclusion.

h) Provide technical assistance to Cooperators, to the maximum extent practicable, when requested.

i) Inform the FWS of any known covered species mortalities or injuries within five working days of receiving notice from a Cooperator of such event.

j) Conduct compliance monitoring (in the form of status reviews), as described in Part 8.0 of this Agreement, and provide assistance in preparing and submitting to FWS a biannual report that describes the findings of such monitoring.

k) Work with the Parties and Upper Little Red River Conservation Group on potential improvements to the administration, goals, and conservation measures of this Agreement, as necessary and appropriate.

l) Inform the FWS when a Cooperator gives a 60 day notice (as per Part 7.4.1) that the landowner intends to carry out an activity that is likely to result in the incidental take of covered species, so as to give the FWS the opportunity to work with AGFC on the relocation of any affected covered species.

m) Inform the FWS when a Cooperator is not in compliance with the terms and conditions of its POMA and/or this Agreement and of any measures employed to remediate the non-compliance.

n) Provide necessary Farm Bill or other program assistance, technical assistance, and funding, when available, to Cooperators in accordance with this Agreement.

o) Provide data collected from enrolled Cooperators, surveys, and monitoring to the FWS in a timely manner to allow FWS to compile biannual reports on implementation of the Agreement.

9.3 TNC shall:

a) Implement and administer this Agreement including: covered species monitoring, coordinating and/or assisting with covered species habitat management efforts on Cooperators' properties and enrolling Cooperators under this Agreement.

b) With the assistance of the prospective Cooperator, complete the applicable POMA Form(s) (Attachments 2 and 3) and ensure that the landowner's proposed actions meet the applicable regulatory standards and goals of this Agreement, including providing an adequate quantity and quality of instream and riparian habitat, maintaining existing suggested land use practices, and continuing maintenance of the property in accordance with any other existing agreement(s) to which the prospective enrollee is a signatory.

c) At least 60 days prior to enrolling a landowner under this Agreement, TNC will provide the draft POMA and any associated conservation measures or habitat management plans to each of the other Parties for review and comment. The Parties shall have the opportunity to review and comment on the proposed POMA prior to the draft POMA being forwarded to the prospective Cooperator. (For those conservation practices identified by the Parties as completely beneficial to the covered species (as determined

under section VII of the *Conservation Strategy for the Speckled Pocketbook and Yellowcheek Darter*), this step is optional.)

d) Upon receiving written concurrence from each of the other Parties, TNC shall enter into the POMA with the landowner (now a Cooperator) and issue to the Cooperator a Certificate of Inclusion. The POMA shall become effective and binding on the date of the last signature to the POMA. The Certificate of Inclusion shall become effective only after it has been signed and dated by a Party to this Agreement.

e) Upon receipt of a completed proposed POMA form from FWS, NRCS, and/or AGFC, TNC shall, within 14 days, notify each of the other Parties of its concurrence or non-concurrence in enrolling the prospective landowner.

f) If TNC objects or has concerns regarding any proposed POMA, TNC shall work cooperatively with all of the other Parties to resolve these concerns within a reasonable time period.

g) Provide to the Cooperator and each Party to this Agreement copies of the executed POMA and Certificate of Inclusion.

h) Provide technical assistance to Cooperators, to the maximum extent practicable, when requested.

i) Inform the FWS of any known covered species mortalities or injuries within five working days of receiving notice from a Cooperator of such event.

j) Conduct compliance monitoring (in the form of status reviews), as described in Part 8.0 of this Agreement, and provide assistance in preparing and submitting to FWS a biannual report that describes the findings of such monitoring.

k) Work with the Parties and Upper Little Red River Conservation Group on potential improvements to the administration, goals, and conservation measures of this Agreement, as necessary and appropriate.

l) Inform the FWS when a Cooperator gives a 60 day notice (as per Part 7.4.1) that the Cooperator intends to carry out an activity that is likely to result in the incidental take of covered species, so as to give the FWS the opportunity to work with AGFC on the relocation of any affected covered species.

m) Inform the FWS when a Cooperator is not in compliance with the terms and conditions of its POMA and/or this Agreement and of any measures employed to remediate the non-compliance.

n) Provide assistance to Cooperators to receive state, federal, and private funding to implement conservation measures in accordance with this Agreement.

o) Provide data collected from enrolled Cooperators, surveys, and monitoring to the FWS in a timely manner to allow FWS to compile biannual reports on implementation of the Agreement.

p) Refrain from releasing personal information of any Cooperator or information specific to this Agreement to anyone other than the Parties to this Agreement without prior approval from the affected Cooperator(s).

9.4 FWS shall:

a) Implement and administer this Agreement including: covered species monitoring, coordinating and/or assisting with covered species habitat management efforts on Cooperators' properties, enrolling Cooperators under this Agreement, and reintroduction(s) of the covered species, if necessary.

b) With the assistance of the prospective Cooperator, complete the applicable POMA Form(s) (Attachments 2 and 3) and ensure that the landowner's proposed actions meet the applicable regulatory standards and goals of this Agreement, including providing an adequate quantity and quality of instream and riparian habitat, maintaining existing suggested land use practices, and continuing maintenance of the property in accordance with any other existing agreement(s) to which the prospective enrollee is a signatory.

c) At least 60 days prior to enrolling a landowner under this Agreement, FWS will provide the draft POMA and any associated conservation measures or habitat management plans to each of the other Parties for review and comment. The Parties shall have the opportunity to review and comment on the proposed POMA prior to the draft POMA being forwarded to the prospective Cooperator. (For those conservation practices identified by the Parties as completely beneficial to the covered species (as determined under section VII of the *Conservation Strategy for the Speckled Pocketbook and Yellowcheek Darter*), this step is optional.)

d) Upon receiving written concurrence from each of the other Parties, FWS shall enter into the POMA with the landowner (now a Cooperator) and issue to the Cooperator a Certificate of Inclusion. The POMA shall become effective and binding on the date of the last signature to the POMA. The Certificate of Inclusion shall become effective only after it has been signed and dated by a Party to this Agreement.

e) Upon receipt of a completed proposed POMA form from TNC, NRCS, and/or AGFC, FWS shall, within 14 days, notify each of the other Parties of its concurrence or non-concurrence in enrolling the prospective landowner.

f) If FWS objects or has concerns regarding any proposed POMA, FWS shall work cooperatively with all of the other Parties to resolve these concerns within a reasonable time period.

g) Provide to the Cooperator and each Party to this Agreement copies of the executed POMA and Certificate of Inclusion.

h) Provide technical assistance to Cooperators, to the maximum extent practicable, when requested.

i) Inform the other Parties of any known covered species mortalities or injuries within five working days of receiving notice from a Cooperator of such event.

j) Conduct compliance and biological monitoring, as described in Part 8.0 of this Agreement.

k) Compile Cooperator, survey, and monitoring data and information collected by the Parties to this Agreement and prepare the biannual reports on implementation of this Agreement.

l) If warranted, recommend procedures the Cooperators can implement as is to avoid future incidental take events that might have been described in past biannual reports.

m) Work with the Parties and Upper Little Red River Conservation Group on potential improvements to the administration, goals, and conservation measures of this Agreement, as necessary and appropriate.

n) Inform the other Parties when a Cooperator gives a 60 day notice (as per Part 7.4.1) that the Cooperator intends to carry out an activity that is likely to result in the incidental take of covered species.

o) Inform the other Parties when a Cooperator is not in compliance with the terms and conditions of its POMA and/or this Agreement and of any measures employed to remediate the non-compliance.

p) Provide ESA funding for the covered species' conservation needs and the implementation of this Agreement when available and authorized.

q) Provide funding when available and authorized under the Partners for Fish and Wildlife Program to benefit the covered species.

r) Apply for funding when available and authorized under other ESA and non-ESA Programs to benefit the covered species.

s) Issue a permit to the Parties under section 10(a)(1)(A) of the ESA, in accordance with the applicable statutes and regulations, with a term of 35 years, that would provide the Parties with the authorization and ability to deliver regulatory assurances and incidental take authorizations to Cooperators through the Certificates. Further information on the regulatory assurances elements of this Agreement are found in Part 7 of this Agreement.

10.0 Agreement Management

10.0.1 Term of the Permit and Agreement

Except as otherwise provided by this Agreement, the Agreement, including the obligations of the Parties and any commitments related to funding, will be in effect for 30 years following the date of the signature of the last Party. The authorization for incidental take will exist for the duration of the Permit issued in association with this Agreement. Except as otherwise provided by this Agreement, incidental take of the covered species will be 35 years from the effective date of the Permit. The expiration date of the Permit extends beyond the life of the Agreement to allow the Cooperators the opportunity to defer take when this Agreement expires thereby allowing for the continuation of species conservation and the extension of the conservation measures employed on behalf of the covered species. This Agreement and the associated Permit may be extended beyond their specified durations through amendment, with concurrence of all Parties. Parties may enroll Cooperators through POMAs at any time from the effective and binding date of this Agreement until five years before the termination of the Agreement (25 years). Obligations under POMAs will be in effect variable lengths of time, but the minimum duration of obligations will be for ten years from the date each POMA becomes effective and binding.

10.0.2 POMA and Certificate Duration

Upon entering into a POMA, the signing Party or Parties will issue a Certificate of Inclusion to the Cooperator authorizing the incidental take of the covered species on the Cooperators' property. The Certificate of Inclusion will authorize incidental take of covered species for the remaining duration of the 35-year term of the Permit at the time the Certificate of Inclusion is issued. The rights and obligations under this Agreement and POMAs shall run with the ownership of the enrolled lands.

10.1 Modifications and Amendments

10.1.1 Modification and Amendment of the Agreement

Proposed minor modifications and amendments to this Agreement must be provided to the other Parties in writing. The non-proposing Parties 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 either of the other non-proposing Parties provides in writing its disapproval of the proposed modification or unless the FWS gives written notice that the proposed modification must be processed as a formal amendment. A formal amendment shall be required if the FWS determines 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 the Agreement failing to meet Part 4.0 of this Agreement.

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) incorporation of the results of the Adaptive Management provisions outlined in Part 16.0 below.

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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.

10.1.2 Modification and Amendment of the Permit

The Permit may be amended to accommodate changed circumstances in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, the FWS' permit regulations at 50 CFR 13 and 50 CFR 17. Any Party may propose amendments to the Permit by providing written notice to the other Parties. Such notice shall include a statement of the proposed amendment, the reason for it, and its expected results. The Parties will make their best efforts to respond to proposed amendments within 60 calendar days of receiving the notice. Proposed amendments will become effective upon fulfillment of the legal requirements stated above.

FWS reserves the right to amend the Permit and any Certificates issued 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), whichever section is applicable.

Minor modifications to this Permit 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) incorporation of the results of the Adaptive Management provisions outlined in Part 17.0 below.

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.

10.1.3 Modification and Amendment of POMA(s) and Certificates

The Parties may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to a Cooperator or successor in interest to the Cooperator except as stipulated in 50 CFR 17.22(c)(5) and 17.32(c)(5), whichever section is applicable.

Minor modifications to a POMA 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 POMA and associated Certificate; (d)

minor changes to survey, monitoring, or reporting protocols; and, (e) conservation measures modified through adaptive management, if applicable.

10.2 Termination of the Agreement

As provided for in Part 12 of the FWS' Safe Harbor Policy (64 FR 32717), the Agreement may be terminated by the Parties with written notice. Termination may occur upon 180 days prior written notice to the other Parties including all Cooperators with Certificates. As long as Cooperators carry out their responsibilities in their Cooperative Agreements, termination of this Agreement will not affect the Cooperators' authorization to take the covered species above baseline for the duration of the permit. FWS will only terminate the Agreement in the unlikely circumstance where the associated Permit will be revoked (see Part 11 below).

10.3 Termination of POMAs/Certificate

10.3.1 By Cooperators

Any Cooperator may terminate a POMA/Certificate prior to its expiration date, for good cause (e.g. a *force majeure* event), even if the expected benefits have not been realized. Upon termination of the POMA, for any cause, the Cooperator is required to provide 90 days prior written notice to the FWS, TNC, AGFC, or NRCS, who will then notify the other Parties.

10.3.2 By the Parties

Any Party has the right to cancel any POMA and the associated Certificate where the Cooperator or its successor(s) is (are) found to be in non-compliance with the terms and conditions of their POMA. If a Cooperator is found to be in non-compliance, the original signatory Party to the POMA 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 the Parties by mutual consent by the end of the 60-day period, the POMA shall be declared null and void. At that point, the POMA and the associated Certificate shall cease to be in effect. The FWS reserves the right to utilize the provisions of this part at its discretion to review and/or terminate a Cooperator's POMA/Certificate.

11.0 Permit Suspension or Revocation

FWS will not exercise its authority to suspend or revoke the Permit unless and until the following circumstances exist: (a) any reason set forth in 50 CFR 13.28(a) (1) through (4); and (b) if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species. Before revoking a permit under (b) of this section; FWS, with the consent of the other Parties and in coordination with the affected Cooperators, will pursue all appropriate options to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, capturing and relocating the species, compensating the affected Cooperator(s) to forgo the activity, purchasing an easement or

fee simple interest in the affected property(ies), or arranging for a third-party acquisition of an interest of the affected property(ies).

12.0 Renewal of Agreement

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

13.0 Renewal of POMAs

With the exception of POMAs of short duration, any Party shall be authorized to renew any POMA and Certificate with or without modification with the written approval of the other Parties and the Cooperator, provided that this Agreement and its associated Permit are still in effect.

14.0 Succession and Transfer

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and transferees, in accordance with applicable Federal regulations (50 CFR 13.24 and 13.25). The rights and obligations under this Agreement and any POMA(s) shall run with the ownership of the enrolled properties and are transferable to subsequent private property owners pursuant to 50 CFR 13.25. The Cooperator shall provide written notice to the FWS of any transfer of ownership at least 90 calendar days prior to the intended transfer. Upon receipt of such notice, the FWS shall inform AGFC, TNC, or NRCS of the intended transfer.

It will be the sole responsibility of the original Cooperator 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, the Parties, at their discretion, will attempt to contact the new or prospective landowner to explain the original POMA and this Agreement, and to determine whether the new landowner will become a Cooperator to the original POMA, enter a new POMA, or cease enrollment under this Agreement. Upon becoming a Cooperator to this Agreement and associated Permit, the new Cooperator will have the same rights and obligations with respect to the enrolled property as the original Cooperator.

15.0 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 landowner's voluntary conservation actions result in listed species occupying adjacent properties that are not enrolled in a POMA, the Parties and the Service will use the maximum flexibility allowed under the FWS' Safe Harbor and/or CCAA Policy to address that issue. In general, the Parties to this Agreement will make every reasonable effort to include the neighboring landowner as a signatory party to the POMA or to a separate POMA and associated Certificate, using the procedure set forth in Part 6.0 of this Agreement. Other potential actions available to the Parties include, but are not limited to, granting incidental take authority to owners of neighboring lands where occupation is a result of the POMA.

16.0 Adaptive Management

Adaptive management allows for mutually agreed upon changes to the Agreement's conservation measures in response to changing conditions or new information. If the conservation measures do not yield the expected results and appear ineffective, then management activities can be changed or alternative activities undertaken to achieve those expected results. Decisions related to adaptive management will be based primarily on an evaluation of the compliance and biological monitoring results detailed in the annual reports.

Adaptive management decisions can be made at any time as deemed necessary by the Parties; however, a major evaluation of this Agreement will be carried out every fifth year to ensure that it is achieving its conservation goals. Management activities will be evaluated as to whether they are resulting in the protection of the covered species on enrolled lands. If there is no increase in the covered species population sizes and/or repopulation of historic ranges within the first ten years of this Agreement, the Parties will change management activities to improve success. This will most likely be brought about through artificial propagation of the covered species for reintroduction to sites within its historical range. The evaluation will also include an assessment of any incidental take event(s) that has occurred to determine if high levels of ongoing take may be preventing recovery of the covered species.

If management activities need to be altered to improve benefits for the species, they will be altered by amending future POMAs, not by altering the responsibilities of Cooperators in existing POMAs. However, if existing Cooperators agree to alter their POMAs, then any modification of their responsibilities in relation to adaptive management will be addressed on a case by case basis.

17.0 Dispute Resolution

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

18.0 Availability of Funds

The responsibilities of each agency under this Agreement will be funded by respective agency or non-governmental organization resources. Implementation of conservation measures will be funded by applying for assistance and/or grants through various programs such as Landowner Incentive Program, Partners for Fish and Wildlife, Private Stewardship Grants, Farm Bill, etc. Each Party's responsibility under this Agreement is subject to, and contingent upon, appropriations and allocations of funds for this purpose. To the extent available and authorized, management activities undertaken by Cooperators will be paid for with Party program funding or outside funding opportunities and will include matching Cooperator funds (10 to 25 percent depending on program).

Implementation of this Agreement is subject to the requirements of the Federal 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. Each Party acknowledges that it is not be required to expend any available or

appropriated funds unless and until an authorized official of that affected Party affirmatively acts to commit to such expenditures as evidenced in writing.

19.0 Remedies

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

20.0 No Third-Party Beneficiaries

Neither this Agreement nor the associated POMA(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 POMA(s) that will be entered into in accordance with this Agreement shall authorize anyone not a party to this Agreement and the associated POMA(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.

21.0 Relationship to Other Agreements

The use of other agreements, such as those used in federal and state programs (*e.g.* Farm Bill, etc.), will be honored as part of the standards of this Agreement.

22.0 Additional Conservation Measures

Nothing in this Agreement shall be construed to limit or constrain either Party or a Cooperator from implementing management actions not provided in this Agreement as long as such actions maintain the original goals and objectives of the POMA and do not otherwise interfere or affect the beneficial actions set forth in this Agreement.

23.0 National Historic Preservation Act - Section 106

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 9 (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.

This Agreement has been reviewed and evaluated by the FWS' Region 4, Ecological Services Staff Archeologist. The overall Agreement does not meet the definition for an undertaking as defined in 36 CFR 800 since the Agreement is concerned with future actions that have not yet occurred.

In addition, the conservation measures are the type of actions that, by themselves, are unlikely to affect any cultural resources that may be present on a specific Cooperator's property. Past review and field evaluations of the type of conservation measures listed in Part 7.0 of this Agreement indicate that it is reasonable to assume that cultural resources will not be affected by the implementation of this Agreement.

The staff archeologist is available to assist the FWS' Arkansas Ecological Services Office and any Party or Cooperator on a project by project evaluation, should any conservation measure be planned that will require significant soil disturbance or the removal of a structure or building 50 years old or older.

24.0 Access to Enrolled Landowners' Property

It is also important for one or more of the Parties to this Agreement to make occasional field visits to make certain the POMAs are being properly implemented, to identify any unanticipated benefits or deficiencies, and to assist Cooperators in developing corrective actions when necessary.

The Cooperator shall allow any Party or other properly permitted persons designated by a Party 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.

25.0 Other Species

Surveys for other federally listed species will not be required of the Cooperators as a condition to participating in this Agreement. However, neither regulatory assurance nor incidental take authorizations will be conveyed to Cooperators for any federally listed animal not identified in their Certificate of Inclusion. If other federally listed species are known to exist on the enrolled property(ies), then the Parties will seek cooperative and comprehensive solutions with the affected Cooperator(s) to tailor his/her management actions which avoid take and/or minimize any disturbance of these species.

26.0 Subordination of POMAs

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

27.0 Notices and Reports

Any notices and reports, including monitoring and biannual reports, required by this Agreement shall be delivered to the persons listed below, as appropriate. Names and addresses may be changed upon written notification to all Parties.

[Cooperators indicated on POMAs]

Field Supervisor
Arkansas Ecological Services Office
U.S. Fish and Wildlife Service
1500 Museum Road, Suite 105
Conway, Arkansas 72032

Director
The Nature Conservancy
Arkansas Field Office
601 North University Avenue
Little Rock, Arkansas 72205

Director
Arkansas Game and Fish Commission
2 Natural Resources Drive
Little Rock, Arkansas 72205

State Conservationist
Natural Resources Conservation Service
Room 3416 Federal Bldg, 700 W. Capitol
Little Rock, AR 72201

28.0 Authorizing Signatures

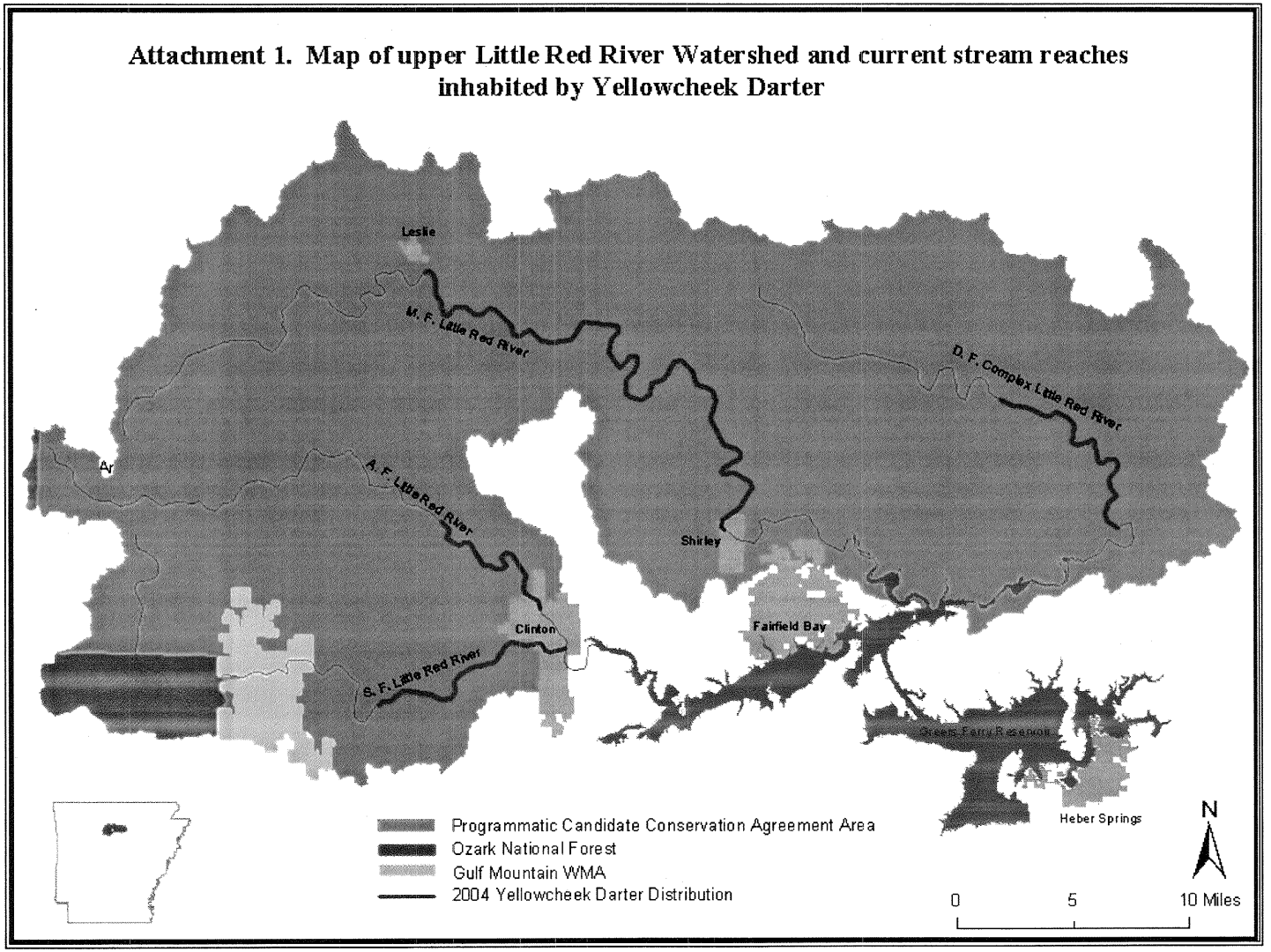
IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Agreement to be in effect as of the date last signed below.

Director Arkansas Game and Fish Commission	Date
Director Arkansas Field Office The Nature Conservancy	Date
State Conservationist, Arkansas Natural Resources Conservation Service	Date
Field Supervisor U. S. Fish and Wildlife Service Arkansas Ecological Services Field Office	1/12/07 Date
Deputy Regional Director U. S. Fish and Wildlife Service Atlanta, Georgia	1/12/07. Date

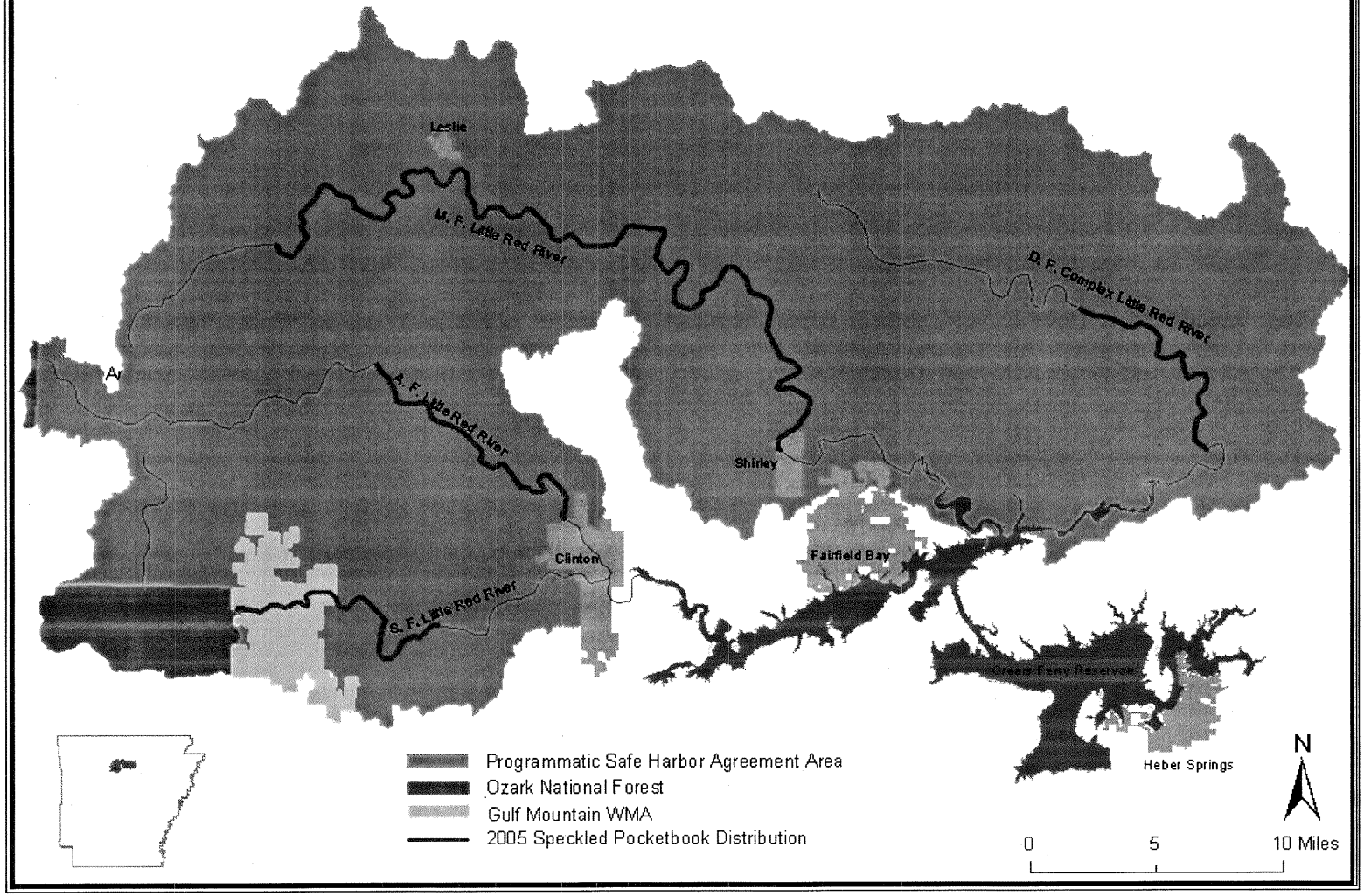
29.0 Attachments to this Agreement

Attachment 1:	Map of upper Little Red River Watershed and current stream reaches inhabited by the covered species.
Attachment 2:	Template POMA – SHA Element
Attachment 3:	Template POMA – CCAA Element
Attachment 4:	Template Certificate of Inclusion – SHA Element
Attachment 5:	Template Certificate of Inclusion – CCAA Element
Attachment 6:	National Historic Preservation Act – Section 106
Attachment 7:	SHA Assurances
Attachment 8:	CCAA Assurances
Attachment 9:	Cooperator/Landowner Waiver to Release Information to Other Parties
Attachment 10:	Literature Cited

Attachment 1. Map of upper Little Red River Watershed and current stream reaches inhabited by Yellowcheek Darter



Attachment 1. Map of upper Little Red River Watershed and current stream reaches inhabited by Speckled Pocketbook



Attachment 2
Template Property Owner Management Agreement (POMA)
Safe Harbor Program for Speckled Pocketbook

1.0 Introduction

This Property Owner Management Agreement (POMA) or Agreement, entered into by ***[insert name]*** (Cooperator), U. S. Fish and Wildlife Service (FWS), Arkansas Game and Fish Commission (AGFC), The Nature Conservancy (TNC), and/or Natural Resources Conservation Service (NRCS), herein after collectively referred to as the "Parties", is intended to promote good land stewardship by assisting the Cooperator in carrying out actions to benefit the speckled pocketbook (*Lampsilis streckeri*) on the Cooperator's Property. This POMA and the associated Certificate of Inclusion ***[reference Certificate #XXX attachment to this POMA]*** are in accordance with the *Programmatic Safe Harbor Agreement and Candidate Conservation with Assurances Agreement for the Speckled Pocketbook and Yellowcheek Darter in the Upper Little Red River Watershed, AR* (SHA/CCAA), entered into by the FWS, AGFC, TNC, and NRCS, and the Enhancement of Survival Permit (Permit) associated with the SHA/CCAA.

The speckled pocketbook ("covered species"), a federally listed endangered species, is the only species for which incidental take authority is authorized under this POMA and the associated Certificate of Inclusion. Other species of listed plants or animals may also occur on the enrolled property, but incidental take of these other species is not authorized or permitted under this POMA.

POMA Tracking Number: ***[FWS Arkansas Ecological Services Field Office will provide].***

2.0 Enrolled Property

The following property is covered by this POMA: ***[include legal description]*** in ***[County]***, Arkansas. This property ("enrolled property") contains habitat that may be used by the covered species or that is important to maintaining healthy streams inhabited by the covered species. The enrolled property lies within the ***[identify Archey Fork, Devils Fork complex, Middle Fork, or South Fork]*** Little Red River watershed and consists of ***[insert # of acres],*** as shown on the attached property map ***[reference map attached to this POMA].***

3.0 Net Conservation Benefits and Conservation Measures

3.1 Net Conservation Benefits

The Parties reasonably expect that this POMA will result in protection, enhancement, and restoration of instream habitat, improved water quality, reduction in erosion and sedimentation, improved riparian habitat, and improved land use practices on the enrolled property during the term of this POMA and the associated certificate of inclusion ("Certificate"). For as long as management activities set forth herein are carried out or the habitat created by these activities persists, the enrolled property will benefit the conservation of the covered species. Without this cooperative federal and state government and voluntary private effort, the Cooperator's enrolled property likely would not have been managed in a manner so as to enhance and/or restore covered species' populations in the foreseeable future. Therefore, the cumulative impact of this

POMA and the activities it covers, which are facilitated by the authorization of incidental take, will provide a net conservation benefit to covered species.

3.2 Conservation Measures

The primary objective of this POMA is to protect, enhance, restore habitat and water quality and thereby promote the continued existence or reestablishment of the covered species population(s) in the [South, Middle, Archey, Turkey, Beech, and Devils Fork]. In order to accomplish this, it is essential that the Cooperator, the FWS, AGFC, TNC, and NRCS work together to provide good habitat and positive stewardship for the covered species. Management activities that are undertaken through this POMA will result in improving habitat quantity and quality for the covered species in the upper Little Red River watershed. The net effect of conservation activities will be to increase the likelihood that viable populations of the covered species will persist in the upper Little Red River watershed and inhabit unoccupied stream reaches that are within its historic range.

The conservation recommendations necessary to meet the net conservation benefit for the enrolled property are: ***[insert a list of specific conservation measures necessary to the net conservation benefit on this property(acres, river miles, management practices, linear feet for fencing, increases in riparian habitat quality/quantity].***

The boundaries of the enrolled property and covered species habitat are shown on the attached map ***[reference map attached to this POMA].***

4.0 Baseline Conditions and Responsibilities

4.1 Baseline Conditions

[Describe the extent and current condition of the enrolled property and their acreage (e.g., major plant communities or habitat types, soils, hydrology, etc.) in terms of appropriate habitat for the covered species. Describe how the conservation recommendations required to meet the net conservation benefits were determined and attach a map showing the boundaries of the property. Existing conditions and those necessary to meet the net conservation benefit may be expressed either as riparian habitat (width, length, type of vegetation, fenced or not fenced), current or recommended land use practices (best management practices), and existing agreements on the property.]

4.2 Baseline Responsibilities

The baseline responsibilities/constraints of the Cooperator are to maintain existing fences, riparian habitat, and best management practices as determined by the baseline survey and as set forth in this POMA. Specifically, the Cooperator's baseline responsibilities are to:

1. Maintain existing riparian habitat within 100 feet of perennial and intermittent stream banks and 30 feet of ephemeral stream banks;

2. Ensure riparian vegetation remains intact during and after vegetation management activities, such as harvesting, prescribed burning, road or fire line construction, and pesticide application;

3. Ensure movement of fish and other aquatic organisms in streams are not obstructed by construction of new road crossings, culverts, or other human-caused obstructions;

4. Refrain from undertaking activities that adversely affect hydrologic function (*i.e.* stream flow, water quality, physical habitat, etc.);

5. Maintain existing fences in a state sufficient to prevent livestock access to riparian areas and streams except at designated water access locations;

6. Adhere to Arkansas Forestry Commission recommended best management practices for water quality protection; and

7. Follow existing terms and conditions related to existing easements or conservation agreements on property.

4.3 Baseline Adjustment

Force majeure events such as tornados, rainstorms, severe drought, fires, or insect/disease epidemics are beyond the reasonable control of the Cooperator, and could either extirpate the covered species from the enrolled property, render the covered species' habitat on the enrolled property unsuitable for continued occupation, or result in a degradation of habitat (water and stream bed). These events may reduce the covered species' numbers or habitat below existing conditions or those conditions necessary to meet the net conservation benefit through no fault or negligence of the Cooperator. If the covered species habitat ceases to exist on an enrolled property, the affected Cooperator will not be held responsible for the loss of such baseline habitat conditions provided such cessation was not the result of the Cooperator or Cooperator's agent(s) action(s). In such circumstances the Cooperator, FWS, AGFC, TNC, and NRCS may agree to revise the conservation recommendations of this POMA to reflect the new circumstances.

5.0 Responsibilities of the Parties

The Cooperator, FWS, AGFC, TNC, and NRCS agree to carry out certain responsibilities under this POMA, as specified below.

Cooperator:

a. Within 30 days, the Cooperator shall inform FWS, AGFC, TNC, or NRCS when the covered species is known or suspected to be present on the enrolled property.

b. If the covered species is known to be present on the enrolled property, the Cooperator shall notify FWS, AGFC, TNC, or NRCS in writing at least 30 days in advance of any planned land management activity (mowing, plowing, etc.) that the Cooperator reasonably anticipates will result in the incidental take of the covered species as well as provide the FWS and AGFC the opportunity to capture and/or relocate any potentially affected individuals of the covered species. Under no circumstances, however, shall the Cooperator disturb the covered species or their instream habitat (occupied or unoccupied).

c. The Cooperator shall inform FWS, AGFC, TNC, and/or NRCS, in writing, within three working days of finding any dead or accidentally killed individuals of the covered species.

d. The Cooperator shall allow any Party or other properly permitted persons designated by a Party 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, with reasonable advance notice (7 days or more).

e. The Cooperator agrees to provide FWS, AGFC, TNC and/or NRCS with information necessary to compile the required biannual report of the SHA/CCAA. This includes, but is not limited to, activities related to covered species' management and any activities that resulted in or may have resulted in incidental take of covered species during the reporting period.

f. The Cooperator agrees to consider adaptive management recommendations that the FWS, AGFC, TNC, and/or NRCS may present to the Cooperator during the term of this POMA.

g. The Cooperator, if considering improving habitat for covered species, shall seek technical assistance from the FWS, AGFC, TNC, and/or NRCS on appropriate action(s).

AGFC, NRCS, TNC, and FWS:

a. Upon execution of this POMA, sign a Certificate of Inclusion with the Cooperator that provides both regulatory assurances and incidental take authorization for the covered species on the enrolled property in accordance with the terms of the SHA/CCAA and the Permit associated with the SHA/CCAA.

b. Provide technical assistance to the Cooperator, to the maximum extent practicable, when requested.

c. Ensure that the Cooperator is implementing the terms of his/her POMA.

d. Conduct compliance and biological monitoring, with NRCS also providing status reviews.

e. Where warranted, recommend procedures to the Cooperator that can be taken to avoid occurrences of incidental take, particularly where incidents of incidental take have been described in biannual reports prepared in accordance with the SHA/CCAA.

f. Work with the Cooperator, one another, and the Upper Little Red River Conservation Group on potential baseline adjustments, new management actions, and adaptive management plans, as necessary.

g. Inform each of the other Parties to this POMA when a Cooperator is not in compliance with the terms and conditions of this POMA and/or the POMA and of any of the measures employed by the Cooperator to remediate the non-compliance.

h. Shall collect data for biannual reports with the assistance of the Cooperator on activities required by this POMA and the SHA/CCAA, including, but not limited to, data related to covered species management and any activities that resulted in or may have resulted in incidental take of the covered species.

6.0 Emergency Situations

Emergency situations arising from natural disasters (e.g., tornados, fire, excessive rainfall, extreme drought, insect infestations, or epidemic disease) may require the initiation of certain land management actions that may result in the incidental take of the covered species. If emergency situations arise, the Cooperator agrees to notify FWS, AGFC, TNC, and/or NRCS in writing and to make reasonable accommodations for survey and/or relocation of speckled pocketbook prior to the initiation of the land management action in such an event.

If prior notification is not possible, the Cooperator will take into account known locations of speckled pocketbook and avoid impacts to the maximum extent possible during the implementation of such actions. The Cooperator will notify FWS, AGFC, TNC, and/or NRCS, in writing, within ten working days of taking such action, and identify and include the measures taken to avoid impacts to speckled pocketbook.

7.0 POMA and Certificate Duration

Obligations under this POMA will be in effect for a minimum of 10 years or until the end of the 30-year duration of the SHA/CCAA, whichever is the longer duration. The POMA and Certificate shall be the same duration. The obligations begin the date the POMA and Certificate of Inclusion are signed by the Party and Cooperator.

The Certificate issued in association with this POMA is attached.

8.0 Incidental Take Authorization

Cooperator is authorized to make use of their enrolled property in any manner that does not result in reducing the population and/or quantity and quality of habitat for the speckled pocketbook below the established and documented baseline responsibilities set for in Part 4 of this POMA. The Cooperator's Certificate authorizes take incidental to otherwise lawful activities on the enrolled property from the time the POMA becomes effective until expiration of the Certificate. Such activities may include, but are not limited to: driving vehicles, building or fence construction, grazing of livestock, gardening, forestry, hunting, farming, mowing, or cultivation of agricultural crops. Cooperator may continue current land-use practices, undertake new practices, or make any other lawful use of the enrolled property, even if such use results in the incidental take of the speckled pocketbook or the loss and/or degradation of habitat above the Cooperator's baseline responsibilities provided that each of the following qualifications and conditions are met:

1. The Cooperator is in total compliance with its POMA;
2. The Cooperator has maintained his/her speckled pocketbook baseline responsibilities;
3. The Cooperator will only engage in take that is incidental to otherwise lawful activities; and,
4. The Cooperator will not undertake any activity that could result in incidental take until written notice is provided as identified in Part 5 above.

9.0 Regulatory Assurances

The following assurances are provided to the Cooperators:

> "If additional conservation measures are necessary to respond to unforeseen circumstances, the Service may require additional measures from the AGFC, TNC or Cooperator only if such measures are limited to modifications within a Cooperator's POMA conservation strategy for the affected species, and only if those measures maintain the original terms of the POMA (and Certificate of Inclusion) 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 POMA (and Certificate) without the consent of the Cooperator."

FWS 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. FWS will consider, but not be limited to, the following factors:

- Size of the current range of the affected species;
- Percentage of range adversely affected;
- Percentage of range conserved;

- Ecological significance of that portion of the range affected;
- Level of knowledge about the affected species and the degree of specificity of the species' conservation program; 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 Cooperator to alter or modify the enrolled property, even if such alteration or modification results in the incidental take of speckled pocketbook habitat to such an extent that the take returns the speckled pocketbook habitat 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 POMA. These assurances are also contingent on the Cooperator's compliance with the obligations of the POMA. Further, the assurances apply only to this particular POMA, only if the POMA is being properly implemented, and only with respect to species covered by this POMA.

10.0 Funding

Funding for management activities undertaken by the Cooperator will be the responsibility of the Cooperator. The FWS, AGFC, TNC, and/or NRCS will inform the Cooperator of potential funding opportunities through state, federal, or private grant programs that may be relevant and available.

11.0 Terms and Conditions

In addition to the matters set form herein, this POMA is subject to all of the terms and conditions of the *Programmatic Safe Harbor Agreement and Candidate Conservation with Assurances Agreement for the Speckled Pocketbook and Yellowcheek Darter in the Upper Little Red River Watershed, AR* and its associated Permit.

11.1 Modification of POMAs

The FWS, AGFC, TNC, NRCS, and/or the Cooperator may propose modifications or amendments to this POMA by providing written notice to one another and obtaining their written concurrence. Such notice shall include a statement of the proposed modification, the reason for the proposed modification, and the expected results of the modification. The Parties will make their best efforts to respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications or amendments that are not minor as set forth in Part 11.3 of the SHA/CCAA will become effective upon the written concurrence of each Party. (The documentation required for either formal or informal amendments are identified in the *Programmatic Safe Harbor Agreement and Candidate Conservation with Assurances Agreement for the Speckled Pocketbook and Yellowcheek Darter in the Upper Little Red River Watershed, AR.*)

11.2 Termination of the POMA

The Cooperator or its enrolled successor in interest must give the Parties ninety (90) days written notice, by certified letter, of the Cooperator's intent to terminate this POMA. The Cooperator also agrees to provide the FWS, AGFC, TNC, and/or NRCS the 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), a Cooperator may terminate a POMA prior to the expiration date of this POMA for circumstances beyond the Cooperator's control.

Provided that the baseline conditions have been maintained, the Cooperator, 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 Cooperator is unable to continue implementation of the management activities, plans and provisions of this POMA, whether due to catastrophic destruction of the species population numbers or habitat or due to unforeseen hardship, the Cooperator agrees to relinquish the Certificate of Inclusion to FWS, AGFC, TNC, and/or NRCS. Termination of this POMA terminates the Certificate.

11.3 Suspension or Revocation of Certificate of Inclusions

FWS, AGFC, TNC, and NRCS may suspend or revoke the Cooperator's Certificate of Inclusion if the Cooperator breaches the obligations set forth in this POMA and fails to cure such breach in a timely manner.

11.4 Succession and Transfer

The rights and obligations under this POMA shall run with the ownership of the enrolled property and are transferable to subsequent private property owners pursuant to 50 CFR 13.25. The Certificate of Inclusion issued to the Cooperator may be extended to the new owner. Upon becoming a party to this POMA and subject to the associated Certificate, the new owner will have the same rights and obligations with respect to the enrolled property as the original owner. The Cooperator shall notify the FWS, AGFC, TNC, and/or NRCS, in writing, of any transfer of ownership at least 90 calendar days prior to the intended transfer, in order to provided FWS, AGFC, TNC, or NRCS the opportunity to contact the new owner, explain the responsibilities applicable to the enrolled property, and seek to interest the new owner in signing the existing POMA or in entering into a new POMA on the enrolled property.

11.5 Remedies

Each party shall have all remedies otherwise available to enforce the terms of this POMA and the associated Certificate.

12.0 Relationship to Other Documents

This POMA is subordinate to the *Programmatic Safe Harbor Agreement and Candidate Conservation with Assurances Agreement for the Speckled Pocketbook and Yellowcheek Darter in the Upper Little Red River Watershed, AR,* and the associated Enhancement of Survival Permit which is incorporated by reference into this POMA, in their entirety.

13.0 Other Species

Surveys for other federally listed species will not be required of the Cooperator as a condition to participating in this POMA. However, neither regulatory assurances nor incidental take authorizations will be conveyed to the Cooperator for any federally listed animal not identified in the attached Certificate of Inclusion. If other federally listed species are known to exist on the enrolled property, then the Parties will seek cooperative and comprehensive solutions with the Cooperator to tailor his/her management actions which avoid take and/or minimize any disturbance of these species.

14.0 Effective Date

This POMA shall be effective and binding on the date of the last signature, below.

15.0 Notification

Communication, reports, and correspondence required by this POMA should be directed to the addresses below. Names and addresses may be changed upon written notice to all Parties.

[insert: Name and address, phone, fax, email of Cooperator]

AGFC: Director
2 Natural Resources Drive
Little Rock, Arkansas 72205
(501)776-0218 (Voice)
(501)223-6461 (Fax)

TNC: State Director
601 North University Ave.
Little Rock, Arkansas 72205
(501)663-6699 (Voice)
(501)663-8332 (Fax)

NRCS: State Conservationist
Room 3416 Federal Bldg
700 W. Capitol
Little Rock, AR 72201
(501)301-3173 (Voice)
(501) 301-3188 (Fax)

FWS: Field Supervisor
Arkansas Ecological Services Office
110 South Amity Road, Suite 300
Conway, Arkansas 72032
(501)513-4470 (Voice)
(501)513-4480 (Fax)

Attachment 2
Template Property Owner Management Agreement (POMA)
Safe Harbor Program for Speckled Pocketbook

IN WITNESS WHEREOF, each party hereto has caused this Property Owner Management Agreement to be executed by an authorized official on the day and year set forth below their signature.

COOPERATOR

By: _____
Name and Title

Date: _____

AUTHORIZING PARTIES

[INSERT U. S. FISH AND WILDLIFE SERVICE, ARKANSAS ECOLOGICAL SERVICES OFFICE; ARKANSAS GAME AND FISH COMMISSION; THE NATURE CONSERVANY, ARKANSAS FIELD OFFICE; OR NATURAL RESOURCES CONSERVATION SERVICE]

By: _____
[Title]

Date: _____

Attachment 3
Template Property Owner Management Agreement (POMA)
Candidate Conservation Agreement with Assurance for the Yellowcheek Darter

1.0 Introduction

This Property Owner Management Agreement (POMA) or Agreement, entered into by ***[insert name]*** (Cooperator), U. S. Fish and Wildlife Service (FWS), Arkansas Game and Fish Commission (AGFC), The Nature Conservancy (TNC), and/or Natural Resources Conservation Service (NRCS), herein after collectively referred to as the "Parties", is intended to promote good land stewardship by assisting the Cooperator in carrying out actions to benefit the yellowcheek darter (*Etheostoma moorei*) on the Cooperator's Property. This POMA and the associated Certificate of Inclusion ***[reference Certificate #XXX attachment to this POMA]*** are in accordance with the *Programmatic Safe Harbor Agreement and Candidate Conservation with Assurances Agreement for the Speckled Pocketbook and Yellowcheek Darter in the Upper Little Red River Watershed, AR* (SHA/CCAA), entered into by the FWS, AGFC, TNC, and NRCS, and the Enhancement of Survival Permit (Permit) associated with the SHA/CCAA.

The yellowcheek darter, a federal candidate species (the "covered species"), is the only species for which incidental take authority is authorized under this POMA and the associated Certificate of Inclusion. Further, such incidental take authority is necessary only upon the species becoming officially designated at the time of listing under the Endangered Species Act of 1973, as amended. Other species of listed plants or animals may also occur on the enrolled property, but incidental take of these other species is not authorized or permitted under this POMA.

POMA Tracking Number: ***[FWS Arkansas Ecological Services Field Office will provide].***

2.0 Enrolled Property

The following property is covered by this POMA: ***[include legal description]*** in ***[County]***, Arkansas. This property ("enrolled property") contains habitat that may be used by the covered species or that is important to maintaining healthy streams inhabited by the covered species. The enrolled property lies within the ***[identify Archey Fork, Devils Fork complex, Middle Fork, or South Fork]*** Little Red River watershed and consists of ***[insert # of acres],*** as shown on the attached property map ***[reference map attached to this POMA].***

3.0 CCAA Conservation Standard

The Parties reasonably expect that this POMA will result in protection, enhancement, and restoration of instream habitat, improved water quality, reduction in erosion and sedimentation, improved riparian habitat, and improved land use practices on the enrolled property during the term of this POMA and the associated Certificate of Inclusion ("Certificate"). For as long as management and conservation activities set forth herein are carried out or the habitat created by these activities persists, the benefits of the conservation actions and measures implemented by this Cooperator, when combined with those benefits that could be achieved if it is assumed that conservation actions and measures were implemented on other necessary properties, would preclude or remove any need to list the covered species.

Without this cooperative federal and state government and voluntary private effort, the Cooperator's enrolled property likely would not have been managed in a manner so as to enhance and/or restore covered species' populations in the foreseeable future.

4.0 Existing Conditions and Maintenance Responsibilities

4.3 Existing Conditions

[Describe the extent and current condition of the enrolled property and their acreage (e.g., major plant communities or habitat types, soils, hydrology, etc.) in terms of appropriate habitat for the covered species. Describe how the conservation recommendations required to meet the CCAA standard were determined and attach a map showing the boundaries of the property. Existing conditions and those necessary to meet the CCAA standard may be expressed either as riparian habitat (width, length, type of vegetation, fenced or not fenced), current or recommended land use practices (best management practices), and existing agreements on the property.]

4.4 Cooperator Responsibilities to Maintain Existing Conditions

In order to maintain the CCAA standard and to retain the regulatory assurances embodied in this POMA and attached Certificate, the Cooperator shall have certain responsibilities to maintain the enrolled property's existing conditions which provide benefits to the covered species. As determined by the initial property assessment and as set forth in this POMA, such responsibilities include:

1. Maintain existing riparian habitat within 100 feet of perennial and intermittent stream banks and 30 feet of ephemeral stream banks;

2. Ensure riparian vegetation remains intact during and after vegetation management activities, such as harvesting, prescribed burning, road or fire line construction, and pesticide application;

3. Ensure movement of fish and other aquatic organisms in streams are not obstructed by construction of new road crossings, culverts, or other human-caused obstructions;

4. Refrain from undertaking activities that adversely affect hydrologic function (*i.e.* stream flow, water quality, physical habitat, etc.);

5. Maintain existing fences in a state sufficient to prevent livestock access to riparian areas and streams except at designated water access locations;

6. Adhere to Arkansas Forestry Commission recommended best management practices for water quality protection; and

7. Follow existing terms and conditions related to existing easements or conservation agreements on property.

4.3 Adjustments to Existing Conditions and Responsibilities

Force majeure events such as tornados, rainstorms, severe drought, fires, or insect/disease epidemics are beyond the reasonable control of the Cooperator, and could either extirpate the covered species from the enrolled property, render the covered species' habitat on the enrolled property unsuitable for continued occupation, or result in a degradation of habitat (water and stream bed). These events may reduce the covered species' numbers or habitat below existing conditions or those conditions necessary to meet the net conservation benefit through no fault or negligence of the Cooperator. If the covered species habitat ceases to exist on an enrolled property, the affected Cooperator will not be held responsible for the loss of such baseline habitat conditions provided such cessation was not the result of the Cooperator or Cooperator's agent(s) action(s). In such circumstances the Cooperator, FWS, AGFC, TNC, and NRCS may agree to revise the conservation recommendations of this POMA to reflect the new circumstances.

5.0 Responsibilities of the Parties

The Cooperator, FWS, AGFC, TNC, and NRCS agree to carry out certain responsibilities under this POMA, as specified below.

Cooperator:

a. Within 30 days, the Cooperator shall inform FWS, AGFC, TNC, or NRCS when the covered species is known or suspected to be present on the enrolled property.

b. If the covered species is known to be present on the enrolled property, the Cooperator shall notify FWS, AGFC, TNC, or NRCS in writing at least 30 days in advance of any planned land management activity (mowing, plowing, etc.) that the Cooperator reasonably anticipates will result in the incidental take of the covered species as well as provide the FWS and AGFC the opportunity to capture and/or relocate any potentially affected individuals of the covered species. Under no circumstances, however, shall the Cooperator disturb the covered species or their instream habitat (occupied or unoccupied).

c. The Cooperator shall inform FWS, AGFC, TNC, and/or NRCS, in writing, within three working days of finding any dead or accidentally killed individuals of the covered species.

d. The Cooperator shall allow any Party or other properly permitted persons designated by a Party 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, with reasonable advance notice (7 days or more).

e. The Cooperator agrees to provide FWS, AGFC, TNC and/or NRCS with information necessary to compile the required biannual report of the SHA/CCAA. This includes, but is not limited to, activities related to covered species' management and any activities that resulted in or may have resulted in incidental take of covered species during the reporting period.

f. The Cooperator agrees to consider adaptive management recommendations that the FWS, AGFC, TNC, and/or NRCS may present to the Cooperator during the term of this POMA.

g. The Cooperator, if considering improving habitat for covered species, shall seek technical assistance from the FWS, AGFC, TNC, and/or NRCS on appropriate action(s).

h. The Cooperator agrees to the responsibilities as set forth above to maintain existing conditions and measures on the enrolled property benefiting the covered species (see Part 4 above).

AGFC, NRCS, TNC, and FWS:

a. Upon execution of this POMA, sign a Certificate of Inclusion with the Cooperator that provides both regulatory assurances and incidental take authorization for the covered species on the enrolled property in accordance with the terms of the SHA/CCAA and the Permit associated with the SHA/CCAA.

b. Provide technical assistance to the Cooperator, to the maximum extent practicable, when requested.

c. Ensure that the Cooperator is implementing the terms of his/her POMA.

d. Conduct compliance and biological monitoring, with NRCS also providing status reviews.

e. Where warranted, recommend procedures to the Cooperator that can be taken to avoid occurrences of incidental take, particularly where incidents of incidental take have been described in biannual reports prepared in accordance with the SHA/CCAA.

f. Work with the Cooperator, one another, and the Upper Little Red River Conservation Group on potential adjustments to the enrolled property's existing conditions and conservation actions, new management actions, and adaptive management plans, as necessary.

g. Inform each of the other Parties to this POMA when a Cooperator is not in compliance with the terms and conditions of this POMA and/or the POMA and of any of the measures employed by the Cooperator to remediate the non-compliance.

h. Shall collect data for biannual reports with the assistance of the Cooperator on activities required by this POMA and the SHA/CCAA, including, but not limited to, data related to covered species management and any activities that resulted in or may have resulted in incidental take of the covered species.

6.0 Emergency Situations

Emergency situations arising from natural disasters (e.g., tornados, fire, excessive rainfall, extreme drought, insect infestations, or epidemic disease) may require the initiation of certain land management actions that may result in the incidental take of the covered species. If emergency situations arise, the Cooperator agrees to notify FWS, AGFC, TNC, and/or NRCS in writing and to make reasonable accommodations for survey and/or relocation of yellowcheek darter prior to the initiation of the land management action in such an event.

If prior notification is not possible, the Cooperator will take into account known locations of yellowcheek darter and avoid impacts to the maximum extent possible during the implementation of such actions. The Cooperator will notify FWS, AGFC, TNC, and/or NRCS, in writing, within ten working days of taking such action, and identify and include the measures taken to avoid impacts to the yellowcheek darter.

7.0 POMA and Certificate Duration

Obligations under this POMA will be in effect for a minimum of 10 years or until the end of the 30-year duration of the SHA/CCAA, whichever is the longer duration. The POMA and Certificate shall be the same duration. The obligations begin the date the POMA and Certificate of Inclusion are signed by the Party and Cooperator.

The Certificate issued in association with this POMA is attached.

8.0 Incidental Take Authorization

Should the yellowcheek darter become listed as threatened or endangered, under the terms of this POMA, the Cooperator is authorized to make use of their enrolled property in any manner that does not result in reducing the population and/or quantity and quality of habitat for yellowcheek darter such that the CCAA standard and goals of the SHA/CCAA are no longer being met.. The Certificate issued to the Cooperator authorizes incidental take of yellowcheek darter resulting from lawful activities within the enrolled property, from the time the yellowcheek darter is officially listed pursuant to the Endangered Species Act until such the Permit expires. Such activities may include, but are not limited to: driving vehicles, building or fence construction, grazing of livestock, gardening, forestry, hunting, farming, mowing, or cultivation of agricultural crops. The Cooperator may continue current land-use practices, practices related to this POMA,

undertake new ones, or make any other lawful use of the property, even if such use results in the take of yellowcheek darter or loss and/or degradation of habitat in excess of the CCAA standard. ***[Describe level of take that may potentially occur on the enrolled property based on property acreage, habitat types, and current distribution and population status of yellowcheek darter.]***

9.0 Regulatory Assurances

The assurances listed below apply to the Cooperator. The assurances apply only where the permit associated with the CCAA and the CCAA itself are being properly implemented, and only with respect to species adequately covered by the CCAA.

(1) Changed circumstances provided for in the CCAA. If additional conservation measures are necessary to respond to changed circumstances and the measures were set forth in the CCAA's operating conservation program, the Cooperator will implement the measures specified in the CCAA.

(2) Changed circumstances not provided for in the CCAA. If additional conservation measures not provided for in the CCAA's operating conservation program are necessary to respond to changed circumstances, the Service will not require any conservation measures in addition to those provided for in the CCAA without the consent of the Cooperator.

(3) Unforeseen circumstances. (A) If additional conservation measures are necessary to respond to unforeseen circumstances, the Director may require additional measures of the Cooperator, but only if such measures are limited to modifications within the conservation activities and measures for the affected species, and only if those measures maintain the original terms of the POMA 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 CCAA without the consent of the Cooperator.

The FWS 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 FWS will consider, but not be limited to, the following factors: (1) Size of the current range of the affected species; (2) Percentage of range adversely affected; (3) Percentage of range conserved; (4) Ecological significance of that portion of the range affected by the POMA(s); (5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the CCAA; and (6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

10.0 Funding

Funding for management activities undertaken by the Cooperator will be the responsibility of the Cooperator. The FWS, AGFC, TNC, and/or NRCS will inform the Cooperator of potential

funding opportunities through state, federal, or private grant programs that may be relevant and available.

11.0 Terms and Conditions

In addition to the matters set form herein, this POMA is subject to all of the terms and conditions of the *Programmatic Safe Harbor Agreement and Candidate Conservation with Assurances Agreement for the Speckled Pocketbook and Yellowcheek Darter in the Upper Little Red River Watershed, AR* and its associated Permit.

11.1 Modification of POMAs

The FWS, AGFC, TNC, NRCS, and/or the Cooperator may propose modifications or amendments to this POMA by providing written notice to one another and obtaining their written concurrence. Such notice shall include a statement of the proposed modification, the reason for the proposed modification, and the expected results of the modification. The Parties will make their best efforts to respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications or amendments that are not minor as set forth in Part 11.3 of the SHA/CCAA will become effective upon the written concurrence of each Party. (The documentation required for either formal or informal amendments are identified in the *Programmatic Safe Harbor Agreement and Candidate Conservation with Assurances Agreement for the Speckled Pocketbook and Yellowcheek Darter in the Upper Little Red River Watershed, AR.*)

11.2 Termination of the POMA

The Cooperator or its enrolled successor in interest must give the Parties ninety (90) days written notice, by certified letter, of the Cooperator's intent to terminate this POMA. The Cooperator also agrees to provide the FWS, AGFC, TNC, and/or NRCS the 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), a Cooperator may terminate a POMA prior to the expiration date of this POMA for circumstances beyond the Cooperator's control.

Provided that the existing conditions and responsibilities have been maintained, the Cooperator, 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 benefits have not been realized. If the Cooperator is unable to continue implementation of the management activities, plans and provisions of this POMA, whether due to catastrophic destruction of the species population numbers or habitat or due to unforeseen hardship, the Cooperator agrees to relinquish the Certificate of Inclusion to FWS, AGFC, TNC, and/or NRCS. Termination of this POMA terminates the Certificate.

11.3 Suspension or Revocation of Certificate of Inclusions

FWS, AGFC, TNC, and NRCS may suspend or revoke the Cooperator's Certificate of Inclusion if the Cooperator breaches the obligations set forth in this POMA and fails to cure such breach in a timely manner.

11.4 Succession and Transfer

The rights and obligations under this POMA shall run with the ownership of the enrolled property and are transferable to subsequent private property owners pursuant to 50 CFR 13.25. The Certificate of Inclusion issued to the Cooperator may be extended to the new owner. Upon becoming a party to this POMA and subject to the associated Certificate, the new owner will have the same rights and obligations with respect to the enrolled property as the original owner. The Cooperator shall notify the FWS, AGFC, TNC, and/or NRCS, in writing, of any transfer of ownership at least 90 calendar days prior to the intended transfer, in order to provided FWS, AGFC, TNC, or NRCS the opportunity to contact the new owner, explain the responsibilities applicable to the enrolled property, and seek to interest the new owner in signing the existing POMA or in entering into a new POMA on the enrolled property.

11.5 Remedies

Each party shall have all remedies otherwise available to enforce the terms of this POMA and the associated Certificate.

12.0 Relationship to Other Documents

This POMA is subordinate to the *Programmatic Safe Harbor Agreement and Candidate Conservation with Assurances Agreement for the Speckled Pocketbook and Yellowcheek Darter in the Upper Little Red River Watershed, AR,* and the associated Enhancement of Survival Permit which is incorporated by reference into this POMA, in their entirety.

13.0 Other Species

Surveys for other federally listed species will not be required of the Cooperator as a condition to participating in this POMA. However, neither regulatory assurances nor incidental take authorizations will be conveyed to the Cooperator for any federally listed animal not identified in the attached Certificate of Inclusion. If other federally listed species are known to exist on the enrolled property, then the Parties will seek cooperative and comprehensive solutions with the Cooperator to tailor his/her management actions which avoid take and/or minimize any disturbance of these species.

14.0 Effective Date

This POMA shall be effective and binding on the date of the last signature, below.

15.0 Notification

Communication, reports, and correspondence required by this POMA should be directed to the addresses below. Names and addresses may be changed upon written notice to all Parties.

[insert: Name and address, phone, fax, email of Cooperator]

AGFC: Director
2 Natural Resources Drive
Little Rock, Arkansas 72205
(501)776-0218 (Voice)
(501)223-6461 (Fax)

TNC: State Director
601 North University Ave.
Little Rock, Arkansas 72205
(501)663-6699 (Voice)
(501)663-8332 (Fax)

NRCS: State Conservationist
Room 3416 Federal Bldg
700 W. Capitol
Little Rock, AR 72201
(501)301-3173 (Voice)
(501) 301-3188 (Fax)

FWS: Field Supervisor
Arkansas Ecological Services Office
110 South Amity Road, Suite 300
Conway, Arkansas 72032
(501)513-4470 (Voice)
(501)513-4480 (Fax)

IN WITNESS WHEREOF, each party hereto has caused this Property Owner Management Agreement to be executed by an authorized official on the day and year set forth below their signature.

COOPERATOR

By: _____
Name and Title

Date: _____

AUTHORIZING PARTIES

[INSERT U. S. FISH AND WILDLIFE SERVICE, ARKANSAS ECOLOGICAL SERVICES OFFICE; ARKANSAS GAME AND FISH COMMISSION; THE NATURE CONSERVANY, ARKANSAS FIELD OFFICE; OR NATURAL RESOURCES CONSERVATION SERVICE]

By: _____
[Title]

Date: _____

Attachment 4
Safe Harbor Property Owner Management Agreement
Incidental Take Authorization for the Speckled Pocketbook

CERTIFICATE OF INCLUSION

This certifies that the property described as follows [legal description of property covered by the Safe Harbor Permit] owned by [Cooperator's name], is included within the scope of the Section 10(a)(1)(A) permit [reference number] issued by the U.S. Fish and Wildlife Service expiring on [date] under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. Through the Permit and this Certificate, [Cooperator's Name] is authorized to perform certain activities as part of the implementation of a program to protect, enhance, or restore a population of speckled pocketbook in the [Archey, South, Middle, Turkey, Beech, or Devils Forks] Little Red River, Arkansas. 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 the speckled pocketbook or its habitat above baseline subject to the terms and conditions of the Permit and the Cooperator's Property Owner Management Agreement [insert number] entered into by [insert Parties' name(s)] and the Cooperator on [insert date].

These authorizations and assurances expire on [Date permit expires].

_____
[Title]

Date: _____

Attachment 5
Candidate Conservation Property Owner Management Agreement
Incidental Take Authorization For the Yellowcheek Darter

CERTIFICATE OF INCLUSION

This certifies that the property described as follows [legal description of property covered by the Candidate Conservation Agreement with Assurances Permit] owned by [Cooperator's name], is included within the scope of the Section 10(a)(1)(A) permit issued by the U.S. Fish and Wildlife Service expiring on [date] under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended [reference number]. The Permit authorizes certain activities by the [Cooperator] as part of the Candidate Conservation Agreement program to protect, enhance, or restore populations of yellowcheek darter in the [Archey, South, Middle, Turkey, Beech, or Devils Forks] Little Red River, Arkansas. 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 the yellowcheek darter or its habitat, should the species become listed, above predetermined existing conditions subject to the terms and conditions of the Permit. This Certificate is only valid for as long as the Cooperator fulfills the responsibilities as described in the Property Owner Management Agreement [reference number] entered into by [U. S. Fish and Wildlife Service, Arkansas Ecological Service Office; Arkansas Game and Fish Commission; The Nature Conservancy, Arkansas Field Office; or Natural Resources Conservation Service] and [Cooperator's name] on [date].

These authorizations and assurances expire on [Date permit expires].

_____
[Title]

Date: _____

Attachment 6
Compliance Actions
National Historic Preservation Act – Section 106

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 9 (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.

This Agreement has been reviewed and evaluated by the Region 4, Ecological Services Staff Archeologist. The overall agreement does not meet the definition for an undertaking as defined in 36 CFR 800 since the Agreement is concerned with future actions that have not yet occurred.

In addition, the conservation measures are the type of actions that, by themselves, are unlikely to affect any cultural resources that may be present on a specific Cooperator's property. Past review and field evaluations of the type of conservation measures listed on pages 8 and 9 of this Agreement indicate that it is reasonable to assume that cultural resources will not be affected by the implementation of this Agreement.

The staff archeologist is available to assist the Arkansas Ecological Services Office and any Party or Coperator on a project by project evaluation, should any conservation measure be planned that will require significant soil disturbance or the removal of a structure or building 50 years old or older.

Attachment 7
Safe Harbor Assurances to the AGFC, TNC and Cooperators

The following assurances are provided to the AGFC, TNC and/of affected Cooperators. The following shall be incorporated verbatim into each Property Owner Management Agreement (POMA):

> "If additional conservation measures are necessary to respond to unforeseen circumstances, the Service may require additional measures from the AGFC, TNC or Cooperator only if such measures are limited to modifications within the Parties' Agreement and/or Cooperator's POMA conservation strategy for the covered species, and only if those measures maintain the original terms of the Agreement and/or affected POMA (and Certificate of Inclusion) 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 Agreement and/or affected POMA(s) (and Certificate(s)) without the consent of the other Parties and/or Cooperator(s)."

FWS 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. FWS 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 AGFC, TNC and Cooperator to alter or modify the enrolled property, even if such alteration or modification results in the incidental take of speckled pocketbook habitat to such an extent that the take returns the speckled pocketbook habitat 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 POMA. These assurances are also contingent on the Cooperator's compliance with the obligations of the Agreement and affected POMA. Further, the assurances apply only if the Agreement and/or affected POMA(s) is (are) being properly implemented, and only with respect to covered species.

Attachment 8
Candidate Conservation Agreement
Assurances to the AGFC, TNC and Cooperators

The assurances listed below apply to the AGFC, TNC and/or affected Cooperator(s). The assurances apply only where the enhancement of survival permit associated with the CCAA authorities and the CCAA element of the Agreement are being properly implemented and only with respect to species adequately covered by the CCAA.

(1) Changed circumstances provided for in the CCAA. If additional conservation measures are necessary to respond to changed circumstances and the measures were set forth in the operating conservation program of the Cooperator's Property Owner Management Agreement (POMA), the Cooperator and the Parties will implement the measures specified in the affected POMA(s).

(2) Changed circumstances not provided for in the CCAA. If additional conservation measures not provided for in the POMA's operating conservation program are necessary to respond to changed circumstances, the FWS will not require any conservation measures in addition to those provided for in the POMA without the consent of the Cooperator.

(3) Unforeseen circumstances. (A) If additional conservation measures are necessary to respond to unforeseen circumstances, FWS may require additional measures of the Cooperator and/or Parties, but only if such measures are limited to modifications within the POMA's conservation measures and programs for the affected species, and only if those measures maintain the original terms of the CCAA elements of the Agreement and the POMA 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 CCAA and/or POMA without the consent of the affected Cooperator and other affected Party(ies).

FWS 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. FWS will consider, but not be limited to, the following factors: (1) Size of the current range of the affected species; (2) Percentage of range adversely affected; (3) Percentage of range conserved; (4) Ecological significance of that portion of the range affected; (5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program; and (6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

Attachment 9
Cooperator/Landowner Waiver to Release Information to Other Parties

I do hereby grant permission to release all personal information, status review information, compliance and biological monitoring information, and any other pertinent information pertaining to my responsibilities as specified in the *Programmatic Safe Harbor Agreement and Candidate Conservation with Assurances Agreement for the Speckled Pocketbook and Yellowcheek Darter in the Upper Little Red River Watershed, AR* and the associated Property Owner Management Agreement to Natural Resources Conservation Service, Arkansas Game and Fish Commission, U. S. Fish and Wildlife Service, and The Nature Conservancy. Such information may be subject to The Privacy Act of 1974, as amended (5 U. S. C. subsection 552a), or other applicable laws otherwise protected by the terms of the aforementioned agreement.

_____

Cooperator Name

_____

Signature

_____

Date

Attachment 10
Literature Cited

Clarke, A. E. 1987. Status survey of *Lampsilis streckeri* Frierson (1927) and *Arcidens wheeleri* (Ortman and Walker 1912). A report to the U. S. Fish and Wildlife Service. 24pp. plus field notes.

Davidson, C. 2005. Threats assessment for the speckled pocketbook (*Lampsilis streckeri*) and yellowcheek darter (*Etheostoma moorei*) in the upper Little Red River watershed, Arkansas – Addendum 1 Archey Fork Little Red River. Unpubl. Report. U. S. Fish and Wildlife Service, Arkansas Field Office, Conway, Arkansas.

Davidson, C. and M. Wine. 2004. Threats assessment for the speckled pocketbook (*Lampsilis streckeri*) and yellowcheek darter (*Etheostoma moorei*) in the upper Little Red River watershed, Arkansas. Unpubl. Report. U. S. Fish and Wildlife Service, Arkansas Field Office, Conway, Arkansas. 28pp. + appendix.

Frierson, L. S. 1927. A classified and annotated check list of the North American naiads. Baylor University Press, Waco, TX. 111pp.

Harris, J. L. 1993. Habitat characterization and species associates of the speckled pocketbook (Lampsilis streckeri) in the Middle Fork Little Red River, Arkansas. Prepared for the U. S. Fish and Wildlife Service, Endangered Species Office, Jackson, MS. 28pp. plus appendices.

Harris, J. L. and M. E. Gordon. 1990. Arkansas Mussels. Arkansas Game and Fish Commission, Little Rock, AR. 32pp.

McDaniel, R.E. 1984. Selected aspects in the life history of *Etheostoma moorei* Raney and Suttkus. Unpubl. MS thesis, Arkansas State University, 124 p.

Mitchell, R.M. 1999. Genetic and meristic variations within and between populations of *E. moorei*. Unpubl. MS thesis, Arkansas State University, 77 p.

Mitchell, R., R.L. Johnson, and G.L. Harp. 2002. Population structure of an endemic species of yellowcheek darter, *Etheostoma moorei* (Raney and Suttkus), of the upper Little Red River, Arkansas. American Midland Naturalist 148(1):129-137.

Raney, E.C. and R. Suttkus. 1964. *Etheostoma moorei,* a new darter of the subgenus *Nothonotus* from the White River system. Copeia 1:130-138.

Robison, H.W. and G.L. Harp. 1981. A study of four endemic Arkansas threatened fishes. Project E-1-3. Office of Endangered Species, Washington, D.C. Unpubl. Unnum.

Robison, H. W., and T.M. Buchanan. 1988. The fishes of Arkansas. The University of Arkansas Press, Fayetteville, Arkansas. 536 p.

Attachment 10
Literature Cited

Schlosser, I.J. 1990. Environmental variation, life history attributes, and community structure in stream fishes: Implications for environmental management and assessment. Environmental Management 14:620-628.

U. S. Fish and Wildlife Service. 1991. Speckled Pocketbook Mussel (*Lampsilis streckeri*) Recovery Plan. U. S. Fish and Wildlife Service. Jackson, MS. 14pp.

Weston, M.R. and R.L. Johnson. 2005. Migration of yellowcheek darters (*Etheostoma moorei*) in the Little Red River watershed. Final report submitted to the U.S. Fish and Wildlife Service, Arkansas Field Office, Conway, AR.

Wine, M.S., S.C. Blumenshine, and G.L. Harp. 2000. Status survey of the yellowcheek darter (*Etheostoma moorei*) in the Little Red River Basin. Final Report submitted to the U.S. Fish and Wildlife Service, Arkansas Field Office, Conway, AR.

Wine, M.S. and S.C. Blumenshine. 2002. Habitat and reproductive requirements of the yellowcheek darter (*Etheostoma moorei*) in the Little Red River watershed. Final Report submitted to the U.S. Fish and Wildlife Service, Arkansas Field Office, Conway, AR.

Winterringer, R. 2003. Population dynamics and reproductive patterns of the federally endangered freshwater mussel, *Lampsilis streckeri* (Frierson 1927). M.S. thesis. Arkansas State University, State University, Arkansas. 74pp

Wood, R.M. 1996. Phylogenetic systematics of the darter subgenus *Nothonotus* (Teleostei: Percidae). Copeia 2:300-318