

MEMORANDUM OF AGREEMENT
Between
Region 2 U.S. Fish and Wildlife Service
and the
Arizona Game and Fish Department

State Wildlife Agency Participation in
Implementing the Endangered Species Act: State of Arizona

June 26, 2002

Section I. Purpose

The purpose of this Memorandum of Agreement (hereafter the Agreement) is to facilitate joint participation, communication, coordination, and collaboration between the U.S. Fish and Wildlife Service (Region 2) Endangered Species Program (hereafter the Service), and the Arizona Game and Fish Department (hereafter the Department), regarding implementation of the Endangered Species Act of 1973 (hereafter the Act), within the State of Arizona.

Given that the State of Arizona does not have wildlife management jurisdiction on Native American reservations, Department participation in implementing the Act on such Tribal lands is subject to prior approval by the appropriate Tribal authority.

Section II. Witnesseth

Whereas, the U.S. Fish and Wildlife Service, a Federal land management and regulatory agency, is responsible for initiating, conducting, and supporting programs for the conservation and recovery of species of wildlife and plants, and the ecosystems of which they are a part, under the authority of the Endangered Species Act of 1973, as amended;

Whereas, the Arizona Game and Fish Department, a State resource agency, has determined that direct participation in implementing the Endangered Species Act of 1973, as amended, is essential to representing the State of Arizona's interest in, and authority for, management of the wildlife resources that are held as a public trust for the people of the State of Arizona;

Whereas, the Department and the Service have previously executed a Cooperative Agreement pursuant to Section 6 the Endangered Species Act of 1973, as amended, which requires the State to maintain an adequate conservation program for all species of mutual concern;

Whereas, the Department and the Service both have limited funds with which to conserve such species of mutual concern, and therefore must be effective and efficient in using such funds;

Whereas, the Department and the Service mutually agree that endangered species conservation in Arizona would be enhanced by affording the Department an opportunity to participate in developing and implementing each recommendation formulated and each action undertaken within the State of Arizona pursuant to the authorities of the Act, within the constraints of State and Federal law; and

Now therefore, in consideration of the above premises, the Cooperators enter into this Agreement to accomplish its purpose and objectives.

Section III. Definitions

- A. This subsection addresses definitions of key terms in this Agreement. For the purposes of this Agreement:
1. The term "Act" means the Endangered Species Act of 1973, as amended (Public Law 93-205, 87 Stat. 884 *et seq.*, 16 U.S.C. 1531 *et seq.*).
 2. The term "species" means any species or subspecies of wildlife, and any distinct population segment of any species of wildlife that interbreeds when mature.
 3. The term "wildlife" means all species of invertebrate and vertebrate animals that are native to Arizona, whether resident, migratory, or erratically occurring, including those species that have become extirpated since 1800.
 4. The term "list" means the Federal List of Endangered and Threatened Wildlife, as found at 50 CFR 17.11.
 5. The term "listed" means all species of wildlife included on the Federal List of Endangered and Threatened Wildlife, as found at 50 CFR 17.11.
 6. The term "candidate" means all species that appear on the Notice of Review of Animal Candidates for Listing as Endangered or Threatened Species, as periodically published in the Federal Register. It also includes all species of wildlife that the Fish and Wildlife Service determines to be candidates, but which have not yet appeared in the aforementioned Notice of Review.
 7. The term "at risk" means any species of wildlife that the Department considers imperiled, of special concern, or otherwise of conservation need.
 8. The terms "consult" and "participate" mean that the Service will request the Department's assistance in implementing the Act, including but not limited to developing recommendations and findings, or planning and implementing actions pertinent to conservation of wildlife and habitat under the authorities of the Act. On any given request or notification from the Service, the Department's "participation" shall include, to the maximum extent feasible: managing wildlife; developing background information; evaluating and summarizing or synthesizing information; conducting status reviews; all

Arizona-USFWS MOA for State Implementation of ESA

June 26, 2002

Page 3 of 15

forms of consultation; all forms of recovery and advisory teams; all forms of conservation planning; budget recommendations and solicitation of funds; and any other activity deemed necessary to provide the fullest possible measure of State participation in implementing the Act to conserve wildlife native to the State of Arizona.

9. The terms "wildlife management" and "managing wildlife" mean actions taken to ensure that wildlife or wildlife habitat is protected and managed for conservation and other lawful purposes, including habitat enhancement, species and habitat monitoring, field inventories and surveys, research, reestablishment and recovery efforts, conservation and mitigation measures, public education, stewardship, etc.
10. The term "conservation agreement" means a formal written document agreed to by the Service and/or the Department, with another Federal agency, Tribe, state agency, local government, or the private sector, to achieve conservation of candidate, at risk, or other species through voluntary cooperation. Such agreements document the specific actions and responsibilities for which each party agrees to be accountable. The objective of a conservation agreement is to reduce threats to a species and/or its habitat. An effective conservation agreement may lower listing priority or eliminate the need to list a species as endangered or threatened.
11. The term "habitat protection" means the process of protecting the quality, diversity, abundance, and serviceability (suitability) of habitats for the purposes of maintaining or recovering populations of wildlife. Habitat is sometimes protected through acquisition, special use permits, or conservation easements, but also through environmental review, which leads to identification of project alternatives and mitigation and conservation measures.
12. The term "NGEWP" means the Department's Nongame and Endangered Wildlife Program.
13. The term "HEPP" means the Department's Habitat Evaluation and Protection Program.
14. The term "AESO" means the Service's Arizona Ecological Services Office.

Section IV. Roles and Responsibilities

- A. This subsection addresses determination of endangered species and threatened species, including the following areas of activity:
1. Candidate assessment
 - a. Respective leads for this area are the Department's NGEWP Chief and the Service's AESO Field Supervisor.
 - b. The Department agrees to maintain a comprehensive database of information on candidate and at-risk species of wildlife and plants, and to provide this information to the Service upon request.
 - c. The Department agrees to help the Service develop information needed to determine whether to recommend Federal listing of any species.
 - d. The Service agrees to involve the Department in all aspects of candidate assessment, including proposing, implementing, or analyzing the results of, status surveys and reviews of candidate species.
 - e. The Service and Department agree to provide each other with reports on candidate assessment (and status) surveys, reviews, or studies, within 30 calendar-days of receipt of such reports. When such studies do not result in final reports, the Service may instead provide locality and other appropriate information.
 2. Prelisting recovery actions
 - a. Respective leads for this area are the Department's NGEWP Chief and the Service's AESO Field Supervisor.
 - b. The Department agrees to take the lead in developing and implementing prelisting recovery actions, including but not limited to conservation agreements for candidate, at-risk, and other unlisted species of wildlife, and further agrees to be a signatory to any such agreements whenever possible, including, , with prior approval from the appropriate Tribal authority, agreements concerning Tribal lands.
 - c. The Department and Service mutually agree to participate in actions taken to improve the status of candidate species of wildlife, and other

Arizona-USFWS MOA for State Implementation of ESA

June 26, 2002

Page 5 of 15

at-risk species, with opportunities for full participation of both parties in project planning, whenever possible. However, both parties agree that if either party declines to participate in such actions, the other may proceed alone.

3. Petition management

- a. Respective leads for this area are the Department's NGEWP Chief and the Service's AESO Field Supervisor.
- b. The Department agrees to provide the Service with any available information for response to petitions to list or reclassify species or to designate critical habitat, and to assist the Service in evaluating and responding to such petitions.
- c. The Department agrees to participate with the Service in monitoring petitioned wildlife for which "warranted but precluded" findings have been made.
- d. The Service agrees to use the Department's expertise, and any other available information, in assessing the status of wildlife species under petition.
- e. The Service agrees to notify the Department of petition findings, and to provide copies of any status reviews, findings, Federal Register notices, or other information on the species within 30 calendar-days of receipt of such documents.

4. Listing, reclassification, and critical habitat designation

- a. Respective leads for this area are the Department's NGEWP Chief and the Service's AESO Field Supervisor.
- b. The Department agrees to provide the Service with any available information for use in preparing proposals and final rules for listing or reclassifying species as endangered or threatened, or for proposing or designating critical habitat.
- c. The Department agrees to assist the Service in drafting and revising any listing, reclassification, or critical habitat proposals, and to attend and participate in any public hearings in Arizona on such proposals.

- d. The Service agrees to consult with the Department in developing listing or reclassification rules, or designations of critical habitat, and to provide opportunities for the Department to participate in such activities, including public hearings and comment periods on such, within what is allowed by the Administrative Procedures and Federal Advisory Committee Acts.
 - e. The Service agrees to consult with the Department prior to publication of proposed or final listing or reclassification rules, or designations of critical habitat, and to provide the Department with copies of any pertinent documents.
5. Special rules for candidate and listed wildlife
- a. Respective leads for this area are the Department's NGEWP Chief and the Service's AESO Field Supervisor.
 - b. The Department agrees to (1) provide the Service with any available information for use in preparing special rules, (2) assist the Service in drafting special rules, (3) provide the Service with comment on proposed special rules, and (4) attend and participate in any public hearings in Arizona on proposed special rules.
 - c. The Service agrees to consult with the Department before initiating development of any special rules, and to provide opportunities for the Department to assist the Service in drafting, and evaluating public comment on, such rules.
 - d. The Service agrees to consult with the Department on any draft, proposed, or final special rules that would or might supersede or conflict with existing State wildlife laws or regulations.
 - e. The Service agrees to provide the Department with copies of any newly published special rules, or other pertinent documents.
6. 5-year review of the list of endangered and threatened wildlife and plants
- a. Respective leads for this area are the Department's NGEWP Chief and the Service's AESO Field Supervisor.
 - b. The Department agrees to provide the Service with any available information for use in 5-year reviews.

Arizona-USFWS MOA for State Implementation of ESA
June 26, 2002
Page 7 of 15

- c. The Service agrees to provide opportunities for the Department to participate fully in 5-year reviews.

7. Recovery plan development and implementation

- a. Respective leads for this area are the Department's NGEWP Chief and the Service's AESO Field Supervisor.
- b. The Department agrees to maintain a comprehensive database of locality information on listed wildlife and plants, and to provide this information to the Service upon request.
- c. The Department agrees to participate with the Service in implementing measures set forth in wildlife recovery plans.
- d. The Department and the Service mutually agree to jointly develop, and approve wildlife recovery plans, in accordance with applicable Federal and State laws, regulations, policies, and guidelines regarding such plans.
- e. The Department and Service mutually agree to (1) consult with each other prior to implementing any wildlife recovery plan actions, (2) obtain each other's concurrence on implementing such actions, and (3) jointly assist in facilitating efforts by other parties to implement such actions.
- f. The Service agrees to appoint appropriately qualified Department personnel as members of, and/or policy and technical consultants to, wildlife recovery teams, including technical teams, implementation teams, stakeholder teams, and any other recovery advisory teams formed or appointed by the Service.

8. Monitoring of delisted species of wildlife

- a. Respective leads for this area are the Department's NGEWP Chief and the Service's AESO Field Supervisor.
- b. The Department agrees to take the lead (in consultation with the Service) in planning and implementing management and monitoring of delisted species of wildlife.
- c. The Service agrees to assist the Department in planning and implementing monitoring of delisted wildlife.

9. Promulgation of Section 4 guidelines

- a. Respective leads for this area are the Department's NGEWP Chief and the Service's AESO Field Supervisor.
- b. The Department agrees to assist the Service in developing guidelines regarding implementation of Section 4 of the Act.
- c. The Service agrees to consult with the Department in drafting, proposing, and finalizing changes in guidelines for implementation of Section 4, and to provide the Department with copies of all pertinent documents.

B. Land acquisition. This subsection addresses land or water acquisition and management for the conservation of fish, wildlife, and plants, including those listed as endangered and threatened.

1. Respective leads for this subsection are the Department's HEPP Chief and the Service's AESO Field Supervisor and Regional Acquisitions Branch Chief.
2. The Department agrees to participate with the Service in any intra or interagency consultations regarding acquisition or other protection of any land or water, or interest therein, for the purpose of conserving any threatened or endangered wildlife.
3. The Department and the Service mutually agree to consult prior to initiation of efforts by the Service to acquire or otherwise protect lands or water in Arizona for any wildlife species, and prior to efforts by the Department to acquire lands or waters using funds provided under Section 5 of the Act. Both parties further agree to maintain this consultation throughout the acquisition or protection process for such lands and waters.
4. The Department and the Service mutually agree to consult in recommending or establishing any management guidelines pertaining to wildlife for any area established or acquired by either party for the conservation of listed wildlife, regardless of funding source. Specific management agreements may be entered into for appropriate areas.

C. This subsection addresses the Department's Section 6 Cooperative Agreement under the Act, for provision of Federal assistance to the State of Arizona for endangered and threatened species programs.

Arizona-USFWS MOA for State Implementation of ESA
June 26, 2002
Page 9 of 15

1. Respective leads for this subsection are the Department's NGEWP Chief and the Service's AESO Field Supervisor.
2. The Department and the Service mutually agree that the phrase, the "Secretary shall cooperate to the maximum extent practicable with the States," which is stated in the referenced Section 6 Cooperative Agreement, shall be taken to mean that Region 2 of the Service has offered the Department an opportunity to participate in developing and implementing each recommendation formulated and each action undertaken within this Region pursuant to the authorities of the Act.
3. The Department and the Service mutually agree, as stated in the referenced Section 6 Cooperative Agreement, that the Department shall maintain an adequate and active conservation program for the conservation of endangered wildlife and threatened wildlife in Arizona, pursuant to the Act. Said program shall include development by the Department of species-specific or ecosystem-specific conservation strategies for all species of wildlife that are listed, proposed for listing, candidates for listing, or which may benefit from proactive efforts to preclude the need for listing pursuant to the Act.
4. The Department and the Service mutually agree to demonstrate cooperation in this area by developing a standardized format and model "State conservation strategies" (i.e. strategic and operational conservation plans) for a listed species (e.g. bald eagle), a proposed species (e.g. flat-tailed horned lizard), and an unlisted but candidate species (e.g. black-tailed prairie dog).
5. The Department and the Service mutually agree to abide by existing and future regulations, guidelines, and policies concerning the implementation of cooperative agreements for Federal assistance in management of candidate and listed wildlife.
6. The Department and the Service mutually agree that, for the purposes of this Agreement, Federal funds provided to the Department under Section 6 of the Act, or other sections of the Act, are Service contributions to implementation of the Act.
7. The Department and the Service mutually agree that the Department, in consultation with the AESO, shall establish priorities within Arizona for use of Section 6 funds allocated to the State.

Arizona-USFWS MOA for State Implementation of ESA

June 26, 2002

Page 10 of 15

- D. This subsection addresses use of authorities in furtherance of the purposes of the Act, through consultations on Federal actions that may affect listed species or critical habitats, and conferences for Federal actions that may jeopardize proposed species or adversely modify or destroy proposed critical habitats.
1. Section 7 consultations (formal and informal)
 - a. Respective leads for this area are the Department's HEPP Chief and the Service's AESO Field Supervisor.
 - b. The Department agrees to provide the Service with any available information for use in Section 7 consultations on wildlife and plants.
 - c. The Department agrees to participate in Section 7 consultations on wildlife, subject to approval by the Federal action agency.
 - d. The Department agrees to copy the Service on all external correspondence relating to any Section 7 consultation on wildlife.
 - e. The Service agrees to notify the Department of any formal Section 7 consultation on wildlife. This notification may take the form of cc: copies of initiation letters. If there is no initiation letter in the case of a short turn-around time as requested by the consulting Federal agency, the Service will directly notify the Department.
 - f. The Service agrees to recommend that the Federal action agency invite the Department to participate in Section 7 consultations on wildlife.
 - g. The Service agrees, subject to approval by the Federal action agency, to provide the Department with a copy of any documents pertinent to a formal Section 7 consultation.
 - h. The Service agrees to provide the Department with a copy of all final biological opinions on Section 7 wildlife consultations. Copies will be sent to the Department after a 10 calendar-day waiting period following delivery to the Federal action agency.
 2. Section 7 conferences on proposed species
 - a. Respective leads for this area are the Department's HEPP Chief and the Service's AESO Field Supervisor.

Arizona-USFWS MOA for State Implementation of ESA

June 26, 2002

Page 11 of 15

- b. The Department agrees to provide the Service with any available information for use in Section 7 conferences on wildlife or plants.
 - c. The Department agrees to participate in any Section 7 conferences on wildlife, subject to approval by the Federal action agency.
 - d. The Service agrees to (1) notify the Department of the initiation of any Section 7 conference on wildlife, (2) recommend that the Federal action agency invite the Department to participate in such conferences, and, subject to approval by the Federal action agency, (3) provide the Department with a copy of the biological evaluation and other appropriate project documents.
 - e. The Service agrees to provide the Department with a copy of all conference reports on wildlife. Copies will be sent to the Department after a 10 calendar-day waiting period following delivery to the Federal action agency.
- D. This subsection addresses cooperation on wildlife conservation efforts with Mexico.
- 1. Respective leads for this subsection are the Department's NGEWP Chief and the Service's Region 2 Assistant Regional Director for Ecological Services.
 - 2. The Department and the Service mutually agree to coordinate and cooperate in all work planned or conducted with Mexico, for any at-risk, candidate, proposed, or listed species of wildlife that is native to Arizona, and to provide each other with copies of any work or study proposals, information, and reports regarding such work.
- E. This subsection addresses cooperation on Federal and State laws pertaining to species of wildlife protected under the Act, including issuance of certain permits for actions on listed species prohibited under Section 9, take incidental to otherwise lawful activities upon preparation and approval of a habitat conservation plan, and designation of experimental populations.
- 1. Law enforcement
 - a. Respective leads in this area are the Department's Chief of Law Enforcement and the Service's Arizona District Resident Senior Agent.
 - b. The Department and the Service mutually agree, to the extent allowable under State and Federal law, to cooperate in maintaining

Arizona-USFWS MOA for State Implementation of ESA
June 26, 2002
Page 12 of 15

an adequate law enforcement program, including cooperation in investigations and prosecutions, for wildlife protected under the Act.

2. Collecting permits

- a. Respective leads in this area are the Department's NGEWP Chief and the Service's Region 2 Assistant Regional Director for Ecological Services.
- b. The Department agrees not to issue any collecting permit for listed species of wildlife, without accompaniment of a notice indicating that an appropriate Service permit is also required.
- c. The Department agrees to furnish the Service with copies of all collecting permits issued, and all collecting permit reports submitted, for listed wildlife.
- d. The Service agrees not to issue any collecting permit for listed species of wildlife, without accompaniment of a notice indicating that an appropriate Department permit is also required.
- e. The Service agrees to furnish the Department with copies of all collecting permits issued and all permit reports submitted for listed species of wildlife.

3. Conservation planning

- a. Respective leads in this area are the Department's (1) NGEWP Chief for Candidate Conservation, Safe Harbor, and State Conservation Agreement Planning for candidate, listed, or other species of wildlife, and its HEPP Chief for Habitat Conservation Planning, and (3) the Service's AESO Field Supervisor.
- b. The Service and Department agree to fully cooperate in all Candidate Conservation planning, Safe Harbor planning, and State Conservation planning. If neither the Service nor the Department takes the lead for a given species or project, another agency may take the lead and both the Service and the Department will assist in such efforts.
- c. The Department agrees to assist the Service and other entities in all Habitat Conservation planning.

- d. The Service agrees to recommend to all Habitat Conservation Plan proponents that they involve the Department and secure its approval or concurrence in all such planning efforts for listed/candidate, and other wildlife.

4. Experimental populations

- a. Respective leads in this area are the Department's NGEWP Chief and the Service's AESO Field Supervisor.
- b. The Department agrees to provide the Service with any available information for use in preparing proposals and final rules for designating experimental populations of listed wildlife.
- c. The Department agrees to provide the Service with comment on proposals for designating experimental populations of listed wildlife species during the public comment period and to attend and participate in any public hearings in Arizona on such proposals.
- d. The Department and Service mutually agree to consult with each other when either is considering whether to develop an experimental population rule for a species, and to strive to reach agreement on which agency (if either) shall take the lead in developing such a rule, to the extent allowable under Federal law.
- e. The Service agrees to consult with the Department before work is initiated on any experimental population rule of listed wildlife, and to solicit information and comment from the Department regarding that action.
- f. The Service agrees to consult with the Department on the publication of experimental population rules, public hearings, and comment periods for listed wildlife, and to provide copies of any pertinent documents.

Section V. Terms of the Agreement

- A. The Department and the Service mutually agree to the following:
1. Liaisons for this Agreement shall be the Department's NGEWP Chief and the Service's AESO Field Supervisor. The liaisons shall hold coordination meetings in January, April, July, and October. Minutes of these meetings shall be made to provide a written summary of implementation and accomplishments. Copies of the minutes shall be disseminated within 30 calendar-days of each meeting, to appropriate staff within the Department and the Service.
 2. In February of each year, the liaisons for this Agreement shall provide a jointly written summary of accomplishments to the Department's Director and the Service's Region 2 Director.
 3. Implementation of specific actions under this Agreement is contingent upon available funds, and availability of staff. To provide a factual foundation for requesting additional Federal funds for both Cooperators to use in implementing this Agreement, instances of inability to implement an action for such cause shall be documented in a letter between the liaisons, and shall be referenced in the annual implementation report mentioned above.
 4. Information exchange among the Cooperators shall be in full compliance with, and in consideration of, all State and Federal laws pertaining to public records.
 5. The Arizona Game and Fish Commission, acting through its administrative agency, the Arizona Game and Fish Department, is authorized by A.R.S. § 17-231.B.7 to enter into this Agreement.
 6. All parties are hereby put on notice that this Agreement is subject to Executive Orders 99-4 and 75-11, entitled "Prohibition of discrimination in State Contracts - Non-discrimination in Employment by Government Contractors and Subcontractors." Said non-discrimination orders, by reference, are made a part of this Agreement.
 7. Neither party to this Agreement shall be compelled by this Agreement to take any action that is contrary to State or Federal law.
 8. This Agreement is subject to all Federal statutes relating to nondiscrimination. These include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352); and (b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683 and 1685-1686).

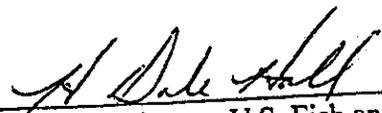
9. No member of, or Delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefits that may arise therefrom, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.
10. This Agreement shall be effective upon execution by both parties as of the last date below.
11. To carry out its intent, this Agreement may be supplemented by subsequent agreements between said parties to allow for specific funding authorities, and may be modified at any time by letter signed by the Department and the Service.
12. This Agreement shall terminate 5 years from the date of the last signature below, unless terminated prior to that date or unless renewed by letter signed by the Department and the Service.
13. This Agreement is subject to cancellation by either party upon submission of a written 60 calendar-day termination notice.

Section VI. Approvals

The parties to this Agreement agree that it becomes effective on the last date of signature below.



Director, Arizona Game and Fish Department 8/10/02
Date



Region 2 Director, U.S. Fish and Wildlife Service 7/13/02
Date