

Memorandum of Understanding

by and among the

Arizona Game and Fish Department, Catron County (NM), Graham County (AZ),
Greenlee County (AZ), Navajo County (AZ), New Mexico Department of Agriculture,
New Mexico Game and Fish Department, Otero County (NM), San Carlos Apache Tribe,
Sierra County (NM), U.S.D.A. Animal and Plant Health Inspection Service/Wildlife Services,
U.S.D.A. Forest Service, U.S.D.I. Fish and Wildlife Service, and
White Mountain Apache Tribe¹

Final Draft 11: June 14, 2010

[This draft is the outcome of discussion among the AGFD, NMDGF and USFWS (Region 2) Directors about the draft (Draft 10) resulting from the May 11, 2010 conference call among AMOC Signatories and USFWS. On June 11, the AGFD, NMDGF and USFWS Directors agreed on this modest re-draft, which resolves all previous concerns expressed by potential Signatories. Each potential Signatory must now determine whether it agrees with the changes (which are noted in red). The potential Signatories will coordinate as necessary to make that happen.]

This Memorandum of Understanding (hereafter Agreement) is made and entered into by and among the following County, Federal, State, and Tribal agencies that: (a) have regulatory jurisdiction and management authority over Mexican wolves (*Canis lupus baileyi*) or the lands that Mexican wolves occupy in Arizona and New Mexico; or (b) are responsible for representing constituency interests while striving to make reintroduction compatible with current and planned human activities, such as livestock grazing and hunting.

1. Arizona Game and Fish Department (AGFD), as authorized to enter into agreements as the administrative agent of the Arizona Game and Fish Commission, i.e. A.R.S. Title 17-231.B.7; as authorized by Arizona Revised Statutes (Title 17) and by a Cooperative Agreement executed in 1985 by AGFD and USFWS, pursuant to Section 6 of the Endangered Species Act of 1973, as amended (ESA); a Memorandum of Understanding executed in 2008 with USFWS for ESA implementation in Arizona; and as authorized under permits issued to AGFD by USFWS under ESA Section 10;
2. New Mexico Department of Agriculture (NMDA), as authorized to enter into agreements in accordance with 76-1-2-F NMSA 1978;
3. New Mexico Department of Game and Fish (NMDGF), as authorized to enter into agreements by NMSA Section 17-2-42; and consistent with Memorandum of Agreement 1448-00002-95-0800, which delineates a cooperative working relationship for accomplishing mutual goals in endangered species conservation and recovery; NMDGF

¹ This is an evolving draft document. The listed agencies and tribes are now individually determining whether this "final" draft is acceptable. Agencies noted above in red have not been active recently in the MOU development process. Their current interest in becoming Signatories is thus unknown but will be ascertained before the document is finalized. If this final draft does meet its needs, each agency or tribe will be asked to move the MOU through its unique approval process expeditiously, so the appropriate decision-making Board, Commission, Council, Director or other entity can determine whether that agency or tribe will become a Signatory. If an agency or tribe decides not to become a Signatory, all references to that agency or tribe will be removed from this document. As this process unfolds, the collaborators will explore with BLM, FSA and NRCS (and perhaps other agencies and tribes) whether those agencies or tribes also want to become Signatories.

- participation in this Agreement is both authorized and limited by New Mexico laws, particularly the New Mexico Wildlife Conservation Act (NMSA [1978] 17-2-37 through 17-2-46); NMDGF can attempt to undertake only those actions within this Agreement that are in compliance with the laws and regulations of the State of New Mexico;
4. San Carlos Apache Tribe (SCAT), as authorized to enter into agreements pursuant to Section 1 of Article V of the Amended Constitution of the SCAT (1954);
 5. U.S.D.A. Animal and Plant Health Inspection Service, Wildlife Services (WS), as authorized to enter into agreements, i.e. Animal Damage Control Act of March 2, 1931, as amended (46 Stat. 1468; 7 USC 426-426b and 426c);
 6. U.S.D.A. Forest Service Southwestern Region (USFS), as authorized under the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 (note 528-531)), and the Endangered Species Act of 1973 (16 U.S.C. 1531-1536, 1538-1540);
 7. U.S.D.I. Fish and Wildlife Service Region 2 (USFWS), as authorized to enter into agreements, i.e. the Endangered Species Act, 1531 USC et seq.;
 8. White Mountain Apache Tribe (WMAT), as authorized to enter into agreements, i.e. Article IV Section 1 of the Tribal Constitution;
 9. The Arizona Counties of Graham (GRAHCO), Greenlee (GRECO), and Navajo (NACO), as authorized by the State of Arizona, enabling counties to protect the health, safety, and welfare of its citizens, pursuant to Arizona Revised Statutes 11-806(b), as well as County laws, including County land-use plans, water and watershed plans, and environmental, natural resource, and cultural resource laws and policies; and
 10. The New Mexico Counties of Catron (CACO), Otero (OTCO), and Sierra (SICO), as authorized by the State of New Mexico, granting powers necessary and proper to provide the safety, preserve the health, promote the prosperity, and improve the morals, orders, comfort, and convenience of any County or its inhabitants, pursuant to New Mexico Revised Statute 4-7-31 (NMSA 1978), as well as county laws, including County land-use plans, water and watershed plans, and environmental, natural resource, and cultural resource laws and policies, as well as the Treaty of Guadalupe Hidalgo.

Collectively, all parties to this Agreement are hereafter referred to as Signatories.

Witnesseth

WHEREAS, ESA declared the policy of Congress to be “that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act;”

WHEREAS, USFWS, a Federal land management and regulatory agency, has a primary responsibility for initiating, conducting, and supporting programs for recovery of species listed under ESA, including the Mexican wolf; USFWS is responsible for providing guidance and coordinated information to all interested parties relative to Mexican wolf reintroduction, in accordance with: ESA; a 1996 Final Environmental Impact Statement (FEIS) on Reintroduction of the Mexican Wolf in the Southwest; a 1997 Record of Decision (ROD) for the FEIS; a 1998 Mexican Wolf Nonessential Experimental Population Rule (50 CFR 17.84(k); hereafter Final Rule); and a USFWS-approved “1998 Mexican Wolf Interagency Management Plan;”

WHEREAS, SCAT is authorized to manage wildlife on the San Carlos Apache Reservation, in accordance with sovereign rights under Treaty with the United States and statements of relationship and agreements with, USFWS, and a Mexican Wolf Management Plan for the San Carlos Indian Reservation as may be agreed to separately by SCAT and USFWS;

WHEREAS, WMAT is authorized to manage Mexican wolves on the Fort Apache Indian Reservation, in accordance with sovereign rights under Treaty with the United States and statements of relationship and agreements with, USFWS, and WMAT has a Mexican Wolf Management Plan for the Fort Apache Indian Reservation that has been agreed to separately by WMAT and USFWS;

WHEREAS, USFS, a Federal land management agency has responsibility under the National Forest Management Act of 1982 to provide for the diversity of plant and animal communities, manage fish and wildlife habitat to maintain viable populations, and, under Section 7(a)(1) of the ESA, to further conservation and recovery of Federally-listed species on National Forest Lands;

WHEREAS, WS, a Federal program, is responsible for providing Federal leadership and expertise to resolve conflicts between humans and wildlife, including threatened and endangered species, in cooperation with Federal, State and Tribal agencies, individuals and other public and private agencies, organizations and institutions;

WHEREAS, Arizona and New Mexico Counties are legally responsible for the protection of health, safety, and welfare of individuals and communities that may be affected by reintroduction and recovery of the Mexican wolf, and they are participating in this Agreement under County authorities to manage natural resources within the boundaries of the Counties;

WHEREAS, the Signatories are committed to establishing and maintaining an ecologically and socially appropriate balance between the conflicting pressures of establishing a wild Mexican wolf population and preventing or alleviating any negative impacts that wolf depredation might have on livestock or wildlife; and

WHEREAS, many Signatories have participated in Mexican wolf reintroduction since 2003 or earlier under previous interagency agreements; in December 2009, USFWS determined that it considers the most recent interagency agreement (executed in October 2003) to have expired in October 2008; other Signatories have continued working under the 2003 agreement; all parties have agreed it would best serve all interests to establish a new agreement that includes USFWS in order to create a new long-term framework for collaboration in Mexican wolf reintroduction.

NOW THEREFORE, the Signatories enter into this Agreement to accomplish its purpose and objectives as stated below:

Purpose

The primary purpose of this Agreement is to provide a framework for collaboration that is based in sound science and which enables the Signatories to develop a mutually-agreeable, long-term collaboration in reintroduction of Mexican wolves in Arizona and New Mexico within the Mexican Wolf Experimental Population Area (hereafter MWEPA²) as defined in the 1998 Final Rule governing reintroduction.

Objectives

The objectives of this Agreement are as follows:

1. Further conservation and wild persistence of the Mexican wolf through long-term effort to reestablish a wild population in the Blue Range Wolf Recovery Area (BRWRA) and on participating contiguous Federal Indian Trust Lands.
2. Manage Mexican wolves that occur within the MWEPA as a result of reintroduction in the United States, including captive-reared individuals released into the wild, individuals born in the wild to released wolves, or their progeny.
3. Commit to developing documents such as: (a) Signatory authorities, roles, and functions (i.e. responsibilities or duties) consistent with applicable statute, policy, or regulation; (b) other processes or procedures by which Signatories will coordinate and manage the Project, including mechanisms, formats, and priorities for interagency work planning, budgeting, outreach, wolf management (including nuisance or depredation response, interdiction, and compensation), performance reporting, and evaluation; and (c) processes or procedures by which Signatories will enable the public to participate in this Project.
4. Ensure that efforts toward Mexican wolf conservation are productively integrated with, and appropriately balanced by, programs that prevent, reduce or mitigate any negative impacts that Mexican wolf reintroduction might have on lawful multiple or other uses of public lands, private lands or participating Federal Indian Trust Lands. Toward that end, the Signatories will strive to stabilize existing funding for such measures and to develop additional funding to implement a comprehensive voluntary interdiction program among livestock producers that are affected by Mexican wolf reintroduction. In addition to the Mexican Wolf Interdiction Fund, the Signatories will apply any other program that can help reduce wolf/livestock conflicts or alleviate the impacts of livestock depredation by

² The MWEPA includes the area in which Mexican wolves were initially reintroduced in 1998: the Blue Range Wolf Recovery Area, consisting of non-tribal lands in portions of east-central Arizona and west-central New Mexico. Reintroduction is now occurring over a broader area, including the Fort Apache Indian Reservation in Arizona. Mexican wolves originating from this reintroduction effort may also occur at least occasionally (and temporarily) on the San Carlos Apache Indian Reservation in Arizona and/or within portions of the MWEPA outside the Blue Range Wolf Recovery Area and the Fort Apache and San Carlos reservations. Although a variety of jurisdictional wolf management plans cover the cumulative area, for convenience and clarity the reintroduction effort in general is referenced collectively. Such reference has no effect on concurrent or exclusive jurisdictions for land and wildlife management within the overall project area, including Federal Indian Trust Lands and non-tribal lands.

wolves, while enabling progress toward the Project's wolf population objective and reintroduction success.

5. Foster cooperation which improves the science-based foundation for Project success by actions that include revision of the: (a) 1982 Mexican Wolf Recovery Plan; (b) Final Rule governing reintroduction in Arizona and New Mexico; (c) USFWS 1998 Mexican Wolf Management Plan; and (d) annual and long-term population objectives for the reintroduction effort.
6. Link Signatory commitment of sufficient resources (including funding, staff, equipment, etc.) to mutually-agreeable Project guidance, practices, performance and results in each of the areas delineated above.

The Signatories in this Agreement agree to:

1. Strive to achieve the purpose and objectives set forth in this Agreement; and
2. Process requests to authorize³ activities or access for activities the Signatories jointly or individually conduct pursuant to this Agreement.

It is Mutually Agreed and Understood by and among the Signatories in this Agreement that:

1. The Signatories are primarily a coordinating body but have agreed through this Agreement to collaborate in developing decision alternatives that will be subject to acceptance by the appropriate jurisdictional agency. Collaboration pursuant to this Agreement shall not abrogate nor shall it be construed to abrogate the jurisdictional or other legal authorities of any Signatory or of any other entity, including State and Tribal trust authorities for wildlife and wildlife management. Although the Signatories may make recommendations to USFWS, both USFWS and the Signatories recognize the Signatories have no decision-making authority over USFWS with regard to the Mexican Wolf Recovery Program.
2. The terms of this Agreement are contingent upon sufficient resources being available to the Signatories for performance of this Agreement. The Signatories will develop work plans each year, develop budgets and, as funding is available from all sources, assess priorities and apply the available funding to those priorities. Decisions as to whether sufficient resources are available to each Signatory shall be determined by each Signatory, shall be accepted by all other Signatories and shall be final.
3. Specific work projects or activities that involve transfer of funds, services or property among the Signatories shall require execution of separate agreements or contracts and be contingent upon the availability of appropriated or other funds. Appropriate statutory authority must independently authorize such activities; this Agreement does not provide such authority. Negotiation, execution and administration of each such agreement must

³ Issuance of authorizations is subject to compliance with applicable agency policies and procedures, as well as applicable state, tribal and federal laws and regulations.

comply with all applicable statutes and regulations. Nothing in this Agreement shall obligate the Signatories to obligate or transfer any funds, expend appropriations, or to enter into any contract or other obligations.

4. This Agreement is non-binding and establishes no duty or obligation on any party; this Agreement is not intended to, and does not create or establish, any substantive or procedural right, benefit, trust responsibility, claim, cause of action enforceable at law, or equity in any administrative or judicial proceeding by a party or non-party against any party or against any employee, officer, agent, or representative of any party.
5. The Signatories in this Agreement and their respective agencies and offices will handle their own activities and use their own resources, including the expenditure of their own funds, in pursuing the objectives of this Agreement. Each party will carry out its separate activities in a coordinated and mutually beneficial manner. Employee assignment to the Project is subject to approval by the employing agency.
6. Any information provided to the Federal Agencies under this instrument may be subject to release under the Freedom of Information Act (5 U.S.C. 552). However, nothing in this Agreement shall be construed to affect the applicability of the exemptions set forth in 5 U.S.C. Section 552 (b).
7. This instrument in no way restricts the Signatories from participating in similar activities with other public or private agencies, organizations and individuals. This Agreement does not modify or supersede other existing agreements between or among any of the Signatories.
8. This Agreement takes effect on the date of the last signature of approval and shall remain in effect for five years. The Signatories will review the Agreement prior to its scheduled expiration and extend it if so desired. All such actions shall be discussed in a public meeting of the Signatories to ensure transparency for the public. However, such public discussion shall not substitute for nor shall it violate any Signatory's obligation to seek approval from its governing body through separate process. Any Signatory may withdraw from this Agreement with a 60-day written notice to the other Signatories. Withdrawal by one party shall not obligate any other Signatory to withdraw nor shall it affect continued cooperation among remaining parties to this Agreement. Further:
 - a. In accordance with the laws of the State of Arizona, all parties are hereby put on notice that State of Arizona participation this Agreement is subject to cancellation pursuant to A.R.S. § 38-511.
 - b. In accordance with the laws of the State of New Mexico, this Agreement is subject to approval by the Department of Finance and Administration. If any money has been contributed by the parties to this Agreement, after completion of the Agreement's purposes any surplus money on hand shall be returned in proportion to the contributions made. No property shall be acquired as the result of the joint exercise of powers under this Agreement.
9. This Agreement may be amended at any time to include additional Signatories. An entity requesting Signatory status shall submit its request to the Signatories in the form of a

document defining the requesting agency's proposed responsibilities pursuant to this Agreement. Inclusion of additional Signatories shall be approved by majority voice concurrence of current Signatories present in a public meeting of the Signatories. On approval, the new Signatory must comply with all aspects of the Agreement as it was structured when its request for Signatory status was approved.

10. Conflicts between or among Signatories concerning this Agreement that cannot be resolved at the lowest possible level shall be referred to the next higher level, et seq., as necessary, for resolution.
11. Each Signatory shall identify principal implementation and contract administration contacts for this Agreement and provide their contact information to the other Signatories. Agencies may change their contact(s) by written notification to all Signatories. Contact changes by one Signatory shall not require concurrence of other Signatories.
12. This Agreement is not a Federal contract, rule or regulation. This Agreement shall not be construed as or interpreted to be final Federal agency action. It is non-binding and establishes no duty or obligation on any Signatory; this Agreement is not intended to, and does not create or establish, any substantive or procedural right, benefit, trust responsibility, claim, cause of action enforceable at law, or equity in any administrative or judicial proceeding by a Signatory or non-Signatory against any Signatory or against any employee, officer, agent, or representative of any Signatory
13. 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).
14. No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.
15. The provisions of any statutes and/or regulations cited in this Agreement contain legally binding requirements. The Agreement itself does not alter, expand, or substitute for those provisions or regulations, nor is it a regulation itself. Thus, this Agreement does not impose legally-binding requirements on the Parties, nor does it create a legal right of action for the Parties or any third party.
16. Nothing in this Agreement may be construed as creating any sort of exclusive arrangement between an agency or agencies, tribes and the non-federal Signatory.
17. Unless expressly provided by law, personnel or volunteers of one Signatory shall not be considered to be agents or employees of the other Signatory for any purpose, and no joint venture or principal-agent relationship shall be deemed to exist. The personnel and volunteers of one Signatory are not entitled to any of the benefits that the other Signatory provides for its employees or volunteers. This Agreement shall not make or be deemed to make employees of one Signatory subject to supervision by employees of another Signatory.

18. On behalf of itself, its officers, directors, members, employees, agents and representatives, each Signatory agrees that it will be responsible for its own acts and omissions and the results thereof and that it shall not be responsible for the acts or omissions of the other Signatory, nor the results thereof. Each Signatory therefore agrees that it will assume the risk and liability to itself, its agents, employees and volunteers for any injury to or death of persons or loss or destruction of property resulting in any manner from the conduct of the Signatory's own operations and/or the operation of its agents, employees and/or volunteers under this Agreement. Each Signatory further releases and waives all claims against the other Signatory for compensation for any loss, cost, damage, expense, personal injury, death, claim, or other liability arising out of the performance of this Agreement, including without limitation any loss, cost, damage, expense, personal injury, death, claim or other liability arising out of the other Signatory's negligence, provided, however, that either Signatory may agree to voluntarily compensate the other for damage to equipment.

IN WITNESS WHEREOF:

The Signatories hereto have executed the Agreement as of the last written date below.

Larry D. Voyles, Director
Arizona Game and Fish Department

Date

Tod W. Stevenson, Director
New Mexico Department of Game and Fish

Date

Wendsler Nosie, Sr., Chairman
San Carlos Apache Tribe

Date

Jeffrey S. Green, Regional Director, Western Region
USDA APHIS/Wildlife Services

Date

Corbin L. Newman, Regional Forester
USDA Forest Service Southwestern Region

Date

Benjamin N. Tuggle, Director, Region 2
U.S. Fish and Wildlife Service

Date

Ronnie Lupe, Chairman
White Mountain Apache Tribe

Date

Francis Edward Wehrheim, Chair
Catron County (NM) Commission

Date

Mark Herrington, Chair
Graham County (AZ) Board of Supervisors

Date

Hector Ruedas, Chair
Greenlee County (AZ) Board of Supervisors

Date

Jesse Thompson, Chair
Navajo County (AZ) Board of Supervisors

Date

Doug Moore, Chair
Otero County (NM) Board of Supervisors

Date

James Coslin, Chair
Sierra County (NM) Commission

Date

I. Miley Gonzalez, Secretary/Director
New Mexico Department of Agriculture

Date