MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCES CONSERVATION SERVICE

AND THE

UNITED STATES DEPARTMENT OF THE INTERIOR, UNITED STATES FISH AND WILDLIFE SERVICE

AND THE

ASSOCIATION OF FISH AND WILDLIFE AGENCIES

This Memorandum of Understanding (MOU) is entered into by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), the United States Department of Interior, Fish and Wildlife Service (FWS), and the Association of Fish and Wildlife Agencies (AFWA), hereinafter referred to as "the Parties."

I. PURPOSE

The purpose of this MOU is to strengthen cooperation among the Parties to proactively conserve plant and animal species at-risk and their habitats. It is the intent of the Parties to identify and create more opportunities to work together to help preempt the need to list additional species under the Federal Endangered Species Act (ESA), foster the recovery of species already listed, and address similar needs for State species of conservation concern.

II. INTRODUCTION

Conserving species at-risk is a high priority for the Parties. A key purpose of ESA is to provide a program for conserving federally listed plant and animal species and the ecosystems upon which they depend. Similarly, many States maintain lists of species identified as endangered or threatened or placed in similar categories under State law, and all States have identified wildlife species of conservation concern in their State Wildlife Action Plans. The Parties believe that these plant and animal species are critical components of biodiversity and often are indicators of healthy, functioning ecosystems that provide critical ecological, social, and economic functions and services upon which humans depend. Furthermore, the Parties believe that a strong partnership among them to encourage conservation efforts will contribute to the recovery and delisting of endangered or threatened species, and preempt the need to list more species under the ESA, as well as achieve the purposes of State-level species conservation laws and policies. The Parties also recognize that strong citizen participation, as well as

stakeholder-based partnerships operating at the local level and at other geographic scales, are fundamental to successful species conservation.

Each Party has roles and processes for conserving species at-risk. Coordination can result in synergistic effects that enable broader success in achieving conservation goals. The roles and processes of each Party are summarized as follows:

A. NRCS

NRCS, under the direction of the Secretary of Agriculture, provides technical and financial assistance to private landowners and land managers who voluntarily agree to apply conservation practices on their land for the conservation and improvement of natural resources. This includes habitat conservation for Federal listed, proposed, and candidate species, as well as State species of conservation concern (General Manual 190 Part 410.22(b)).

As a Federal Agency, NRCS has responsibilities related to implementing the ESA. Under section 7(a)(1) of the ESA, NRCS is required, in consultation with and with the assistance of FWS, to utilize its authorities in furtherance of ESA purposes by carrying out programs for the conservation of federally listed endangered and threatened species. NRCS can meet its section 7(a)(1) responsibilities by making sure that, where appropriate, the Agency's programs are carried out with participation from FWS, appropriate State fish and wildlife agencies, and other conservation entities. This participation is particularly appropriate through the NRCS State Technical Committee (STC). The STC plays an important role in developing and providing recommendations to the NRCS State Conservationist regarding the implementation of NRCS conservation programs.

Under 7(a)(2) of the ESA, NRCS is required to ensure, in consultation with FWS, that any action NRCS authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. Under NRCS policy, State Conservationists are encouraged to "identify opportunities and procedures, such as programmatic consultations, to implement conservation measures and practices on a more efficient and timely basis."

B. FWS

FWS, under the direction of the Secretary of Interior, has regulatory and statutory responsibility for administering ESA.[1] FWS engages in a variety of activities to carry out its ESA responsibilities. These include: evaluating the status of species and, when

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[1] The National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, under the direction of the Secretary of Commerce, shares this responsibility. Generally, NMFS manages listed species that spend at least part of their life in marine waters, whereas FWS manages terrestrial and freshwater species. As used in the MOU, the term "listed species" refers to those under FWS responsibility.

appropriate, listing species as threatened or endangered, and designating critical habitat; delisting or changing the status of listed species and modifying critical habitat designations; conducting species and habitat conservation activities on FWS-managed lands, guiding the development of recovery plans for Federally-listed species, and working in partnership with other Federal agencies, State and local governments, Tribes, private landowners and land managers to support species and habitat conservation. A key purpose of these efforts is to reduce or remove threats so that Federally-listed species no longer need protection under ESA and thus can be delisted, and so that species which are proposed or candidates for listing, and species that appear likely to become candidates in the near future, will not need to be listed under ESA. FWS offers non-Federal landowners technical and financial assistance, as well as regulatory assurances pursuant to section 10 of ESA, to encourage and facilitate voluntary and proactive conservation efforts that contribute to the conservation of such species and the ecosystems upon which they depend.

Consistent with section 6 of ESA, FWS cooperates with States in carrying out programs authorized by the Act. FWS also works with other Federal agencies, including, but not limited to, cooperation under the consultation provisions of section 7 of ESA.

C. AFWA

AFWA, formerly known as the International Association of Fish and Wildlife Agencies, is an organization that represents the State fish and wildlife agencies' interests in fish and wildlife management. The Association's mission is to protect State authority and support provincial and territorial authority for fish and wildlife conservation; promote sound resource management; and strengthen Federal, State, territorial, and private cooperation in conserving fish, wildlife, and their habitats in the public interest. AFWA is committed to conserving the Nation's fish, wildlife, and natural resources based on scientific principles. AFWA represents and assists all 50 States and territories in working toward the accomplishment of their individual fish and wildlife goals and objectives. The States in general possess broad trustee and police powers over fish and wildlife within their borders, including — absent a clear expression of Congress' intent to the contrary — fish and wildlife on Federal lands within their borders. Where Congress has given Federal agencies certain conservation responsibilities, such as for migratory birds or species listed as threatened or endangered under ESA, the States, in most cases, have cooperative management authority.

State fish and wildlife agencies' objectives are: (1) to successfully carry out their public trust responsibilities to ensure the vitality of fish and wildlife resources for present and future generations; (2) to encourage, facilitate, and enhance the opportunities, means, and methods available to all citizens, especially landowners, to contribute to meeting this conservation objective in cooperation with State agencies and their Federal counterparts; and (3) to provide for the sustainable multipurpose use of resources, which includes hunting, fishing, trapping, and nonconsumptive uses.

In 2001, Congress developed two new programs to provide wildlife conservation funding to States: the Wildlife Conservation and Restoration Program and the State Wildlife Grants Program. These programs assist each State fish and wildlife agency by providing annual allocations to the States and territories for programs to prevent fish and wildlife from becoming listed. The funding is intended to supplement existing State fish and wildlife programs and to target species in greatest need of conservation, species indicative of the diversity and health of the State's fish and wildlife, and species with low and declining populations, as deemed appropriate by each State. In order to receive funding under these new measures, every State developed a Comprehensive State Wildlife Conservation Strategy (referred to as a State Wildlife Action Plan).

The State Wildlife Action Plans assess the status of each State's wildlife populations, and outline the action steps that are needed to conserve them over the long term. These plans address the needs of a broad array of wildlife, including fish and other aquatic species. In some States, the State Wildlife Action Plan also includes specific plants. The State Wildlife Action Plans were written broadly with the involvement of many stakeholders, including landowners; Federal, State, and local agencies; sportsmen and sportswomen; and conservation groups. The State Wildlife Action Plans, in combination with other conservation strategies and plans for State species of conservation concern, are powerful resources to guide the conservation of species at-risk and their habitats.

III ROLES AND RESPONSIBILITIES

This MOU commits the Parties to expand coordination and cooperation to ensure successful efforts in each State and territory in the Nation for the conservation of species at-risk. The actions taken under this MOU are expected to enable the Parties to more effectively meet their individual and collective obligations and priorities for conserving these species and their habitats.

A. NRCS will:

1. Invite and encourage FWS and State fish and wildlife agencies to be involved on State Technical Committees (STCs) and associated subcommittees, as well as local working groups, as appropriate, to provide expertise regarding the needs of local fish and wildlife, life histories, population dynamics, management, ESA criteria and processes for listing and delisting species, species conservation planning, regulatory assurance programs, and other conservation tools.

2. Through STC meetings and other venues, provide information about NRCS-administered programs that can assist in implementing FWS recovery plans, candidate conservation agreements, State Wildlife Action Plans, and other opportunities for considering species at-risk when evaluating and selecting potential NRCS-supported projects.

3. Explore opportunities with FWS to increase the efficiency of the section 7 consultation process for NRCS activities.

4. As resources permit, participate in the development, revision, and implementation of State Wildlife Action Plans for species of conservation concern, FWS recovery plans for listed species, candidate conservation agreements, and other conservation strategies, plans, and agreements for species at-risk.

5. Obtain appropriate permission from NRCS clients prior to on-site implementation of NRCS or NRCS-based partner activities.

B. FWS will:

1. Invite NRCS and State fish and wildlife agencies to participate in the development, revision, and implementation of FWS recovery plans for listed species, when appropriate.

2. Participate on NRCS STCs and subcommittees as appropriate.

3. Provide information and updates to NRCS and State fish and wildlife agencies about FWS procedures and programs, such as: processes and criteria used by the Service to identify species as candidates for listing, and for listing and delisting actions and related activities under section 4 of the ESA; consultation procedures under section 7 of the ESA; species conservation planning and permitting under section 10 of the ESA; and other FWS cooperative conservation programs (including grants) that support ESA implementation.

4. Explore opportunities with NRCS to increase the efficiency of the section 7 consultation process for NRCS actions.

5. Assist with preparation, and provide timely review and processing, of voluntary conservation agreements under section 10 of the ESA that are developed by State fish and wildlife agencies and by non-Federal landowners and other non-Federal organizations working with State agencies and/or NRCS. Such agreements are for federally listed, proposed, or candidate species, or those likely to become candidates for listing under the ESA in the future.

6. Share information with NRCS and State fish and wildlife agencies regarding changes that pertain to regulations, policies, or practices regarding voluntary conservation activities, such as agreements under section 10 of the ESA and other fish and wildlife cooperative conservation programs. FWS also will share information regarding voluntary conservation agreements under section 10 of the ESA that are under development, and will coordinate with these

agencies to promote their involvement, as appropriate, and to ensure that proposed conservation measures are not detrimental to other fish and wildlife species and conservation efforts for which the States have jurisdictional authority.

C. AFWA will encourage State fish and wildlife agencies to:

1. Participate on the NRCS STCs and subcommittees as appropriate.

2. Participate in the development and implementation of FWS Recovery Plans for listed species and conservation agreements or strategies for other species at-risk.

3. Provide NRCS and FWS with information regarding State Wildlife Action Plans, State species of conservation concern, and State laws and/or policies pertaining to those species.

4. Promote coordination with NRCS and FWS to implement State Wildlife Action Plans and other conservation agreements or strategies that address State species of conservation concern.

5. Collaborate with FWS, appropriate Conservation Districts, Resource Conservation and Development Councils, and any other appropriate entity to develop and implement various types of Federal or State voluntary conservation agreements or similar documents for species at-risk. (The type of agreement and the method for landowner or manager participation will be determined on a case-by-case basis.)

D. NRCS, FWS, and AFWA will, as appropriate:

1. Coordinate procedures and provide joint training to improve the efficiency and effectiveness of various conservation programs to benefit species at-risk. This includes, but is not limited to, promoting the use of programmatic conservation agreements as an efficient and effective means of providing ESA assurances to non-Federal landowners and land managers.

2. Share information regarding priorities for conservation of species at-risk and their habitats, and identify opportunities to implement actions to achieve shared priorities. Coordinate to ensure each Party's conservation programs are complementary and are not inadvertently in conflict.

3. Share updated information regarding conservation policies, programs, voluntary conservation agreements, and procedures related to species at-risk and their habitats. This can be done through communication at STC meetings, joint training programs, or other means.

4. Coordinate species and habitat information and data, as appropriate, to assist in focusing resources for developing and implementing conservation agreements or strategies, recovery plans, or other programs and projects for species at-risk.

5. Collaborate with other appropriate entities to facilitate development and implementation of voluntary conservation agreements and assurances under the ESA.

6. Promote information sharing with non-Federal landowners regarding opportunities to: participate in voluntary conservation agreements; receive technical and financial assistance to support conservation efforts; and receive regulatory assurances for activities developed pursuant to section 10 of the ESA.

7. Promote coordinated technical assistance, as appropriate, to private landowners and land managers in the implementation of conservation practices that benefit species at-risk and their habitats.

8. Encourage the development of MOUs or other types of partnerships (e.g., at regional, State, and local levels) to facilitate implementation of this MOU.

9. Monitor and report on implementation of this MOU. Initially, this will include convening a Monitoring and Reporting Workgroup to develop a national monitoring and reporting system for tracking progress in achieving the coordination that is the key purpose of this MOU. The monitoring and reporting process will be in place within 9 months after the MOU becomes effective. Monitoring mechanisms will include provisions for identifying cooperation existing at the inception of this MOU and changes that result from its implementation. The Agency Contacts (as identified in VI, below), or their designees, will meet at least annually to review performance under this MOU, and provide recommendations as appropriate. The signatories to the MOU will be provided with a mid-term progress report, and a final report at the expiration of the MOU.

IV. GENERAL PROVISIONS

A. This MOU takes effect upon the signatures of the Parties and remains in effect for 5 years from the date of execution. In the event of termination by one of the parties, the other parties may initiate a new MOU between them.

B. This MOU is not intended to, and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies, its officers, or any person.

C. This MOU does not affect or modify existing regulations or agency responsibilities and authorities. It specifically does not commit any agency to activities beyond the scope of its mission and authorities under its organic statutes and its trust responsibilities to ESA.

D. NRCS, FWS, AFWA, and their respective officers will handle their own activities and utilize their own resources, including expenditures of their own funds, in pursuing the purposes of this MOU. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

E. Nothing in this MOU shall obligate the Department of Agriculture, the Department of Interior, or the Association of Fish and Wildlife Agencies to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Parties will require execution of separate agreements, and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

V. DEFINITIONS

Candidate species — Species for which FWS has on file sufficient information on vulnerability and threats to support a proposal to list it as endangered or threatened under ESA, but for which preparation and publication of a proposal is precluded by higher-priority listing actions.

Conservation agreements — Formal agreements between two or more entities for the conservation of species and/or habitat, that are entered into on a voluntary basis.

Programmatic conservation agreements — Voluntary conservation agreements that are developed at a scale above that of an individual landowner, and which allow multiple individual landowners to participate. Generally, these are agreements developed under section 10 of ESA and involve permits and/or regulatory assurances.

Regulatory assurances — Generally, this term refers to assurances provided by FWS to a State or other non-Federal property owner in association with a permit for a conservation agreement pursuant to section 10 of ESA. Regulatory assurances generally include a commitment by FWS that if changed circumstances occur that are not provided for in the Agreement, the Service will not require any conservation measures or restrictions on the use of land or other resources in addition to those provided for in the Agreement without the consent of the permittee.

Species — As defined in ESA, the term "species" includes any species, subspecies of fish, or wildlife, or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

Species at-risk — For purposes of this MOU, species at-risk refers to plant and animal species that are: listed as endangered or threatened under ESA; proposed or candidates for listing under ESA; likely to become candidates for listing in the near future; species listed as endangered or threatened (or similar classification) under State law; and State species of conservation concern.

State species of conservation concern — Species identified by State fish and wildlife agencies in State Wildlife Action Plans or other State agency conservation strategies and plans that include species identified as being in greatest need of conservation. (The criteria for identifying such species vary across States; consult the individual State Wildlife Action Plan for specifics.)

VI. AGENCY CONTACTS

NRCS: Director, Ecological Sciences Division

FWS: Assistant Director, Endangered Species

AFWA: Legislative Director

VII. AUTHORITIES

This MOU is entered into in accordance with the following laws:

1. Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544)
2. Soil Conservation and Domestic Allotment Act, as amended (Public Law 74-46, 16 U.S.C. 590 (a-f)
3. Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714c)
4. Food Security Act of 1985, as amended (16 U.S.C. 3841 et. seq.)
5. Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624)
6. Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104-127)
7. Farm Security and Rural Investment Act of 2002 (Public Law 107-171)
8. Fish and Wildlife Conservation Act, as amended (16 U.S.C. 2901-2911)
9. Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661-666(e))

VIII. APPROVAL

The undersigned parties hereby agree to the terms and conditions specified above.

ARLEN L. LANCASTER
Chief, Natural Resources Conservation Service

2/14/2007
DATE

H. DALE HALL
Director, U.S. Fish and Wildlife Service

2/14/07
DATE

MATT HOGAN
Executive Director,
Association of Fish and Wildlife Agencies

2.15.07
DATE