

DRAFT DELIBERATIVE – NOT FOR DISTRIBUTION

Memorandum of Understanding
For the Reintroduction of Gray Wolves in Colorado

March 1, 2024

Through this Memorandum of Understanding (hereinafter referred to as “Agreement”), the Signatory Agencies agree to cooperate to implement actions necessary to assist in Colorado Parks and Wildlife’s gray wolf restoration efforts, protect the genetic integrity of the Mexican gray wolf population, and collaborate in association with the 10(a)(1)(A) permit for neighboring states outside of Colorado’s 10(j) boundary to ~~manage-return~~ wolves that leave the experimental population area. This Agreement is made and entered into by and among the following Federal and state agencies.

Signatory Agencies

The following Signatory Agencies have regulatory jurisdiction and management authority over gray wolves, including Mexican gray wolves, and/or regulatory jurisdiction and management over the lands that wolves occupy in Arizona, Colorado, New Mexico, and Utah and/or expertise in resolving conflicts between humans and wildlife, including threatened and endangered species.

Arizona Game and Fish Department (AGFD), ~~is~~ authorized to enter into Memoranda of Understanding (MOUs) ~~as the administrative agent of the Arizona Game and Fish Commission, A.R.S. § 17-231.B.7; as authorized by Arizona Revised Statutes (Title 17) and~~ by a Cooperative Agreement executed in 1985 by AGFD and United States Fish and Wildlife Service (USFWS), pursuant to Section 6 of the Endangered Species Act of 1973, as amended (ESA); an MOU executed in 2008 with USFWS for ESA implementation in Arizona; and as authorized under permits issued to AGFD by USFWS under ESA Section 10.

Colorado Division of Parks and Wildlife and the Colorado Parks and Wildlife Commission (together, CPW), as authorized under C.R.S. 33-1-105(1)(e) to enter into cooperative agreements for the development and promotion of wildlife programs; and by a Cooperative Agreement executed in 1976 by CPW and USFWS, pursuant to Section 6 of the Endangered Species Act of 1973, as amended, and by ~~regulations issued by the commission authorizing the take, possession, 2 Colo. Code Regs. §§ 406-10:1000.A(7) and transport of nongame species, either by FWS or by the other state’s wildlife agency; 406-10:1001.A(1).~~

New Mexico Department of Game and Fish (NMDGF), as authorized to enter into MOUs with federal agencies for the management of endangered species, under the Wildlife Conservation Act 17-2-37 to 17-2-46 NMSA 1978; and by a Cooperative Agreement executed in 1976 by ~~NMDGF~~ NMDGF and the USFWS, entered into under Section 6 of the ESA; and as authorized under permits issued to ~~NMDFD-NMDGF~~ NMDGF by USFWS under ESA Section 10.

Utah Division of Wildlife Resources (UDWR), as authorized to enter into MOUs with state and federal agencies for wildlife conservation and management-related purposes as authorized under Utah Code ~~23A-2-40123-22-1~~; and by a Cooperative Agreement executed in 1979 by UDWR

Commented [LR1]: 7. Threatened or endangered wildlife may be possessed if legally taken in and transported from another state or country and legally imported into the United States and Colorado.

Commented [LR2]: 1. Capture and relocation of nongame, endangered, or threatened gray wolves is prohibited except as carried out by the Division or its agents or by the U.S. Fish and Wildlife Service or its agents.

DRAFT DELIBERATIVE – NOT FOR DISTRIBUTION

and the USFWS, entered into under Section 6 of the ESA, and as authorized under permits issued to UDWR by USFWS under ESA Section 10.

United States Department of Interior, Fish and Wildlife Service Region 2 and Region 6, as authorized under the ESA.

Further details regarding the management authorities necessary to achieve the purposes of this framework will be outlined in a subsequent permit issued by the USFWS pursuant to Section 10(a)(1)(A) of the Endangered Species Act, or amendments to already existing Section 10(a)(1)(A) permits.

Purpose

The purpose of this Agreement is to generally outline the procedures signatories' intent to relocate gray wolves that leave the Colorado nonessential population area back to Colorado, should they disperse to Utah, Arizona, or New Mexico and establishes mutual agreement for the 10(a)(1)(A) permits issued by the USFWS that would provide authority for Arizona, Colorado, New Mexico, and Utah to return both gray wolves and Mexican wolves back to their nonessential population areas as described below. In addition, this Agreement aims to maintain geographic separation of the gray wolf and Mexican gray wolf subspecies to prevent hybridization that may threaten the genetic integrity of the Mexican gray wolf population. Nothing contained in this Agreement is intended to conflict with the 10(a)(1)(A) permit issued by the for the Mexican wolf USFWS to Arizona and New Mexico allowing the return of Mexican wolves that stray from their nonessential population area within Arizona and New Mexico.

Commented [JD3]: The word "procedures" here suggests to me that we are outlining how the signatories will manage capture and return. Perhaps we can revise to "generally outline the Signatories' intent to relocate gray wolves"?

Commented [LR4]: This is for clarification, but leaving it out would not be a fatal flaw.

Commented [LSD5]: The permit is currently issued to the USFWS not the states and potential 10(a)(1)(A) permits for the Mexican wolf may allow other cooperating states to return wolves to NM or AZ so I don't want the language to be constraining

Objectives

The objectives of this Agreement are as follows:

1. Notify Signatories of any wolves that are showing dispersal behavior outside their respective nonessential population areas.
2. Collaboratively work to capture and return dispersing gray wolves from the Colorado nonessential population area or Mexican wolves from the Mexican wolf nonessential population area to the respective nonessential population areas.
3. Work cooperatively to include objectives 1 and 2 in a subsequent permit issued by the USFWS pursuant to Section 10(a)(1)(A) of the Endangered Species Act, or amendments to already existing Section 10(a)(1)(A) permits.

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

1. 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, except when transfers of funds are authorized by separate agreements or contracts. USFWS will not provide financial assistance in any form, such as furnishing USFWS property, goods, or services through this agreement. None of the Signatories to this Agreement will reimburse any other Signatory party for all or any party of the cost incurred by such Signatory party in providing wolf management pursuant to this Agreement. Each state is responsible for all staffing costs and other expenditures associated with capturing a wolf that has dispersed

Commented [LR6]: Fixing a typo

DRAFT DELIBERATIVE – NOT FOR DISTRIBUTION

out of the Colorado Experimental Population Area, unless collaboratively agreed to by the signatories. Once captured, the wolf will be transported to Colorado where it will be transferred to possession of CPW staff. Any Mexican wolves captured outside of the Mexican Wolf Experimental Population Area will be transported and transferred to possession of the Mexican Wolf Recovery Program. Each Signatory party will carry out its separate activities in a coordinated and mutually beneficial manner: with the other Signatories as appropriate. Employee assignment under this framework is subject to approval by the employing agency.

2. Certain discussions or documents provided to the Signatories or their designees may contain confidential information on the Mexican Wolf Recovery and Colorado gray wolf restoration programs. Any confidential information provided or shared among the Signatories will be marked CONFIDENTIAL and is provided to the Signatories for deliberative and advisory purposes. Signatories acknowledge the confidential nature of this information and that it is, accordingly, not intended for distribution or discussion outside of the appropriate personnel within the Signatories' agencies. The Signatories agree to maintain the confidentiality of the information they receive, to the extent permitted by law (e.g., Freedom of Information Act [FOIA] or state public records law), and to limit its distribution or discussion outside of their organizational leadership, as required and appropriate, on a strictly need-to-know basis.
3. Any information provided to the Federal Agencies under this Agreement may be subject to release under the Freedom of Information Act (5 U.S.C. 552) (FOIA) or state public records law. However, nothing in this Agreement shall be construed to affect the applicability of the exemptions set forth in 5 U.S.C. 552 (b). The Signatories will take all measures available to them by law to protect the confidentiality of confidential information.
4. This Agreement in no way restricts the Signatories from participating in similar activities with other public or private agencies, organizations or individuals. This Agreement does not modify or supersede other existing agreements between or among any of the Signatories.
5. This Agreement takes effect on the date of the last signature of approval and shall remain in effect for 5 years after the date of the last signature. The Signatories will review the Agreement prior to its scheduled expiration and extend it if so desired. 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.
6. 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, as necessary, for resolution.
7. Each Signatory shall identify principal implementation and contract administration contacts for this Agreement and provide their contact information to the other

DRAFT DELIBERATIVE – NOT FOR DISTRIBUTION

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.

8. This Agreement is not a Federal contract, rule or regulation. This Agreement shall not be construed as or interpreted to be a final Federal agency action.
9. Anti-Deficiency Act - 31 U.S.C. §1341 - Nothing contained in this Agreement shall be construed as binding the USFWS to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
10. 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 Signatories, nor the results thereof.
11. This Agreement imposes no legally binding requirements on the signatories. 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 that conflict with statute or regulations, nor does it create a legal right of action for the Parties or any third party.

Signatures:

Ty Gray, Director, Arizona Game and Fish Department Date

Jeff Davis, Director, Colorado Parks and Wildlife Date

Michael Sloane, Director, New Mexico Department of Game and Fish Date

Justin Shirley, Director, Utah Division of Wildlife Resources Date

DRAFT DELIBERATIVE – NOT FOR DISTRIBUTION

Amy Lueders, Region 2 Director, U.S. Fish and Wildlife Service Date

Matt Hogan, Region 6 Director, U.S. Fish and Wildlife Service Date

DRAFT