

Appendix I: Memorandum of Understanding with Iowa Department of Natural Resources

Memorandum of Understanding Iowa Wetland Management District

Cooperating Partners:

**U.S. Fish and Wildlife Service
and
Iowa Department of Natural Resources**

October 2012

MEMORANDUM OF UNDERSTANDING

Iowa Department of Natural Resources
State of Iowa

Fish and Wildlife Service
U.S. Department of Interior

This MEMORANDUM OF UNDERSTANDING, entered into by and between the Iowa Department of Natural Resources, State of Iowa, hereinafter referred to as the Department, under Chapters 107.24 and 107.30, Code of Iowa; and the Fish and Wildlife Service, United States Department of the Interior, hereinafter referred to as the Service, acting by and through the Regional Director, Region 3, under the Authority of the Migratory Bird Conservation Act of February 18, 1929, as amended (16 U.S.C. 715-715r); Migratory Bird Hunting and Conservation Stamp Act of March 16, 1934 (48 Stat. 451), as amended (16 U.S.C. 718 et seq.); Fish and Wildlife Act of August 8, 1956 (708 Stat. 1119), as amended (16 U.S.C. 742a-742j); the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460 et seq.); the Emergency Wetland Resources Act of 1986 (P.L. 99-645); the National Wildlife Refuge System Improvement Act of 1997 (P.L. 105-57); and in accordance with the policy of cooperation with the various states expressed in 43 CFR, part 24.

WHEREAS, the Department has been created under the laws of the State of Iowa to provide an adequate and flexible system for the protection, development, and use of forests, fish and wildlife, lakes, streams, plant life, flowers, and other outdoor resources, and

WHEREAS, the Service has as its responsibility the management of migratory birds and seeks to maintain and increase populations of migratory birds so they may continue to provide recreational and educational benefits for people, and

WHEREAS, the Department has a responsibility for the management of migratory birds and other wildlife within the boundaries of the state of Iowa, and

WHEREAS, the Department and the Service recognize the value of wetlands developed under this agreement to wildlife species other than waterfowl, and

WHEREAS, it is the mutual desire of the Department and the Service to work in harmony for the common purpose of acquiring and managing production habitat in Iowa in order to maintain and increase waterfowl and other migratory bird populations for the best interests of the people of Iowa and the United States.

This MEMORANDUM OF UNDERSTANDING between the Department and the Service supports the goals of the Prairie Pothole Joint Venture, a component of the North American Waterfowl Management Plan. In Iowa, the goals for wetland preservation are to: 1) acquire land through a combination of county, state and federal governments, conservation organizations, private businesses and concerned citizens to protect 100,000 acres, 2) acquire existing or restorable wetlands and adjacent upland nesting habitat at an optimum ratio of one wetland acre per three upland acres within each priority complex, and 3) continue an aggressive wetland restoration program on private land to create new wetland habitat.

The Iowa Department of Natural Resources and The Fish and Wildlife Service Mutually Agree:

1. To cooperate in planning, carrying out, and operating a program to acquire, protect, and manage lands for wetlands preservation and waterfowl production in the state of Iowa for the express purpose of maintaining and increasing the production of waterfowl. These lands will be known as Waterfowl Production Areas (WPAs). This program shall be known as the Iowa Small Wetlands Acquisition Program (Program).
2. To cooperate in identifying communities of waterfowl production habitat in Iowa, and delineate for purchase or easement those lands of high waterfowl production capabilities of said communities. Each wetland community selected for habitat acquisition shall be within the 35 counties identified in the Prairie Pothole Joint Venture Plan.
3. To coordinate activities under this agreement with the Iowa PPJV Implementation Committee.
4. To manage lands acquired under this Program in accordance with the Iowa Wetland Management District (WMD) approved Comprehensive Conservation Plan (CCP) incorporating updated management practices as mutually agreed by both agencies.
5. To abide by the attached Procedural Agreement which has been mutually agreed upon as the document that will guide activities under this Memorandum of Understanding and is attached hereto and made a part of this Memorandum of Understanding.
6. To review annually, the management of lands acquired under this Program, the progress of the Program, and to plan for the future Program direction as appropriate.
7. That each and every provision of this Memorandum of Understanding is subject to the laws of the State of Iowa and the laws of the United States.
8. The Service shall retain primary jurisdiction and be principally responsible for the management of these lands as part of the National Wildlife Refuge System as outlined in the attached Procedural Agreement.
9. That nothing in this Memorandum shall be construed as obligating the Department or the State of Iowa to the expenditure of funds or for the future payment of money in excess of appropriations authorized by law.
10. That nothing in this Memorandum shall be construed as obligating the Service to expend or as involving the United States in any contracts or other obligations for the future payment of money in excess of the appropriations authorized by law.
11. That this Memorandum shall become effective as soon as it is signed by the parties hereto and shall continue in force until terminated by either party upon a thirty (30) day notice upon a date indicated.

12. That amendments to this basic Memorandum of Understanding may be proposed by either party and shall become effective upon approval by both parties.

13. To share the operation and use of equipment and vehicles in the course of cooperative management operations subject to the following special provision:

Each party to this agreement agrees to be responsible for damages to their own property and injuries to their own employees/volunteers, except for damages/injuries resulting from the faulty or negligence of the other party. Any claim for damages to property or persons made against the respective governments will be pursued in accordance with the provision of the respective Tort Claims Acts.

The Fish and Wildlife Service Agrees:

1. To request a minimum of \$2 million of the Region's annual migratory bird fund allocation to this Program.
2. To provide the necessary personnel to plan for and carry out the purpose of this Program.
3. To review and approve or disapprove completed land acquisition appraisal reports.
4. To prepare and authorize Statements of Just Compensation, as required by provisions of P.L. 91-646.
5. To take necessary steps to vest title in the United States of land acquired for this Program, and make payment for property so purchased.
6. To make payments for all relocation benefits to displaced persons affected by the acquisition of lands under this Memorandum of Understanding, as required by P.L. 91-646.
7. To conduct cadastral surveys of lands purchased for this Program if required for legal description or relocation of boundary.
8. To complete appropriate use findings and compatibility determinations for uses in accordance with Service policy.
9. To provide Department \$250,000 annually for management of WPAs within the Iowa WMD.

The Iowa Department of Natural Resources Agrees:

1. To provide the necessary personnel to plan for and carry out the purpose of this Program.
2. To provide, when requested by the Service, appraisal reports on proposed projects.
3. To negotiate with landowners and obtain purchase agreements on Service forms, to conduct relocation advisory services as required by P.L. 91-646, and to assist the landowners in filing claims for reimbursement of expenses under P.L. 91-646.

4. To obtain necessary state approvals for lands purchased for this Program in accordance with applicable state and federal laws.
5. To forward signed purchase agreements, completed appraisal reports and other documents deemed necessary to the Division of Realty, U.S. Fish and Wildlife Service, Bloomington, Minnesota.
6. To provide information concerning proposed secondary and economic uses to the Service for compatibility determinations.
7. To provide the Service a summary activity report, by WPA, on an annual basis.

In WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date when last signed below.

DEPARTMENT OF NATURAL RESOURCES
STATE OF IOWA

By Chuck Gagg
Director

Date 10/29/2012

FISH AND WILDLIFE SERVICE
U.S. DEPARTMENT OF THE
INTERIOR

By Thomas O. Melius
Regional Director

Date 11/20/12

PROCEDURAL AGREEMENT

I. LIAISON AND COORDINATION

The Service Project Leader at Union Slough National Wildlife Refuge, Titonka, IA, is designated as Iowa Wetland Management District (WMD) Coordinator. The Service Project Leader will represent the Service in exercising jurisdiction over the management of Waterfowl Production Areas (WPAs), and provide local assistance to the Department in carrying out the Program. Acquisition, however, shall be coordinated through the Division of Realty, in Bloomington, MN.

The Wildlife Bureau Chief will be the Program Coordinator representing the Department in all matters related to the Memorandum of Understanding and Procedural Agreement.

II. GUIDELINES FOR SELECTING WPAs

Acquisition objectives will be to identify and acquire, in fee title or easement, WPAs with highest priority given to acquiring natural or restorable wetlands having brood-rearing cover and associated upland nesting cover in close proximity to existing public wetlands. Other areas of priority will be uplands in the vicinity of wetlands where nesting cover is lacking.

- A. Project areas will be located within the 35 eligible counties listed in the Prairie Pothole Joint Venture Plan. Priority will be given to wetland complexes as delineated in the *Identification of Potential Wetland Complex Restorations in the Prairie Pothole Region of Iowa* (2002). This does not preclude consideration of tracts outside of the delineated areas which may be deemed important focal areas of habitat.
- B. WPAs to be acquired will be selected primarily on the basis of their importance to waterfowl and other migratory birds.
- C. The upland-nesting component of waterfowl production habitat will be emphasized and situated to complement designated wetlands ideally in a 3:1 ratio of uplands to wetlands within a targeted complex. Whole farm units can be considered. Surplus upland can be exchanged where appropriate.
- D. Legal access to the property for the purpose of management and public use is required. This can be either in fee or easement.
- E. Creeks and rivers do not qualify as core wetlands for purchase but their presence may enhance the unit.

III. ACQUISITION PROCEDURES

- A. Service Division of Realty will maintain a record of all WPA projects and provide updates to the Department on request.

- B. Potential projects will be evaluated by Department or Service. Selected project packages containing a Service delineation sheet and other project data will be forwarded to the Department.
- C. Department will review and forward selected WPA project packages to the Service Project Leader for review.
- D. The Service Project Leader will review packages and forward to Service Division of Realty.
- E. Service Division of Realty conducts or contracts for the appraisal. The Service shall have the appraisal reviewed and upon approval, send a Statement of Just Compensation, copy of appraisal and purchase agreement to the Department Realty office for negotiation.
- F. Negotiations will be conducted with the intent not to exceed the appraised value. While the Service has authority to accept purchase agreements in excess of the appraised value for WPAs; it rarely does so. In special circumstances, justification to obtain price agreement in excess of appraised value is warranted. Before a WPA agreement for a price exceeding the appraised value is accepted, the Regional Director must approve a statement, for the record, citing the case history of negotiations and the reasons that a higher price is justified. Coordination shall be through the Division of Realty, Bloomington, Minnesota.
- G. Federal purchase agreement forms will be used, including Statements of Just Compensation.
- H. The value for use and occupancy reservation of less than 2 years duration is not usually discounted. Use reservations, especially for buildings, are permitted for periods not to exceed five years. Any additional tenancies beyond five years, if permitted, will be handled by Special Use Permit executed by the Service Project Leader. Tenancy for Cooperative Farming Agreements shall be administered in accordance with the WMD approved CCP and 50 CFR 29.2 (Cooperative Land Management).
- I. Upon Service acceptance of the purchase agreement, a certified letter of acceptance will be sent to the vendor. A copy of the letter of acceptance and a copy of the accepted option and tract maps will be sent to the Department and Service Project Leader. Service Division of Realty (or designee) will conduct necessary acquisition surveys.
- J. After transfer of title to the United States, the following documents will be furnished at time of completion to the Department and Service Project Leader.
 - 1. Copy of executed deed.
 - 2. Notification of payment to vendor
 - 3. Title vesting memorandum with copy of final opinion from Solicitor.
- K. Department will provide owner/tenants with legal notification of termination of cropping rights per state law at date of closing and Service will notify USDA-FSA of title transfers

**IV. COMPREHENSIVE CONSERVATION PLAN (CCP) AND STEP DOWN
MANAGEMENT PLAN REQUIREMENTS**

Within one year after the Service takes possession of a given tract, a unit plan will be prepared by the Department and Service and will be based on goals and objectives outlined in the WMD CCP and Habitat Management Plan (HMP). The jointly developed unit plan will describe the objectives for management of WPAs in the Iowa WMD and will include objectives for upland habitats, wetland habitats, and public uses.

Objectives will primarily consider migratory waterfowl, other migratory birds, and endangered and threatened species. Public use objectives will be consistent with those authorized in Title 50 Code of Federal Regulations and National Wildlife Refuge System guidelines. Cultural resources will be managed according to federal regulations.

An inventory of present land use practices and recommended future use and development for each habitat type will be included in the plan. Existing facilities will be identified along with recommendations as to their future use or disposal. GIS generated aerial photographs, maps and soils data will be incorporated into management planning when available and feasible.

V. LAND MANAGEMENT RESPONSIBILITIES

The MOU identifies the Department as the lead management agency for WPAs in Iowa. As such, the Department provides major financial support for WPA management. The cooperative nature of this partnership affords flexibility in our shared responsibilities to ensure that critical elements are accomplished in a timely manner. Work will be accomplished in accordance with the approved CCP and applicable step down plans (e.g. HMP, Visitor Services Plan, Hunt Plan). The Iowa WMD CCP and step down plans are hereby made a part of the Procedural Agreement and will be used in the management of Iowa's WPAs. Responsibilities for specific elements are described as follows:

A. Administration

1. Service will make annual federal payments to the counties according to P.L. 95-469, Refuge Revenue Sharing Act as amended in 1978.
2. Service will issue Special Use Permits and receive monetary receipts.
3. Department will negotiate and administer Cooperative Farming Agreements following Department and Service land management policy and guidelines. One copy will be kept at the WMD office. The Service Project Leader will review the Cooperative Farming Agreements for consistency with the CCP at the beginning of each agreement period. Department shall not accrue income nor barter goods or services under these agreements. All cooperative farming activities will be consistent with 50 CFR 29.2 (Cooperative land management). Department will have signature authority for FSA and NRCS documents pertaining to Cooperative Farming Agreements.
4. Service and Department will conduct compliance checks for all Special Use Permits and Cooperative Farming Agreements.

5. Service will process all applications for rights-of-way.
6. Service will conduct real property inventory.
7. Service and Department will provide administrative services associated with construction contracts.
8. Department will erect, maintain, and/or remove fences.
9. Service will provide all Service boundary, recognition, and regulatory signs and posts. Department will provide special use, boundary, public hunting, and recognition signs as appropriate and as outlined in the CCP or Visitor Services Plan.
10. Department will install and maintain signs on WPAs.
11. Service and Department will evaluate all WPAs at least once a year for wildlife and habitat resource values.
12. Service will maintain a closed case file of all fee and easement purchases. The original closed case file will be available in the Division of Realty, Bloomington, Minnesota.

B. Building Sites and Other Improvements

1. Service will inventory, administer sales, and bury and/or remove debris, junk, and unsold buildings and structures. Department will assist when appropriate.
2. Service and/or Department will fill and/or cap wells, septic systems, and deep holes.
3. Service and/or Department will level and seed disturbed areas to suitable wildlife cover.

C. Cultural Resources

1. Department will provide the Service Project Leader with a Cultural Resource Clearance form, aerial photograph, and any consultant's findings regarding cultural resources. The Service Project Leader will notify the Regional Historic Preservation Officer who will evaluate all projects and consult with the State Historic Preservation Officer, Indian tribes, and other parties as applicable. The Service will pay for archeological investigations and studies. The Service Project Leader will provide the Department with results and will approve project implementation.

D. Wetland Development, Enhancement, and Restoration

Service and Department will design and construct water control facilities, plug existing ditches, and break or outlet tile lines. The Service will maintain these facilities. Department can provide labor, equipment and technical support.

E. Upland Habitat Management

1. Service and Department will manage existing cover and establish and manage permanent and rotational nesting cover for migratory waterfowl and grassland birds in accordance to objectives outlined in the CCP and HMP.
2. Crop production as a method for the conversion of uplands to waterfowl nesting cover is an acceptable practice.
3. Permanent food plots are permitted at levels identified in the WMD CCP, WMD HMP, and WPA unit plans.
4. Department will control noxious weeds as necessary adhering to Pesticide Use Proposals and reporting use to the Service Project Leader as requested.

F. Law Enforcement

1. Department will assume primary responsibility to enforce regulations on WPAs necessary to protect the resource. Department will submit an annual WMD report summarizing law enforcement incidents and citations (by category) to Service.
2. Service will enforce regulations and prosecute violations in federal court. Service will conduct annual reconnaissance to detect violations on Service easements.
3. Service and Department will inspect WPAs annually for land-use violations.

G. Public Use

1. WPAs will be open for hunting, fishing, and trapping in accordance with existing federal regulations. Other wildlife-dependent uses (wildlife observation, wildlife photography, environmental education, and interpretation) are allowed as stated in the WMD CCP. The public will be notified of allowed uses through signage, leaflets or other means. The use of any vehicle is prohibited except for persons with disabilities holding a special Department permit. Other uses may be permitted following the approval of a Service compatibility determination. In special cases, WPAs, or portions thereof, may be closed to all uses for resource protection or for reasons of human health and safety. Such closures must be approved by the Service's Regional Office. Refer to Title 50, Code of Federal Regulations for complete regulations governing the use of WPAs.