



FS Agreement No. 11-MU-11090100-008
Cooperator Agreement No. _____
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MEMORANDUM OF UNDERSTANDING
Among The
USDI, FISH AND WILDLIFE SERVICE,
The
MICHIGAN DEPARTMENT OF NATURAL RESOURCES,
And The
USDA, FOREST SERVICE, EASTERN REGION
(LAKE STATES FORESTS IN MICHIGAN AND WISCONSIN)

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the USDI, Fish and Wildlife Service, hereinafter referred to as “U.S. Fish and Wildlife Service,” the Michigan Department of Natural Resources, hereinafter referred to as “Michigan DNR,” and the USDA, Forest Service, Eastern Region (Lake States Forests in Michigan and Wisconsin), hereinafter referred to as the “U.S. Forest Service.” The U.S. Forest Service, U.S. Fish and Wildlife Service, and Michigan DNR are hereinafter referred to collectively as “the parties.”

Background: The management of the endangered Kirtland’s warbler and the jack pine system on which it depends has been hailed a conservation success story. Collaboration among the parties and conservation organizations has been a hallmark of this management and success. For over four decades, the parties have collaborated on habitat management, brown-headed cowbird control, monitoring, research, and public education necessary to support the recovery of the Kirtland’s warbler. These coordinated management actions were successful; the population has increased from a low of 167 breeding pairs in 1987 to 1,747 breeding pairs in 2010.

With the population above 1,000 breeding pairs, the parties have begun discussing the eventual removal of this species from the federal list of threatened and endangered species. Delisting is the ultimate measure of success in showing that species are recovered. To consider delisting the Kirtland’s warbler two criteria must be met: 1) the population must be at or above 1,000 breeding pairs for five years, and 2) mechanisms must be in place to ensure future management will sustain the population at or above 1,000 breeding pairs. Although the population has remained above 1,000 breeding pairs for well over five years, mechanisms to support future management and monitoring actions are not currently in place. Without assurances that habitat management, brown-headed cowbird control, monitoring, education, and research will continue, removal of the Kirtland’s warbler from the list of threatened and endangered species is not possible.

Habitat management, brown-headed cowbird control, monitoring, education and research will be needed perpetually to maintain the Kirtland’s warbler population. These actions have significant staff time and monetary costs associated with them. Funding these activities will continue to be



a challenge for the parties regardless of the species' Endangered Species Act (ESA) protected status. The parties can make commitments to management and future collaboration only as appropriated funds are available. Some ESA-specific funding, which is currently used to conduct the brown-headed cowbird control program, will not be available after delisting. To help address these funding challenges, non-profit groups are currently working with private sector interests to develop a Kirtland's warbler trust fund. This trust fund is anticipated to provide primary funding for the brown-headed cowbird control program and supplemental funding for Kirtland's warbler habitat management, monitoring, education, and research. This MOU represents the commitment of the parties to continue this program, but the parties stress that additional funds will be necessary to meet these commitments.

This MOU provides written assurances to continue collaborative habitat management, brown-headed cowbird control, monitoring, research, and education as it relates to Kirtland's warbler and jack pine management. These assurances represent a critical step toward delisting Kirtland's warblers, but it is not the only step. The U.S. Fish and Wildlife Service believes at least two other actions are necessary: 1) securing funding for continued brown-headed cowbird control, and 2) developing a post-delisting monitoring plan.

Title: Kirtland's Warbler Interagency MOU

I. PURPOSE:

The purpose of this MOU is to document the cooperation between the parties to continue their commitment to collaborative habitat management, brown-headed cowbird control, monitoring, research, and education to maintain a Kirtland's warbler population at or above 1,000 breeding pairs, regardless of the species' legal protection under the ESA in accordance with the following provisions. This MOU is expected to be a critical component supporting the eventual delisting of this species.

II. STATEMENT OF MUTUAL BENEFIT AND INTEREST:

The mission of the U.S. Fish and Wildlife Service is working with others to conserve, protect, manage, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. The U.S. Fish and Wildlife Service is legally mandated to implement the provisions of the ESA and Migratory Bird Treaty Act. The East Lansing Field Office and regional Ecological Services program have helped coordinate protection and recovery of Kirtland's warblers under the ESA since the species was listed. In addition, the Seney National Wildlife Refuge manages the Kirtland's Warbler Wildlife Management Area in cooperation with Michigan DNR and other partners to provide habitat for Kirtland's warblers and other species. Finally, the U.S. Fish and Wildlife Service's Migratory Bird Program may be engaged in long term conservation of Kirtland's warblers in multiple ways including ensuring the species remains a priority after delisting, helping develop long term population monitoring within a conservation context, and strengthening national and international partnerships.



The Michigan DNR is committed to the conservation, protection, management, accessible use and enjoyment of the State's natural resources for current and future generations. The Michigan DNR is legally mandated to implement the provisions of the state endangered species legislation in Part 365 of Public Act 451 of 1994. Furthermore, the Michigan DNR is responsible for the protection and conservation of all wildlife, including the Kirtland's warbler, even if it is removed from the state or federal endangered species list. The Michigan DNR must also seek and maintain forest certification under Public Act 125 of 2004. One important facet of forest certification is to sustain forest biodiversity. The Michigan DNR has participated actively in the recovery of the Kirtland's warbler since the songbird was first added to state and federal endangered species lists. The goal of the State's program for nearly four decades has been the recovery of the species and eventual removal from those lists. Michigan DNR hopes that this MOU will move us one step closer to the goal of a viable and sustainable population of Kirtland's warbler that is no longer in danger of extinction in the foreseeable future.

The mission of the U.S. Forest Service is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. As part of their Land and Resource Management Plans, the Huron-Manistee National Forest, Hiawatha National Forest, Ottawa National Forest, and Chequamegon-Nicolet National Forests manage jack pine habitat for the conservation of multiple animal and plant species including the Kirtland's warbler.

To ensure the long term conservation of Kirtland's warbler and the jack pine system, the U.S. Forest Service, U.S. Fish and Wildlife Service, and Michigan DNR must cooperate and coordinate activities. This MOU will ensure that important and globally rare elements of the jack pine landscape, including Kirtland's warblers, will persist in a way that reduces wildfire danger, creates habitat for game and nongame species, provides timber products, and supports the local economy.

In consideration of the above premises, the parties agree as follows:

III. THE U.S. FISH AND WILDLIFE SERVICE SHALL:

- A. Maintain habitat in suitable densities and age classes for Kirtland's warblers on the Kirtland's Warbler Wildlife Management Area. Because of the small size and dispersed nature of the Kirtland's Warbler Wildlife Management Area, management will occur in concert with adjacent agency or privately-owned land.
- B. Develop a monitoring plan to evaluate the status of Kirtland's warbler after delisting.

IV. THE MICHIGAN DEPARTMENT OF NATURAL RESOURCES SHALL:

- A. Regenerate forest habitat according to plans already adopted by the Michigan DNR, such as the 2001 Strategy for Kirtland's Warbler Habitat Management, which calls for 1,560 acres of breeding habitat to be developed each year within designated Kirtland's Warbler Management Areas on Michigan DNR lands.



- B. Manage brown-headed cowbird populations on the parties' lands to reduce nest parasitism on Kirtland's warblers to sustainable levels, if appropriate funding is available. Any work on U.S. Forest Service lands will be conducted through a separate agreement (see provision VI.L.).

V. THE U.S. FOREST SERVICE SHALL:

- A. Follow direction in the Huron-Manistee, Hiawatha, Ottawa and Chequamegon-Nicolet National Forest Plans to regenerate an average of 2,270 acres of breeding habitat per year and to maintain at least 22,660 acres of jack pine in the appropriate size class. The National Forests in Michigan and Wisconsin agree to the following:
 - i. Huron-Manistee National Forest agrees to continue to implement the Forest Plan in relation to Kirtland's warbler habitat management. The Forest Plan objective is to create approximately 1,600 acres of breeding habitat each year within designated Kirtland's Warbler Management Areas. Approximately 15,960 acres of breeding habitat will be available at any one time.
 - ii. Hiawatha National Forest agrees to continue to implement the Forest Plan in relation to Kirtland's warbler habitat management. The Forest Plan objective is to regenerate an average of 670 acres of Kirtland's warbler habitat per year with a goal to provide a minimum of 6,700 acres of jack pine in the appropriate size class.
 - iii. Ottawa National Forest agrees to continue to implement projects that benefit the Kirtland's warbler compliant with Forest Plan direction.
 - iv. Chequamegon-Nicolet National Forest agrees to continue to implement projects that benefit the Kirtland's warbler compliant with Forest Plan direction.

VI. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

- A. The parties agree to collaboratively implement Kirtland's warbler management actions as outlined in their Forest Plans (Michigan DNR and U.S. Forest Service) or Comprehensive Conservation Plan (U.S. Fish and Wildlife Service). At least 38,000 acres of breeding habitat shall be available at any time across Kirtland's Warbler Management Areas. As new information becomes available, these numbers are expected to be refined. The parties agree to annually report to each other the quantity, category and location of Kirtland's warbler breeding habitat developed each year.
- B. The parties agree to collaboratively develop a Kirtland's Warbler Conservation Plan that:
 - i. Is consistent with the commitments within this MOU;



- ii. Replaces the 2001 Strategy for Kirtland’s Warbler Habitat Management and, when the Kirtland’s warbler is delisted, also will replace the Recovery Plan;
 - iii. Incorporates the best available science, provides an adaptive framework to maintain a population of at least 1,000 breeding pairs of Kirtland’s warblers, and summarizes techniques used to conserve the jack pine ecosystem for Kirtland’s warbler and associated species; and
 - iv. Is completed by April, 2013 and then periodically updated so that new scientific findings and new management techniques can be incorporated. The Michigan DNR will be the lead agency in developing and updating the Conservation Plan.
- C. The parties agree to allow brown-headed cowbird traps to be placed and operated on lands they administer to maintain a Kirtland’s warbler fledging rate that sustains a minimum population of 1,000 breeding pairs.
- D. The parties agree to conduct an annual census to monitor the Kirtland’s warbler population, or to monitor the population according to the post-delisting monitoring plan developed by the U.S. Fish and Wildlife Service. The Michigan DNR will be the lead agency in coordinating the monitoring effort.
- E. The parties agree to continue annual coordination of Kirtland’s warbler conservation efforts through the existing Recovery Team or, if delisted, through a Kirtland’s Warbler Advisory Committee.
- F. The parties agree to review and begin re-negotiating this MOU in four years so that adjustments can be agreed to prior to renewal in five years. The MOU may be updated, based on the outcome of the Conservation Plan and new information on the Kirtland’s warbler or the jack pine ecosystem.
- G. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

Principal U.S. Fish and Wildlife Contacts:

U.S. Fish and Wildlife Program Contact	U.S. Fish and Wildlife Administrative Contact
Name: Scott Hicks Address: 2651 Coolidge Rd., Suite 101 City, State, Zip: East Lansing, MI 48823 Telephone: (517) 351-2555 FAX: (517) 351-1443 Email: scott_hicks@fws.gov	Name: Janet Brewer Address: 2651 Coolidge Rd., Suite 101 City, State, Zip: East Lansing, MI 48823 Telephone: (517) 351-6221 FAX: (517) 351-1443 Email: janet_brewer@fws.gov



Principal Michigan DNR Contacts:

Michigan DNR Program Contact	Michigan DNR Administrative Contact
Name: Doug Reeves Address: P.O. Box 30444 City, State, Zip: Lansing, MI 48909 Telephone: 517-373-9311 FAX: 517-373-6705 Email: reevesd@michigan.gov	Name: Cara Boucher Address: P.O. Box 30444 City, State, Zip: Lansing, MI 48909 Telephone: 517-335-7009 FAX: 517-373-6705 Email: boucherc@michigan.gov

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: Becky Ewing, Regional Wildlife Biologist Address: 626 E. Wisconsin Ave. City, State, Zip: Milwaukee, WI 53202 Telephone: (414) 297-3612 FAX: (414) 944-3963 Email: rewing@fs.fed.us	Name: Mike Rogers Address: 401 Fairgrounds Road City, State, Zip: Rolla, MO 65401 Telephone: (573) 341-7477 FAX: (573) 426-6814 Email: mkrogers@fs.fed.us

H. NON-LIABILITY. The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this instrument.

I. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Fish and Wildlife Service, Michigan DNR, or U.S. Forest Service is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by email or fax, as follows:

To U.S. Fish and Wildlife Service, as U.S. Fish and Wildlife Service’s address shown in MOU or such other address designated within the MOU.

To Michigan DNR’s address shown in the MOU or such other address designated within the MOU.

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.



- J. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Fish and Wildlife Service, Michigan DNR, or U.S. Forest Service from participating in similar activities with other public or private agencies, organizations, and individuals.
- K. ENDORSEMENT. Any of U.S. Fish and Wildlife Service's or Michigan DNR's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of U.S. Fish and Wildlife Service's or Michigan DNR's products or activities.
- L. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate instruments and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation instrument that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective instrument, each party operates under its own laws, regulations, and/or policies, and any U.S. Fish and Wildlife Service, Michigan DNR, or U.S. Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective instruments must comply with all applicable law.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- M. USE OF U.S. FOREST SERVICE INSIGNIA. In order for the U.S. Fish and Wildlife Service or Michigan DNR to use the U.S. Forest Service insignia on any published material, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Services' Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- N. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this instrument, or benefits that may arise therefrom, either directly or indirectly.



- O. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- P. PUBLIC NOTICES. It is the U.S. Forest Service’s policy to inform the public as fully as possible of its programs and activities. U.S. Fish and Wildlife Service and Michigan DNR are encouraged to give public notice of the receipt of this instrument and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

“Region 9 of the U.S. Forest Service, Department of Agriculture, Kirtland’s warbler program.”

U.S. Fish and Wildlife Service or Michigan DNR may call on the U.S. Forest Service’s Office of Communication for advice regarding public notices. U.S. Fish and Wildlife Service and Michigan DNR are requested to provide copies or notices or announcements to the U.S. Forest Service Program Manager and to the U.S. Forest Service’s Office of Communications as far in advance of release as possible.

- Q. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. U.S. Fish and Wildlife Service and Michigan DNR shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.
- R. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. U.S. Fish and Wildlife Service and Michigan DNR shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:



"This institution is an equal opportunity provider."

- S. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.

- T. DEBARMENT AND SUSPENSION. U.S. Fish and Wildlife Service and Michigan DNR shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to terms of 2 CFR Part 180. Additionally, should U.S. Fish and Wildlife Service and Michigan DNR or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies to whether the exclusion, debarment, or suspension is voluntary or involuntary.

- U. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.

- V. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through **April 30, 2016** at which time it will expire.

- W. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.

CHARLES M. WOOLEY, Deputy Regional Director Date
U.S. Fish and Wildlife Service

KELLEY D. SMITH, Acting Deputy Director Date
Michigan Department of Natural Resources

LOGAN LEE, Acting Regional Forester Date
U.S. Forest Service, Eastern Region



The authority and format of this instrument have been reviewed and approved for signature.

MIKE ROGERS
U.S. Forest Service Grants & Agreements Specialist

Date

Burden Statement

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.