

**MEMORANDUM OF UNDERSTANDING
BETWEEN
UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
COLORADO ECOLOGICAL SERVICES FIELD OFFICE
AND
NEW MEXICO DEPARTMENT OF GAME AND FISH
FOR
DEVELOPMENT OF THE ENVIRONMENTAL IMPACT STATEMENT ASSOCIATED
WITH
THE ESTABLISHMENT OF AN EXPERIMENTAL POPULATION OF NORTHERN
GRAY WOLVES IN COLORADO**

I. Introduction

This Memorandum of Understanding ("MOU") is between the United States Department of the Interior, Fish and Wildlife Service, Colorado Ecological Services Field Office ("FWS"), and New Mexico Department of Game and Fish hereinafter referred to as the "Department"; jointly referred to as the "Parties." The FWS is the lead federal agency for the Environmental Impact Statement (EIS) analyzing the effects of a proposed rule establishing an experimental population of northern gray wolves in Colorado pursuant to Section 10 of the Endangered Species Act (ESA). The FWS acknowledges that the Cooperator has jurisdiction by law and/or special expertise applicable to the EIS effort, as defined at 40 C.F.R. §§ 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by the Parties.

The cooperating agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (in particular, 40 C.F.R. §§ 1501.6 and 1508.5), the FWS's planning regulations, and the Department of the Interior Manual (516 DM 2.5).

II. Purpose(s)

The purposes of this MOU are:

- A. To designate the Department in the proposed rule development and EIS processes.
- B. To provide a framework for cooperation and coordination between the FWS and the Cooperator that will ensure successful completion of the EIS in a timely, efficient, and thorough manner.
- C. To recognize that the FWS is the lead agency with responsibility for the completion of the EIS and the Record of Decision (ROD).
- D. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

III. Background

The FWS, with the assistance of a third-party contractor, is writing an EIS to analyze the effects of a proposed rule designating an experimental population of northern gray wolves in western Colorado. This effort was initiated at the request of Colorado Parks and Wildlife (CPW), which is mandated by state statute to develop a plan to reintroduce northern gray wolves to lands in western Colorado by December 31, 2023. The proposed experimental population designation will provide CPW enhanced management flexibility for northern gray wolves in Colorado. The intent of the EIS is to provide NEPA documentation and support for the Record of Decision (ROD), if applicable.

Consistent with the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et. seq., as amended, and pursuant to the Code of Federal Regulations (40 C.F.R. §§ 1501.6 and 1508.5), State governments may participate in the development of environmental documentation for projects in which or where they have jurisdiction by law or special expertise.

Nothing in this MOU alters or supersedes the authorities and responsibilities of any of the Parties on any matter under their respective jurisdictions.

IV. Authorities

The authorities of the FWS to enter into and engage in the activities described within this MOU include, but are not limited to:

- A. National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.).
- B. Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq.).

V. Roles and Responsibilities

A. The FWS roles and responsibilities include:

1. As lead agency, the FWS retains final responsibility for the content of all planning and NEPA documents, which include the Draft EIS, the Proposed Final EIS, and the ROD. The FWS's responsibilities include determining the purpose of and need for the EIS, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the FWS will follow all applicable statutory and regulatory requirements.
2. To the fullest extent consistent with its responsibilities as lead agency, the FWS will consider the comments, recommendations, data, and/or analyses provided by the Department in the EIS planning process, considering those topics on which the Department acknowledged to possess jurisdiction by law or special expertise.
3. To the fullest extent practicable, after consideration of the effect such releases may have on the FWS's ability to withhold this information from other parties under the Freedom of Information Act (FOIA), or other statutes, the FWS will provide the Department with copies of documents underlying the EIS relevant to the Department's responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft

and final EIS.

4. The FWS will keep all Cooperators apprised of current events in relation to development of the EIS and will appropriately involve Cooperators in meetings where it would be necessary or of benefit to the process.

B. The Department's roles and responsibilities include:

1. The Department is a Cooperating Agency in this planning processes and is recognized to have jurisdiction by law and/or special expertise.
2. The Department will provide information, comments, and technical expertise to the FWS regarding those elements of the EIS, and the data and analyses supporting them, in which it has the Department jurisdiction or special expertise or for which the FWS requests their assistance.
3. Within the areas of their jurisdiction or special expertise, the Department may participate in providing guidance on public involvement strategies, identifying data needs, suggesting management actions to resolve planning issues, identifying effects of alternatives, suggesting mitigation measures, and providing written comments on working drafts of the EIS and supporting documents.
4. The Department will submit information at their discretion or upon request by the FWS within the specified timeframes.

C. The joint roles and responsibilities of the Parties include:

1. The Parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements.
2. Each Party agrees to fund its own expenses associated with the Colorado Northern Gray Wolf Experimental Population EIS process.
3. The Parties agree to cooperate in apprising each other, as far in advance as possible, of any related actions or problems that might affect the EIS and documentation process or that might affect either party.
4. The Parties agree to meet on issues concerning the EIS at the request of either party. The Parties agree to carefully consider whether proposed meetings or other activities would waive the Unfunded Mandates Reform Act exception to the Federal Advisory Committee Act (5 U.S.C. App. 2).

VI. Representatives

The Parties will designate representatives as specified below to ensure coordination during the implementation of this MOU. Each Party may change its representative at will by providing written notice to the other Party[ies].

Principal Cooperator Contacts:

FWS Colorado Ecological Services Field Office Contact	Department Contact
Name: Nicole Alt Address: 134 Union Boulevard, Suite 670 City, State, Zip: Lakewood, CO 80228 Telephone: 303-236-4213 Email: nicole_alt@fws.gov	Name: Stewart Liley Address: One Wildlife Way City, State, Zip: 87507 Telephone: 505-476-8031 Email: stewart.liley@state.nm.us

VII. Other Provisions

- A. Authorities not altered. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.
- B. Financial obligations. Subject to the availability of funds, the Parties agree to fund their own expenses associated with the implementation of this MOU. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available, in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341.
- C. Immunity and Defenses Retained. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- D. Conflict of interest. The Parties agree not to utilize any individual or organization for purposes of plan development, environmental analysis, or Cooperator representation, including officials, employees, or third party contractors, having a financial interest in the outcome of the Colorado Northern Gray Wolf Experimental Population EIS. Questions regarding potential conflicts of interest should be referred to FWS HQ or Field Ethics Counselors for resolution.
- E. Documenting disagreement or inconsistency. Where the FWS and one or more Cooperators disagree on substantive elements of the EIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the FWS will include a summary of the Cooperators' views in the Draft EIS and the Proposed Final EIS. The FWS will also describe substantial inconsistencies between its proposed action(s) and the objectives of state, local, or tribal land use plans and policies.
- F. Management of information. Any records or documents generated as a result of this MOU shall become part of the official FWS record maintained in accordance with FWS record management policies. The Cooperator[s] acknowledge[s] that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act (FOIA) and other federal statutes. The cooperating agencies will keep confidential and protect from public disclosure any and all documents related to, or generated by this agreement, to the extent possible under law. FWS will determine their suitability for public review or release under the provisions of the FOIA, Privacy Act, and in accordance with Department of the Interior or FWS regulations. The FWS acknowledges that the Cooperator's[s'] handling

of these materials may be impacted by New Mexico Inspection of Public Records Act. The Parties agree that the FWS at its discretion may withhold from the cooperator[s] those documents that would otherwise be available for public release under New Mexico Inspection of Public Records Act.

- G. Conflict Resolution. The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts, and may agree to initiate an Alternative Dispute Resolution (ADR) process. The Parties acknowledge that FWS retains final responsibility for the decisions identified in the Colorado Northern Gray Wolf Experimental Population EIS and ROD.

VIII. Compliance with Applicable Laws and Regulations; Severability Clause

This MOU is subject to all applicable Federal laws, regulations and rules, whether now in force or hereafter enacted or promulgated. Nothing in this MOU shall be construed as in any way impairing the general powers of the FWS under such applicable laws, regulations, and rules. If any term or provision of this MOU is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions. Meeting the terms of this MOU shall not excuse any failure to comply with all applicable laws and regulations, whether or not these laws and regulations are specifically listed herein.

IX. Term, Amendment, and Termination

A. Term of MOU:

1. This MOU becomes effective upon the date last signed and executed by the duly authorized representative of the Parties to this MOU. This MOU will end when the ROD for the Colorado Northern Gray Wolf Experimental Population EIS is approved and signed.

B. Amendments:

1. The Parties may request changes to this MOU, which shall be effective only upon the written agreement of all Parties.
1. Any changes, modification, revisions, or amendments to this MOU shall be incorporated by written instrument, executed and signed by all Parties, and will be effective in accordance with the terms and conditions contained herein.

A. Termination:

1. Any Party may end its participation in this MOU by providing written notice to the other Party.

X. Signatures

- A. All signatories have the appropriate delegation of authority to sign this MOU.
- B. The Parties have executed this MOU on the dates shown below.

Michael B. Sloane, Director
New Mexico Department of Game and Fish

Dated:_____

Nicole Alt, Colorado Ecological Services Supervisor
Colorado Ecological Services Field Office
U.S. Fish and Wildlife Service

Dated:_____