

MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES FISH AND WILDLIFE SERVICE
AND
THE NEW MEXICO DEPARTMENT OF GAME AND FISH
AND
THE ARIZONA GAME AND FISH DEPARTMENT

I. AUTHORITIES

This memorandum of agreement (MOA) between the U.S. Fish and Wildlife Service, the New Mexico Department of Game and Fish, and the Arizona Department of Game and Fish is entered into under the authority of the Fish and Wildlife Coordination Act of 1934 (16 U.S.C. § 661-666c; 48 Stat. 410), as amended; Endangered Species Act of 1973 (16 U.S.C. § 1531-1543; 87 Stat. 884) (ESA); and 43 C.F.R. part 24.

II. BACKGROUND

In 1998, the U.S. Fish and Wildlife Service (Service) began reintroducing Mexican wolves into Arizona and New Mexico as a non-essential experimental population, pursuant to the 1982 Mexican Wolf Recovery Plan and the 1998 experimental population rule for the Mexican wolf. By 2014, the wild population met the numerical objective identified in the 1982 Mexican Wolf Recovery Plan of 100 wolves, when the Service identified a minimum of 110 wolves. While the number identified declined to 97 in 2015, it increased to 113 in 2016. In the meantime, in 2015, the Service issued a revised experimental population rule for the Mexican wolf. 80 Fed. Reg. 2512 (Jan. 16, 2015).

In 2016, the Service entered into a stipulated settlement agreement, whereby the Service agreed to complete an updated Mexican wolf recovery plan by November 30, 2017. On June 29, 2017, the Service released a Draft Mexican Wolf Recovery Plan, First Revision. Among other things, the Draft Mexican Wolf Recovery Plan, First Revision proposed numerical criteria for downlisting and delisting of the Mexican wolf (that is, recovery criteria) and explained that in order to achieve the criteria, certain decisions would be made in cooperation with the States.

On November 30, 2017, the Service issued a final Mexican Wolf Recovery Plan, First Revision. Among other things, the Mexican Wolf Recovery Plan, First Revision embodies a recovery

strategy that “addresses the threats of human-caused mortality, extinction risk associated with small population size, and loss of gene diversity” and “ensures that Mexican wolf populations can achieve the resiliency, representation, and redundancy needed to downlist and delist the Mexican wolf.” In addition, “[t]he recovery strategy’s primary components include expanding the geographic distribution of the Mexican wolf, increasing population abundance, improving gene diversity, monitoring wild populations and implementing adaptive management, and collaborating with partners to address social and economic concerns related to Mexican wolf recovery.”

III. PURPOSE & OBJECTIVES

The Service, the New Mexico Department of Game and Fish, and the Arizona Game and Fish Department enter into this Memorandum of Agreement to clarify the commitment of the Service and the States to work cooperatively to determine the timing, location, and circumstances of releases of Mexican wolves into the wild in Arizona and New Mexico under the Mexican Wolf Recovery Plan and experimental population rule, with the intent of facilitating the recovery of the species and eventual transition from federal management to state management.

IV. RESPONSIBILITY OF THE PARTIES

In order to achieve the genetic criteria for downlisting and delisting the Mexican wolf in the Mexican Wolf Recovery Plan, decisions regarding the timing, location and circumstances of Mexican wolf releases will be based on input from the Interagency Field Team, and will be made cooperatively by the Service with the Arizona Game and Fish Department with respect to releases in Arizona, and by the Service with the New Mexico Department of Game and Fish with respect to releases in New Mexico. Additionally, prior to any releases occurring, the Service will comply with state permit requirements pursuant to (i) 43 C.F.R. pt. 24 and (ii) conditions imposed by any permit issued under section 10(a)(1)(A) of the Endangered Species Act, 16 U.S.C. § 1539(a)(1)(A).

The Service, the New Mexico Department of Game and Fish, and the Arizona Game and Fish Department will work in good faith to achieve the numerical criteria set forth in the Mexican Wolf Recovery Plan, First Revision in the time periods set forth therein.

V. GENERAL PROVISIONS

- A. Neither this MOA nor any part of it may be changed, altered, modified, limited, or extended orally or by any agreement between the parties unless such agreement be expressed in writing, signed, and acknowledged by the parties or their successors in interest.
- B. Implementation of this MOA by the Service is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this MOA will be

construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this MOA to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing. Any endeavor involving reimbursement or contribution of funds between the parties of this MOA will be administered in accordance with applicable laws, regulations, and procedures. Such endeavors will be documented in separate agreements or contracts made in writing by the representatives or the parties and shall be independently authorized by appropriate statutory authority.

- C. The provisions of any statutes and/or regulations cited in this MOA contain legally binding requirements. While the MOA memorializes the parties' commitments to work cooperatively towards the satisfaction of these requirements, the MOA itself does not alter, expand, or substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not create a legal right of action for the parties or any third party enforceable in a court of law. Rather, this MOA contains guidance to assist the Parties in working cooperatively to carry out existing legal requirements. This MOA is not a contract, federal rule or regulation. This MOA shall not be construed as a final federal agency action.
- D. On behalf of itself, its officers, directors, members, employees, agents, and representatives, each party 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 any other party, nor the results thereof. Each party therefore agrees that it will assume the risk and liability to itself, its agents, employees, and volunteers for any injury to or death of persons or loss or destruction of property resulting in any manner from the conduct of the party's own operations and/or the operations of its agents, employees, and/or volunteers under this MOA.
- E. Documents in the possession of the Service are subject to the Freedom of Information Act (FOIA). To the extent necessary, the Service will coordinate with New Mexico Department of Game and Fish and the Arizona Department of Game and Fish prior to the release of any documents related to this MOA pursuant to FOIA.
- F. Any notice or report required to be given or that may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States Postal Service, postage prepaid, and addressed as follows:

Mexican wolf Recovery Coordinator
New Mexico Ecological Services Field Office

2105 Osuna Road NE
Albuquerque, NM 87113

Alexandra Sandoval
Director
New Mexico Department of Game and Fish
One Wildlife Way
Santa Fe, NM 87507

Ty E. Gray
Director
Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086

- G. In carrying out the terms of this MOA there shall be no discrimination against any persons because of race, color, national origin, age, religion, sex, sexual orientation, or disability, in compliance with the nondiscrimination provisions contained in titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination in Employment Act of 1975, and in accordance with the policies of the Department of the Interior and Fish and Wildlife Service.
- H. This MOA in no way restricts the parties from participating in similar activities or arrangements, or promoting public policy activities with other public or private agencies, organizations or individuals.
- I. All records relating to the agreement shall be subject, at all reasonable times, to inspection and audit by the State of Arizona for five years after termination of this agreement.
- J. The State of Arizona may terminate this agreement upon a finding that a state employee that was significantly involved in the creation of this agreement is, at the time the agreement is in effect but no later than three years after its termination, an employee or consultant to any other party in the agreement.
- K. In the event that a dispute arises regarding this Agreement, the Parties agree to engage in alternative dispute resolution procedures to the extent that such procedures are

appropriate in light of the dispute and are required by their statutes or regulations, for example, 5 U.S.C. § 575 and A.R.S. § 12-1518.

L. The parties hereto agree that if any provision of this MOA shall be determined to be invalid, ineffective, inoperative, unenforceable, or contrary to law, all of the remaining provisions shall remain in full force and effect.

M. This MOA shall become effective as of the date of approval and may be terminated by mutual agreement at any point until December 31, 2021, after which time, this MOA may be terminated by any party for any reason with a 150-day written notice to the other parties.

IN WITNESS THEREOF each party hereto has caused this Agreement to be executed by an authorized official on the date set forth below.

GREG SHEEHAN
Principal Deputy Director, U.S. Fish and
Wildlife Service

Date


3/14/18

ALEXANDRA SANDOVAL
Director, New Mexico Department of Game
and Fish

Date


3/5/18

TY E. GRAY
Director, Arizona Game and Fish Department

Date


3/12/18