

**DRAFT**  
**Memorandum of Understanding**  
**Between the**  
**U.S. Fish and Wildlife Service,**  
**And the**  
**Arizona Counties of Insert County Name, Insert County Name, Insert County Name**  
**And the**  
**New Mexico Counties of Insert County Name, Insert County Name, Insert County Name**

**SECTION I. PARTIES**

This Memorandum of Understanding (hereinafter referred to as MOU) is made and entered into by and between the:

A. U.S. Fish and Wildlife Service Region 2 (Service), as authorized and directed under the NEPA implementing regulations of 1977, as amended, and specifically acknowledging the following areas of the regulations, which are of mutual interest to the parties 40 CFR 1506.2, 40 CFR 1508.5, 40 CFR 1501.7(a)(1), 40 CFR 1501.2(d)(2), 40 CFR 1508.27(b)(10), 40 CFR 1502.16(c), and 40 CFR 1506.2(d) and the guidelines used by EPA, in their NEPA compliance analysis for assessment of environmental justice impacts pursuant to Final Guidance For Incorporating Environmental Justice Concerns, April, 1998; and the Council on Environmental Quality, Memorandum for the heads of federal Agencies (January 30, 2002); 516DM 1.2B, 1.2F, 1.5C(1), 2.2A; and

B. (Listing of AZ Counties) Insert County Name County, Insert County Name County, and Insert County Name County, as authorized under the State of Arizona, enabling counties to protect the health, safety, and welfare of its citizens, pursuant to Arizona Revised Statutes 11-806(B), as well as County laws, including County land use plans, water and watershed plans, and environmental and natural resource laws and policies, as well as the Treaty of Guadalupe Hidalgo; and

C. (Listing of NM Counties) Insert County Name County, Insert County Name County, and Insert County Name County as authorized under the State of New Mexico, granting powers necessary and proper to provide the safety, preserve the health, promote the prosperity, and improve the morals, orders, comfort, and convenience of any County or its inhabitants, pursuant to New Mexico Revised Statute 4-7-31 (NMSA 1978), as well as County laws, including County land use plans, water and watershed plans, and environmental and natural resource laws and policies, as well as the Treaty of Guadalupe Hidalgo.

D. Hereinafter referred to as the Parties.

## **SECTION II. STATEMENT OF PURPOSE**

The purpose of this MOU is for the signatory entities to cooperatively prepare an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA). The proposed rule to revise the 1998 Mexican wolf nonessential experimental population rule (63 FR 1752) (1998 Final Rule) will be the proposed action of our EIS. We will analyze the environmental consequences from implementation of the proposed action and alternatives. The EIS will analyze proposed revisions to the Mexican Wolf Experimental Population Area (MWEPA) and Blue Range Wolf Recovery Area (BRWRA), and to some aspects of currently authorized regulations for management of the experimental population of Mexican wolves in Arizona and New Mexico. The new rule may replace and supersede the 1998 Final Rule, pursuant to section 10(j) of the Endangered Species Act (Act). The EIS will also analyze alternatives that include implementing a management plan to authorize take of endangered Mexican wolves in areas of Arizona and New Mexico external to the MWEPA. The management plan would be implemented through a U.S. Fish and Wildlife Service (Service) permit.

Furthermore, for the purposes of the production of an Environmental Impact Statement (EIS) that will analyze a range of alternatives, the following:

A. Confirms the formal designation of the Service as the Lead Federal Agency with responsibility for completion of the Environmental Impact Statement (EIS) and Record of Decision (ROD). The Lead Federal Agency shall:

- i. Request the participation of each Cooperating Agency in the NEPA process at the earliest possible time; and
- ii. Use the environmental analysis and proposals of Parties with jurisdiction by law and/or special expertise, to the maximum extent possible consistent with its responsibility as Lead Federal Agency; and
- iii. Meet, either in person or teleconferencing, with a Cooperating Agency at the latter's request.
- iv. Request that the counties designate a representative to participate on the Interdisciplinary Team.

B. Formally designates the **(List of Arizona and New Mexico Counties)** as Cooperating Agencies. It is recognized that Cooperating Agencies have legal authority and/or special expertise applicable to the planning process. Each Cooperating Agency shall:

- i. Participate in the NEPA process at the earliest possible time; and

- ii. Assist in the collection and/or assembly of necessary resource, environmental, social economic, and institutional data; and
- iii. Provide information, data, and comments to the lead agency for developing and preparing environmental analyses including portions of the EIS in which the Cooperating Party has special expertise; and
- iv. Assist in evaluating alternatives and estimating the effects of implementing alternatives; and
- v. Make available staff support at the Lead Federal Agency's request to enhance the latter's interdisciplinary capability;
- vi. Designate a representative and agree to select an individual to represent the county on the Interdisciplinary Team; and

C. Formalizes and provides a framework for cooperation and coordination among the Parties that will be necessary in order to successfully complete the EIS in a timely, efficient, and thorough manner.

E. Ensures the working relationship between the Parties meets the purposes and intent of NEPA.

F. Provides a structural framework for coordination of the NEPA processes.

### **SECTION III. BACKGROUND**

A. The Service proposes to revise the 1998 Final Rule and to implement a management plan for areas outside of the MWEPA. The EIS will analyze proposed revisions to: (1) the MWEPA and BRWRA, (2) some aspects of currently authorized regulations for management of the experimental population of Mexican wolves in Arizona and New Mexico, and (3) implement a management plan for Mexican wolves that are not part of the experimental population. The Service and Cooperating agencies conducted 12 scoping meeting in November and December of 2007. An EIS will analyze options for revising the 1998 Rule (including no action) and implementing a management plan, and includes various geographic and management scenarios. The proposed 10(j) rule was published on June 13, 2013. A draft EIS will be published, followed by a final EIS, ROD, and final 10(j) Rule (provided that the ROD does not select the No Action Alternative).

B. The Parties seek to fully consider the impacts of proposed actions on the physical, biological, social and economic aspects of the human environment, and;

C. The Parties desire to enter into this MOU and have the authority, through the Regional Director and the County Supervisors and Commissions, to do so, and;

D. This MOU shall not be construed to affect the jurisdiction of Federal, State, County or other local governmental agencies which exists as a matter of law, and:

E. Arizona and New Mexico Counties are legally responsible for the protection of health, safety, and welfare of individuals and communities that may be affected by reintroduction and recovery of the Mexican wolf;

F. Arizona Counties have determined that participation in the Proposed Amendment of Mexican Wolf 10(j) rule EIS is consistent with the Counties' policies for the protection of the health, safety, and welfare of their citizens, and is important to representing the Counties' interest in, and authority for, management of natural resources within the boundaries of the Counties.

G. New Mexico Counties have determined that participation in the Proposed Amendment of Mexican Wolf 10(j) rule EIS is consistent with the Counties' policies for the protection of the health, safety, and welfare of their citizens, and is important to representing the Counties' interest in, and authority for, management of natural resources within the boundaries of the Counties.

H. In the interest of enhancing communication, Black's Law Dictionary (7th Edition: ISBN 0314241302) and Merriam-Webster's Collegiate Dictionary (11th Edition: ISBN 0877798095) shall be the primary references for words used in this MOU;

#### **SECTION IV. RECITALS**

**NOW THEREFORE**, the parties hereto agree to cooperatively develop appropriate documentation in order to satisfy the requirements of NEPA, and further agree that:

A. The Service will:

- i. serve as the Lead Federal Agency in coordinating the development of an EIS analyzing the environmental impacts of a proposed new designation of a MWEPA and of implementation of a management plan external to the MWEPA, and alternatives thereto; and
- ii. provide guidance as to proper process, document format, and information required to satisfy NEPA requirements; and
- iii. determine the purpose and need of the project, the conclusions of the environmental analysis, which alternatives are selected for analysis, and make final determinations on content relative to applicable statutory and regulatory requirements; and
- iv. develop the EIS, consistent with Federal law, regulation and Department and Agency policy and will incorporate, to the maximum extent possible consistent with its responsibility as Lead Federal Agency, the comments, recommendations, and/or data

- submitted by Parties in the EIS planning process; and
- v. provide available information and resources for development of the EIS; and
- vi. provide timely review of the EIS in order to ensure compliance with Service guidelines for NEPA implementation; and
- vii. give, to the maximum extent possible, a reasonable time frame for review and return of consolidated and comprehensive comments; and

B. The Counties are recognized to have jurisdiction by law and special expertise and will:

- i. provide available information, data (and supporting analyses), comments, and resources for development of proper NEPA documentation and the EIS; and
- ii. provide timely review of the EIS in order to ensure compliance with Service guidelines for NEPA implementation; and
- iii. help collect data to the maximum extent possible, participate in discussions about data assessment and technical reports, prepare selected sections, and provide technical expertise in order to assist in evaluating the effectiveness of all alternatives and the EIS; and
- iv. receive working drafts of the EIS and its alternatives and analyses for review and comment in relation to areas of jurisdictional responsibility and/or special expertise; and
- v. return consolidated and comprehensive comments on working drafts to the Service in an agreed upon time frame consistent with the planning schedule.
- vi. may meet with affected stakeholders and provide comments to the Service at any point in the development of the EIS, provided that internal draft documents are not disseminated (see **Document Control** section below).

C. Conflict Resolution. Conflicts between or among the Parties concerning this MOU that cannot be resolved at the lowest possible level shall be referred to the next higher level, et seq., as necessary, for resolution with full recognition of the Service's decision making responsibilities in the EIS process.

**Legal Effect of MOU:** The provisions of any statutes and/or regulations cited in this MOU contain legally binding requirements. The MOU itself does not alter, expand, or substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally-binding requirements on the parties. Furthermore, this MOU does not create a right of action enforceable in a court of law for any of the parties. Rather, this MOU contains procedural guidance to assist the parties in carrying out existing legal requirements. No party shall be liable in damages to any other party or other person for any breach of this agreement, any performance

or failure to perform a mandatory or discretionary obligation imposed by this agreement or any other cause of action arising from this agreement.

**Document Control:** All internal working draft documents for the development of any National Environmental Policy Act (NEPA) documents are pre-decisional and the parties will ensure that these documents will not be available for review by individuals or entities other than the parties to this MOU, unless otherwise required by applicable law. All documents created, collected, or provided by the parties in support of the development of NEPA documents are part of the official Service administrative record and may only be released by the Service to the extent allowable by the Freedom of Information Act and/or Privacy Act.

**Enforcement Authority of the United States.** Nothing contained in this MOU is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

**No partnership.** This MOU shall not make or be deemed to make any party to this agreement the agent for or the partner of any other party.

**Notices.** Any notice permitted or required by this MOU shall be in writing, delivered personally to the persons or parties listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other parties in writing. Notices may be delivered by e-mail, facsimile or other electronic means, provided that they are also delivered personally or by certified mail. Notices shall be transmitted so that they are received with the specified deadlines.

**Elected officials not to benefit.** No member of or delegate to Congress or a staff member to a member or delegate to Congress shall be entitled to any share or part of this MOU, or to any benefit that may arise from it.

**Availability of funds.** Implementation of this MOU by the Service is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this MOU 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 agreement to expend any appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

**Duplicate originals.** This MOU may be executed in any number of duplicate originals. A complete original of this MOU shall be maintained in the official records of each of the parties hereto.

**No third-party beneficiaries.** Without limiting the applicability of rights granted to the public pursuant to the ESA or other Federal law, this MOU shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a party to this MOU maintain a suit for personal injuries or damages pursuant to the provision of this MOU. The duties, obligations, and responsibilities of the parties to this MOU with respect to third parties shall remain as imposed under existing law.

**Amendment.** This MOU may be amended upon written agreement of all parties. The party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects.

**Termination.** Any party may terminate its participation in this MOU at any time. Any termination shall be made in writing. If not terminated sooner, this MOU will end upon agreement of all Parties once the EIS is final and the Service issues the ROD. Agencies may submit requests to be signatories to the June 30, 2010 MOU for Mexican Wolf Reintroduction within the AZ-NM Experimental Population Area for full participation and involvement in the Mexican wolf reintroduction project.

See [http://www.fws.gov/southwest/es/mexicanwolf/pdf/MW\\_MOU.pdf](http://www.fws.gov/southwest/es/mexicanwolf/pdf/MW_MOU.pdf) for the current MOU.

Principal Contacts. The principal contacts for this MOU are:

- i. United States Fish and Wildlife Service  
Attn: Sherry Barrett  
New Mexico Ecological Services Field Office  
2105 Osuna NE  
Albuquerque, New Mexico 87113  
Phone: 505-761-4748
- ii. Insert County Name and Contact Information  
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- iii. Insert County Name and Contact Information  
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- iv. Insert County Name and Contact Information  
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- v. Insert County Name and Contact Information  
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