

MEMORANDUM OF UNDERSTANDING
between the
UNITED STATES DEPARTMENT OF AGRICULTURE
Forest Service
the
UNITED STATES DEPARTMENT OF DEFENSE
the
UNITED STATES DEPARTMENT OF THE ARMY
Corps of Engineers
the
UNITED STATES DEPARTMENT OF COMMERCE
National Marine Fisheries Service
the
UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Bureau of Mines
Bureau of Reclamation
Fish and Wildlife Service
Minerals Management Service
National Park Service
the
UNITED STATES DEPARTMENT OF TRANSPORTATION
Coast Guard
Federal Aviation Administration
Federal Highway Administration
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
on
IMPLEMENTATION OF THE ENDANGERED SPECIES ACT

This Memorandum of Understanding (MOU), is made and entered into by and among the U.S. Department of Agriculture Forest Service (hereinafter referred to as FS); U.S. Department of the Army Corps of Engineers (hereinafter referred to as COE); U.S. Department of Commerce National Marine Fisheries Service (hereinafter referred to as NMFS); U.S. Department of Defense (hereinafter referred to as DoD); U.S. Department of the Interior Bureau of Land Management (hereinafter referred to as BLM); U.S. Department of the Interior Bureau of Mines (hereinafter referred to as USBM); U.S. Department of the Interior Bureau of Reclamation (hereinafter referred to as BOR); U.S. Department of the Interior Fish and Wildlife Service (hereinafter referred to as FWS); U.S. Department of the Interior Minerals Management Service (MMS); U.S. Department of the Interior National Park Service (hereinafter referred to as NPS); U.S. Department of Transportation Coast Guard (hereinafter referred to as Coast Guard); U.S. Department of Transportation Federal Aviation Administration (hereinafter referred to as FAA); U.S. Department of Transportation Federal Highway Administration (hereinafter referred to as FHWA); and U.S. Environmental Protection Agency (hereinafter referred to as EPA). Collectively, the parties to this MOU will be referred to as Cooperators.

I. PURPOSE

The Endangered Species Act of 1973, as amended, (ESA) provides a means to conserve threatened and endangered species and the ecosystems upon which they depend. The ESA directs all Federal agencies to use their authorities to further the purposes of the ESA by carrying out programs to conserve threatened and endangered species.

The purpose of this MOU is to establish a general framework for cooperation and participation among the Cooperators in the exercise of their responsibilities under the ESA. The Cooperators will work together—and with appropriate involvement of the public, States, Indian Tribal governments, and local governments—to achieve the common goal of conserving species listed as threatened or endangered under the ESA by protecting and managing their populations and the ecosystems upon which those populations depend.

The Cooperators will work together to achieve the common goals of (1) conserving species Federally listed as threatened or endangered under the ESA; (2) using existing Federal authorities and programs to further the purposes of the ESA; and (3) improving the efficiency and effectiveness of the interagency consultations conducted pursuant to section 7(a)(2) of the ESA. Conservation Agreements (See Attachment A for definition of terms) will be developed for species and or habitats selected by the cooperators using an agreed upon method of priority setting and in full consideration of budgetary feasibility and respective agency missions. Attachment A is incorporated by reference into this MOU.

II. STATEMENT OF MUTUAL INTEREST AND MUTUAL BENEFITS

The BLM is a land management agency responsible for the management of public lands. The BLM manages 270 million surface acres in 29 states that serve as habitat for many plant and animal species. The BLM also has a national policy (BLM Manual 6840) and strategic plans for implementing BLM's Fish and Wildlife 2000, an initiative to manage habitats for plant and animal species to prevent the need for their federal listing under the ESA.

The USBM is a research, development, information, and analysis agency with a mission to insure mineral supplies to the country at acceptable economic, social, environmental costs. The USBM's goals include an improved understanding of the interaction between economic activities such as mining and ecosystems; the identification of management and policy options that can increase the potential for the coexistence of economic activities and healthy ecosystems; and the identification of opportunities for ecosystem-related research and development.

The BOR is a water resource management agency responsible for the management, protection, and development of water and land resources that include some 300 reservoir areas and thousands of miles of river and stream corridors in an environmentally and economically sound manner in the interest of the American public.

The Coast Guard has marine environmental protection and other responsibilities that include maritime law enforcement, maritime safety, environmental protection, and national security. The Coast Guard's environmental duties range from pollution response and fisheries enforcement to internal environmental compliance.

The COE is the water resources development agency that carries out the Secretary of the Army's authorities for navigation, flood damage reduction, and related purposes. The COE has planned, developed, and maintains the inland and intracoastal waterways, flood control levees and reservoirs, and operates its hydropower facilities. The COE also has stewardship responsibilities for over 11 million acres of upland, wetlands, and water. The COE administers the regulatory programs for Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act.

The DoD manages 25 million acres of public lands while conducting its primary mission of national defense. These lands are home to many threatened and endangered species and significant habitat areas. DoD recognizes that environmental security is a major component of national security. The DoD is committed to developing a comprehensive biological resources management program on its land on its lands and waters.

The EPA protects and preserves public health and the sustainability of natural ecosystems by preventing, controlling, and abating pollution. EPA achieves these goals by reducing environmental risks to human health, protecting natural systems from degradation, and restoring ecological integrity through its regulatory and non-regulatory programs.

The FAA has the primary responsibility for assuring that the Nation's air transportation system is safe, efficient, and responsive to the present and future needs of the domestic and foreign commerce of the United States and the national defense. The FAA directly regulates airmen, aircraft, and airspace and also administers the Airport and Airway Improvement Program and other safety, research, and training programs. In carry out its responsibilities, the FAA is responsible for ensuring that its policies, programs, and activities comply with the ESA and all other applicable federal laws.

The FHWA has the primary responsibility for assuring that the Nation's highway transportation system is safe, economical, and efficient with respect to the movement of people and goods while giving full consideration to the highway's impact on environmental and social and economic conditions. FHWA, in cooperation with the States, administers the Federal-Aid Highway Construction Program and other safety, research, and training programs related to highway use, planning, and construction. The FHWA is responsible for ensuring that federally financed highways are planned and constructed in compliance with the ESA, as well as all other applicable federal laws and regulations.

The FS is a land management agency responsible for the management of the national forests and grasslands. The FS manages 191 million acres in 43 states that serve as habitat for many plant and animal species. The FS has a national policy (Forest Service Manual 2670) to manage habitats for plant and animal species to prevent the need for their Federal listing under the ESA. The FS, in conjunction with State Foresters, also cooperates with State and private managers, and has research responsibilities that include ESA implementation.

The FWS is a Federal land management agency and regulatory agency responsible for the implementation of the ESA and coordination with other Federal and State agencies in the national effort to conserve species listed as threatened or endangered under the ESA. The FWS is responsible for publishing and revising the list of threatened, endangered, and candidate plant and animal species. In addition to administering the ESA, the FWS manages the National Wildlife Refuge system, which is the only network of Federal lands and waters set aside primarily for the protection and conservation of fish and wildlife, including threatened and endangered species.

The MMS primary responsibilities are to manage the mineral resources located on the Nation's outer continental shelf (OCS), collect revenue from the Federal OCS and onshore Federal and Indian lands, and distribute those revenues. MMS works to ensure that offshore mineral resource operations are conducted in an environmentally sound and safe manner, including meeting the requirements of the ESA.

The NMFS is a regulatory agency responsible for stewardship of the Nation's living marine resources. NMFS shares responsibility with the FWS for the implementation of the ESA and coordination with other Federal and State agencies in the national effort to conserve species listed as threatened or endangered under the ESA. As part of this stewardship role, the NMFS implements the ESA for most anadromous and marine species.

The NPS preserves and manages more than 80 million acres in 367 units of the National Park System for the enjoyment of present and future generations and is responsible for increasing the public knowledge, awareness, and appreciation of natural resources. NPS policies promote the conservation of all Federally listed threatened, endangered, or candidate species within park boundaries and their critical habitats.

Section 2(c) of the ESA declared the policy of Congress that all Federal departments and agencies shall seek to conserve threatened and endangered species and shall utilize their authorities to further the purposes of the ESA. This section also declared the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

Section 5 of the ESA directs the Secretary of Agriculture, with respect to the National Forest System, and the Secretary of the Interior to establish and implement a program to acquire lands and to conserve fish, wildlife, and plants, including threatened and endangered species.

Section 6(a) of the ESA directs the Secretary to cooperate to the maximum extent possible with the States in carrying out programs authorized by the ESA. Such cooperation shall include consultation with the States concerned before acquiring any land or water, or interest therein, for the purpose of conserving any endangered or threatened species.

Section 7(a)(1) of the ESA directs the Secretary of Commerce and the Secretary of the Interior "to review other programs administered by him and utilize such programs in furtherance of the purposes of this Act." Section 7(a)(1) also directs all other Federal agencies to use their authorities to further the purposes of the ESA by carrying out programs for the conservation of threatened and endangered species.

Section 7(a)(2) of the ESA directs Federal agencies, in consultation with the Secretary of Commerce or the Secretary of the Interior, to insure that any agency action is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat.

The Cooperators seek to improve efficiency by combining their efforts, to foster better working relationships and promote the conservation of species listed as threatened or endangered under the ESA. In a closely-related, but separate, Memorandum of Understanding that was signed on January 25, 1994, certain Cooperators have agreed to use their authorities to help prevent species endangerment by conserving species that are tending toward Federal listing as threatened or endangered under the ESA (i.e., sensitive and candidate species).

In consideration of the above premises,

III. THE COOPERATORS AGREE TO THE FOLLOWING:

- A. Each individual agency that is a party to this MOU will:
1. Use its authorities to further the purposes of the ESA by carrying out programs for the conservation of Federally listed species, including implementing appropriate recovery actions that are identified in recovery plans;
 2. Identify opportunities to conserve Federally listed species and the ecosystems upon which those species depend within its existing programs or authorities.
 3. Determine whether its respective planning processes effectively help conserve threatened and endangered species and the ecosystems upon which those species depend.
 4. Use existing programs, or establish a program if one does not currently exist, to evaluate, recognize, and reward the performance and achievements of personnel who are responsible for planning or implementing programs to conserve or recover listed species or the ecosystems upon which they depend.
- B. By the end of the first quarter of Fiscal Year 1995, the Cooperators will establish, or use existing, regional interagency working groups that will identify geographic areas within which the groups will coordinate agency actions and create opportunities, and overcome barriers, to conserve species listed or proposed as threatened or endangered under the ESA and the ecosystems upon which they depend and, to the extent practicable, protect candidate, or sensitive species and the ecosystems upon which they depend. The agencies involved in the regional working groups will, as appropriate:
1. Identify critical threats to the native species and ecosystems in the geographic area they are focusing upon;
 2. Identify new and existing approaches within the jurisdiction of the Cooperators that are most likely to alleviate the threats that have been identified;
 3. Assist the FWS or NMFS to assemble interagency, interdisciplinary teams to develop recovery plans or Conservation Agreements for species listed as threatened or endangered under the ESA and, to the extent practicable, sensitive species or the ecosystems upon which they depend;
 4. Cooperate to implement recovery plans, Conservation Agreements, and other affirmative conservation actions that are developed by the regional interagency groups;
 5. Identify and, to the extent practicable, attempt to resolve regional issues associated with interagency consultations undertaken pursuant to section 7(a)(2)

of the ESA. These issues include, but are not limited to, encouraging multi-agency, multi-project consultations; exploring opportunities to increase the effectiveness of programmatic consultations; improving consistency and clarity in the interagency consultation process; addressing uncertainty; providing opportunities for enhanced dialogue between agencies during formal and informal consultation; increasing the level of interagency guidance and training; and exploring approaches to resolving disagreements among agencies resulting from the interagency consultation process;

6. Implement programs to monitor the status of species that have been removed from the Federal list of threatened and endangered species;
7. Develop recommendations and undertake actions to implement the ESA with the appropriate involvement of the public, States, Indian Tribal governments, and local governments;
8. Exchange information and coordinate research activities to promote efficient and effective conservation of threatened and endangered species, to minimize social costs and economic impacts of recovery plan implementation, consistent with timely recovery, and to develop and test new alternatives for conserving species listed as threatened or endangered under the ESA and the ecosystems upon which they depend.
9. Prepare and disseminate information to the public; and
10. Document and share information about the outcome or status of any recovery tasks or affirmative conservation activities. ..

C. The Cooperators will establish a national interagency ESA working group [the "national working group"] to coordinate the implementation of the ESA. The national working group will identify and coordinate improvements in Federal implementation of the ESA. The national working group will, as appropriate:

1. Identify the geographic regions of the United States, its possessions, and territories that will be used as the basis for organizing the regional interagency work groups;
2. Identify ways to improve the conservation of species listed as threatened or endangered under the ESA, including protection of the ecosystems upon which they depend, in agency planning processes and other agency programs;
3. At least annually, review the previous year's work, prepare and disseminate a report of accomplishments to the public, and establish a program of work for subsequent fiscal years;
4. Identify, and to the extent practicable, attempt to resolve national issues associated with interagency consultations undertaken pursuant to section 7(a)(2) of the ESA. These issues include, but are not limited to, encouraging multi-

agency, multi-project consultations; exploring opportunities to increase the effectiveness of programmatic consultations; improving consistency and clarity in the interagency consultation process; addressing uncertainty; providing opportunities for enhanced dialogue between agencies during formal and informal consultation; increasing the level of interagency guidance and training; and exploring approaches to resolving disagreements among agencies resulting from the interagency consultation process; and

5. Take other appropriate actions to help individual agencies or regional working groups to more effectively conserve species listed or proposed for listing under the ESA, the ecosystems upon which they depend, and, to the extent practicable, protect candidate and sensitive species.

IV. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND AMONG THE COOPERATORS THAT:

- A. Specific work projects or activities that involve the transfer of funds, services, or property among the Cooperators will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, services, or property among the Cooperators must comply with all applicable statutes and regulations, including those statutes and regulations applicable to procurement activities, and must be independently authorized by appropriate statutory authority.
- B. This MOU in no way restricts the Cooperators from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- C. Nothing in this MOU shall obligate the Cooperators to expend appropriations or enter into any contract or other obligations.
- D. This MOU may be modified or amended upon written request of any party hereto and the subsequent written concurrence of all of the Cooperators. Cooperator participation in this MOU may be terminated with the 60-day written notice of any party to the other Cooperators. Unless terminated under the terms of this paragraph, this MOU will remain in full force and in effect until September 30, 1999.
- E. This Memorandum of Understanding is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.
- F. The terms of this Memorandum of Understanding are not intended to be enforceable by any party other than the signatories hereto.

V. PRINCIPAL CONTACTS

The following persons will be the principal contacts for their respective agencies at the time of execution of this MOU. These contacts may be changed at an agencies' discretion upon notice to the other Cooperators.

Threatened and Endangered Species Coordinator
Bureau of Land Management
1849 C Street, N.W. (LSB)
Washington, D.C. 20240
(202) 452-7761

Environmental Coordinator
Office of the Director
U.S. Bureau of Mines
810 7th Street, N.W.
Washington, D.C. 20241
(202) 501-9304

Director, Office of Policy and External Affairs
Bureau of Reclamation
1849 C Streets, N.W. MS-7650
Washington, D.C. 20240
(202) 208-4291

Deputy Chief (G-O)
Office of Law Enforcement and Defense Operations
U.S. Coast Guard
2100 2nd Street, S.W.
Washington, D.C. 20593
(202) 267-1436

Endangered Species Coordinator (Civil Works)
U.S. Army Corps of Engineers, CECW-PD
20 Massachusetts Avenue, N.W.
Washington, D.C. 20314-1000
(202) 272-0132

Director, Conservation
Office of the Under Secretary of Defense
(Environmental Security)
400 Army-Navy Drive, Suite 206
Arlington, Virginia 22202
(703) 604-5707

Director, Office of Federal Activities
U.S. Environmental Protection Agency
401 M Street, S.W. (2251)
Washington, D.C. 20460
(202) 260-5053

Environmental Protection Specialist
ATTN: Dr. Ann M. Hooker
Policy and Regulatory Division (AEE-300)
Office of Environment and Energy
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591
(202) 493-4018

Chief, Environmental Quality Branch (HEP-42)
Office of Environmental and Planning
Federal Highway Administration
400 7th Street, S.W.
Washington, D.C. 20590
(202) 366-9173

Chief, Endangered Species Division
U.S. Fish and Wildlife Service
1849 C Street, N.W. MS-ARLSQ 452
Washington, D.C. 20240
(703) 358-2171

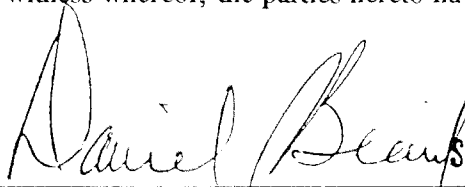
Program Manager
Threatened, Endangered and Sensitive Species
Program
U.S.D.A. Forest Service
P.O. Box 96090
Washington, D.C. 20090
(202) 205-1220

Chief, Endangered Species Division
National Marine Fisheries Service
Office of Protected Resources
1335 East-West Highway
Silver Spring, Maryland 20910
(301) 713-2322

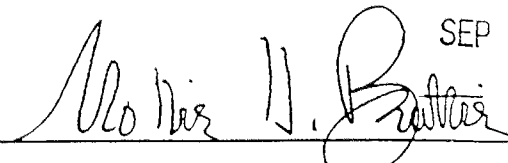
Chief, Environmental Policy and Programs Division
U.S. Minerals Management Service
381 Elden Street
Herndon, Virginia 22070-4817
(703) 787-1656

Threatened and Endangered Species Coordinator
National Park Service
P.O. Box 37127 MS-490
Washington, D.C. 20013
(202) 343-8115

In witness whereof, the parties hereto have executed this MOU as of the last written date below.


SEP 27 1994

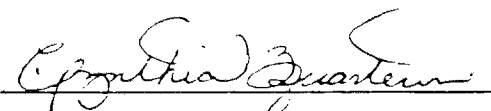
DANIEL P. BEARD, Commissioner
USDI Bureau of Reclamation

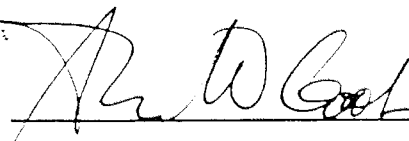

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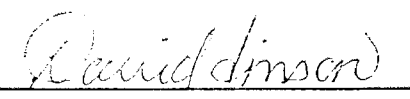
MOLLIE H. BEATTIE, Director
USDI Fish and Wildlife Service

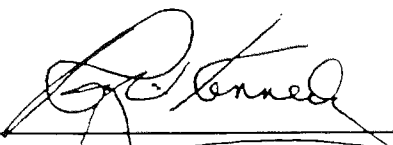

for MICHAEL DOMBECK, Acting Director
USDI Bureau of Land Management

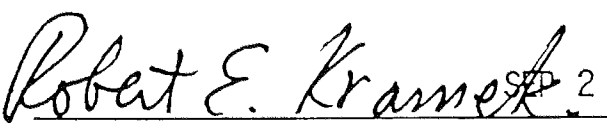

9/29/94
HERMANN ENZER, Acting Director
USDI Bureau of Mines

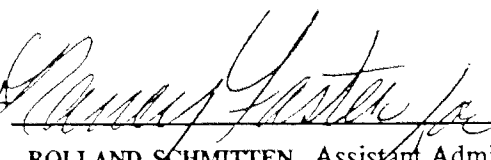

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CYNTHIA QUARTERMAN, Acting Director
USDI Minerals Management Service

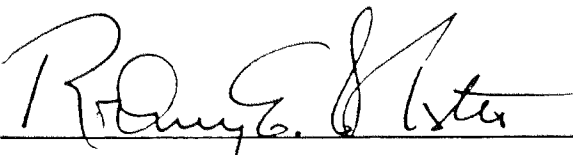

9/27/94
✓ SHERRI GOODMAN, Deputy Under Secretary
Environmental Security
US Department of Defense

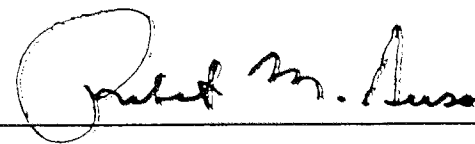

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DAVID R. HINSON, Administrator
USDOT Federal Aviation Administration

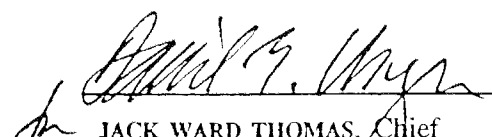

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ROGER G. KENNEDY, Director
USDI National Park Service

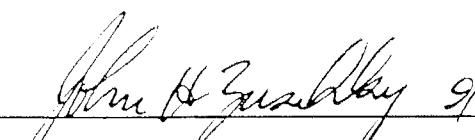

SEP 27 1994
ADMIRAL ROBERT E. KRAHEK, Commandant
US Coast Guard


9/27/94
ROLLAND SCHMITT, Assistant Administrator
USDC National Marine Fisheries Service


RODNEY E. SLATER, Administrator
USDOT Federal Highway Administration


SEP 28 1994
ROBERT M. SUSSMAN, Deputy Administrator
US Environmental Protection Agency


JACK WARD THOMAS, Chief
USDA Forest Service


9/28/94
JOHN H. ZIRINSKY, Acting Assistant Secretary
US Army Corps of Engineers

ATTACHMENT A DEFINITION OF TERMS

CANDIDATE SPECIES: those plant and animals species that, in the opinion of the Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS), may qualify for listing as threatened or endangered pursuant to the ESA. The FWS recognizes two categories of candidate species. Category 1 candidates are taxa for which the FWS has sufficient information to support proposals for listing as either threatened or endangered. Category 2 candidates are taxa for which the information available to the FWS indicates that a proposed listing may be appropriate, but for which the available information is insufficient to support a listing. The NMFS' most recent list of candidate species is published in 56 FR 26797. Because of the smaller number of species on the NMFS list, NMFS does not organize them by categories.

CONSERVATION AGREEMENT: a formal, written document agreed to by the FWS and/or NMFS and another Federal agency, Tribe, State agency, local government, or private agency, organization, or individual to achieve the conservation or recovery of threatened or endangered species through voluntary cooperation. A Conservation Agreement documents the specific actions and responsibilities for which each party agrees to be held accountable. The objective of a Conservation Agreement is to achieve the recovery of a threatened, endangered, or candidate species.

CONSERVE, CONSERVING, and CONSERVATION: as used in this MOU, these terms, except when referring to Conservation Agreements, have the same meaning as they do in the ESA. These terms mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the ESA are no longer necessary. Such methods include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary cases where population pressure within a given ecosystem cannot be otherwise relieved, may include regulated taking.

ENDANGERED SPECIES: as used in this MOU, this term has the same meaning as it does in the ESA. That is, any species which is in danger of extinction throughout all or a significant portion of its range and has been listed as endangered pursuant to section 4(a)(1) of the ESA, other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of the ESA would present an overwhelming and overriding risk to man.

FISH AND WILDLIFE: as used in this MOU, this term has the same meaning as it does in the ESA. That is, any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body parts thereof.

PLANT: as used in this MOU, this term has the same meaning as it does in the ESA. That is, any member of the plant kingdom, including seeds, roots, and other parts thereof.

RECOVERY PLAN: as used in this MOU, this term has the same meaning as it does in the ESA. That is, plans that are developed for the conservation and survival of threatened and endangered species. These plans provide descriptions of site-specific management actions that may be necessary to achieve the plan's goal for the conservation and survival of threatened and endangered species. These plans also provide objective, measurable criteria which, when met, would result in a determination that the species be removed from the Federal list of threatened and endangered species. Finally, recovery plans include

estimates of the time required to conserve listed species and the cost of carrying out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

SENSITIVE SPECIES: those plants and animal species that have been identified through appropriate agency procedures for which population viability is a concern as evidenced by: (a) significant current or predicted downward trend in population numbers or density, (b) significant current or predicted downward trend in habitat capability that would reduce a species' existing distribution.

THREATENED SPECIES: as used in this MOU, this term has the same meaning as it does in the ESA. That is any species listed as threatened pursuant to section 4(a)(1) of the ESA, which is in danger of becoming endangered within the foreseeable future throughout all or a significant portion of its range.