

ADDENDUM
to the October 31, 2003 Memorandum of Understanding
among the
Arizona Game and Fish Department,
New Mexico Department of Game and Fish,
U.S.D.A. Animal and Plant Health Inspection Service/Wildlife Services,
U.S.D.A Forest Service,
U.S. Fish and Wildlife Service,
White Mountain Apache Tribe,
Arizona Counties of Greenlee and Navajo,
New Mexico County of Sierra,
and the
New Mexico Department of Agriculture
for Conservation of the Mexican Wolf

The signatories to the aforementioned October 31, 2003 Memorandum of Understanding (MOU) have approved this Addendum in accordance with provisions of said MOU. The signatories to that MOU agree that this Addendum is intended solely to clarify the roles of, and provide guidance to, agencies cooperating in carrying out the purpose for which this Addendum is intended (see **Purpose**, below). The agencies listed below (see **Signatory Parties**, below) have agreed to participate in carrying out this Addendum and have indicated such agreement in writing. Collectively, all signatories to this Addendum are hereinafter referred to as Parties. Further, all Parties hereby acknowledge and agree that certain signatories to this Addendum have the prerogative to affirm in writing that their participation is restricted to the execution of this Addendum, and their participation in the Addendum does not indicate nor shall be construed to indicate that they have become or desire to become Cooperators in the full scope of the MOU under which this Addendum is structured.

Purpose: The purpose of this Addendum is for the signatory Federal, State, and Tribal entities to cooperatively prepare appropriate National Environmental Policy Act (NEPA) documentation analyzing alternatives to a proposed rule that might designate a new Mexican Wolf Experimental Population Area (MWEPA) and alter some aspects of currently authorized regulations for management of the Mexican wolf in Arizona and New Mexico. The new MWEPA may replace and supersede the current Mexican Wolf non-essential experimental population designation (63 FR 1752) pursuant to section 10(j) of the Endangered Species Act (ESA).

Furthermore, for the purposes of collaborative planning and the production of an Environmental Impact Statement (EIS) that will analyze a range of alternatives and impacts from a proposed new rule, the following:

A. Confirms the formal designation of the U.S. Fish and Wildlife Service (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:

- (1) Request the participation of each Cooperating Agency in the NEPA process at the earliest possible time.

- (2) 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.
- (3) Meet with a Cooperating Agency at the latter's request.

B. Formally designates the U.S.D.A. Forest Service (USFS), U.S.D.A. Animal and Plant Health Inspection Service/Wildlife Services (WS), Arizona Game and Fish Department (AGFD), New Mexico Department of Game and Fish (NMDGF), and White Mountain Apache Tribe (WMAT) 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:

- (1) Participate in the NEPA process at the earliest possible time.
- (2) Participate in the scoping process.
- (3) 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.
- (4) Make available staff support at the Lead Federal Agency's request to enhance the latter's interdisciplinary capability.

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.

D. Describes the respective roles, responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

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

F. Provides a structural framework for coordination of the rule-making and NEPA processes.

Project Description – The Service proposes to analyze the results of the Mexican Wolf Blue Range Reintroduction Project 5-Year Review and potentially consider designation of a new MWEPA, as well as a change in selected 10(j) regulations, for the purpose of furthering the conservation of the Mexican wolf from its current status under Blue Range Wolf Recovery Area (BRWRA) regulations. An EIS will analyze options for writing a new 10(j) Rule (including no action), and may include various geographic and management scenarios. A draft EIS and draft

10(j) Rule will be published, followed by a final EIS, ROD, and final 10(j) Rule (assuming a new 10(j) Final Rule is consistent with the ROD).

Recitals:

WHEREAS, the Service, USFS, WS, AGFD, NMDGF, and WMAT conducted a 5-Year Review of the Mexican Wolf Blue Range Reintroduction Project in December 2005 that culminated in 37 recommendations that identified areas of potential improvement, including development of a new Final Rule under section 10(j) of the ESA that may replace and supersede the existing Final Rule (63 FR 1752) that established a nonessential experimental population of the Mexican gray wolf in Arizona and New Mexico;

Now therefore, the parties hereto agree to cooperatively develop appropriate documentation in order to satisfy the requirements of NEPA, and further agree that;

I. The Service will:

- (a) 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 alternatives thereto; and
- (b) provide guidance as to proper process, document format, and information required to satisfy NEPA requirements; and
- (c) 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
- (d) develop the EIS under the consistency requirements of Federal law 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
- (e) provide available information and resources for development of the EIS; and
- (f) provide timely review of the EIS in order to ensure compliance with Service guidelines for NEPA implementation; and
- (g) give, to the maximum extent possible, a reasonable time frame for review and return of consolidated and comprehensive comments; and

II. The USFS is recognized to have jurisdiction by law and special expertise and will:

(a) provide available information, data (and supporting analyses), comments, and resources for development of proper NEPA documentation and the EIS as identified in a Work Activity Schedule developed cooperatively by the Parties before initiation of the NEPA process and adaptively revised throughout the process as needed; and

(b) provide timely review of the EIS in order to ensure compliance with Service guidelines for NEPA implementation; and

(c) 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

(d) 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

(e) will return consolidated and comprehensive comments on working drafts to the Service in an agreed upon time frame consistent with the planning schedule; and

III. WS is recognized to have special expertise and will:

(a) provide available information, data (and supporting analyses), comments, and resources for development of proper NEPA documentation and the EIS as identified in a Work Activity Schedule developed cooperatively by the Parties before initiation of the NEPA process and adaptively revised throughout the process as needed; and

(b) provide timely review of the EIS in order to ensure compliance with Service guidelines for NEPA implementation; and

(c) 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

(d) 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

(e) will return consolidated and comprehensive comments on working drafts to the Service in an agreed upon time frame consistent with the planning schedule; and

IV. The AGFD, NMDGF, and WMAT jointly and individually will:

(a) provide available information, data (and supporting analyses), and resources for development of proper NEPA documentation and the EIS as identified in a Work Activity Schedule developed cooperatively by the Parties before initiation of the NEPA process and adaptively revised throughout the process as needed; and

(b) provide timely review of the EIS in order to ensure compliance with Service guidelines for NEPA implementation; and

(c) help collect data, 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

(d) 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

(e) will return consolidated and comprehensive comments on working drafts to the Service in an agreed upon time frame consistent with the planning schedule; and

(f) may meet with expert individuals collectively to obtain individual views, advice, and recommendations. These collections of individuals may not make and implement traditionally Government decisions or perform specific tasks to implement a Federal program; and

V. It is also understood that:

(a) This Addendum is subject to all covenants and stipulations of the October 31, 2003 MOU to which it is an Addendum, and does not replace or invalidate anything within the 2003 MOU, except to the extent to which the Addendum addresses developing an EIS. In the event of any conflict between the two

documents, the Addendum shall be considered to supersede the relevant material within the 2003 MOU; and

(b) This Addendum shall become effective upon written concurrence by the referenced signatory Parties below, in accordance with the afore-referenced October 31, 2003 MOU; and

(c) All Parties agree to cooperate fully with each other and to jointly develop and conscientiously attempt to abide by a Work Activity Schedule to achieve the purpose of this Addendum; and

(d) All Parties agree to participate in this planning process in good faith and make every reasonable effort to resolve any perceived areas of conflict. The Parties agree to fully explore issues before coming to conclusions and to commit to searching for opportunities for resolution designed to contribute to an effective outcome; and

(e) All internal working draft documents for the development of the EIS and 10(j) Rule are pre-decisional and the Parties will ensure that these documents will not be made available for review by individuals or entities other than Parties to this Addendum, unless otherwise required by applicable law; and

(f) All documents created, collected, or provided by the Parties in support of the development of the EIS are part of the official Service administrative record and may only be released by the Service to the extent allowed by the Freedom of Information Act and/or the Privacy Act; and

(g) For services related to plan development, all Parties agree not to employ any third party having a financial interest in the outcome of the EIS. The Parties also agree to take all necessary steps to ensure no conflicts of interest exist with any officers, agents (including consultants), or representatives they may employ in the development of the EIS; and

(h) The Parties recognize that nothing in this Addendum will be construed as limiting, affecting, or binding in any way the authority or legal responsibility of any of the Parties to perform beyond the respective authority of each, or as requiring any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available. Nothing in this Addendum may be construed to obligate the United States, the Department of the Interior, or the Department of Agriculture to any current or future expenditure of resources in advance of the availability of appropriations from Congress; and

(j) The terms of this Addendum are contingent upon sufficient resources being available to the signatory Parties for the performance of this Addendum. The Parties hereby agree to jointly develop a Work Activity Schedule for this project, including a budget and identifying sources of funding, as appropriate, within this EIS/10(j) project. The decision as to whether sufficient resources are available to each signatory Party shall be determined by each signatory, shall be accepted by all other signatories, and shall be final [Note: for NMDGF, “sufficient resources” means appropriated dollars, and NMDGF is not obligated by this Agreement to seek funds from the Legislature.]; and

(k) The Federal Parties’ intent is to endeavor to use the Congressional budget process to fund this EIS/10(j) project. The non-Federal Parties intent is to seek sufficient Federal funding for this EIS/10(j) project through direct Congressional allocation, and/or, as appropriate and necessary, other sources that are in addition to Federal funds currently available to AGFD, NMDGF, or WMAT, rather than by reallocation of existing funds (note: funds raised by non-Federal parties shall be separate and distinct from the Federal partners. This shall not preclude non-Federal partners from using Federally-originated funds to contribute to their operating budgets. It is understood by all parties that Federal funds cannot be used to match Federal funds, e.g., as in cost-share agreements, unless Congress has specifically authorized an exception); and

(l) No Right of Action: This Addendum is strictly for internal management purposes for the Parties. It is not legally enforceable and shall not be construed to create any legal obligation on the part of the Parties or their respective agencies. This agreement shall not be construed to provide a private right or cause for action by any person or entity including third-parties; and

(m) Press Releases. All Parties to this Addendum will obtain prior approval from the other Parties of all press releases, published advertisements, or other statements intended for the public that refer to this Addendum or its Parties, or the name or title of any employee of any of the Parties in connection with this agreement; and

(n) Elected Officials Not to Benefit: No member of or delegate to Congress shall be entitled to any share or part of this Addendum, or to any benefit that may arise from it; and

(o) The Lead Federal Agency shall engage in government-to-government consultation with affected Indian tribe(s) during all phases of the planning process, in accordance with applicable federal statutes, regulations, and other authorities, including NEPA, the National Historic Preservation Act, the

American Indian Religious Freedom Act, and Secretarial Order 3206. Status as a Cooperating Agency in no way affects the responsibility of the Lead Federal Agency, and the authority of affected tribe(s) to engage in these government-to-government consultations. To the extent that Parties to this Addendum receive any Indian Trust Asset data as a function of the requirement to conduct government-to-government consultations with affected Indian tribes, the Lead Federal Agency certifies that it will accord such data all necessary protection and security pursuant to applicable statutes, regulations, and policies, including those set forth in the context of any applicable litigation; and

(p) Notices: All notices, demands, or requests from one Party to another may be personally delivered, sent by facsimile, sent by recognized overnight delivery service, or sent by mail, certified or registered, postage prepaid, to the persons set forth below or shall be deemed given 5 days after deposit in the United States Postal Service 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 and shall be effective at the time of personal delivery, facsimile transmission, or mailing:

- i. United States Fish and Wildlife Service
Attn: John R. Morgart
New Mexico Ecological Services Field Office
2105 Osuna NE
Albuquerque, New Mexico 87102
Phone: 505-761-4748
john_morgart@fws.gov
- ii. U.S. Forest Service
Attn: Bobbi L. Barrera
333 Broadway SE
Albuquerque, New Mexico 87102
Phone: 505-842-3194
blbarrera@fs.fed.us
- iii. USDA APHIS – Wildlife Services
Attn: David Bergman
8836 North 23rd Avenue, Suite 2
Phoenix, Arizona 85021
Phone: 602-870-2081
david.l.bergman@usda.gov

- iv. Arizona Game and Fish Department
Attn: Terry B. Johnson
2221 West Greenway Road
Phoenix, Arizona 85023-4399
Phone: 602-789-3707
teebeej@azgfd.gov

- v. New Mexico Department of Game and Fish
Attn: Chuck Hayes
P.O. Box 25112
Santa Fe, New Mexico 87504
Phone: 505-476-8101
chuck.hayes@state.nm.us

- vi. White Mountain Apache Tribe
Attn: John Caid
P.O. Box 220
Whiteriver, Arizona 85941
928-338-4385
jcaid@wmat.nsn.us

(q) This Addendum becomes effective upon written concurrence by the referenced signatory Parties below, and may subsequently be amended in accordance with the October 31, 2003 MOU to which it is an Addendum. Any Party may terminate its involvement in this Addendum by providing written notice of termination in accordance with the aforementioned MOU. If not terminated sooner, this Addendum will end upon agreement of all Parties once the EIS is final and the Service issues the ROD.

Signatory Parties to this Addendum:

Arizona Game and Fish Department; concurrence letter of November 28, 2006
New Mexico Department of Game and Fish; concurrence letter of December 7, 2006
U.S.D.A. APHIS – Wildlife Services, Western Region; concurrence letter of December 1, 2006
U.S.D.A Forest Service, Region 3; concurrence letter of December 6, 2006
U.S. Fish and Wildlife Service, Region 2; concurrence letter of December 5, 2006
White Mountain Apache Tribe, concurrence pending