

MEMORANDUM OF AGREEMENT
Between
U.S. Fish and Wildlife Service Pacific Southwest Region
and the
California Department of Fish and Wildlife

Wildlife Agency Participation for Implementation of
the Federal and State Endangered Species Acts

Section I. Purpose

The purpose of this Memorandum of Agreement (hereafter Agreement) is to facilitate joint participation, communication, coordination, and collaboration between the U.S. Fish and Wildlife Service, Pacific Southwest Region (hereafter USFWS or Wildlife Agency), and the California Department of Fish and Wildlife (hereafter CDFW or Wildlife Agency) collectively "Wildlife Agencies," regarding implementation of the Endangered Species Act of 1973, as amended (hereafter ESA), and the California Endangered Species Act, as amended (hereafter CESA) within the State of California.

Section II. Recitals

Whereas, the USFWS, a Federal land management and regulatory agency, is responsible for initiating, conducting, and supporting programs for the conservation of threatened and endangered species of wildlife and plants, and the ecosystems of which they are a part, under the authority of the ESA;

Whereas, the CDFW, a State natural resource agency, has determined that participation in implementing the ESA is essential to the State of California's interest in, and authority for, management of the wildlife resources that are held as a public trust for the people of the State of California;

Whereas, CDFW and USFWS have executed a Cooperative Agreement pursuant to Section 6 of the ESA which recognizes that the State maintains an acceptable conservation program for resident species of fish and wildlife and plants that are listed as threatened or endangered under the ESA and that authority resides in CDFW to conserve resident species of fish, wildlife and plants determined by the State or USFWS to be threatened or endangered;

Whereas, CDFW and USFWS both have limited funds with which to conserve such species and therefore must be effective and efficient in using such funds;

Whereas, CDFW and USFWS believe implementation of the ESA and conservation of resident endangered and threatened species in California would benefit from the continued coordination between the Wildlife Agencies in developing recommendations and implementing actions within

the State of California consistent with the authorities of the ESA and within the constraints of State and Federal law; and

Now therefore, in consideration of the above recitals, the Wildlife Agencies enter into this Agreement.

Section III. Definitions

A. This subsection addresses definitions of key terms in this Agreement. For the purposes of this Agreement:

1. "Candidate" is a term with meaning under both the ESA and CESA. An ESA "candidate" species means fish, wildlife, and plants considered for possible addition to the List of Endangered and Threatened Species. These are taxa for which the USFWS has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposal to list, but issuance of a proposed rule is precluded by higher priority listing actions (61 FR 7596-7613). A CESA "candidate" species is one which the California Fish and Game Commission has noticed as being under review by CDFW for addition to the State list of endangered or threatened species (Fish and Game Code section 2068).
2. "Conference" means a process of early interagency cooperation involving informal or formal discussions between a Federal agency and USFWS pursuant to section 7(a) (4) of ESA regarding the likely impact of an action on proposed species or proposed critical habitat.
3. "Coordinate" means a request on the part of the responsible Wildlife Agency for assistance in administering the ESA or CESA, as further specified in this Agreement, and the provision of such assistance, when and as appropriate, by the other Wildlife Agency.
4. "Dually Listed" refers to species included in the Federal List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the Federal List of Endangered and Threatened Plants at 50 CFR 17.12 and in the State lists of endangered, threatened or rare species at 14 CCR 670.2 or 670.5.
5. "Experimental Population" means any population designated as "experimental" under § 10(j) of the ESA and authorized by the Secretary for release outside the current range of such species if USFWS determines that such release will further the conservation of such species, but only when the population is wholly separate geographically from non-experimental populations of the same species.

6. "Liaison" means a designated representative of the respective Wildlife Agency.
7. "Participate" means that to the extent feasible given availability of staff or funding and other workload priorities, each Wildlife Agency will support the other Wildlife Agency in implementing this Agreement.
8. "Plant" means any member of the plant kingdom, including seeds, roots, and other parts thereof.
9. "Proposed" refers to any species of fish, wildlife, or plant that is proposed in the Federal Register to be listed under section 4 of ESA. Proposed critical habitat means habitat proposed in the Federal Register to be designated or revised as critical habitat under Section 4 of the ESA.
10. "Species" means any species or subspecies of wildlife or plants, and any distinct vertebrate population segment of any vertebrate species of wildlife that interbreeds when mature.
11. "Wildlife" means all species or subspecies of invertebrate and vertebrate animals that are resident in California, including migratory and extirpated species.

Section IV. Roles and Responsibilities

Principal responsibility for implementing the Section 6 Cooperative Agreement and this Agreement resides with CDFW's Chief Deputy Director and USFWS's Assistant Regional Director for Ecological Services, Pacific Southwest Region.

- A. ESA Section 4 Determination of Endangered Species and Threatened Species
 1. Petition Management
 - a. Respective liaisons for this subject are USFWS's Ecological Services (ES) Division Chief for Listing and Recovery and CDFW's Deputy Director, Wildlife and Fisheries Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
 - b. USFWS agrees to promptly notify CDFW of, and to provide a copy of, any petition submitted to USFWS to list a wildlife or plant species resident in California and to provide CDFW with notice of all 90 day findings and an electronic link to the findings on www.regulations.gov within 30 days of such findings. USFWS also agrees to promptly notify CDFW of any species internally designated as a candidate species by USFWS and an electronic link to the species assessment form.

- c. CDFW agrees to provide all petitions to list a wildlife or plant species submitted to the State of California Fish and Game Commission (Commission) and petition evaluations to USFWS within 30 days of the date the petition or evaluation is provided to the Commission.

2. Listing, Reclassification, and Critical Habitat Designation

- a. Respective liaisons for this subject are USFWS's ES Division Chief for Listing and Recovery and CDFW's Deputy Director, Wildlife and Fisheries Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
- b. USFWS agrees promptly to inform CDFW of the development of listing and reclassification rules and critical habitat rules and, consistent with applicable federal law, including the Administrative Procedure Act (hereafter APA) and statutory and administrative timelines, to provide opportunities for CDFW to provide technical assistance and to review and comment on the scientific information relevant to such rules during public hearings and comment periods, and at other times as allowable and appropriate.
- c. Upon request by USFWS, CDFW agrees promptly to provide USFWS with any available scientific, including spatial data, or other information relevant to the preparation of 1) a 12-month finding, proposed rule or final rule to list or reclassify a species as endangered or threatened, or 2) a proposed rule or final rule to designate or revise critical habitat.
- d. USFWS agrees to provide CDFW with notice of and an electronic link to any 12 month finding, proposed or final listing or critical habitat rule, and other information and associated Federal Register notices on www.regulations.gov within 30 days of such finding or proposed or final rule.
- e. CDFW agrees to seek, to the extent feasible and appropriate, available scientific or other information from USFWS when preparing a status review of a CESA candidate species and to provide USFWS with a copy of any status review, recommendation to the Commission regarding listing, and notice of proposed rulemaking to list a species under CESA within 30 days of such review, recommendation or notice.

3. ESA 4(d) Rules

- a. Respective liaisons for this subject are USFWS's ES Division Chief for Listing and Recovery and CDFW's Deputy Director, Wildlife and Fisheries Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.

- b. CDFW agrees to the extent feasible to (1) provide USFWS with any relevant information, including spatial data, for use in preparing 4(d) rules, (2) provide technical assistance to USFWS, as appropriate, in developing 4(d) special rules, contingent on availability and expertise of CDFW staff, (3) submit comments on proposed 4(d) rules during public comment periods, and (4) participate in any public hearings in California on proposed special rules.
 - c. USFWS agrees to fully consider CDFW's comments on any, proposed 4(d) special rules, and in particular, any comments from CDFW indicating that a proposed 4(d) rule would likely conflict with existing State wildlife or plant laws or regulations.
 - d. USFWS agrees to provide CDFW with notice of and an electronic link to any proposed or final 4(d) rule, and other relevant information and associated Federal Register notices posted on www.regulations.gov.
- 4. Five year Status Reviews of Endangered and Threatened Wildlife and Plants
 - a. Respective liaisons for this subject are USFWS's ES Division Chief for Listing and Recovery and CDFW's Deputy Director, Wildlife and Fisheries Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
 - b. The USFWS agrees to request relevant scientific, including spatial data, and other information from CDFW during development of 5-year status reviews.
 - c. CDFW agrees to request relevant scientific, including spatial data, and other information from USFWS during development of 5-year status reviews.
- 5. Recovery Plan Development and Implementation
 - a. Respective liaisons for this subject are USFWS's ES Division Chief for Listing and Recovery and CDFW's Deputy Director, Wildlife and Fisheries Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
 - b. USFWS will provide CDFW the opportunity to participate in the development of recovery plans, and where feasible and appropriate, will invite CDFW to develop joint recovery plans for species listed under both the ESA and CESA, to the extent allowable under applicable Federal and State laws, regulations, policies, guidelines, or other legal obligations regarding such plans.

- c. USFWS agrees to appoint qualified CDFW personnel, when available, as members of, and/or policy and technical consultants to, wildlife and plant recovery teams, including technical teams, implementation teams, stakeholder teams, and any other recovery advisory teams formed or appointed by USFWS. In the event that recovery plans are developed without establishment of a recovery team, USFWS will solicit comment from CDFW.
 - d. CDFW agrees to participate with USFWS in implementing measures set forth in wildlife and plant recovery plans, particularly those related to landscape-level conservation.
 - e. If any State listed species is designated for development of a recovery plan, CDFW will request participation and relevant available information from USFWS in the development of such plan.
 - f. USFWS and CDFW agree to encourage other agencies and partners to incorporate into their planning and projects those recovery actions and conservation actions described in Federal and State recovery plans.
6. Monitoring of Delisted Species of Wildlife
- a. Respective liaisons for this subject are USFWS's ES Division Chief for Listing and Recovery and CDFW's Deputy Director, Wildlife and Fisheries Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
 - b. CDFW and USFWS agree to participate in planning, management, and monitoring of delisted species of wildlife and plants.

B. ESA Section 5 Land Acquisition

- 1. Respective liaisons for this subject are USFWS's Assistant Regional Director – Refuges and Assistant Regional Director – ES and CDFW's Deputy Director, Wildlife and Fisheries Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
- 2. CDFW, acting through the Wildlife Conservation Board, agrees to provide notice to USFWS regarding acquisition or other ownership interest in any land or water for the purpose of conserving any federally threatened or endangered wildlife or plant species.
- 3. The USFWS agrees to coordinate with CDFW before acquiring any land, or water, or interest therein, for the purpose of conserving any endangered or

threatened species. Both parties further agree to maintain this coordination throughout the acquisition process for such lands and waters.

4. CDFW and USFWS agree to coordinate with one another before adopting any final Management Plans for any wildlife area or refuge established or acquired using Federal funds by either party for the conservation of listed wildlife or plants.

C. ESA Section 6 Cooperation With the States

1. Respective liaisons for this subject are USFWS's ES Division Chief for Listing and Recovery and CDFW's Deputy Director, Wildlife and Fisheries Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
2. CDFW and USFWS agree to coordinate annually to establish priorities that address those endangered and threatened species within California that the wildlife agencies agree are most urgently in need of conservation programs for use of Section 6 funds allocated to the State.
3. CDFW agrees to provide all available Take Reporting data collected under CDFW's conservation program for the conservation of endangered and threatened wildlife in California to USFWS's representative designated in the Cooperative Agreement as part of the annual renewal of the Section 6 Cooperative Agreement. This information will identify any utilized federal grant support and USFWS research or recovery permitting coverage for these activities. USFWS agrees to notify CDFW if overlapping reporting is occurring and work with CDFW to streamline the reporting process.

D. ESA Section 7 Interagency Cooperation

1. Section 7 Consultations and Conferences
 - a. Respective liaisons for this subject are USFWS's ES Deputy Division Chief for Consultation, HCPs, Habitat Conservation, and Environmental Quality and CDFW's Deputy Director, Ecosystem Conservation Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
 - b. At the request of USFWS, CDFW agrees to provide USFWS with available information, including spatial data, relevant to ongoing or prospective Section 7 consultations and conferences on proposed or dually listed species.
 - c. At the invitation of the Federal action agency and subject to the concurrence of the Federal applicant, if any, CDFW may agree to be

involved in Section 7 consultations and conferences on proposed or dually listed species. It is understood by CDFW and USFWS that involvement by CDFW does not affect the regulatory timelines for completion of consultation or conference set forth in the ESA and implementing regulations.

- d. USFWS agrees to recommend to the Federal action agency that the action agency invite CDFW to participate in Section 7 consultations and conferences on wildlife and plants when the subject species is/are proposed for listing or dually listed. USFWS will recommend to the Federal action agency that the agency copy CDFW on initiation letters. If USFWS sends a letter to the action agency acknowledging the initiation of consultation, it will copy CDFW on such letter.
 - e. USFWS agrees to provide CDFW with an electronic copy of all final biological and conference opinions completed on dually listed species. If the consultation is reinitiated or a request is received to confirm a conference opinion as a biological opinion, USFWS agrees to recommend to the Federal action agency that the agency invite CDFW to participate in the consultation. If the Federal action agency does not agree to allow CDFW to participate in the consultation or conference, USFWS will provide a copy of the completed biological opinion to CDFW after a 10 calendar-day waiting period following delivery to the Federal action agency.
 - f. CDFW will provide an electronic copy of any Consistency Determination or Incidental Take permit to USFWS for proposed or dually listed species.
2. Programmatic Consultations on Federal Grants to CDFW
- a. Respective liaisons for this subject are USFWS's ES Deputy Division Chief for Consultation, HCPs, Habitat Conservation, and Environmental Quality and CDFW's Deputy Director, Wildlife and Fisheries Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
 - b. As an alternative to standard informal or formal consultations for individual Wildlife and Sport Fish Restoration Program grants, USFWS may agree to conduct intra-Service consultations at the programmatic level on multiple CDFW grants within a specified regional planning area or specified actions and for a specified duration for individual or multiple species.

E. ESA Section 8 International Cooperation

1. Wildlife Preservation in the Western Hemisphere

- a. Respective liaisons for this subject are USFWS's Assistant Regional Director – Refuges and Assistant Regional Director – ES and CDFW's Deputy Director, Wildlife and Fisheries Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
- b. CDFW and USFWS agree to coordinate with regard to activities planned or conducted with Mexico for dually listed species of wildlife and plants which also exist in Mexico, and to provide each other with copies of work or study proposals, information, and reports regarding such work.

F. ESA Section 9 Prohibited Acts

1. Law Enforcement

- a. Respective liaisons for this subject are CDFW's Chief of Law Enforcement Division and USFWS's Pacific Southwest Region Special Agent in Charge. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
- b. CDFW and USFWS mutually agree to implement the December 16, 2008 *Memorandum of Agreement for Cooperative Law Enforcement between U.S. Fish and Wildlife Service and California Department of Fish and Game*.

G. ESA Section 10 Exceptions

1. Permits

- a. Respective liaisons for this subject are USFWS's Pacific Southwest Region Division Chief for Listing and Recovery and CDFW's Chief, Habitat Conservation Planning Branch.
- b. When issuing an ESA 10(a) (1) (a) permit for dually listed species, USFWS will include a notice indicating that an appropriate permit from CDFW may be required.
- c. When issuing a CESA 2081(a) permit or memorandum of understanding for dually listed species, CDFW will include a notice indicating that an appropriate permit from USFWS may be required.

- d. When issuing a 10(a) (1) (a) permit for species that are dually-listed, USFWS will require the permittee to submit copies of all reports to CDFW.
- e. CDFW will provide an electronic copy of any Consistency Determination or Incidental Take permit to USFWS for dually listed species. When issuing an Incidental Take Permit for a dually listed species, CDFW will require the permittee to submit copies of all reports to USFWS.

2. Conservation Planning

- a. Respective liaisons for this subject are USFWS's Pacific Southwest Region HCP Coordinator and CDFW's Chief, Habitat Conservation Planning Branch.
- b. Subject to the consent of the permit applicant, USFWS and CDFW agree to coordinate in all Candidate Conservation Agreement planning, Safe Harbor planning, Natural Community Conservation Planning and Habitat Conservation Planning, as appropriate and subject to the availability of funding and staffing resources.

3. Experimental Populations

- a. Respective liaisons for this subject are USFWS's ES Division Chief for Listing and Recovery and CDFW's Deputy Director, Wildlife and Fisheries Division. Designated liaisons may then delegate implementation of tasks to appropriate programs and staff.
- b. USFWS agrees to inform CDFW of the development of any experimental population rule and, consistent with the APA, ESA and other applicable Federal law, to provide opportunities for CDFW's involvement in public reviews of such rules, including public hearings and comment periods.
- c. CDFW agrees to provide USFWS with any available scientific, including spatial, data or other relevant information for use in preparing proposals and final rules for designating experimental populations of listed wildlife.
- d. CDFW agrees to the extent feasible to provide USFWS with comment on proposed rules for designating experimental populations of listed wildlife or plant species during the public comment period and to attend and participate in any public hearings in California on such proposed rules.

- e. USFWS agrees to solicit and consider the views of CDFW when considering the development of an experimental population rule for a species.
- f. USFWS agrees to provide CDFW with notice of and an electronic link to any proposed or final 10(j) rule, and other relevant information and associated Federal Register notices posted on www.regulations.gov.

Section V. Terms of the Agreement

1. CDFW and USFWS agree to the following coordination meetings.
 - a. CDFW's Deputy Director Wildlife and Fisheries Division shall organize and schedule three review and coordination meetings each year.
 - b. The first meeting, held in approximately March of each year, will be at the CDFW Headquarters and USFWS Regional Office staff level to discuss the programmatic staff-level implementation of the Cooperative Agreement and this Agreement.
 - c. A second meeting, held in approximately May of each year, will include senior-level staff from CDFW Headquarters and USFWS Regional Office who are directly responsible for the programmatic implementation of the various activities described in this Agreement
 - d. The third meeting, to be held prior to July 31 of each year, will be between CDFW's Chief Deputy Director and USFWS Assistant Regional Director for Ecological Services and designated staff. It will be to consider the recommendations and issues presented, discussed and resolved in the prior two meetings and to determine if modification of the Agreement is needed at that time.
 - e. The minutes of these meetings shall provide a written summary of implementation and accomplishments. Copies of the minutes shall be disseminated within 30 calendar-days of each meeting, to appropriate staff within CDFW and USFWS.
2. Implementation of any specific actions under this Agreement is contingent upon the availability of appropriated funds and the availability of staffing resources. With regard to USFWS funding, this Agreement is also subject to the requirements of the Anti-Deficiency Act. Nothing in this Agreement will be construed by the Wildlife Agencies to require the obligation, appropriation or expenditure of any money from the United States Treasury. The Wildlife Agencies acknowledge that USFWS will not be required under this Agreement to expend any federally appropriated funds unless or until an

authorized official of USFWS affirmatively acts to commit to such expenditures as evidenced in writing.

3. Whenever a specific section of this Agreement provides for the transmittal of information or documents between USFWS and CDFW, such information or documents shall be transmitted to the liaison designated in that section for the recipient Wildlife Agency. Information and document exchanges between the Wildlife Agencies shall be in full compliance with, and in consideration of, all State and Federal laws pertaining to public records.
4. This Agreement shall be effective upon execution by USFWS and CDFW as of the last date below.
5. To carry out its intent, this Agreement may be supplemented by subsequent agreements between USFWS and CDFW to allow for specific funding authorities, and may be modified at any time by letter signed by CDFW and USFWS.
6. This Agreement will remain in effect as long as the Cooperative Agreement is in effect, unless terminated prior to that date pursuant to paragraph V. 7.
7. This Agreement is subject to termination by either USFWS or CDFW upon submission of a written 60 calendar-day termination notice.
8. This Agreement is non-binding and establishes no duty or obligation on CDFW or USFWS. This Agreement is not a rule or regulation. This Agreement is not a delegation of authority of either USFWS or CDFW. This Agreement is not intended to, and does not create or establish, any substantive or procedural right, benefit, trust responsibility, claim, cause of action enforceable at law, or equity in any administrative or judicial proceeding by either Wildlife Agency or by a third party against either Wildlife Agency or against any employee, officer, agent, or representative of either Wildlife Agency.
9. All written notices concerning modifications to this Agreement shall be delivered in person or sent by certified mail, return receipt requested, to the Wildlife Agencies as follows:

A. For CDFW:


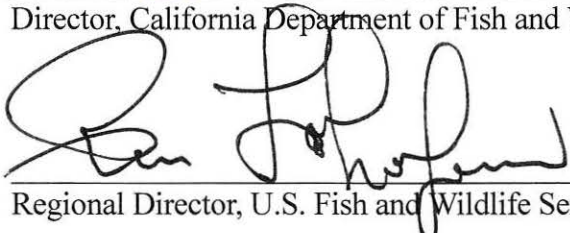
Chief Deputy Director
California Department of Fish and Wildlife
1416 Ninth Street, 12th Floor, Sacramento, CA 95814

B. For USFWS:

Assistant Regional Director for Ecological Services
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2606 Sacramento, CA 95825-1846

Section VI. Approvals

This Agreement becomes effective on the last date of signature below.

	
_____ Director, California Department of Fish and Wildlife	_____ Regional Director, U.S. Fish and Wildlife Service, Pacific Southwest Region
March 18, 2015 Date	March 16 th , 2015 Date

