

**Master Memorandum of Understanding  
Between  
United States Department of the Interior  
Fish and Wildlife Service Region 2  
and  
State of Arizona  
Arizona Game and Fish Commission**

Roles and Responsibilities for  
Implementing the Endangered Species Act in Arizona

**August 11, 2008**

This Memorandum of Understanding (MOU) is entered into between the Arizona Game and Fish Commission ("Commission") and the U.S. Fish and Wildlife Service Region 2 (FWS) (collectively "Parties" and singularly "Party").

WHEREAS, the Commission has statewide responsibility for wildlife management;  
WHEREAS, the Arizona Game and Fish Department ("Department") acts under the authority of the Commission;  
WHEREAS, the FWS, a Federal land management and regulatory agency, is responsible for initiating, conducting, and supporting programs for the conservation and recovery of species of wildlife and plants and the ecosystems of which they are a part;  
WHEREAS, the Arizona Ecological Services Office (AESO) has primary responsibility for implementation of the Endangered Species Act of 1973, as amended (ESA) within the State of Arizona;

NOW, THEREFORE, it is the understanding of the Parties that:

**Section I. Purpose**

The purpose of this MOU is to facilitate joint participation, communication, coordination, and collaboration between the FWS, and Commission and Department, regarding implementation of the ESA within the State of Arizona. This MOU establishes the master framework for future supplemental or specific agreements.

**Section II. Joint Policy Statement**

The Parties work cooperatively to manage threatened and endangered species throughout the State of Arizona. The Commission has determined that the Department's direct participation in implementing the ESA is essential to representing the State of Arizona'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 Arizona. The FWS agrees that full participation of the State of Arizona in implementing the ESA will enhance its fulfillment of its statutory obligations in conserving threatened and endangered species and the ecosystems upon which they depend, and that the Department has statutory obligations and authorities to manage wildlife in Arizona.

The Parties have executed a Cooperative Agreement pursuant to Section 6 of the ESA, which remains in place and requires the State of Arizona to maintain an adequate and active program for the conservation of endangered and threatened species. Further, the Parties have limited funds with which to conserve such species, and therefore must be effective and efficient in using such funds. As a result, the Parties agree that threatened and endangered species conservation in Arizona would be enhanced if both Parties participate in developing and implementing recommendations and actions within the State of Arizona. Now therefore, in consideration of the above premises, the Parties enter into this MOU to accomplish its purpose and objectives.

This MOU applies to only those species for which both Parties have management authorities. This MOU also applies to information sharing between the Parties for State Wildlife Action Plan (SWAP) data and the Heritage Data Management System (HDMS) purposes for all proposed, candidate, or listed species. This MOU does not preclude additional work with other agencies that are not subject to this MOU.

Given that the State of Arizona does not have wildlife management jurisdiction on Tribal lands, Department participation in implementing the ESA on such Tribal lands is subject to prior approval by the appropriate Tribal authority. Although the Department does not have jurisdiction for management of plants and insects, they may have an interest in Federal actions affecting those species groups and may cooperate, at the state's discretion, on ESA-related processes.

### **Section III. Authorities**

- A. The authority of the FWS to enter into this MOU includes, but is not limited to:
  - 1. The Endangered Species Act of 1973, as amended; and
  - 2. Fish and Wildlife Coordination Act (16 U.S.C. 661-667e; the Act of March 10, 1934; Ch. 55; 48 Stat. 401), as amended 1946, 1958, 1978 and 1995.
- B. The authorities of the Commission, to enter into this MOU include, but are not limited to:
  - 1. Arizona Revised Statutes (A.R.S.) §§ 17-231(A)(2) and 17-231(B)(7);
  - 2. A.R.S. § 17-452(C);
  - 3. Fish and Wildlife Coordination Act (16 U.S.C. 661-667e; the Act of March 10, 1934; Ch. 55; 48 Stat. 401), as amended 1946, 1958, 1978 and 1995; and
  - 4. The Endangered Species Act of 1973, as amended.

#### **Section IV. Roles and Responsibilities**

All timelines specified within this MOU are for the purpose of establishing reasonable timeframes, however both Parties acknowledge that extenuating circumstances (e.g. court orders or statutory deadlines) may not allow strict adherence. The Parties will make every attempt to meet the specified timelines and will communicate when it becomes apparent that the desired timelines cannot be met.

For the purposes of this MOU, the terms "conservation action" and "recovery action" refer to on-the-ground activities such as translocations, habitat manipulations, etc., and not such activities as routine surveys, data collection, measurements, etc., unless otherwise indicated. In the latter case, such information will be shared with the other Party but such activities do not require prior coordination.

- A. This subsection addresses Section 4 of the ESA (classification and recovery of listed species). Respective leads for this area are the Department's Nongame Branch Chief and the FWS's AESO Field Supervisor.
  1. Candidate assessment
    - a. The AESO agrees to involve the Department in assessment of candidates for listing under the ESA.
    - b. The Department agrees to keep the AESO informed on planned and conducted candidate investigations, including sharing of approved grant applications and their resulting project reports.
    - c. For existing candidates, the AESO will provide the Department updated candidate forms for review and comment, at least 30 days prior to the FWS Regional Office due date. The Department will respond within 20 days. Where warranted, the response will include a description of any Department activities which may affect candidate species.
    - d. For new candidate nominations, the AESO will provide the new candidate forms to the Department for review and comment prior to submission to the FWS Regional Office. The Department will provide a response within 20 days. Where warranted, the response will include a description of any Department activities which may affect candidate species.
    - e. The Department agrees to help the AESO develop information for candidate assessments. This information will be provided within 30 days of a request by AESO. The Department will be included in the review of

public comments concerning candidate assessments to the extent allowed by time commitments.

2. Candidate Conservation Agreements (CCA)

- a. The Department may choose to participate in the development of CCAs. In instances where the Department chooses not to participate in the development of a CCA, the AESO will provide the Department a draft of the document and give the Department 30 days to respond. The Parties will work together to establish a lead for all candidate conservation agreements.
- b. At the Department's request, it shall be a signatory on any CCA.
- c. The Parties will work together to include partners with interest in the CCA.
- d. If either Party declines to participate in the CCA process, the other may proceed alone unless one Party opposes the action in writing, in which case, the Parties agree to follow the conflict resolution protocol described in Section VI of this MOU.
- e. If the conflict is not resolved through the conflict resolution process, nothing in this MOU will preclude the FWS from entering into a legally valid CCA.

3. Candidate conservation actions

- a. The Parties agree to work cooperatively in developing and implementing candidate conservation actions. The Parties agree to participate in actions taken to improve the status of candidate species of wildlife, and other at-risk species, with opportunities for full participation of both Parties in project planning. The Parties agree to coordinate in project planning and to provide each other at least 30 days notice before a decision is made to implement the action.
- b. If either Party declines to participate in candidate conservation, the other Party may proceed alone unless one Party opposes the action, in which case the Parties agree to follow the conflict resolution protocol described in Section VI of this MOU.
- c. If the conflict is not resolved through the conflict resolution process, nothing in this MOU will preclude either Party from conducting legal conservation actions.

4. Petition findings
  - a. The AESO will provide the Department a copy of every petition filed within 10 days of receipt.
  - b. The petition is provided for informational purposes only and the Department will not provide comment to the AESO at the 90-day stage.
  - c. After publication of any substantial (i.e. positive) 90-day finding, the Department may choose to be an active participant in the subsequent status review.
  
5. Rulemaking (Listing, delisting, reclassification, critical habitat designation/revision and special rules)
  - a. The AESO will provide the Department notice of its intent to prepare a proposed listing or critical habitat rule and request Department information and assistance.
  - b. The Department will provide relevant information within 30 days.
  - c. The AESO will notify the Department of the publication of proposed rules within 10 days.
  - d. The Department will assist the AESO in conducting public hearings and responding to public comments to the extent practicable.
  - e. In instances where a 4(d) rule is being contemplated by AESO independent of a listing action, or, if any 4(d) rule is in conflict with existing State wildlife laws or regulations, the AESO agrees to notify the Department before initiating development and address concerns during the process.
  
6. 5-year review of endangered and threatened species
  - a. The AESO agrees to provide opportunities for the Department to participate in 5-year review and provide a schedule of 5-year review initiations annually.
  - b. The Parties agree to keep each other informed on planned and conducted investigations on listed species, including sharing of approved grant applications and resulting reports.

- c. The Department agrees to provide the AESO with any available information for use in 5-year reviews within 30 days of a written request from the AESO.
  - d. The AESO will provide the Department a draft 5-year review for the Department's review and response at least 30 days prior to transmitting the document to the FWS Regional Office for approval. The Department will provide a response within 20 days.
  - e. The AESO will provide the Department a copy of the 5-year review transmitted to the FWS Regional Office.
  - f. The AESO agrees to alert the Department of any substantive changes made by the Regional Office within 10 days of receipt.
7. Recovery plan development
- a. The AESO agrees to invite the Department to participate on all Recovery Teams established to develop Recovery Plans for wildlife species. Where a Recovery Team is not established, the AESO will invite the Department to provide information for use in developing the recovery plan and assist in its technical development.
  - b. Upon agreement by the Department, the FWS will appoint appropriately qualified Department personnel as leaders of, members of, and/or policy and technical consultants to, wildlife recovery teams, including technical teams, implementation teams, stakeholder teams, and any other recovery advisory teams formed or appointed by the FWS.
  - c. The FWS will provide the Department a copy of any Recovery Plan transmitted to the FWS Regional Office within 10 days of transmittal.
  - d. The FWS agrees to alert the Department of any substantive changes made by the Regional and/or Washington Office within 10 days of receipt.
  - e. The goal for all Recovery Plans is to obtain the signatures of both Parties. The conflict resolution protocol in Section VI of this MOU shall be invoked when necessary to reach agreement on substantive issues.

8. Implementation of recovery actions

- a. The Parties agree to work cooperatively in developing and implementing recovery actions. The Parties shall, to the extent practicable, encourage participation of the other Party in the planning and implementation of recovery actions. This may include species surveys that are planned in advance. Both Parties agree to provide the other Party as much notice as possible.
- b. If either Party declines to participate in such actions, the other Party may proceed alone unless one Party opposes the action, in which case the Parties agree to follow the conflict resolution protocol described in Section VI of this MOU.

9. Post-delisting monitoring

- a. The Department may take the lead (in consultation with the AESO) in planning and implementing monitoring of species of wildlife that have been delisted due to recovery. In instances where the Department chooses not to take the lead, the AESO will inform the Department of AESO monitoring plans.
- b. The lead Party will coordinate post-delisting monitoring efforts with the other Party and will share all monitoring data collected.

B. This subsection addresses Section 5 of the ESA (land acquisition). Respective leads for this subsection are the Department's Habitat Branch Chief and the FWS's AESO Field Supervisor and Regional Realty Chief.

1. The Parties agree to coordinate regarding land acquisition, donation or other protection of any lands or waters, or interest therein, for the purpose of conserving any endangered, threatened, proposed, or species at risk.
2. The Parties mutually agree to consult prior to the Commission's acquisition or otherwise protection of lands or waters in Arizona for endangered, threatened, candidate or special status wildlife species when using funds provided under Section 5 of the ESA. Both Parties further agree to maintain this consultation throughout the acquisition or protection process for such lands and waters.

C. This subsection addresses Section 6 of the ESA (Cooperative Agreements).

1. Traditional Section 6. Respective leads for this subsection are the Department's Nongame Branch Chief and the FWS's AESO Field Supervisor.

Department funds eligible and typically allocated for ESA management activities include State Wildlife Grants and Heritage IIAPM funds in addition to Section 6 funds. The Department uses all of these funds to accomplish management objectives. These are formally established through a 3-tiered planning process that includes Strategic, Operational and Implementation planning.

- a. The AESO will keep the Department informed of Section 6 funding outlook annually.
  - b. The AESO will provide priority projects for the Department's 6-year Strategic Plan and the 2-year Operational Plan as a part of the planning processes prior to public review.
  - c. The Parties will discuss management priorities annually. Discussions during the coordination meetings described in the communications protocol in Section V. B. will be used to help establish Activities (projects) identified in Department Implementation Plans and prioritization for alternative funds sources as they become available.
  - d. The Department will inform the AESO on what ESA related activities are being conducted by all fund sources.
2. Non-Traditional Section 6 (Habitat Conservation Plan Development Grants, HCP Land Acquisition). Respective leads for this subsection are the Department's Habitat Branch Chief and the FWS's AESO Field Supervisor.
    - a. The Parties agree to coordinate efforts to seek mutually beneficial HCP funding applications, recognizing that any such applications submitted to the Department must be supported by the Department through its 3-tiered planning and budget approval processes.
    - b. The Parties will discuss priorities for non-traditional Section 6 HCP funding annually at the coordination meetings. Agreed upon priority HCP funding needs will be submitted for consideration in the Department's 3-tiered planning process.
    - c. The Parties will maintain a public notification system to announce annual application deadlines and procedures.



- d. The Parties will ensure that the other Party is aware of discussions regarding potential non-traditional Section 6 grant applications in a timely manner.
  - e. When mutually agreed, the Parties will work with the sub-applicant to develop a final application that is acceptable to the Department as the primary applicant.
  - f. The AESO will ensure that all sub-applicants are made fully aware that the final applicant is the Department and that the Department must support the application and build it into their 3-tiered planning and budget approval processes.
  - g. The Parties will provide each other with copies of all requests for HCP funding within 10 days of receipt.
3. Non-Traditional Section 6 (Recovery Land Acquisition). Respective leads for this subsection are the Department's Habitat Branch Chief and the FWS's AESO Field Supervisor.
- a. The Parties agree to coordinate efforts to seek mutually beneficial Recovery Land Acquisition opportunities, recognizing that any such acquisitions must be supported by the Department through its 3-tiered planning and budget approval processes.
  - b. The Parties will use the Department's most updated version of the Areas of Conservation Priority geospatial modeling system to inform decisions on whether to pursue funding opportunities under Recovery Land Acquisition program.
  - c. The Parties will ensure that the other Party is aware of discussions regarding potential recovery habitat acquisitions in a timely manner.
- D. This subsection addresses Section 7 of the ESA (responsibilities of Federal agencies in ESA implementation). Respective leads for this area are the Department's Habitat Chief and the FWS's AESO Field Supervisor.
- 1. Section 7 consultations and conferences (formal and informal)
    - a. The Department may participate in all formal and informal consultations subject to availability of staff, regulatory timeframes, and approval by any Federal agency or Tribal participant.

- b. The AESO will notify Federal action agencies and will maintain a notice on its website requesting that they provide a copy of all informal and formal consultation letters to the Department.
  - c. In 30-day letters to action agencies, the AESO will encourage Federal action agencies to share Biological Assessments and draft Biological Opinions with the Department.
  - d. When transmitting draft Biological Opinions to action agencies, the AESO will encourage the action agency to share draft Biological Opinions with the Department.
  - e. Formal correspondence and final documents on Section 7 matters originated by the AESO will be provided to the Department.
  - f. If a specific Tribal nation has requested that the Department be involved, provisions c. through f. will apply.
2. Emergency Consultations
- a. The Parties will consult each other when evaluating potential rescue or salvage operations that would require significant resources, and will enlist the other Party's assistance when conducting such operations.
  - b. The AESO will provide the Department with copies of all final Emergency Consultation documents originating from AESO.
- E. This subsection addresses Section 8 of the ESA (cooperation with Mexico). Respective leads for this subsection are the Department's Nongame Branch Chief and the FWS's AESO Field Supervisor.
- 1. The Parties mutually agree to coordinate and cooperate in all work planned or conducted with Mexico, for any at-risk, candidate, proposed, or listed species of wildlife that is native to Arizona, and to provide each other with copies of any work or study proposals, information, and reports regarding such work.
  - 2. The Parties agree to coordinate their participation at the annual meeting of the Canada/Mexico/US Trilateral Committee for Wildlife Ecosystem Conservation and Management, including discussion of possible agenda items of mutual interest prior to the annual meeting.
- F. Section 9 of the ESA (cooperation on Federal and State law enforcement) is covered by other cooperative agreements.

- G. This subsection addresses Section 10 of the ESA.
1. Research and Recovery permits [10(a)(1)(A)]. The lead in this area for the Department is the Nongame Branch Chief and for FWS is the Assistant Regional Director - Ecological Services.
    - a. When issuing a collecting permit for listed species of wildlife, the Parties will include a notice indicating that an appropriate permit from the other Party is also required.
    - b. The Parties will furnish each other copies of all collecting permits issued, and all collecting permit reports submitted, for listed wildlife.
  2. Conservation planning (Habitat Conservation Plans, Safe Harbor Agreements and Candidate Conservation Agreements)
    - a. Respective leads in this area are the Department's Nongame Branch Chief and the FWS's AESO Field Supervisor for Candidate Conservation and Safe Harbor Agreements, and the Department's Habitat Branch Chief and the FWS's AESO Field Supervisor for Habitat Conservation Planning.
    - b. The Department agrees to assist the AESO and other entities in all Section 10 planning, including providing the AESO with any available information for use in this process.
    - c. The AESO agrees to recommend to all Section 10 planning proponents that they involve the Department in all such planning efforts.
  3. Experimental populations

Respective leads in this area are the Department's Nongame Branch Chief and the FWS's AESO Field Supervisor.

- a. The Department agrees to provide the AESO with any available information for use in preparing proposals and final rules for designating experimental populations of listed wildlife as requested.
- b. All rulemaking will follow the guidelines above under Section 4: Rulemaking.

**Section V. Terms of the MOU**

- A. The Parties agree to the following:
1. Liaisons for this MOU shall be the Department's Nongame and Habitat Branch Chiefs as noted herein, and the FWS's AESO Field Supervisor. The liaisons shall ensure staff meets no less than bi-annually to accomplish the coordination requirements of this MOU. Agendas will be jointly developed prior to the meetings; will be adjusted to reflect actual discussion topics; and will be annotated with significant decisions and action items. The document will be provided to meeting participants for distribution as appropriate.
  2. Implementation of specific actions under this MOU is contingent upon availability of funds and staff.
  3. Information exchange among the Parties shall be in full compliance with, and in consideration of, all State and Federal laws pertaining to public records.
  4. Either Party may conduct ESA related management actions or processes involving private lands in the absence of the other Party if requested by a land owner. However, the Parties will keep each other informed as to the progress and results unless specifically requested not to by the land owner, in which case information will only be shared to the extent required by law.
  5. The Department agrees to maintain a comprehensive database of information on candidate and at-risk species of wildlife and plants, and to provide this information to the AESO upon request. This information will be provided by the Department in digital (electronic) format within 30 days of a request from the AESO.
  6. Neither Party to this MOU shall be compelled by this MOU to take any action that is contrary to State or Federal law.
  7. This MOU is subject to all State and Federal laws relating to nondiscrimination. These include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352); and (b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683 and 1685-1686).
  8. The Parties agree to comply with Executive Order 2005-30, "Ensuring Compliance with Federal Immigration Laws by State Employers and Contractors," the provisions of which are hereby incorporated by reference.

9. No member of, or Delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this MOU, or to any benefits that may arise therefrom, but this provision shall not be construed to extend to this MOU if made with a corporation for its general benefit.
10. This MOU is effective as of the last signature date and expires five (5) years from that date. Unless terminated earlier by the Parties, this MOU shall be automatically renewed at expiration for an additional five (5) year term.
11. To carry out its intent, this MOU may be supplemented by subsequent agreements between the Parties to allow for specific funding authorities, and may be modified at any time by letter signed by the Parties.
12. Either Party may terminate this MOU upon thirty (30) days' written notice to the other Party.
13. In the event that any provision of this MOU or portion thereof is held invalid, illegal, or unenforceable, such provision or portion thereof shall be severed from this MOU and shall have no effect on the remaining provisions of this MOU, which shall remain in full force and effect.
14. The Commission may terminate this agreement for conflict of interest pursuant to A.R.S. 38-511.
15. Nothing in this MOU shall require the Parties to expend funds not appropriated for the purposes of this MOU.
16. That nothing in the MOU prevents either Party from participating in similar activities with other public or private agencies, organizations, or individuals.
17. All written notices concerning modifications to this MOU shall be delivered in person or sent by certified mail, return receipt requested, to the Parties as follows:

A. For the Commission:  
Eric Gardner  
Arizona Game and Fish Department  
5000 W Carefree Highway  
Phoenix, Arizona 85086

B. For Arizona Ecological Services Office  
Steve Spangle  
United States Department of the Interior  
U.S. Fish and Wildlife Service  
2321 West Royal Palm Road, Suite 103  
Phoenix, Arizona 85021

18. This MOU is non-binding and establishes no duty or obligation on any party to this MOU or any other MOU or similar agreement. This MOU is not a rule or regulation. This MOU is not a delegation of authority of either Party. This MOU 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 a Party or non-Party against any Party or against any employee, officer, agent, or representative of any Party to this MOU.
19. 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.
20. Nothing in this MOU shall make or be deemed to make any Party to this agreement the agent for or the partner of any other party.

B. Communication Protocol

1. The communication protocol to be used in the implementation of this MOU involves coordination and discussion at all levels, with initial informal discussion at staff-level that will be escalated to more formal inter-agency coordination when resources or funds are to be committed or there is a known conflict
2. All requests for formal peer review by a member of the Department, as per FWS Peer Review Policy, must be made to the Department's Director and not to the individual whose scientific input is being requested. The Department will only assign personnel to conduct a peer review if input would be scientifically independent of Department positions as per the intent of the FWS Peer Review Policy.
3. All documents should be transmitted electronically where practicable.
4. In instances where an ESA process is lead by another FWS regional or field office, the AESO will attempt to meet the terms and conditions of this MOU

to the extent practicable. The Department acknowledges that complete adherence to the terms and conditions of this MOU is outside of the control of the AESO.

5. The Parties will strive to meet all of the time frames identified in this MOU. If the Parties are unable to respond within the identified time frames, they will notify each other immediately. In the event of the Department's inability to comply with the timelines in this MOU, the AESO may then proceed in completing the task or action absent the Department's participation.
6. The inter-agency communication required under this MOU may take place at the appropriate staff level, but each agency is responsible for ensuring, under its own internal communication protocol, that their MOU Lead is informed of all substantive issues.

## **VI. Conflict Resolution**

The Parties agree:

- A. To work cooperatively in the management of threatened, endangered, and other special status species.
- B. To provide adequate consideration of the statutory authorities under which the Parties operate.
- C. To work cooperatively to identify and resolve issues at the lowest possible level. Assistant Field Supervisors and programmatic staff will work to resolve the issue in a timely manner. Upon determination that resolution cannot be reached, the issue will be elevated to the AESO Field Supervisor and the Nongame and Habitat Branch Chiefs accordingly, who will outline timelines for resolution.
- D. Upon determination by the AESO Field Supervisor and the Nongame and Habitat Branch Chiefs that resolution cannot be reached, the issue will be elevated to the Assistant Regional Director – Ecological Services and the Assistant Director of the WMD. The AESO Field Supervisor and the Nongame and Habitat Branch Chiefs shall attempt to resolve the conflict within 20 days, allowing 40 days for continued conflict resolution.
- E. Upon determination by the Assistant Regional Director – Ecological Services and the Assistant Director of the WMD that resolution cannot be reached, the issue will be elevated to the FWS Regional Director and the Department Director. The Assistant Regional Director – Ecological Services and the Assistant Director of the WMD shall

attempt to resolve the conflict within 20 days, allowing 20 days for continued conflict resolution.


F. The FWS Regional Director and the Department Director shall come to a decision on how to proceed within 20 days and, whether in agreement or not, shall provide direction to respective staff as required.

G. Nothing in this section shall be construed as a delegation of the legal authority of either Party.

### VII. Signatures

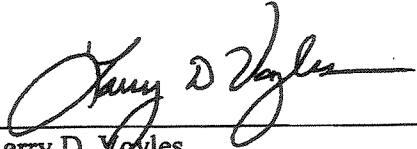
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date below:

U.S. Fish and Wildlife Service Region 2

  
\_\_\_\_\_  
Benjamin N. Tuggle  
Regional Director

September 4, 2008  
\_\_\_\_\_  
[Date]

ARIZONA GAME AND FISH COMMISSION

  
\_\_\_\_\_  
Larry D. Coyles  
Secretary to the Commission  
Director, Arizona Game and Fish Department

August 25, 2008  
\_\_\_\_\_  
[Date]