

COOPERATIVE AGREEMENT

Endangered/Threatened Species

This Cooperative Agreement is entered into pursuant to Section 6(c), (16 U.S.C.; 1535(c)), of the Endangered Species Act of 1973 as amended, 16 U.S.C.; 1531-43 (Supp. IV 1974) hereinafter referred to as "the Act"), and Chapter 22, K.S.A. 32-501-510, State of Kansas, between the U.S. Fish and Wildlife Service, U.S. Department of the Interior, and the Kansas Forestry, Fish and Game Commission. Hereinafter, the parties shall be referred to as USFWS, and FF&GC respectively.

WHEREAS, the Congress of the United States has found that there are resident species of fish or wildlife which are in danger of extinction and that these species of fish and wildlife are of aesthetic, ecological, educational, scientific, economic and other value to the Nation and its people;

WHEREAS, the purposes of the Act are to provide a means whereby the ecosystems upon which Endangered and Threatened fish or wildlife depend may be conserved, to provide a program for the conservation of such species, and to take such steps as may be appropriate to achieve the purposes of the various treaties and conventions related to the conservation of fish or wildlife;

WHEREAS, the Congress of the United States has declared that encouraging the States and other interested parties, through Federal financial

assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in its fish or wildlife;

WHEREAS, the Secretary of the Interior has delegated his responsibilities under the Act to the Director, USFWS;

WHEREAS, the Director, USFWS, desires to enter into this Cooperative Agreement for the purpose of assisting in the implementation of the Endangered and Threatened fish or wildlife conservation program of the State of Kansas for those species under his jurisdiction pursuant to Reorganization Plan Numbered 4 of 1970;

WHEREAS, the State of Kansas, acting through the FF&GC wishes to administer its program for the conservation of Endangered and Threatened fish or wildlife in harmony with the terms and spirit of the Act;

WHEREAS, the parties agree that programs of the State of Kansas are designed to assist resident endangered and Threatened fish or wildlife and that it is the mutual desire of the FF&GC and the USFWS to work in harmony for the common purpose of planning, developing and conducting programs to protect, manage and enhance populations of all resident Endangered and Threatened fish or wildlife within this State;

WHEREAS, the Director, USFWS, has the statutory and administrative responsibility to establish programs for the conservation of Endangered and Threatened fish or wildlife which are under his jurisdiction pursuant to Reorganization Plan Numbered 4 of 1970; to provide periodic review of the State program at no greater than annual intervals; to provide funding to that program as such funding is available and in accordance with the terms of the Act, to provide coordination among the programs of the various States; and to exchange with the FF&GC such biological data or other information which may result in the enhancement of the opportunities for the continued survival of Endangered and Threatened fish or wildlife;

WHEREAS, the FF&GC has a responsibility to conserve Endangered and Threatened fish or wildlife which are resident in the State of Kansas;

WHEREAS, the FF&GC (a) has the authority to conserve resident fish or wildlife determined by the State agency or the Secretary to be Endangered or Threatened; (b) has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident fish or wildlife in the State which are deemed by the Secretary to be Endangered or Threatened and has furnished a copy of such a program together with all pertinent details, information and data requested by the Secretary; (c) has the authority to conduct investigations to determine the status and requirements for survival of resident fish or wildlife; (d) has the authority to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident Endangered or Threatened fish or wildlife; and (e) has provided

for public participation in designating resident fish or wildlife as Endangered and Threatened.

NOW, THEREFORE, the parties agree as follows:

1. Cooperative Program

- (a) The FF&GC will carry out the activities identified in its program for the benefit of the Endangered and Threatened fish or wildlife which are resident in the State of Kansas.
- (b) The Director, USFWS, may agree with the State to provide financial assistance for the implementation of an acceptable project for the conservation of Endangered and Threatened fish or wildlife. Such financial assistance will require the submission of an Application for Federal Assistance and the negotiation of a Project Agreement. These will comply with the Secretary's Rules and Regulations (Section 6(c)(1) of the Act), and the USFWS Federal Aid Manual.
- (c) As a part of this cooperative program, the law enforcement authorities of USFWS and FF&GC shall cooperate in the detection, apprehension, and prosecution of violators of the Act or State law intended to conserve Endangered and Threatened fish or wildlife.

- (d) As additional species of resident fish or wildlife in the State of Kansas are listed as Endangered or Threatened by the State or USFWS, the parties agree to cooperate in the development of programs and projects for the benefit of such species.
- (e) It is understood that any Federal funding pursuant to Section 6(d) of the Act is contingent on the continued implementation of an adequate and active program for the conservation of Federally-listed Endangered and Threatened fish or wildlife which are resident in the State of Kansas defined under Section 6(c)(1) of the Act. If the program for the conservation of such fish or wildlife is determined by the Director, USFWS, to be inadequate or inactive, this Agreement and funding shall be terminated in accordance with Sections 5 and 7 of this Agreement.
- (f) As part of the consultation process, provided for by Section 7 of the Act, for the determination of critical habitat for Federally-listed Endangered or Threatened fish or wildlife, the parties agree to exchange biological and other data as necessary to facilitate such determination by the Director, USFWS.

2. Permits

(a) General Rule

The FF&GC will not engage in, or issue a permit authorizing, the taking of resident Federally-listed Endangered or Threatened fish or wildlife as defined under Section 6(c)(1) of the Act without prior issuance of a permit to the applicant by the Director, USFWS, except as authorized in Subsection 2(b), (c), or (d) of this Agreement, or pursuant to a special rule in 50 CFR; 17.40-48.

(b) Endangered Species

Any employee or agent of the FF&GC who is designated by that agency for such purposes, may, when acting in the course of his official duties, take any resident Federally-listed Endangered fish or wildlife for conservation purposes that are consistent with this Cooperative Agreement or any Project Agreement attached thereto, provided that such taking will not result in:

- (1) the avoidable or intentional death of the specimen;
- (2) the removal of the specimen from the State of Kansas;

- (3) the introduction of the specimen or any of its progeny into an area beyond the historical range of the species; or
- (4) the holding of the specimen in captivity for a period of more than 30 consecutive days.

(c) Threatened Species

Any employee or agent of the FF&GC who is designated by that agency for such purposes, may, when acting in the course of his official duties, take any resident Federally-listed Threatened fish or wildlife for conservation purposes that are consistent with the purposes of this Act, or this Cooperative Agreement or any Project Agreement attached thereto. Provided, that the authority conveyed to the FF&GC by this Subsection may, at any time, be temporarily suspended for a particular project or conservation program by written notification from the Regional Director, USFWS, upon his receipt of substantial evidence demonstrating the use of this authority for purposes inconsistent with the purposes of this Act. Upon notification of the temporary suspension and the reasons therefore, the FF&GC may request from the Director, USFWS, an opportunity to

demonstrate compliance with the purposes of the Act. The Director shall promptly consider the evidence so submitted by the FF&GC and either reaffirm the conclusion of the Regional Director, USFWS, and revoke the authority temporarily suspended pursuant to this Subsection, or reverse the conclusion of the Regional Director, USFWS, and reinstate the authority temporarily suspended.

(d) Emergency Provisions

Any employee or agent of the FF&GC who is designated by that agency for such purposes, may, when acting in the course of his official duties, take Federally-listed Endangered and Threatened fish or wildlife without a permit if such action is necessary to:

- (1) aid a sick, injured or orphaned specimen; or
- (2) dispose of a dead specimen; or
- (3) salvage a dead specimen which may be useful for scientific study, or
- (4) remove specimens which constitute a demonstrable, but non-immediate threat to human safety, provided

that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live capturing and releasing the specimen unharmed, in a remote area; or

(5) defend his own life or the lives of others.

Any taking pursuant to this Subsection 2(d) must be reported in writing within 5 days to the Regional Director, USFWS, for transmission to the Division of Law Enforcement, USFWS, in Washington, D.C. The specimen may only be retained, disposed of or salvaged in accordance with the directions from the USFWS.

3. Records

The FF&GC agrees to maintain records of: (1) Federally-funded projects for the conservation of Endangered and Threatened fish or wildlife in accordance with Chapters 4 and 5 of the USFWS Federal Aid Manual; and (2) the number of specimens of such species of Federally-listed Endangered and Threatened fish or wildlife taken by State employees or agents pursuant to 50 CFR; 17.21(c)(5) and; 17.31(b) as amended, the conservation

purposes for which they were taken, and any mortalities or permanently disabling injuries resulting from the taking.

4. Notification

The FF&GC agrees to inform the USFWS of any change in circumstances which could cause the program to be out of conformance with the requirements of Section 6(c) of the Act. Included without limitation are changes in the FF&GC's relevant constitutional, statutory or regulatory authority. The FF&GC shall promptly furnish the USFWS with an assessment of the effect of such a change on the State's ability to remain in compliance with the requirements of Section 6(c) of the Act. The Director, USFWS, agrees to notify the State of all regulations and rulemakings, in accordance with Section 4 of the Act which might affect the FF&GC's program.

5. Effective Date and Renewal

(a) This Agreement shall become effective when signed by the Director, USFWS, and the Director, FF&GC, and may be renewed in the following manner: Not later than June 30th of each year, the FF&GC shall submit to the USFWS, the following items: (1) additions and/or deletions to the list of Federal and State-listed Endangered and

Threatened fish or wildlife which are resident in the State; (2) a memorandum of law analyzing any changes in the FF&GC's statutory authority for Endangered fish or wildlife which were made since the date of the previous program submission. This memorandum shall also analyze the application of State law to any resident fish or wildlife which have been added to the Federal Endangered and Threatened species list since the date of the previous program submission; (3) a list of any substantial changes in the Endangered and Threatened fish or wildlife conservation programs since the date of the previous program submission; (4) a detailed description of the number of specimens of each species of Federally-listed Endangered and Threatened fish or wildlife taken by State employees or agents pursuant to 50 CFR; 17.21(c) and 17.31(b) as amended, the conservation purposes for which they were taken, and any mortalities or permanently disabling injuries resulting from the taking; and (5) copies of such reports the FF&GC has prepared since the previous program submission which discussed its conservation program accomplishments for resident Federally-listed Endangered and Threatened fish or wildlife.

- (b) USFWS will, on or before October 1st of each year, notify the FF&GC in writing either that the Cooperative Agreement is renewed effective October 1st of that year, or that

the State agency's Endangered and Threatened fish or wildlife conservation program or authorities are not in compliance with the criteria of Section 6(c) of the Act, and unless appropriate changes are made by June 30th of the following year, this Agreement shall be terminated.

- (c) For purposes of this Section, the phrase "previous program submission" means either the program submission of (1) the original Cooperative Agreement, or (2) the most recent renewal application for the Cooperative Agreement, whichever is later in time.

6. Amendment

This Agreement may be amended at any time with the concurrence of the signatory parties.

7. Termination

This Agreement may be terminated: (a) by mutual agreement; (b) by the FF&GC upon 60 days written notice to the USFWS; or (c) notwithstanding the renewal provisions in Section 5(b) of this Cooperative Agreement, by the USFWS upon 60 days written notice to the signatory party for the State of Kansas from the Regional Director, USFWS, stating that the State's Endangered and Threatened fish or wildlife conservation program is no

longer in compliance with the criteria of Section 6(c) of the Act or that the State has violated a provision of this Agreement. The FF&GC may submit a written request for review to the Director, USFWS, within 30 days of receipt of the termination notice. The Director, USFWS, will consider all evidence submitted to the FF&GC in its request for review and either reaffirm the conclusion of the Regional Director and terminate this Agreement at the end of the 60-day notification period, or reverse the conclusion of the Regional Director and revoke the notice of termination. All Federal funds which have been obligated to, but not expended by the FF&GC as of the date of the termination notice shall be retained by the USFWS for reallocation pursuant to Section 6(d) of the Act, unless:

(1) those funds are specifically approved by the Regional Director for expenditure before the date of actual termination; or (2) the notice of termination is revoked by the Director, USFWS.

Date:

9/14/79

By:

James M. Conley
KANSAS FORESTRY, FISH AND GAME COMMISSION

Date:

SEP 24 1979

By:

James P. Gutman
ACTING REGIONAL DIRECTOR, REGION 6
U.S. FISH AND WILDLIFE SERVICE
U.S. DEPARTMENT OF THE INTERIOR