

MEMORANDUM OF AGREEMENT

Between

SOUTHWEST TRIBAL FISHERIES COMMISSION

P.O. Box 190

Mescalero, New Mexico 88340-0190

and

U. S. FISH AND WILDLIFE SERVICE, Region 2

500 Gold Avenue SW

P.O. Box 1306

Albuquerque, New Mexico 87103-1306

I. INTRODUCTION

This Memorandum of Agreement (MOA) is entered into between the Southwest Tribal Fisheries Commission, hereafter referred to as the “SWTFC”; and the U.S. Fish and Wildlife Service, hereafter referred to as the “Service” for the purpose of supporting native fish conservation and recreational fisheries management where mutually held goals of aquatic resource management provide opportunities.

II. BACKGROUND

The mission of the SWTFC is to advance Tribal self-determination and Tribal stewardship of fisheries resources through the professional development and support of Tribal resource management programs, such as restoring native fish onto Tribal lands, and through supporting sustainable economic development on Southwestern Tribal lands by enhancing recreational fishing and public recreation opportunities. The primary goals of the SWTFC are to support and expand southwest Tribal recreational fishing programs and aquatic resources for enhanced fishing and outdoor recreation opportunities and protection of culturally sensitive species and environments (e.g., native species, unique or fragile environment) on the homelands of Indian people. Specific objectives to meet these goals are to:

- a. Secure and enhance the operational capabilities and production of existing fish hatchery facilities supporting Tribal fisheries programs.
- b. Identify and develop additional fish hatcheries or rearing facilities that can supplement existing regional recreational and native fish production.
- c. Facilitate, as appropriate, among interested Tribes, the Service, the Bureau of Indian Affairs, (BIA) and other regional partners, the development of Tribal fish

hatchery co-management and/or transition-management programs aimed at securing Tribal control of Tribal fish hatchery facilities.

- d. Develop meaningful, well-coordinated partnerships with Tribal, state, federal, and local interests that promote the advancement of the SWTFC mission, Tribal sovereignty, and the protection of culturally sensitive natural resources.

The mission of the Service is working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. In furtherance of that overall mission, the Southwest Region's Fisheries and Aquatic Resources Conservation Program is committed to working with our partners to:

- a. Protect the health of aquatic habitat.
- b. Recovery and restore fish and other aquatic resources.
- c. Provide opportunities to enjoy the many benefits of healthy aquatic resources.

Many responsibilities for managing and conserving fish and other aquatic species and their diverse habitats are shared. Success is contingent upon the combined knowledge, resources and commitment of agencies and peoples working together. The Service has technical expertise in fish and wildlife that establishes it as a significant partner for the SWTFC. The Service also has a trust responsibility to assist Native American Tribes and their agents as articulated in Secretary of the Interior's Order No. 3206, Native American Indian Policy, June 28, 1994, Department of Interior Manual (512 DM 2), Presidential Memorandum of April 29, 1994, Executive Order No. 13175, and Secretarial Order No. 3175.

III. PURPOSE

The purpose of this MOA is to provide an efficient framework for satisfaction of goals and objectives stated herein between the Service and the SWTFC working on behalf of its member Tribes.

IV. AUTHORITY

The Service enters into this MOA under the authority of the Intergovernmental Cooperation Act, 31 U.S.C. 6505, U.S. Fish and Wildlife Coordination Act, 16 USC 661 to 667, and other applicable provisions and policies.

The SWTFC enters into this MOA under SWTFC's By-Laws, Article VI. Corporate Authority and Powers, Section 6.2 Powers of Board of Directors, subsection(s) A, B, C, G, and H.

V. STATEMENT OF MUTUAL BENEFIT

Mutual objectives of SWTFC and the Service include, but are not limited to, working in cooperation to establish and maintain a long-term partnership, enhance and sustain the Tribal Fishery Programs, provide technical assistance (*e.g., development of fishery management plans, stream/lake surveys, fish stocking, etc.*) reaffirmation and fulfillment of Federal Trust Responsibilities to Tribes, recognition of Tribal sovereignty, restoration and conservation of culturally sensitive and unique natural resources such as native fishes and ecosystems.

The Service has been charged by the Congress of the United States to conserve, protect, and promote the public enjoyment of species of fish and wildlife that are of aesthetic, ecological, educational, scientific, economic, recreational, and other value. The Service has the capability and expertise to assist the SWTFC; and the SWTFC stands ready to support the Service in achieving its mission. Therefore, the Service and the SWTFC deem it mutually advantageous to cooperate in this undertaking.

VI. RESPONSIBILITIES OF THE PARTIES

A. The SWTFC shall:

- (i) Support the activities of the Service relative to fisheries management assistance needs of the SWTFC member Tribes, and subject to the concurrence of said Tribes.
- (ii) Coordinate on activities with the Service in accordance with sound biological principles and fisheries management plans.
- (iii) Provide access and support at SWTFC operated facilities for the Service's egg/fish delivery, fish health monitoring and testing, and other related activities.
- (iv) At the request of the SWTFC member tribes, coordinate with the Service in the conservation and restoration of native fishes within their current or historical ranges and culturally sensitive ecosystems on Tribal lands.
- (v) Offer hatchery space as temporary refugia for native fishes in the event of a catastrophic event (*e.g., wildfire or drought*).
- (vi) Respect Tribal confidentiality of information and data sharing. Information pertaining to stocking records or management activities for a specific Tribe will not be shared without the express or written consent of the Tribe.
- (vii) Adhere to all fish health, transport, and distribution regulations and policies of the Service.

B. The Service shall:

- (i) Provide trout eggs for hatching and rearing for the purpose of distribution to the Tribes in the Southwest including but not limited to SWTFC member tribes to enhance their Tribal fisheries programs.
- (ii) Provide an annual hatchery inspection for disease certification and importation requirements; upon request by the SWTFC and where feasible provide on-site fish health assistance in the event of disease\pathogen\viral outbreaks for hatcheries and fish-rearing facilities operated by SWTFC and/or member Tribes.
- (iii) Provide information and technical assistance with surveys of fishery resources (e.g., lakes and streams), conservation and restoration projects, data analysis and reporting, development or revisions of fishery management plans, and stocking recommendations to the SWTFC for the purpose of promoting Tribal fisheries management goals, SWTFC goals and objectives, and the Service's goals and objectives outlined in Region 2 Strategic Plan.
- (iv) Assistance with issues pertaining to the Endangered Species Act (e.g., Intra/Inter-Service section 7 consultation) or actions which may impact or harm threatened or endangered species will be coordinated and consulted with the Service's New Mexico Ecological Services Field Office.
- (v) Contingent upon Service's criteria, availability and prior existing agreements, offer surplus fish produced at Service hatchery facilities to hatchery facilities operated by SWTFC for the purpose of re-distribution to Tribes, regardless of SWTFC membership. Upon mutual agreement, the SWTFC may rear fish from a Service hatchery designated for delivery to a Tribe, to ensure suitable water quality conditions, or size criteria requested by a Tribe.
- (vi) When feasible, provide for transport of fish stocks to SWTFC operated facilities.
- (vii) When feasible, provide training and educational opportunities to SWTFC staff and trainees.
- (viii) When requested by SWTFC, and where feasible, provide assistance (i.e., job detail), at SWTFC operated facilities..

- C. It is further agreed and understood that:
- (i) The SWTFC and the Service will meet periodically to discuss progress and review new means whereby each party can fulfill its respective responsibilities to the Tribes of the Southwest, either singly or in concert.
 - (ii) Nothing in this agreement shall restrict, influence, or amend the commitment of the Service to Tribes, regardless of membership in or relationship to SWTFC.
 - (iii) The Service affirms its continued commitment, adhering to Tribal protocols (i.e., data sharing), separately or in concert, respecting Tribal confidentiality to ensure that all Tribal proprietary, commercial, and other confidential information is protected.

VII. AGREEMENT TERM

This MOA is effective upon signature by all parties and shall remain in effect for a period not to exceed five (5) years and may be subject to revisions or amendments as mutually agreed to by the SWTFC and the Service.

VIII. SPECIAL PROVISIONS

- A. This MOA is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between parties of this MOA will be handled in accordance with applicable laws, regulations, and procedures.
- B. This MOA shall be reviewed annually within sixty (60) days of the anniversary of signature date by the Service and SWTFC representatives to recommend revisions, modifications and adjustments to the agreement.
- C. Each party hereto shall designate a representative from its organization as a single point of contact for all communications between the parties regarding authorization, initiation and completion of tasks undertaken under the MOA. The parties may, from time to time, change their contact person. The contact persons shall work cooperatively to further the purposes of this MOA.

1. U.S. Fish and Wildlife Service:

Contact Person: Michael Oetker, Assistant Regional Director
Fisheries and Aquatic Resources Conservation

Address: P.O. Box 1306
Albuquerque, NM 87103
Physical Address: 500 Gold Ave. SW

Phone: 505-248-6620
Fax: 505-248-6865

2. Southwest Tribal Fisheries Commission:

Contact Person: Michael A. Montoya, Executive Director
Address: P.O. Box 190
Mescalero, NM 88340
Phone: 505-464-8768
Fax: 505-464-8768

- D. Amendments or renewals may be proposed at any time during the period of performance by either party and shall become effective upon signing by both parties. No change to this agreement shall be binding upon the Service or SWTFC unless or until reduce to writing or signed by both parties.
- E. This MOA may be terminated by either party for good cause shown upon ninety (90) days written notice delivered to the other party. By such termination notice, neither party shall negate nor excuse obligations already incurred or required to be performed prior to the effective date of termination.


IN WITNESS WHEREOF, the parties hereto have caused this MOA to be executed as of the date of last signature below.

FOR SOUTHWEST TRIBAL FISHERIES COMMISSION


Arthur "Butch" Blazer, Chairman

Date: November 12, 2008

FOR THE U. S. FISH AND WILDLIFE SERVICE, Region 2


Dr. Benjamin N. Tuggle,
Regional Director, Region 2

Date: November 12, 2008