

United States Department of Agriculture



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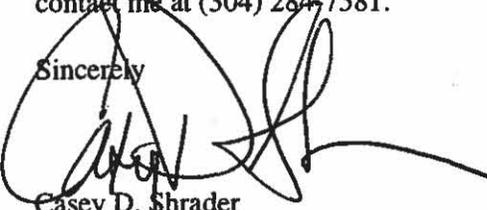
September 27, 2010

To: Walt Kordek, Assistant Chief, West Virginia Division of Natural Resources, Elkins Operation Center
Deb Carter, Supervisor, U.S. Fish and Wildlife Service, West Virginia Field Office

Enclosed is your executed copy of the Memorandum of Agreement between the West Virginia Division of Natural Resources, the U.S. Fish and Wildlife Service and the USDA Natural Resources Conservation Service in West Virginia. This document is a result of our collaborative efforts initiated in September of 2009. It contains the provisions and operation and maintenance of the web-based interagency Coordination Tool as we have agreed. As you are aware, this web-based geospatial computer application will allow NRCS field staff to access federal-listed species information based on location and practice input.

I would like to thank you all for your assistance in the continuing development of the programmatic agreement and your effort to aid in the recovery of listed species. I look forward to working with you in the future to complete this process. As always, if you have questions, concerns or need additional details please contact me at (304) 284-7581.

Sincerely



Casey D. Shrader
NRCS WV State Biologist

cc: Pat Bowen, NRCS State Resource Conservationist, Morgantown, WV

MEMORANDUM OF AGREEMENT

Between

**West Virginia Division of Natural Resources
Wildlife Resources Section
Wildlife Diversity Program
and**

**United States Department of the Interior
Fish and Wildlife Service
West Virginia Field Office
and the**

**United States Department of Agriculture
Natural Resources Conservation Service**

This memorandum is relative to an Agreement between the West Virginia Division of Natural Resources Wildlife Resources Section Wildlife Diversity Program (DNR), the United States Department of the Interior Fish and Wildlife Service West Virginia Field Office (USFWS) and the United States Department of Agriculture Natural Resources Conservation Service (NRCS) for the provision of data, operation and maintenance of the web-based Interagency Coordination Tool (ICT) for the evaluation of potential impacts and protection of species listed under the Endangered Species Act and additional natural heritage resources.

1. The DNR SHALL:

- A.** Provide to NRCS, in an agreed-upon internet-based format mutually agreed to in a separate document, a usable, statewide NRCS field office ICT to assess and analyze natural heritage resources. Analyzed resources shall include at a minimum impacts to Federally-listed endangered, threatened, and candidate species, and habitat. *(Unless otherwise indicated, the term "habitat" is utilized in this document to include all habitats that are officially designated as "critical" under the Endangered Species Act (ESA), the Bald and Golden Eagle Protection Act (BGEPA) as well as other habitat that is occupied by or potentially suitable to support Federally-listed and candidate species and WV species of conservation concern.)*
- B.** Work with USFWS to develop the ICT to provide mutually acceptable practical written guidance and documentation for implementation of NRCS conservation practices for the avoidance, minimization, or mitigation of negative impacts within agricultural settings to Federally-listed and candidate species including known eagle nesting sites as outlined in an NRCS conservation practice-species matrix. Similar guidance may be provided for West

Virginia state species of conservation concern that, when feasible, shall be implemented to further benefit and to avoid, minimize, or mitigate negative impacts to those species.

- C. Develop the ICT to ensure that the final design in no way precludes eventual inclusion of an additional reporting function similar to that described in item 1. A. for addressing the impacts to cultural resources, waters of the State, or other resources as may be appropriate to include at a later time. Modification of said tool to incorporate these NRCS-provided data may be included under a revision to this Agreement or under separate agreement(s) with this and/or other agencies.
- D. Accept the results of consultation under the ESA section 7 and BGEPA for conservation technical assistance developed concurrently between NRCS and the USFWS. This document will include the conservation practice matrix identifying potential effects, avoidance measures, required conditions, benefits, etc., to avoid or minimize negative impacts and identify benefits to Federally-listed species and their habitats including known eagle nesting sites. This information will be utilized as the basis of the ICT and will be developed concurrently.
- E. Make the ICT available in a mutually-agreed-upon format to all agencies included in this Agreement and outlined in detail in separate technical specifications.
- F. Allow NRCS and/or USFWS to query the ICT at least annually to provide various reports concerning species benefits, impacts, number of queries and other mutually-agreed-upon information with respect to implementation of all conservation practice impacts.
- G. Assist NRCS with an agreed-upon amount of initial training upon completion of the ICT, and, as resources allow, interagency training for additional staff using the ICT to ensure that NRCS staff recognize and understand the various features and attributes that are identified as part of the data and understand and follow appropriate procedures for using the ICT.
- H. Upon submission of a query from NRCS through the completed ICT, provide a printable response suitable for use as compliance documentation under the ESA section 7. These responses will generally comprise the following:
 - (1) A list of Federally-listed endangered and threatened species, candidate species, and their habitats (including known eagle nesting sites) that are likely to be impacted by the installation of conservation practices if any, and

(2) Strategies to avoid or minimize negative impacts based upon consultation with the USFWS if Federally-listed species, habitats or known eagle nesting sites may be affected by implementation of the planned conservation practices, and

(3) The document entitled *West Virginia NRCS Conservation Practice Effects on Threatened and Endangered Species for Planning And Program Implementation*.

- I. Provide NRCS in mutually-agreed-upon methods, DNR technical staff assistance to appropriately address impacts and resource conditions as they apply to installation and implementation of NRCS conservation practices.
- J. Provide field assistance in the confirmation of species covered under this MOA and other natural heritage resources in locations that require on-site analysis.
- K. Through mutually agreeable terms, ensure in the development of the ICT that inherent information transmitted and generated through the ICT shall comply with all Privacy Act and NRCS policies including the Freedom of Information Act (FOIA) and be developed in accordance with data sensitivity and protection criteria in place. The ICT will function to ensure that any NRCS client-sensitive information is unavailable.
- L. Maintain the ICT and associated database, i.e., continue to collect and input into the Natural Heritage Database, information on the distribution, biology, global and state rarity ranks, management needs, and protection status of natural heritage resources as applicable.
- M. Maintain the daily operation and physical housing, maintenance and daily upkeep of the ICT within the DNR operations network.
- N. Not release client-specific data entered into ICT by NRCS to any parties other than NRCS or through mutually-acceptable terms or a separate data sharing agreement.

2. NRCS SHALL:

- A. Concurrently develop with, and provide to DNR, a completed conservation practice-species matrix resulting from consultation with USFWS that will include a conservation practice-species matrix identifying potential affects, avoidance measures, required conditions, benefits, etc. that avoid or minimize impacts and identify benefits to Federally-listed species and their habitats. This information will be utilized as the basis of the ICT.

- B.** Utilize the ICT only for planning and documenting compliance with NRCS policy, ESA, BGEPA and some components of the National Environmental Policy Act (NEPA) for activities in which NRCS staff is providing individual Conservation Technical Assistance (CTA) (i.e., on-farm planning) usually anticipated for funding under various Farm Bill programs. Projects that are larger in scope (project activities) shall not utilize this methodology and shall not fall under this Agreement. Projects larger in scope will continue to follow NRCS policy and procedures as stated in GM Title 190, Part 410 - Compliance with NEPA and 190-VI-National Environmental Compliance Handbook (NECH).
- C.** Ensure that all NRCS client information remains private. This method will be developed and agreed upon through mutually-acceptable terms. Examples of mutually-agreed transferable information may include, but are not limited to, GPS coordinates, conservation practice codes, quantities and extents of conservation practices.
- D.** Understand that no location, population or other natural heritage data deemed as “sensitive” by the DNR will be released to NRCS through the ICT.
- E.** Understand that responses provided by the ICT indicating the absence of habitat or species may indicate that the area has not been surveyed or unknown data exists, rather than confirmation that the area lacks natural heritage resources; and further, that on rare occasion, additional surveys may be required before proceeding with project implementation. NRCS shall proceed with project implementation understanding that upon discovery of protected resources or modification to original designs, re-evaluation or further coordination may be required.
- F.** Provide either agency under this Agreement via mutually-agreed-upon methods, appropriate NRCS technical staff assistance or resources to appropriately address impacts and resource conditions as they apply to installation and implementation of NRCS conservation practices.
- G.** Assist DNR with an agreed-upon amount of initial training sessions upon completion of the ICT ensuring that NRCS personnel understand and follow appropriate procedures for using the ICT. In addition, NRCS shall assist DNR Wildlife Resources Section (WRS) staff to ensure that they recognize and understand the conservation practices and effects applied within the agricultural landscape.

- H. , Cooperate with DNR to identify and implement conservation and management projects and programs of mutual interest and benefit when identified, and with client concurrence; and identify and implement conservation and management projects concerning species of concern of mutual interest and benefits as they arise.
- I. Agree to notify USFWS and DNR in a timely manner regarding updates and/or modification and revisions to national and West Virginia conservation practice standards. Any resulting changes to effects or impacts to natural heritage resources shall be incorporated as appropriate and incorporated into the ICT in a mutually-acceptable timeframe.
- J. Provide DNR any new information on rare species, sensitive or exemplary natural communities, Federally-listed endangered and threatened species, candidate species, and other significant natural heritage resource occurrences to be incorporated into the ICT as applicable. Also, upon discovery of imminent impacts to these resources NRCS shall follow existing agency policy to obtain client permission to consult with the appropriate agency prior to project implementation.
- K. Ensure that NRCS employees shall have appropriate communication links that allow and facilitate access to the World-Wide Web (Internet) that links to the data base supporting the ICT.

3. USFWS SHALL:

- A. Collaboratively develop with NRCS and complete an ESA section 7 programmatic consultation on the NRCS conservation practices that will include a conservation practice-species matrix identifying potential affects, avoidance measures, required conditions, benefits, etc. to avoid or minimize negative impacts and identify benefits to Federally-listed species, candidate species, their habitats and known bald and golden eagle nesting sites. This information will be utilized as the basis of the ICT.
- B. Work closely with the DNR to outline and identify areas of known or potential habitat and populations of Federally-listed and candidate species in the State of West Virginia for use within the ICT (i.e., GIS-layered polygons).
- C. Agree to the results provided by the programmatic consultation and the ICT in that the conditions set forth and followed by NRCS shall fully comply with section 7 of the ESA and the BGEPA.

- D. Continually update and monitor the statuses of Federally-listed, candidate species, and known bald and golden eagle nesting locations; and at least annually provide to DNR for incorporation into the ICT any revised species lists and/or areas of habitat as conditions arise.
- E. In a timely fashion, provide DNR and NRCS, in mutually-agreed-upon methods, appropriate technical staff assistance or resources to appropriately address impacts and resource conditions as they apply to installation and implementation of NRCS conservation practices that may not have been analyzed previously.
- F. Periodically provide training to agency field staffs with respect to Federally-listed, and candidate species or their habitats, and known bald and golden eagle nesting sites or other appropriate information as required.

4. ALL PARTIES SHALL AGREE:

- A. To the formation of an ICT committee that meets at least annually to review items outlined in this agreement such as NRCS conservation practice standards, the adequacy of current determinations, benefits and the effect on habitats and Federally-listed and candidate species and other items that may arise to update and improve the ICT. As is practical and useful, representatives will meet annually to discuss the use of the ICT, any revisions or improvements needed and other productive ways of cooperating for the furtherance of mutual interests.
- B. That staff of all agencies directly involved in this Agreement will benefit from improved understanding of each agency's mission and the activities performed by staff at the field level.
- C. To work collaboratively toward implementation of cooperative measures to preserve, protect and/or restore the natural resources of mutual benefit. All agencies shall identify opportunities to implement actions to achieve shared priorities. Each agency shall coordinate to ensure each party's conservation programs are complementary and are not inadvertently in conflict.
- D. That any information transmitted through the final ICT remain anonymous and innocuous, without the ability for any party to inadvertently release sensitive information regulated by agency authorities, policies, state and Federal laws.

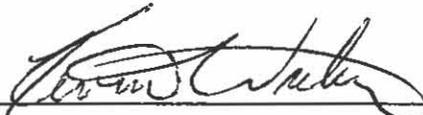
- E.** That the use of any data provided through this Agreement, whether in printed, graphical, or digital format shall be governed by mutually-agreed-upon conditions; and that ICT products will not be distributed without mutual concurrence.
- F.** As appropriate, to coordinate publicity and education materials as otherwise brought about by this project, publicly acknowledging the contribution each agency is making to the conservation of biological diversity and the recovery of Federally-listed species.
- G.** By signing this Agreement, it is mutually assured that the program or activities provided for under this Agreement shall be conducted in compliance with all applicable Federal civil rights laws, rules, regulations, and policies.
- H.** Nothing in this Agreement shall be construed as limiting or affecting in anyway the delegated authority of DNR, USFWS or NRCS.
- I.** This Agreement may be modified or amended upon request by any party and the concurrence of the other parties. No alteration, amendment, or modification in the provisions of this Agreement shall be effective unless it is reduced to writing, signed by all parties, and attached hereto. Any agency may withdraw from this Agreement after providing one month's written notice of intent to withdraw. This Agreement becomes effective when signed by all parties and shall remain in effect for a term of up to one (1) year, unless otherwise modified or terminated.
- J.** Nothing in this MOA shall obligate either party to expend or transfer funds. Specific projects or activities that involve the transfer of funds, services, or property among Parties and offices of the Parties will require the execution of separate agreements, and be contingent upon the availability of appropriated funds.

5. TECHNICAL CONTACTS

The following shall serve as technical liaisons for the development, management and maintenance of the ICT:

NRCS:	
<p>Casey Shrader State Biologist 1550 Earl L. Core Road Morgantown, WV 26505 (304) 284-7581 (phone) (304) 284-4839 (fax) Casey.Shrader@wv.usda.gov</p>	<p>Ron Wigal Environmental Specialist 1550 Earl L. Core Road Morgantown, WV 26505 Morgantown, WV 2650 (304) 284-7566 (phone) (304) 284-4839 (fax) Ron.Wigal@wv.usda.gov</p>
DNR WRS:	
<p>Walter S. Kordek Assistant Chief Wildlife Div. & Tech. Support Units WV Division of Natural Resources, Wildlife Resources Section PO Box 67 Elkins, WV 26241 (304) 637-0245 (phone) (304) 637-0250 (fax) waltkordek@wvdnr.gov</p>	<p>Michael Dougherty GIS Programmer Analyst WV Division of Natural Resources, Wildlife Resources Section PO Box 67 Elkins, WV 26241 (304) 637-0245 (phone) (304) 637-0250 (fax) michaeldougherty@wvdnr.gov</p>
USFWS:	
<p>Barbara Douglas Endangered Species Biologist West Virginia Field Office U.S. Fish and Wildlife Service 694 Beverly Pike Elkins, West Virginia 26241 (304) 636-6586 (phone) (304) 636-7824 (fax) Barbara_Douglas@fws.gov</p>	<p>John E. Schmidt State Coordinator Partners for Fish And Wildlife West Virginia Field Office U.S. Fish and Wildlife Service 694 Beverly Pike Elkins, West Virginia 26241 304) 636-6586 (phone) (304) 636-7824 (fax) John_Schmidt@fws.gov</p>

**UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE**

BY:  DATE 9/27/2010
Kevin Wickey
NRCS State Conservationist

WEST VIRGINIA DIVISION OF NATURAL RESOURCES

BY: Frank Jezioro DATE 9/8/10
Frank Jezioro
Director, WVDNR

UNITED STATES DEPARTMENT OF INTERIOR
FISH AND WILDLIFE SERVICE

BY: Deborah Carter DATE August 24, 2010

Deborah Carter
USFWS West Virginia Field Office Supervisor