

**COOPERATIVE AGREEMENT BETWEEN  
THE CALIFORNIA DEPARTMENT OF FISH AND GAME  
AND  
THE U.S. FISH AND WILDLIFE SERVICE  
Endangered and Threatened Fish, Wildlife and Plants**

This Cooperative Agreement is entered into pursuant to Section 6(c) of the Endangered Species Act of 1973, as amended 16 U.S.C. § 1531-et seq (hereinafter referred to as "the Act"), and the California Endangered Species Act of 1984 (CESA), Species Preservation Act of 1970, and California Native Plant Protection Act of 1977, between the U.S. Fish and Wildlife Service, U.S. Department of the Interior, and the California Department of Fish and Game. Hereinafter, the parties shall be referred to as "USFWS", and "CDFG" respectively.

WHEREAS, the Congress of the United States has found that there are resident species of fish, wildlife and plants which are in danger of extinction and that these species of fish, wildlife and plants 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, wildlife and plants 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, wildlife and plants;

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 as expressed in the said Endangered Species Act 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, wildlife and plants;

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, wildlife, and plant conservation program of the State of California for those species under his jurisdiction;

WHEREAS, the State of California acting through the CDFG, wishes to administer its program for the conservation of endangered, threatened and rare fish, wildlife and plants in harmony with the terms and spirit of the Act;

WHEREAS, the parties agree that programs of the State of California are designed to assist in the conservation and recovery of resident endangered and threatened and rare fish, wildlife and plants, and that it is the mutual desire of the CDFG and the USFWS to work in harmony for the common purposes of planning, developing and conducting programs to protect and enhance populations of all resident endangered and threatened and rare fish, wildlife and plants within the State of California;



Whereas, the Director, USFWS, has the statutory and administrative responsibility to establish programs for the conservation of endangered and threatened fish, wildlife and plants which are under his jurisdiction 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 CDFG such biological data or other information which may result in the enhancement and recovery of endangered, threatened and rare fish, wildlife and plants;

WHEREAS, the CDFG has a statutory responsibility to conserve endangered, threatened and rare fish, wildlife and plants which are resident in the State of California. Resident wildlife species is defined for purposes of this Act in 50 CFR Part 81 (40 FR 47509, Oct. 9, 1975) and plant species as included in the term "species" under amended definitions; and

WHEREAS, the CDFG (a) has the authority to conserve resident fish or wildlife and plants determined by the State agency or the Secretary to be endangered, threatened or rare; (b) has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident fish, wildlife and plants in the State which are deemed by the Secretary to be endangered and 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, wildlife and plants; (d) has the authority to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered, threatened or rare fish, wildlife and plants; and (e) has provided for public participation in designating resident fish, wildlife and plants as endangered, threatened or rare;

Now therefore the parties agree as follows:

1. Cooperative Program

- (a) The CDFG will carry out the activities identified in its program for the benefit of the endangered, threatened and rare fish, wildlife and plants which are resident in the State of California.
- (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, wildlife and plants. Such financial assistance will require the submission of an Application for Federal Assistance and the successful negotiation of a Project Agreement. These will comply with the Secretary's Rules and Regulations 50 CFR Part 81, (40 FR 47509, Oct. 9, 1975), and the USFWS Federal Aid Manual.
- (c) As a part of this cooperative program, the law enforcement authorities of USFWS and the CDFG shall cooperate in the detection, apprehension, and prosecution of violators of the Act or State law intended to conserve endangered, threatened and rare fish, wildlife and plants.
- (d) As additional species of resident fish or wildlife and plants in the State of California are listed as endangered or threatened by the USFWS or endangered, threatened or rare by the State, 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, wildlife and plants that are resident in the State of California as defined in 50 CFR Part 81 (40 FR 47509, Oct. 9, 1975). If the program for the conservation of such fish, wildlife or plants 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 listing process pursuant to Section 4 of the Act for the determination of endangered and threatened fish, wildlife and plants, and of critical habitat for Federally listed endangered or threatened species, the parties agree to exchange biological and other data as necessary to facilitate such determination by the Director, USFWS.
- (g) As part of the interagency cooperation and consultation process, provided for by Section 7 of the Act and Section 2095 of the CESA, the parties agree to exchange information, as appropriate, during their respective consultation processes.

## 2. Permits

### (a) General Rule

The CDFG agrees not to engage in, or issue a permit authorizing the taking of resident federally listed endangered or threatened fish, wildlife or plants as defined in 50 CFR Part 81, (40 FR 47509, Oct. 9, 1975) without prior issuance of a permit to the applicant by the Director, USFWS, except as authorized in subsection 2(b), (c), [REDACTED] of this Agreement, pursuant to a special rule in 50 CFR § 17.21.

- (b) Any qualified employee or agent (contractor to the CDFG for implementation of specific recovery actions) of the CDFG 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 or threatened fish, wildlife or plant for conservation purposes that are consistent with the Cooperative Agreement and any approved Application for Federal Assistance attached thereto, or any recovery recommendations in draft or recovery plans, provide that such taking is not reasonably anticipated to result in:

- (1) the death or permanent disabling of the specimen;
- (2) the removal of the specimen from the State of California;
- (3) the introduction of the specimen or any of its progeny into an area beyond the historical range of the specimen; or
- (4) the holding of the specimen in captivity for a period of more than 45 consecutive days in the case of animals; and
- (5) that the authority conveyed to the CDFG by this subsection may, at any time, be temporarily suspended for a particular project or that part of the conservation program by written notification by the Regional Director, USFWS, upon his receipt and determination that there is substantial evidence demonstrating the CDFG is using this authority for purposes inconsistent with the purposes of the Act. Such suspension will not be imposed until after consultation between the Regional Director, USFWS, and CDFG. Upon notification of the temporary suspension and the reasons therefore, the CDFG 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 CDFG 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.

### (c) Emergency Provisions

Any employee or agent of the CDFG 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, wildlife or plants 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 plant or dead animal 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 animals only if it has not been reasonably possible to eliminate such threat by live capturing and releasing the specimen unharmed in remote area; or
- (5) defend his own life or the lives of others.

Any taking pursuant to this subsection 2 (c) 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 directions from the USFWS.

### 3. Records

The CDFG agrees to maintain records of:

- 1) the federally funded projects for the conservation of endangered threatened and rare fish, wildlife or plants in accordance with Chapters 4 and 5 of the USFWS Federal Aid Manual; and
- (2) the number of specimens of each species of federally listed endangered and threatened fish, wildlife or plants 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 CDFG agrees to inform the USFWS of any change in circumstances that could cause the state program to be in nonconformance with the requirements of Section 6(c) of the Act. Included without limitation are changes in the CDFG's relevant constitutional, statutory, or regulatory authority. The CDFG 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 made pursuant to the provisions of the Act, that might affect the State's program.

### 5. Effective Date and Renewal

- (a) This Agreement shall become effective when signed by the Regional Director, USFWS, and the Director, CDFG, and may be renewed in the following manner: Not later than June 30th of each year the CDFG shall submit to the USFWS, the following items: (1) additions and/or deletions to the Federal and State lists of endangered, threatened, and rare fish, wildlife or plants which are resident in the State; (2) a memorandum of law analyzing any changes in the CDFG's statutory authority for endangered, threatened and rare fish, wildlife or plants 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, wildlife or plant species that 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 State's endangered, threatened and rare fish, wildlife or plant 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 species 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 to them resulting from the taking; and (5) copies of such reports the CDFG has prepared since the previous program accomplishments for resident, federally listed endangered and threatened species.

- (b) USFWS will, on or before October 1st of each year, notify the CDFG in writing either that the Cooperative Agreement is renewed effective October 21st of that year, or that the CDFG endangered and threatened fish, wildlife and plant 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 the purposes of this section, the phrase "previous program submission" means either the program submission of (1) the original Cooperative Agreement and amendments 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 CDFG upon 60 day 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 California from the Regional Director, USFWS, stating that the State's endangered and threatened fish, wildlife or plant 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 CDFG 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 by the CDFG 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 CDFG 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.

8-28-91

Date

Howard A. Sarashin

Director

California Department of Fish and Game

JUN 6 1991

Date

Acting Regional Director

U.S. Fish and Wildlife Service

WILLIAM E. MARTIN

