

**Cooperative Agreement
for
Protection and Maintenance of White Sands Pupfish
between
U.S. Army - White Sands Missile Range
U.S. Air Force - Holloman Air Force Base
National Park Service - White Sands National Monument
U.S. Fish and Wildlife Service
New Mexico Department of Game and Fish**

1 May 2006

Whereas, the White Sands pupfish is considered a Species of Concern by the U.S. Fish and Wildlife Service (USFWS), and is listed as a Threatened Species by the New Mexico Department of Game and Fish (NMDGF); and

Whereas, the White Sands pupfish occurs only in the Tularosa Basin, New Mexico, on public lands administered by the U.S. Army - White Sands Missile Range (WSMR), the U.S. Air Force - Holloman Air Force Base (HAFB), and the National Park Service - White Sands National Monument (WSNM); and

Whereas, NMDGF has the primary responsibility under the New Mexico Wildlife Conservation Act (WCA) as amended, to provide for the protection and perpetuation of this species; and

Whereas, the USFWS has the responsibility to review the status of species and determine the need to provide protection through the Endangered Species Act of 1973 (ESA), as amended; and,

Whereas, WSMR, HAFB and WSNM have the responsibility to carry out their respective military and land management missions with consideration to the mandates of the National Environmental Policy Act of 1969 (NEPA), ESA, and the Sikes Act, as amended; and

Whereas, WSMR and HAFB have the responsibility to manage hunting, fishing, and trapping in accordance with the Engle Act;

Therefore, the signatory parties to this document agree to cooperate in the management, protection, and conservation of present and future populations of White Sands pupfish and their habitats.

I. PURPOSE

This Cooperative Agreement (Agreement) delineates an effective and cooperative working relationship between its signatories in protecting and maintaining viable populations of the White Sands pupfish (*Cyprinodon tularosa* Miller and Echelle) in its habitats on White Sands Missile Range, Holloman Air Force Base, and White Sands National Monument.

II. AUTHORITIES

New Mexico Wildlife Conservation Act [17-2-37 through 17-2-46 NMSA 1978]

National Environmental Policy Act of 1969 [42 U.S.C. 4321 through 4370d]

Endangered Species Act of 1973, as amended [16 U.S.C. 1531 *et seq.*]

The Sikes Act [16 USC 670 *et seq.*]

The Engle Act [10 USC 2671]

III. OPERATIONS

A. DESCRIPTION OF THE AREA AND GENERAL INTENT

1. White Sands Pupfish is the only fish endemic to the endorheic Tularosa Basin of south-central New Mexico. It occurs in four disjunct locations on WSMR, HAFB, and WSNM: Salt Creek, Mound Spring, Malpais Spring, and Lost River. The extremely limited distribution and geographic range of White Sands pupfish makes it vulnerable to extinction from natural and anthropogenic causes. Consequently, it is of utmost importance for the signatories to work to protect these populations and habitat as follows.
2. **Essential Habitat** is aquatic habitat that is occupied by White Sands pupfish on a perennial or intermittent basis. Essential habitat must be protected from adverse anthropogenic disturbances and to ensure survival of the species. All non-emergency vehicular traffic shall be restricted within Essential Habitat with the exception of use of existing improved and unimproved roads. Likewise, all non-emergency activities shall be restricted within Essential Habitats, unless the responsible WMSR, HAFB, or WSNM official is consulted. In the case of emergency activities that may affect habitats of White Sands pupfish, such as chemical spills, debris recovery from military activities, or carrion removal, NMDGF and USFWS shall be notified and conferred with, as appropriate.

Essential Habitat shall consist of the following occupied or potential White Sands pupfish habitats:

- a. Salt Creek, main channel, with ephemeral, intermittent, or perennial flow and perennial springs from Big Salt Lake south of Range Road 6 north to Range Road 8, including a corridor 200 meters (660 feet) wide, extending 100 meters (330 feet) from either side of the center of the main-stream channel and all land

within 100 meters (330 feet) of any tributary spring and Big Salt Lake;

- b. Mound Spring complex, including the area within 100 meters (330 feet) of the perimeter of the spring ponds;
 - c. Malpais Spring and Malpais Salt Marsh, including:
 - i. The area within 100 meters (330 feet) of the perimeter of the spring pond,
 - ii. Its outflow stream, including a corridor 200 meters (660 feet) wide, extending 100 meters (330 feet) from either side of the center of the stream channel; and
 - iii. The associated wetlands and playas that may be perennially or intermittently occupied by pupfish, including all land within 100 meters (330 feet) of the high-water boundary of the wetlands and playas associated with Malpais Spring;
 - d. All stream channels of Malone Draw and Lost River on HAFB, WSNM, and WSMR and a corridor 200 meters (660 feet) wide, extending 100 meters (330 feet) from either side of the center of the stream channel.
 - e. In addition to the delineations described above, Essential Habitat shall also include any other areas where White Sands pupfish are found or transplanted by mutual agreement of all signatories as well as a 100-meter (330-foot) buffer around said habitat as demonstrated in the previous delineations, with the exception of the experimental ponds on HAFB and any future exceptions mutual agreement with NMDGF, USFWS, and the party or parties seeking such exceptions.
3. **Limited-Use Areas** are lands adjacent to existing habitat where activities must be managed to ensure that degradation of Essential Habitat does not occur through direct or indirect effects such as contaminant runoff and excessive soil erosion. All reasonable precautions shall be taken in coordination with USFWS and NMDGF, as appropriate, to avoid or minimize degradation of Essential Habitat due to activities on Limited-Use Areas.
4. **Areas of Concern** shall consist of all watersheds within the topographic drainage basin of Salt Creek, Malpais Spring, Malone Draw-Lost River, and Mound Springs complex, as described above (III.A.2.a, c, d and e). Activities in these Areas of Concern will be considered for their cumulative impacts on White Sands pupfish habitats.

B. AGENCY RESPONSIBILITIES

- 1. The signatory agencies jointly agree to:
 - a. Participate on the White Sands Pupfish Conservation Team, composed of knowledgeable personnel representing each of the cooperating agencies which

shall:

- i. Review activities, which might affect White Sands pupfish or its habitat.
 - ii. Make recommendations and provide advice and information to the concerned agencies regarding conservation of White Sands pupfish.
 - iii. Meet at least annually to discuss pertinent concerns regarding White Sands pupfish and its habitat, exclusive of all other activities.
 - b. Develop and maintain the White Sands Pupfish Conservation and Recovery Plan (Plan), which shall be the guiding document for White Sands pupfish conservation activities.
 - c. Provide logistical and financial resources necessary to carry out the responsibilities detailed in this Agreement and the Plan. Subject to the availability of funds, agencies will provide:
 - i. Personnel and equipment to at least semi-annually monitor habitats and populations of White Sands pupfish, exclusive of all other Agreement activities.
 - ii. Exchange of manpower, equipment, and funds to carry out activities pursuant to this Agreement, exclusive of semi-annual monitoring.
 - d. Develop and disseminate public information on White Sands pupfish.
 - e. Participate in professional meetings to apprise the scientific community of the status, biology, and ecology of White Sands pupfish.
2. WSMR, subject to the availability of funds, agrees to:
- a. Take reasonable and prudent actions in coordination with the other signatories to protect, manage, and conserve White Sands pupfish habitat on WSMR. This includes, but is not limited to, continuing hydrologic monitoring of the Essential Habitats in regard to the characterization of natural events and the cumulative effects from military activities.
 - b. Restrict all non-emergency activities, including vehicular traffic, except on existing roads within Essential Habitats and Limited-Use Areas, unless the WSMR Natural Resource Manager is consulted. In the case of emergency activities that may affect habitats of White Sands pupfish, such as chemical spills, debris recovery from military activities, or carrion removal, NMDGF and USFWS shall be notified and conferred with, as appropriate.
 - c. Prohibit the transport and introduction of any live non-native aquatic organisms to WSMR-controlled aquatic habitats north of Highway 70. Furthermore, aquatic habitats within WSMR north of Highway 70 not currently inhabited by White Sands pupfish shall not be considered for establishment of non-native aquatic organisms and non-native terrestrial flora in the Essential and Limited Use habitats without prior conference and agreement with USFWS and NMDGF.

- d. Cooperate with the signatory agencies, as appropriate, in the inventory and removal of non-native fauna in the Essential and Limited Use Habitats to prevent potential contamination of habitats or populations of White Sands pupfish.
- e. Cooperate with the signatory agencies in White Sands pupfish recovery activities, including but not limited to the following activities:
 - i. Preparing and implementing the necessary documents and actions to create White Sands pupfish refugia with special emphasis on the Malpais Spring pupfish population; and
 - ii. Preparing and implementing the necessary documents and actions to remove existing obstacles that restrict movement of White Sands pupfish within Essential Habitats, including but not limited to, culverts at RR316 on Salt Creek and construction debris.
 - iii. Preparing and implementing the necessary documents and actions to remove, if appropriate, military testing debris.
- f. Coordinate all military activities proposed for implementation within Essential Habitat with the signatory agencies, as appropriate, to avoid or mitigate negative impacts to White Sands pupfish or its habitat and review current project activities for potential impacts. Monitor all military activities within Essential Habitats and Limited-Use Areas on WSMR for potential impacts.
- g. Develop and implement incident response programs for accidental chemical spills, impacts from debris due to military activities, vehicle accidents, and coordinate the resolution of any unforeseen perturbation to White Sands pupfish or its habitats with signatory agencies as soon as reasonably possible upon detection or advisement of such event(s).
- h. Develop a customer orientation package to provide all WSMR mission customers and their agents with written procedures for ensuring their project activities are carried out in accordance with the Plan.
- i. With reasonable advance notice and as military activities and applicable WSMR security policies allow, permit unescorted access to the area designated as Essential Habitat and Limited-Use Areas on WSMR (III.A.2.a, b, c and e; III.A.3), as appropriate, for representatives of the signatory agencies.
- j. Provide in-briefing for non-WSMR Conservation Team personnel outlining scheduling, safety, and security principles and practices.
- k. With reasonable advance notice and as military activities and current WSMR policies allow, provide the Conservation Team with optics permits and military transportation authorizations (flight orders).
- l. Coordinate with NMDGF concerning suspected violations of the WCA.

3. HAFB agrees to:

- a. Protect, manage, and enhance habitats of White Sands pupfish within Essential Habitat and Limited Use Areas on HAFB, in coordination with the signatory agencies.
- b. Restrict all non-emergency activities, including vehicular traffic, except on existing roads, with the exception of natural and cultural resource management, conservation and research (to include, but not be limited to pupfish monitoring, research and conservation activities), within Essential Habitat, with consultation of HAFB Natural Resource Managers. In the case of emergency activities that may affect habitats of White Sands pupfish, such as chemical spills, debris recovery from military activities, or carrion removal, NMDGF and USFWS shall be notified and conferred with, as appropriate.
- c. Prohibit the transport and introduction of any live non-native aquatic organisms to aquatic habitats on HAFB. Furthermore, aquatic habitats within HAFB not currently inhabited by White Sands pupfish shall not be considered for establishment of non-native aquatic organisms without prior conference and consent by USFWS and NMDGF.
- d. Cooperate with the signatory agencies in the inventory and removal of specifically identified populations of non-native fauna within HAFB to prevent the potential contamination of habitats or populations of White Sands pupfish.
- e. Coordinate all unclassified activities proposed for implementation within Essential Habitat and Limited Use Areas with the signatory agencies to prevent negative impacts to White Sands pupfish or its habitat and review current project activities to ensure that no potential negative impacts to the species or its habitat are impending. Monitor all unclassified activities within Essential Habitat and Limited Use Areas on HAFB to ensure that no negative impacts occur.
- f. Evaluate all classified project activities that may affect the White Sands pupfish or its habitat and ensure that no negative impacts to the species or its habitat will occur. Monitor all classified activities within Essential Habitat and Limited Use Areas on HAFB to ensure that no negative impacts occur.
- g. Implement, and review and update as necessary, incident response programs for accidental chemical spills, impacts from airborne debris, vehicle accidents, etc. and coordinate the resolution of any unforeseen perturbation to the White Sands pupfish or its habitats with signatory agencies immediately upon detection or advisement of such event(s).
- h. Develop a public information program to educate the base community about White Sands pupfish, and affiliated restrictions and procedures in accordance with

the Plan.

- i. Allow unescorted Conservation Team access to the area designated as Essential Habitat on HAFB.
- j. Provide the Conservation Team with optics permits.
- k. Coordinate with NMDGF concerning suspected violations of the New Mexico Wildlife Conservation Act.

4. WSNM agrees to:

- a. Protect, manage, and enhance habitats of the White Sands pupfish within Essential Habitat and Limited Use Areas on WSNM, in coordination with the signatory agencies.
- b. Restrict all non-emergency activities, including vehicular traffic, except on existing roads, with the exception of natural and cultural resource management, conservation, and research (to include, but not be limited to pupfish monitoring, research and conservation activities), within Essential Habitat, in consultation with WSNM Natural Resource Managers. In the case of emergency activities that may affect habitats of White Sands pupfish, such as chemical spills, debris recovery from military activities, or carrion removal, NMDGF and USFWS shall be notified and conferred with, as appropriate.
- c. Prohibit the transport of any live non-native aquatic organisms to or in the vicinity of White Sands pupfish habitat. Furthermore, aquatic habitats within WSNM not currently inhabited by White Sands pupfish shall not be considered for establishment of non-native aquatic organisms without prior conference and consent by USFWS and NMDGF.
- d. Cooperate with the signatory agencies in the chemical or mechanical removal of specifically identified populations of non-native fishes within WSNM to prevent the potential contamination of habitats or populations of White Sands pupfish.
- e. Coordinate all activities proposed for implementation within Essential Habitat and Limited Use Areas with the signatory agencies to prevent negative impacts to White Sands pupfish or its habitat and review current project activities to ensure that no potential negative impacts to the species or its habitat are impending. Monitor all activities within Essential Habitat and Limited Use Areas on WSNM to ensure that no negative impacts occur.
- f. Coordinate the resolution of any unforeseen perturbation to the population of White Sands pupfish or its habitat with signatory agencies immediately upon detection or advisement of such event(s).

- g. Allow Conservation Team access to the area designated as Essential Habitat on WSNM.
 - h. Coordinate with NMDGF concerning suspected violations of the New Mexico Wildlife Conservation Act.
5. USFWS agrees to:
- a. Participate in protection, management, enhancement, research, and monitoring of habitats and populations of White Sands pupfish.
 - b. Coordinate with WSMR, HAFB, and WSNM on all activities that may impact habitats or populations of White Sands pupfish.
 - c. Provide WSMR and HAFB, through the respective sponsor, with written request for unescorted access to uprange areas for each of its Conservation Team personnel. Included in the request will be a listing of personal specifications for each individual. Changes in badged, visiting Conservation Team personnel shall also be implemented by written request and coordinated with WSMR and HAFB representatives.
 - d. Have USFWS Conservation Team representatives sign hold harmless agreements releasing WSMR and HAFB from liability in case of personal injury while on WSMR or HAFB property.
 - e. Provide enforcement, at WSMR's, HAFB's, or WSNM's request, of any violations of Federal fish and wildlife statutes (e.g. Lacey Act and Black Bass Act), as appropriate.
6. NMDGF agrees to:
- a. Participate in protection, management, enhancement, research, and monitoring of habitats and populations of White Sands pupfish.
 - b. Coordinate with WSMR, HAFB, and WSNM on all activities that may impact habitats or populations of White Sands pupfish.
 - c. Coordinate the development and implementation of the White Sands Pupfish Conservation and Recovery Plan with the signatory agencies, in accordance with the WCA.
 - d. Provide WSMR and HAFB, through the respective sponsor, with written request for unescorted access to uprange areas for each of its Conservation Team personnel. Included in the request will be a listing of personal specifications for each individual. Changes in badged, visiting Conservation Team personnel shall also be implemented by written request and coordinated with WSMR and HAFB

representatives.

- e. Have NMDGF Conservation Team representatives sign hold-harmless agreements releasing WSMR and HAFB from liability in case of personal injury while on WSMR or HAFB property.
- f. Provide enforcement of violations of the New Mexico Wildlife Conservation Act, as appropriate.
- g. Coordinate and assemble an annual report summarizing the activities of the Conservation Team, White Sands pupfish monitoring program, and other projects concerning the species.
- h. Issue State of New Mexico permits to signatories for research or management activities as necessary to support the conservation and recovery of White Sands pupfish.

C. OTHER PROVISIONS

1. Safety, Security, and Scheduling

To engage in Plan activities on WSMR, HAFB, and WSNM, Conservation Team members of the signatory agencies shall abide by the following stipulations:

- a. All applicable military and National Park Service rules, policies, and regulations will be observed.
- b. When entering WSMR, relevant rules and regulations will be presented to non-WSMR personnel during the in-briefing process. Conservation Team access may be suspended at any time by WSMR for military purposes.
- c. Conservation Team personnel will obtain proper permits for entry into HAFB. All field activities will be scheduled with the Natural Resources Manager prior to entry to HAFB and HAFB Security will be notified of monitoring activities (505) 572-7171.
- d. Conservation Team personnel will schedule all entries into WSNM with the Superintendent or his representative and will obtain proper permits to conduct work on WSNM.
 - i. Schedule requests will be submitted one week prior to proposed entry, or as soon as possible.
 - ii. All research and monitoring activities must be conducted under an approved National Park Service collection permit. No research, sampling or collecting will be initiated on WSNM without an approved permit.
 - iii. Various portions of WSNM are periodically subject to evacuation in support

- of WSMR operations. During evacuations, Conservation Team personnel will not be permitted access to effected areas.
- iv. Conservation Team members will not be permitted to stay on WSNM property overnight without prior notification to, and approval from, the Superintendent or his representative.
 - e. Conservation Team personnel will schedule all entries into WSMR uprange areas with the appropriate WSMR offices and activities and the WSMR Conservation Team sponsor.
 - i. Schedule badge requests for new Team Personnel and renewal of expired badges at least 4 weeks prior to the proposed date of entry. The WSMR does not guarantee a minimum of 4 weeks, pending required by other WSMR offices beyond the control of the WSMR Team sponsor.
 - ii. Schedule requests for previously badged Team personnel will be submitted at least one week prior to proposed entry.
 - iii. Team members will advise the appropriate WSMR offices and activities up to the day before access of any required changes or cancellations. Conservation Team access may be suspended at any time by WSMR for military purposes.
 - f. For approved daily use of WSMR, Conservation Team personnel shall coordinate with the appropriate WSMR offices and activities and the WSMR Conservation Team sponsor prior to entry into, and upon exit from, WSMR land or airspace to:
 - i. Verify entry and ensure that no interference with military operations occurs.
 - ii. Provide the precise areas of operations and entry/exit points and times for all field activities.
 - iii. Advise when Conservation Team personnel depart WSMR property.
 - g. The Conservation Team will not be permitted to stay on WSMR property overnight without prior notification to the WSMR Conservation Team sponsor and approval from the appropriate WSMR offices and activities and the Conservation Team sponsor. WSMR uprange facilities may be used by field personnel on an "as-needed" basis following coordination through the appropriate WSMR offices and activities and the WSMR Conservation Team sponsor, if available. Reservations and use may be suspended or changed by WSMR for military activity requirements.
 - h. Although the Conservation Team personnel may be issued WSMR and HAFB optics permits, all photography will pertain only to White Sands pupfish and its habitats. No other photographs will be permitted. All digital photographic media, slides, prints, and negatives must be declassified and cleared through the normal WSMR and HAFB Operations and Security process prior to public

dissemination. Further rules and regulations on photography on WSMR and HAFB will be presented to non-WSMR and non-HAFB Conservation Team members during their in-briefing.

- i. All military activities on WSMR and HAFB will take precedence over White Sands pupfish investigation activities, both on the ground and in the air, if conflicts arise that cannot be resolved through the scheduling process. Such determinations shall be at the sole discretion of WSMR and HAFB.

2. Progress Reports

Copies of all interim reports and an annual report will be provided to all signatories to this Agreement.

3. Conditions

- a. This Agreement takes effect upon signature of the parties to this Agreement, and shall be reviewed at least every five years. Unless terminated as described below (3.b), this Agreement will continue indefinitely.
- b. This Agreement may be terminated by any signatory agency upon 30 days of written notice to all signatory parties. Upon termination of this Agreement, the remaining parties are not bound by terms of the Agreement.
- c. This instrument is neither a fiscal nor a funds obligation document. Nothing in this Agreement shall obligate any party to obligate or transfer any funds. Any endeavor involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures, including those for applicable Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by appropriate representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to any cooperators of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.
- d. This Agreement is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the State of New Mexico or the United States, its agencies, its officers, or any person.
- e. This Agreement in no way restricts the signatory parties from participating in similar activities or agreements with other public or private agencies, organizations, and individuals.

- f. Any information provided to a Federal agency under this Agreement is subject to the Freedom of Information Act (5 U.S.C. 552) or the New Mexico Inspection of Public Records Act, unless otherwise provided by law or existing court order.
- g. NMDGF will participate in the above Agreement to the extent authorized under New Mexico laws, particularly the New Mexico Wildlife Conservation Act. NMDGF will attempt to undertake only those actions within this Agreement that are in compliance within the laws and regulations of the State of New Mexico.
- h. The terms of this Agreement are contingent upon sufficient appropriations being available to the signatory agencies for the performance of this Agreement. The signatory agencies' decision as whether sufficient appropriations are available shall be accepted by all signatory agencies in this Agreement, and shall be final.

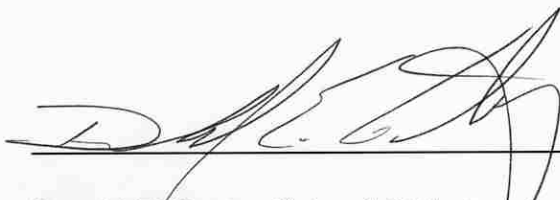
Signatory Agencies

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5/25/06

Thomas R. Berard, SES
Director, White Sands Missile Range

Date

A handwritten signature in black ink, appearing to read 'D. E. Gentry', written over a horizontal line.

Donald E. Gentry, Colonel, U.S. Army
Garrison Commander, White Sands Missile Range

A handwritten date '8 May 06' in black ink, written over a horizontal line.

Date

White Sands Pupfish Cooperative Agreement

 COL, USAF

for DAVID L. GOLDFEIN
Colonel, USAF
Commander, 49th Fighter Wing

29 AUG 2006

Date

A handwritten signature in dark ink, appearing to read 'Cliff Spencer', written over a horizontal line.

5/4/06

Cliff Spencer
Superintendent, White Sands National Monument, National Park Service

Date



5/9/06

ACTING

Benjamin N. Tuggle
Regional Director, Region 2, U.S. Fish and Wildlife Service

Date

Bruce C. Thompson

28 April 2006

Bruce C. Thompson, PhD.
Director, New Mexico Department of Game and Fish

Date