

8/28/74

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
U.S. FISH AND WILDLIFE SERVICE
UNITED STATES DEPARTMENT OF THE INTERIOR
AND THE
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
UNITED STATES DEPARTMENT OF COMMERCE
REGARDING
JURISDICTIONAL RESPONSIBILITIES AND LISTING PROCEDURES
UNDER THE ENDANGERED SPECIES ACT OF 1973

WHEREAS, under the Endangered Species Act of 1973, (16 U.S.C. §§1531-43) (the "Act"), the Secretary of the Interior and the Secretary of Commerce share, among other things, the responsibility to determine species of fauna and flora to be endangered species and threatened species;

WHEREAS, the Secretary of the Interior and the Secretary of Commerce have delegated those responsibilities to the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, respectively;

WHEREAS, the Reorganization Plan No. 4 of 1970, which under the Act, governs the responsibilities of each Secretary, does not adequately set forth those species of fauna and flora under the jurisdiction of the Secretary of the Interior and those under the jurisdiction of the Secretary of Commerce;

WHEREAS, the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, wish to establish procedures for the implementation of the Act and for the amendment of the United States Lists of Endangered Species and Threatened Species;

WHEREAS, the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, consider it desirable to define their respective jurisdictions with respect to the Act;

NOW THEREFORE, the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, hereby agree as follows with respect to their responsibilities for species of fauna subject to the Act and for the addition of species of fauna to the United States Lists of Endangered Species and Threatened Species, and for other revisions of those Lists:

1. (a) The Director, National Marine Fisheries Service, shall have jurisdiction over and shall determine whether species in the following classes, orders, or groups of animals shall be added to the lists of endangered species and threatened species or changed in status from threatened to endangered:

All species of the order Cetacea; all species of the order Pinnipedia, other than walruses; all commercially harvested species of the phylum Mollusca and the class Crustacea which spend all of their lifetimes in estuarine waters; and all other nonmammalian species (except members of the classes Aves, Amphibia, and Reptilia), which either (i) reside the major portion of their lifetimes in marine waters; or (ii) are species which spend part of their lifetimes in estuarine waters, if the major portion of the remaining time (the time which is not spent in estuarine waters) is spent in marine waters.

For the purposes of this Memorandum of Understanding: (i) "commercially harvested species" is defined to mean species which are commercially harvested from the estuary at the time this Memorandum is signed; and (ii) "lists of endangered species and threatened species" is defined to mean the endangered species and threatened species listed pursuant to section 4 of the Act.

(b) The proposed determination of the Director, National Marine Fisheries Service, that such a species should be added to the lists of endangered species and threatened species or changed in status from threatened to endangered, and the corresponding proposed listing by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal

Register, signed by both Directors. Comments on the proposed listing shall be directed to the Director, National Marine Fisheries Service, who shall conduct all appropriate or required status reviews, consultations, and notifications, and who may, in his discretion, hold any appropriate hearings. The final determination of the Director, National Marine Fisheries Service, that such a species should be added to the lists of endangered species or threatened species or changed in status from threatened to endangered, and the corresponding listing by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register, signed by both Directors.



(c) Both Directors must jointly agree whether such a species shall be removed from the lists of endangered species and threatened species or changed in status from endangered to threatened.

(d) The proposed action by the Directors with respect to whether such a species should be removed from the lists of endangered species and threatened species or changed in status from endangered to threatened, and the corresponding proposed revision of those lists by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register, signed by both Directors. Comments on the proposed revision of those lists shall be directed to both

Directors, unless otherwise agreed in writing by the Directors. If both Directors desire hearings on the proposed revision, joint hearings shall be held, unless otherwise agreed in writing by the Directors. The Director, National Marine Fisheries Service, shall conduct all appropriate or required status reviews, consultations, and notifications. The final action by the Directors with respect to whether such a species should be removed from the lists of endangered and threatened species or changed in status from endangered to threatened, and the corresponding revision of those lists by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register, signed by both Directors.

2. The Director, U.S. Fish and Wildlife Service, shall have jurisdiction over, and shall determine whether species in the following classes, orders, or groups of animals shall be added to or removed from the lists of endangered species and threatened species or changed in status from either category to the other, and shall list such species in his discretion.

All members of the classes Mammalia (except members of the order Cetacea, and members of the order Pinnepedia, other than Walruses), Aves, Reptilia (except marine turtles of the families Cheloniidae and Dermochelidae), Amphibia, and all other species (except species of the orders Cetacea and Pinnipedia, other than Walruses) which either (i) spend the major portion of their lifetimes on land and/or in fresh water; or (ii) are species

which spend part of their lifetimes in estuarine waters, if the major portion of the remaining time (the time which is not spent in estuarine waters) is spent on land and/or in fresh water.

3. (a) The Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service, shall have joint jurisdiction over, and shall jointly determine whether species of fauna not specifically assigned in paragraphs 1 and 2 above shall be added to or removed from the lists of endangered species and threatened species or changed in status from one category to the other. In the case of addition, removal, or change in status of one of these species, the procedure set forth in paragraph 3(b) shall be followed with all of the appropriate actions to be done jointly, with the concurrence of both Directors, including any notices of review, proposed determinations, notifications, hearings, consultations, receipt of comments, and final determinations; provided, that, the Directors may agree in writing that hearings and the receipt of comments may be the responsibility of either Director.

(b) The proposed joint determination by the Director, National Marine Fisheries Service, and the Director, U.S. Fish and Wildlife Service, and the corresponding proposed revision of the lists by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register,

signed by both Directors. Where both Directors concur in the determination that a final revision of the lists should be made, the final determination by the Directors and the corresponding final revision of the lists by the Director, U.S. Fish and Wildlife Service, shall be published in a single document in the Federal Register, signed by both Directors.

4. Final allocation of responsibilities under the Endangered Species Act of 1973, with respect to marine turtles of the families Cheloniidae and Dermochelidae must be resolved at some future time. For this reason, it is agreed that until this particular issue is resolved, all actions respecting such turtles will be undertaken jointly, using the same joint actions, requirements, and procedures contained in paragraph 3(b).

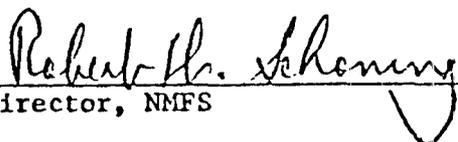
5. In emergency situations, regulations promulgated with respect to listing pursuant to the provisions of section (4)(f)(2)(B)(ii) of the Act shall be undertaken using the jurisdictional assignments and the joint procedures, to the extent appropriate, described in paragraphs 1, 2, 3, and 4.

6. Neither agency will unilaterally act on the listing of any plant species until the jurisdictional issue, with respect to plants, is resolved.

7. Each Director agrees that he and his staff will, at all stages, consult with and consider the recommendations of the other Director and his staff with respect to all actions proposed to be taken under the authority of the Memorandum of Understanding.

8. This Memorandum of Understanding has been executed in order to permit an orderly, efficient administration of the Act and should not be construed to govern the activities of either Secretary with respect to any other program administered by them.

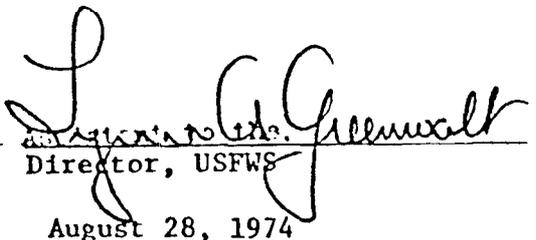
This Memorandum of Understanding will become effective when signed by the Director, U.S. Fish and Wildlife Service, and the Director, National Marine Fisheries Service. Either of the aforementioned Directors may cancel this Memorandum of Understanding upon thirty days written notice to the other Director.


Director, NMFS

August 28, 1974

Date

Special Agent in Charge


Director, USFWS

August 28, 1974

Date