

1989-3

U.S. FISH AND WILDLIFE SERVICE
REFUGES AND WILDLIFE

WAM1

RECEIVED

Associate Manager, WAM1

JUN 9 1989

WILDLIFE ASSISTANCE
EAST LANSING

Mike
if you have
any other comments,
please call Bill
by 6-16-89.

J.C. 3701

Minnesota
Minnesota
in
ton, Minnesota
n
sota
sota

Comments

Len,
Please review
attached MOU +
letter. When
Ed gets back
I'll tell him
about holding off
till after Aug. ^{when} 7/24

Bill

Called & discussed
w/ Bill Hutchinson
6-15-89. OK by me
with several comments
JES.

Phone Conversation 9/01/90 with
J.C. indicates this was never
sent. Eventually, ~~record~~ in
Oct 89 mtg betw FWS R3 and DNR
bros, it was decided that the
MOU would be shelved until
a "Management Plan" for the
FWS lands was produced by
the RECOVERY TEAM!

- Lacrosse District, Minnesota
- Savanna District, Savanna, Illinois
- Wildlife Assistance, East Lansing
- Wildlife Assistance, St. Cloud
- Wildlife Assistance, Madison

From: ACTING WAM 1	Date: 6-6-89
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United States Department of the Interior



FISH AND WILDLIFE SERVICE
FEDERAL BUILDING, FORT SNELLING
TWIN CITIES, MINNESOTA 55111

IN REPLY REFER TO:

FWS/ARW-OPS

Mr. David Hales
Director
Department of Natural Resources
Box 30028
Lansing, Michigan 48909

Dear Mr. Hales:

Enclosed is our second draft of the Kirtland's Warbler Memorandum of Understanding. We have slightly modified the draft you sent to us on April 6, 1989.

We have also received notice that the U.S. Fish and Wildlife Service may be receiving resource management funding for the Kirtland's Warbler Wildlife Management Area in the amount of \$100,000 annually, commencing in Fiscal Year 1990.

These funds could be used by your agency in managing Kirtland's Warbler habitat on federally-owned lands per agreed-upon management plans.

Please contact Mr. Edward S. Crozier, Wildlife Associate Manager, at 612-725-3701 if you have any questions regarding this second draft Memorandum of Understanding.

Sincerely,

Enclosure

MEMORANDUM OF UNDERSTANDING

Department of Natural Resources
State of Michigan

Fish and Wildlife Service
U.S. Department of the Interior

This Memorandum of Understanding (MOU), entered into by and between the Department of Natural Resources, State of Michigan, hereinafter called the DNR, under Sections 3.321 and 299.201 of Michigan Compiled Laws, and the Fish and Wildlife Service, United States Department of the Interior, hereinafter called the FWS, acting by and through the Regional Director, Region 3, under the Authority of the Endangered Species Act (87 Stat. 889; 16 U.S.C. 1531-1543 ad amended); the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222 et seq.), as amended (16 U.S.C. 668dd-668jj); and in accordance with the policy of cooperation with the various states expressed in Section 6 of the Endangered Species Act.

WHEREAS, the DNR has been created under the laws of the State of Michigan to provide an adequate and flexible system for the protection, development, and use of natural communities that include lakes, streams, fish, wildlife, plant life, endangered and threatened species, and other outdoor resources and, the DNR has a responsibility for management of the Kirtland's Warbler and other wildlife within the boundaries of the State of Michigan and,

WHEREAS, the FWS has as its responsibility the management of migratory birds and the recovery of endangered and threatened species and seeks to maintain and increase populations of the endangered Kirtland's Warbler so they may continue to exist on earth,

WHEREAS, it is the mutual desire of the DNR and FWS to work in harmony for the purpose of cooperatively-acquiring and managing Kirtland's Warbler habitat in Michigan in order to bring additional land under appropriate habitat management so that a minimum of 100 nesting pairs of Kirtland's Warblers annually use this land. This MOU supersedes Cooperative Agreement No. 14-16-0003-82-930, dated March 31, 1982, between the FWS and DNR and the Cooperative Agreement (for Management of Certain Lands to Benefit the Kirtland's Warbler) dated September 14, 1978, between the FWS and DNR.

The goals of this MOU are as follows:

1. To acquire 7,700 acres of private land which are near, adjacent to, or within the DNR's Kirtland's Warbler management unit boundaries and have the potential for creation of jack pine habitat suitable for the Kirtland's Warbler. Approximately 5,250 acres of this goal have been met as of March 27, 1989.
2. To consolidate interests in these acres to allow more efficient habitat management by the FWS and DNR.
3. To provide for prompt initiation of habitat management on these lands as they are acquired.

4. To use the jack pine management expertise within the DNR to facilitate the planning and initiation of habitat management on these lands.

The Department of Natural Resources and the Fish and Wildlife Service

Mutually Agree:

1. To cooperate in the implementation of a program to acquire and manage lands for Kirtland's Warbler habitat in the State of Michigan for the expressed purpose of maintaining and increasing the population of Kirtland's Warblers.
2. To cooperate in identifying in Michigan, for FWS fee and/or easement acquisition, lands of high Kirtland's Warbler nesting habitat capabilities. Parcels so selected for acquisition shall be prioritized on an acquisition list. A total of 7,700 acres will be acquired by the FWS as funds and willing sellers owning land so listed become available.
3. To cooperate in preparing guidelines for the management of lands acquired under this program for the recovery of the Kirtland's Warbler.
4. To review the program annually including land management progress, and program direction.
5. To exchange land and/or interests in land of high nesting habitat capability to allow for the consolidation of management on one or more large areas designated as Kirtland's Warbler Wildlife Management Areas.

6. Lands acquired by the FWS for the Kirtland's Warbler Wildlife Management Areas will be under the jurisdiction of the National Wildlife Refuge System.
7. The FWS Regional Director and the Director of the Michigan DNR shall reconcile any program disagreements, with the FWS Regional Director having the final decision concerning Federally-owned lands and/or acquired management "interests" on State-owned lands.
8. That nothing in this MOU shall be construed as obligating the FWS or the State of Michigan in the expenditure of funds or for the future payment of money in excess of appropriations authorized by law.
9. That this MOU shall become effective as soon as signed by the parties hereto and shall continue in force until terminated by either party upon thirty (30) days' written notice.
10. That amendment to this basic MOU may be proposed by either party and shall become effective upon approval by both parties.
11. Each party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other party and the results thereof. Each party therefore agrees that it will assume all risk and liability to itself, its agents or employees, for any injury to persons or property resulting in any manner from conduct of its own operations, and the operations of its agents or employees, under the agreement, and for any loss, cost, damage, or expense resulting at any time from any and all causes due to any act or

acts, negligence, or the failure to exercise proper precautions, of or by itself or its own agents or its own employees, while occupying or visiting the premises under and pursuant to this agreement.

The Fish and Wildlife Service Agrees:

1. To conduct its activities as authorized under the Endangered Species Act and the National Wildlife Refuge System Administration Act.
2. To acquire, as funds become available, priority-listed lands in accordance with FWS procedures, taking steps to vest title in the United States in land and associated interests so acquired for this program, and make payment for property so purchased.
3. To provide full documentation of lands acquired to the Chief of the DNR Real Estate Division.
4. To implement necessary procedures to ensure that these lands be open to recreational hunting and trapping compatible with Kirtland's Warbler management, and in accordance with the provisions of 50 CFR and other applicable Federal laws. Hunting and trapping will be governed by applicable State and Federal regulations.
5. To salvage, remove, or retain at its option any capital improvements on all lands acquired under this program.
6. To conduct, by mutual agreement, specific management activities, such as cowbird population management and experimental habitat management techniques.

- 7. To provide the DNR \$15,000, as endangered species funding allows, to manage Kirtland's Warblers on State-owned lands and where agreed to, other resource management funds to manage Kirtland's Warblers on FWS-owned lands.

The Department of Natural Resources Agrees:

- 1. To prepare and maintain a priority list of desirable lands for acquisition under this program. This list may be amended by mutual consent.
- 2. That any revenues derived from the administration of these lands under FWS ownership shall be subject to the provisions of Section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 7155). All revenues derived from FWS-owned lands shall be transmitted within 90 days of each fiscal year, beginning October 1, to the FWS.
- 3. That upon request, and when feasible, to assist the FWS in the removal of capital improvements.
- 4. To manage FWS-owned lands and other lands for which the FWS has management "interests" for Kirtland's Warblers, ~~using mutually acceptable techniques:~~ ^{as ~~per~~ ~~the~~ ~~agreement~~ ~~to~~ ~~be~~ ~~signed~~.}
 (FWS has a right of first refusal.)

IN WITNESS THEREOF, the parties hereto have executed this Memorandum of Understanding as of the date last signed below.

DEPARTMENT OF NATURAL RESOURCES

By: _____

Date: _____

FISH AND WILDLIFE SERVICE

By: _____

Date: _____



1989-2B

U. S. FISH & WILDLIFE SERVICE
INTER-OFFICE TRANSMITTAL

<input type="checkbox"/> Director, _____	<input type="checkbox"/> Regular Mail
<input checked="" type="checkbox"/> Regional Director, <u>Twin Cities. Mail (WAM-1)</u>	<input type="checkbox"/> Air Mail
<input type="checkbox"/> Project Leader, _____	<input type="checkbox"/> Action
<input type="checkbox"/> Attention: <u>Bill Hutchinson</u>	<input type="checkbox"/> Information

From <u>L. Schumann</u>	Office <u>WA, East Lansing, MI</u>	Date <u>5-5-89</u>
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Subject
R. t. l. d. s. Warbler - Memorandum of Understanding

3-1908 (Attach securely to material to be transmitted & mail through regular channels)

1st marked copy sent by ELWA to RO

DRAFT

MEMORANDUM OF UNDERSTANDING

Department of Natural Resources
State of Michigan

Fish and Wildlife Service
U. S. Department of the Interior

This Memorandum of Understanding (MOU), entered into by and between the Department of Natural Resources, State of Michigan, hereinafter called the DNR, under Sections 3.321 and 299.201 of the Michigan Compiled Laws, and the Fish and Wildlife Service, United States Department of the Interior, hereinafter called the FWS, acting by and through the Regional Director, Region 3, under the authority of the Endangered Species Act (87 Stat. 889; 16 U.S.C. 1531-1543 ad amended); the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222 et seg.), as amended (16 U.S.C. 668dd-668jj); and in accordance with the policy of cooperation with the various states expressed in Section 6 of the Endangered Species Act.

WHEREAS, the DNR has been created under the laws of the State of Michigan to provide an adequate and flexible system for the protection, development, and use of natural communities that include lakes, streams, fish, wildlife, plant life, endangered and threatened species, and other outdoor resources, and the DNR has a responsibility for management of the Kirtland's warbler and other wildlife within the boundaries of the State of Michigan and,

WHEREAS, the FWS has as its responsibility the management of migratory birds and the recovery of endangered and threatened species and seeks to maintain

and increase populations of the endangered Kirtland's warbler so they may continue to exist on earth,

WHEREAS, it is the mutual desire of the DNR and FWS to work in harmony for the purpose of cooperatively acquiring and managing Kirtland's warbler habitat in Michigan in order to bring additional land under appropriate habitat management. ~~So that a minimum of 100 nesting pairs of Kirtland's warblers annually use this land.~~ *Makes no sense.* This MOU supersedes Cooperative Agreement No. 14-16-0003-82-930, dated March 31, 1982, between the FWS and DNR and the Cooperative Agreement (For Management of Certain Lands to Benefit the Kirtland's Warbler), dated September 14, 1978, between the FWS and DNR.

The goals of this MOU are as follows:

1. To acquire 7,700 acres of ^{private} land which are ~~not currently~~ ^{near, adjacent to, or} within ^{DNR} Kirtland's warbler management units, ^{boundaries and,} ~~but~~ have the potential for creation of jack pine habitat suitable for Kirtland's warbler, ~~and are near existing management units.~~ Approximately 5,400 acres of this goal ^{have} ~~has~~ now been ~~met.~~ ^{acquired.}
2. To provide for prompt initiation of habitat management for Kirtland's warbler on these lands as they are acquired.
3. ~~To use the jack pine management expertise within the DNR to facilitate the planning and initiation of habitat management on these lands.~~ ^{#3 is implied in #3, page 3.}

The Department of Natural Resources and the Fish and Wildlife Service

Mutually Agree:

1. To cooperate in the implementation of a program to acquire and manage *to be known as the Kirtland's Warbler Wildlife Management Area (KWMA)* FWS lands for Kirtland's warbler habitat in the State of Michigan for the expressed purpose of maintaining and increasing the population of Kirtland's warbler.
2. To cooperate in identifying ~~Kirtland's warbler habitat~~ *Kirtland's warbler* in Michigan, for FWS fee and/or easement acquisition, lands of high nesting habitat capabilities. Parcels so selected for ~~habitat~~ acquisition shall be prioritized on an acquisition list. A total of 7,700 acres will be acquired by the FWS as funds and willing sellers owning land so listed become available.
3. To cooperate in preparing guidelines for the management of lands acquired under this program for the recovery of the Kirtland's warbler. *Management guidelines for KWMA may allow all, or part to be managed with experimental techniques.*
4. To review the program annually including land management progress and program direction.
5. To exchange *land and/or* interests in land of high nesting habitat capability to allow for the consolidation of management on one or more large areas. *Perhaps "interests" should be defined.*

6. The FWS Regional Director and the Director of the Michigan DNR shall reconcile any program disagreements.
7. That nothing in this MOU shall be construed as obligating the FWS or the State of Michigan in the expenditure of funds or for the future payment of money in excess of appropriations authorized by law.
8. That this MOU shall become effective as soon as signed by the parties hereto and shall continue in force until terminated by either party upon thirty (30) days written notice.
9. That amendment to this basic MOU may be proposed by either party and shall become effective upon approval by both parties.
10. Each party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other party and the results thereof. Each party therefore agrees that it will assume all risk and liability to itself, its agents or employees, for any injury to persons or property resulting in any manner from conduct of its own operations, and the operations of its agents or employees under the agreement, and for any loss, cost, damage, or expense resulting at any time from any and all causes due to any act or acts, negligence, or the failure to exercise proper precautions, of or by itself or its own agents or its own employees, while occupying or visiting the premises under and pursuant to this Agreement.

The Fish and Wildlife Service agrees:

1. To conduct its activities as authorized under the Endangered Species Act and the National Wildlife Refuge System Administration Act.
2. To acquire, as funds become available, priority-listed lands in accordance with FWS procedures, taking steps to vest title in the United States in land and associated interests so acquired for this program, and make payment for property so purchased.
3. To provide full documentation of lands acquired to the Chief of the DNR Real Estate Division.
4. To implement necessary procedures to ensure that these lands be open to recreational hunting and trapping compatible with Kirtland's warbler management, and in accordance with the provisions of 50 CFR and other applicable Federal laws. Hunting and trapping will be governed by applicable State and Federal regulations.
5. To salvage, remove, or retain at its option, any capital improvements on all lands acquired under this program.
6. To conduct by mutual agreement, specific management activities, such as cowbird population management and experimental habitat management techniques.

7. To provide the DNR \$15,000^{annually} as endangered species funding allows, to manage Kirtland's warblers on State-owned lands and where agreed to, funds to manage Kirtland's warblers on FWS-owned lands.

The Department of Natural Resources Agrees:

and maintain (meaning to keep current)

1. To prepare a priority list of desirable lands for acquisition under this program. This list may be amended by mutual consent.
2. That any revenues derived from the administration of these lands under FWS ownership shall be subject to the provisions of Section 401 of the Act of June 15, 1935 (49 Stat. 383; 16 U.S.C. 7155). All revenues derived from FWS-owned lands shall be transmitted within 90 days of each fiscal year, beginning October 1, to the FWS.
3. That upon request, and when feasible, to assist the FWS in the removal of capital improvements.
4. To manage FWS-owned lands for Kirtland's warbler, *using mutually acceptable techniques.*

#4 is very wide open! They don't even ask for MONEY! Grab it quick.

DRAFT

-7-

IN WITNESS THEREOF, the parties hereto have executed this Memorandum of Understanding as of the date when last signed below.

MICHIGAN DEPARTMENT OF NATURAL RESOURCES

Date: _____

By: _____

FISH AND WILDLIFE SERVICE

Date: _____

By: _____

Rev. 3/23/89