

COOPERATIVE AGREEMENT
BETWEEN THE
U.S. FISH AND WILDLIFE SERVICE
U.S. DEPARTMENT OF THE INTERIOR
AND THE
DEPARTMENT OF NATURAL RESOURCES
STATE OF MICHIGAN

1991

I. BACKGROUND, AUTHORITY AND PURPOSE:

This Cooperative Agreement is 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 "Service, 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 As 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.

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.

The Service 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.

It is the mutual desire of the DNR and Service to work in harmony for the purpose of cooperatively acquiring and managing Service-owned Kirtland's warbler habitat in Michigan in order to bring additional land under appropriate habitat management to maximize long-term nesting and recruitment on Service-owned land. This Agreement supersedes #14-16-0003-82-930, dated March 31, 1982, between the Service and DNR and the Cooperative Agreement for "Management of Certain Lands to Benefit the Kirtland's Warbler), dated September 14, 1978 between the Service and DNR.

II. SCOPE OF WORK

The goal of this Agreement is to:

- 1) To acquire up to 7,700 acres of land which are not currently within Kirtland's warbler management units, but have the potential for creation of jack pine habitat suitable for Kirtland's warbler, and are near existing management units, approximately 6,500 acres of this goal has now been met;
- 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.

The DNR and the Service Mutually Agree:

- 1) To cooperative 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 warbler.
- 2) To cooperate in identifying Kirtland's warbler habitat in Michigan, for Service fee 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 may be acquired by the Service as funds and willing sellers 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) That appropriate representatives of both agencies will meet annually for coordination and planning, including but not limited to review, evaluation, and planning for completed, ongoing, and future management on Service lands.
- 5) To exchange interests in land of high nesting habitat capability where necessary for effective management.
- 6) The Fish and Wildlife Service Regional Director and the Director of the Michigan DNR shall reconcile any program disagreements.

SPECIFICALLY THE FISH AND WILDLIFE SERVICE AGREES TO:

- 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 Service procedures, taking steps to vest title in the United States in land associated interests so acquired for this program, and make payment for property so purchase.
- 3) Provide full documentation of lands acquired to the Chief of the DNR Real Estate Division.
- 4) Implement necessary procedures to ensure that these lands are 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, with hunting and trapping governed by applicable State and Federal regulations.
- 5) Salvage, remove, or retain at its option, any capital improvements on all land acquired under this program.
- 6) Coordinate specific management activities, such as cowbird population management and experimental habitat management actions in such a way as to be compatible with adjacent DNR management for Kirtland's warbler.
- 7) Conduct cowbird control activities on DNR Kirtland's Warbler Management Units.
- 8) 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 Service-owned lands.
- 9) Conduct a prescribed burning program on Service-owned lands, involving planning, site preparation and burning, by mutual agreement and in cooperation with the DNR.
- 10) Provide funds to the DNR to cover expenses incurred in the removal of forest cover, site preparation, burning and replanting on Service-owned lands, up to the value of the receipts generated in timber sales. ?

SPECIFICALLY THE DEPARTMENT OF NATURAL RESOURCES AGREES TO:

- 1) Conduct management of Service-owned lands for Kirtland's warbler.
- 2) Any revenues derived from the administration of these lands under Service ownership shall be subject to the provisions of Section 401 of the Act of June 15, 1935 (49 Stat. 382; 16 U.S.C. 7155).
- 3) Account for in detail and transmit to the Service within 90 days of each fiscal year, beginning October 1, all revenues derived from Service lands.
- 4) Cooperative and assist in implementing a prescribed burning in program on Service-owned lands using mutually agreed upon burn plans and site preparation plans.
- 5) Use the funds provided by the Service, including but not limited to Endangered Species Act Section 6 funds, for the removal, site preparation and planting of trees, to defray the costs of managing Kirtland's warbler habitat on Service lands.
- 6) Assist the Service by completing resource inventories and cover typing of the Service-owned lands that will be compatible with and compliment DNR resource data on State Kirtland's Warbler Management Units.
- 7) Incorporate all or mutually selected Service tracts into DNR Kirtland's Warbler Management Units.
- 8) Make available to the Service within one year of this agreement or upon completion of DNR Kirtland's Warbler Management Plan revision, maps and treatment schedules for compartments and cutting blocks containing Service Tracts.

III. PERIOD OF PERFORMANCE

This Cooperative Agreements will become effective as soon as signed by the parties hereto.

IV. MODIFICATIONS AND TERMINATION

Modifications may be proposed at any time during the period of performance by either party and shall become effective upon approval by both parties upon thirty (30) days written notice.

V. FINANCIAL ADMINISTRATION

The Service will 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 Service-owned lands.

The DNR will use the funds provided by the Service, including but not limited to Endangered Species Act Section 6 funds, for the removal, site preparation and planting of trees; to defray the costs of managing Kirtland's warbler habitat on Service lands.

Nothing in this Agreement shall be construed as obligating the Service or the State of Michigan in the expenditure of funds or for the future payment of money in excess of appropriations authorized by law.

VI. PROJECT OFFICERS

U.S. Fish and Wildlife Service
Michael Tansy, Refuge Manager
Seney National Wildlife Refuge
Seney, Michigan 49883
Phone: 906/586-9851

Mr. George E. Burgoyne, Jr.
Assistant Chief of Wildlife Division
Michigan Department of Natural Resources
Steven T. Mason Building,
P.O. Box 30028
Lansing, Michigan 48909
Phone: 517/373-1263

VII. SPECIAL AND GENERAL PROVISIONS

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 U.S. Fish and Wildlife Service General Provisions for Grants and Cooperative Agreements dated August 1, 1985, shall be applicable to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date therein written.

U.S. Fish and Wildlife Service

Michigan Department of Natural Resources

Deputy Director

James C. Giltman
Title Regional Director

Title

MAY 2 1991

5-13-91

Date

Date