

DRAFT

Subtitle E.

Roles and Responsibilities Hualapai

Tribe and USFWS

(Hualapai Threatened and Endangered

Species Ordinance)

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STATEMENT OF ROLES AND RESPONSIBILITIES FOR
IMPLEMENTING THE ENDANGERED SPECIES ACT
ON THE
HUALAPAI INDIAN RESERVATION

Section 1. Purpose. The purpose of this statement is to:

Provide a foundation for conserving species listed under the Endangered Species Act of 1973 (Act) that occur on the Hualapai Indian Reservation consistent with Federal Indian law and policy, the Federal Government's trust responsibilities to the Hualapai Tribe, and the United States' obligations to honor and protect the reserved rights of the Hualapai Tribe.

Clarify the relationship between the Hualapai Tribe (Tribe), the United States Fish and Wildlife Service (Service) and the Bureau of Indian Affairs (Bureau), collectively referred to as the parties, and their respective roles and responsibilities with regard to activities taken under the authority of the Endangered Species Act on the Hualapai Indian Reservation.

Adopt and incorporate by this reference the principles set forth in the Service's Native American Policy, and the Bureau's Indian Fish and Wildlife Policy, both signed in June 1994.

Section 2. Underlying Principals. The Hualapai Tribe, as a governmental sovereign, has the power to make and enforce laws, administer justice, manage natural resources, protect the environment, and regulate member and non-member activity on the Hualapai Indian Reservation. These powers are recognized as the supreme law of the land. Their exercise is subject only to the plenary power of congress.

The Hualapai Indian Reservation is not part of the public domain, and is not subject to public land laws. It is regarded as a "private trust asset" set aside for the exclusive use of the Hualapai Tribe, to be managed in accordance with tribal goals and objectives, within the framework of applicable. The tribe retains the benefits of ownership of its lands, as do owners of fee simple property, however, reservation lands cannot be alienated or encumbered without the Federal Government's approval.

There is a unique relationship between the United States and the Hualapai Tribe that differentiates the Tribe from other governments and entities. This relationship entails a Federal trust responsibility involving legal obligations of the United States toward the tribe, and fiduciary standards of due care with respect to the protection of reservation resources. It also entails the protection of Federal lands and habitats that support resources upon which the meaningful exercise of tribal rights may depend, and the administration of Federal projects to prevent the diminishment of natural resources to which the tribe may be entitled.

The Act and its implementing regulations shall be administered in a manner consistent with the United States' obligation to honor and protect the reserved rights of the Hualapai Tribe, and interpreted in accordance with the trust responsibility, tribal laws, tribal rights and Federal Indian law and policy. A clear expression of Congressional intent is required before a later-enacted statute may be construed to abrogate any reserved powers or rights of the tribe.

In implementing the Act on the Hualapai Indian Reservation, any and all regulatory measures adopted shall: (1) be reasonable and necessary for species preservation, (2) be the least restrictive available to achieve the required conservation purpose, (3) either on their face or as applied, not discriminate against Indian activities, (4) be implemented only when their purpose cannot be achieved solely through the regulation of non-Indian activity, and (5) be implemented only when voluntary tribal conservation measures are not adequate to achieve the conservation purpose.

Program coordination and the unique government-to-government relationship between the United States and the Hualapai Tribe requires that effective working relationships and mutual partnerships for implementing the Act be established and maintained between the parties. This relationship must focus on cooperative assistance, consultation and the sharing of information, and involve regular and direct inter-party communication in all pre-decisional processes potentially impacting the laws, rights, lands' resources and management/development prerogatives of the tribe.

Section 3. Scope. For all species of fish, wildlife and plants defined pursuant to section 3 of the Act occurring on the Hualapai Indian Reservation, and for listing, recovery, land acquisition, interagency consultation, international cooperation and permitting programs as outlined in, and to the extent consistent with the Act.

Section 4. Implementation of the Act. In implementing the Act on the Hualapai Indian Reservation, the parties will consult as necessary to determine the Federal Government's fiduciary duty and the approaches that might be taken to meet this duty. In the following areas and programs, it is the policy of the parties to:

a. Prelisting Conservation

Consult with, utilize the expertise of, and solicit information from each other in determining which species should be included on the list of candidate animal and plant species.

Consult with, utilize the expertise of, and solicit information from each other when conducting population status inventories and geographical distribution surveys to determine which species warrant listing.

Consult with, utilize the expertise of, solicit information from, and work cooperatively with each other when designing and implementing prelisting stabilization actions for species and habitat to remove or alleviate threats so that listing priority is reduced or listing as endangered or threatened is not warranted.

Consult with, utilize the expertise of, and solicit information from each other when responding to listing petitions.

b. Listing

Consult with, utilize the expertise of, and solicit information from each other when preparing proposed and final rules to list species as endangered or threatened species, to designate critical habitat, to reclassify a species from endangered to threatened (or vice versa), and to remove a species from the list. (Reference section 4(b)(5)).

Provide timely notification and actively consult with each other on a regular basis throughout review and decision-making processes in cases where tribal laws, rights, lands, resources or management/development prerogatives may be affected by a proposed regulation to list a species, designate critical habitat, reclassify a species, or remove a species from the list of threatened and endangered species. Provide for inter-party review and comment on pre-decisional documents.

Conduct inter-party consultation when preparing economic analyses for proposed critical habitat, and in applying the balancing test to determine appropriate exclusions from critical habitat (Reference section 4(b)(2)), including providing for adequate opportunities to review and comment on draft economic analyses with implications for the Hualapai Indian Reservation and associated tribal management prerogatives, prior to their finalization.

Provide timely notification and consult with each other on petitions that are found to present substantial information that a proposed listing or revised critical habitat may be warranted in cases where Hualapai lands and associated tribal laws, rights, resources or management/development prerogatives may be affected by the petitioned action. Provide for inter-party exchange of scientific data and other resource management information during the status review process. (Reference section 4(b)(3)).

Consistent with the requirements of section 4(d) of the Act, cooperate in the exercise of special regulations authority for threatened species in a manner which avoids or minimizes section 9 effects on the exercise of reserved tribal rights. In cases where actions being undertaken by the Hualapai Tribe satisfy the general policy statement conditions, any applicable section 4(d) rule would simply adopt the tribal measures. (Reference section 4(d)).

Having actively consulted with each other, and having provided for adequate inter-party opportunity to review and comment on pre-decisional documents, the Hualapai Tribe and the Bureau shall be provided with a written justification if a final decision on a proposal to list a species, designate critical habitat, reclassify a species, or remove a species from the list of threatened and endangered species conflicts with comments provided by the tribe or Bureau on a proposal. If the tribe petitions for rulemaking under section 4(b)(3), it shall be consulted with, and, should the requested regulation not be adopted, provided with a written justification. (Reference section 4(h)).

c. Consultation

Provide timely notification and consult with each other on any Federal agency action subject to formal or informal consultation that may affect tribal laws, rights, resources and lands. Encourage and facilitate government-to-government dealings between the parties and the action agencies during the review process, and share the results of any related studies.

Exchange information and actively consult with each other when preparing biological opinions on Federal actions that may adversely affect the laws, rights, resources or lands of the tribe, providing for inter-party review and comment on pre-decisional documents.

Make final biological opinions available to the parties in cases where Indian lands, resources, laws or rights may be affected by an agency action, unless the related information is protected by national security classification or the Trade Secrets Act.

Encourage and facilitate inter-party participation in all phases of formal consultation on Federal actions that may affect the laws, rights, resources and lands of the Hualapai Tribe, including, but not limited to meetings with Federal action agencies, and other opportunities to provide pertinent scientific data, to review data in the administrative record, and to review and comment on draft biological opinions. Interior Department policy directs each of its action agencies to concur with tribal requests to participate in a formal consultation process. (Reference section 4(b)).

Encourage and facilitate inter-party participation in the development and review of biological assessments prepared for Federal actions that affect the laws, rights, resources and lands of the Hualapai Tribe. Interior Department policy directs its action agencies to concur with requests by tribes to participate in a formal consultation process. (Reference section 4(b)).

d. Habitat Conservation Planning

Encourage and facilitate inter-party participation in all aspects of Habitat Conservation Planning (HCP) that may affect the laws, rights, resources or lands of the Hualapai Tribe.

e. Recovery

Encourage and facilitate inter-party participation in all aspects of recovery planning involving species occurring on the Hualapai Indian Reservation, or which may be subject to tribal laws, rights, including the appointment of tribal officials to associated recovery teams. (Reference section 4(f)).

Encourage and facilitate inter-party participation in all instances where recovery plan implementation may affect the laws, rights, resources, lands and management/development prerogatives of the Hualapai Tribe.

Encourage and facilitate inter-party participation in designing and implementing monitor programs for species that have been removed from the list of Endangered and Threatened Wildlife and Plants that occur on the Hualapai Indian Reservation, that may be subject to tribal laws, rights or that may affect tribal management/development prerogatives.

Section 6. Authority. Endangered Species Act of 1973, as amended (16 U.S.C. 1536). Hualapai Tribal Environmental Review Code, Constitution.

Chairman, Hualapai Tribal Council

Date

Concur:

Director, U.S. Fish & Wildlife Service

Date

Assistant Secretary-Indian Affairs

Date