

COOPERATIVE AGREEMENT TEMPLATE

1. INTRODUCTION

This Cooperative Agreement (CA), between the Nevada Department of Wildlife (NDOW) and _____(Cooperator), is intended to enhance the reintroduction and long-term recovery of Lahontan cutthroat trout (LCT) (*Oncorhynchus clarki henshawi*) through implementation of management actions and conservation measures within the Northwest Distinct Population Segment (NWDPS) on land owned by the Cooperator. Participation in this CA is a prerequisite for obtaining a Certificate of Inclusion (CI; Attachment A) from NDOW as part of the Safe Harbor Agreement (SHA) between NDOW and the U.S. Fish and Wildlife Service (Service) titled: *Safe Harbor Agreement for Voluntary Enhancement/Restoration Activities Benefiting Lahontan Cutthroat Trout on Private Lands within the Northwest Distinct Population Segment*.

2. ENROLLED PROPERTY

2.1. Background. The Cooperator owns property in _____ County, Nevada, within the NWDPS containing habitat that may be used by LCT. The property to be enrolled includes ___ miles of _____ Creek, located within T _____ N, R _____ W, S _____ in northern Nevada.

The enrolled property consists of _____ *[Qualitative description of the property. Include biological & major plant communities or habitat types, locations of water delivery and control systems]*. Photographs of the enrolled property are included in Attachment _.

2.2. Current Land Use. Currently, the Cooperator implements the following management actions on the enrolled property: *[livestock management, recreational pursuits, agriculture activities, irrigation, others]*. Describe in detail the management actions being undertaken and conservation measures to be implemented to minimize impacts or benefit LCT.

2.3 Expected Benefits. Implementation of the conservation measures and management actions listed in this CA is expected to result in _____. *[generally describe the expected benefits—how the land may change to benefit LCT in response to conservation measures and management actions; also how LCT may now be able to use the habitat, such as for spawning, rearing, or migration]*.

3. BASELINE

3.1. Existing Condition. A description of existing _____ *[habitat conditions and/or LCT populations]* conditions is critical because the conservation measures agreed upon by the Cooperator address potential take in the form of _____ *[Description of specific threats, e.g., entrainment, habitat, displacement by exotics]* that are considered _____ *[direct,*

indirect, or both] forms of take. These conditions are based on surveys conducted on [date]. Survey results indicate that [redacted]
[Discussion of the results of surveys as related to habitat and/or fish populations]

3.2. Established Baseline Conditions. Established baseline conditions are qualitative descriptions with associated photographic documentation of the enrolled property environment prior to implementation of this CA, and are agreed to by the Cooperator, NDOW, and the Service. Baseline conditions shall be based on riparian/stream habitat, fish populations, or both, as well as networked population suitability and recovery needs. Determination of baseline conditions will be accomplished through surveys, photos, and discussions between the landowner, NDOW, and the Service.

Catastrophic natural events such as rainstorms, severe storm events, drought, forest fires, or insect/disease epidemics are beyond the reasonable control of the Cooperator, and could either extirpate LCT from enrolled lands or render LCT habitat on enrolled lands unsuitable for continued occupation. These events may reduce LCT numbers or habitat below original baseline conditions through no fault of, or negligence by, the Cooperator. In such circumstances the Cooperator and NDOW, in coordination with the Service and the NWDPS Team, may agree to revise the baseline conditions in the CA to reflect the new circumstances.

4. MANAGEMENT ACTIONS AND CONSERVATION MEASURES

4.1. Management Actions. Management actions are activities being conducted by the Cooperator on the enrolled property that have the potential to affect LCT populations or recovery. *[Describe all of the covered activities that will be implemented for this CA within this section]*

4.2. Conservation Measures. Conservation measures are activities agreed to by the Cooperator and NDOW that will benefit LCT on the enrolled property. These measures will be implemented by the Cooperator. *[Discuss in detail in this section. Identify what measures are being implemented, when they will be implemented, what benefits will be gained through implementation of the measures, and what association they have with management actions.]*

5. RESPONSIBILITIES

Responsibilities of NDOW and the Service are listed in the Safe Harbor Agreement signed on _____. The responsibilities of the Cooperator include the following:

- a. Implement conservation measures within the enrolled property to maintain or enhance habitat conditions for LCT.
- b. Provide NDOW, the Service, their representatives (including the NWDPS Team) with reasonable access to enrolled land to manage, monitor, reintroduce, or remove LCT, or to carry out other management activities, perform biological and compliance monitoring,

or salvage or relocate LCT from areas to be impacted by management actions. These entities will contact the Cooperator at least 7 days in advance for access to enrolled land.

- c. Inform NDOW within 3 working days of finding any dead or accidentally killed LCT, and allow immediate access to NDOW, the Service, or their representatives (including NWDPS team) to determine the cause of the mortality.
- d. Inform NDOW as soon as practicable of natural or human-caused emergency circumstances, such as storm events or failure of water delivery systems, that could negatively affect occupied aquatic habitats and result in take of LCT; allow immediate access to NDOW, the Service, or their representatives (including the NWDPS Team) for emergency salvage or relocation of affected individuals.
- e. Give NDOW, the Service, or their representatives notice at least a 30 days prior to planned activities that could reasonably be expected to result in the incidental take of LCT on the enrolled property so that Lahontan cutthroat trout may be relocated or removed as necessary.
- f. Notify NDOW 90 calendar days (if possible) prior to transfer of ownership of enrolled land, so that they may contact the new owner, explain the baseline responsibilities applicable to the enrolled property, and seek to interest the new owner in signing the existing CA or a new one.

6. MONITORING

To ensure compliance with the SHA and CAs, and to document progress in meeting recovery objectives, compliance and biological monitoring must be conducted on all enrolled property. The frequency of surveys shall be agreed on by the Cooperator, NDOW, and the Service, based on the adaptive management component of the SHA. The Cooperator agrees to provide NDOW, the Service, or their representatives with access to the enrolled property for the purpose of conducting these surveys. Results of this monitoring will be a critical component of the annual reports and will be shared with the Cooperator if requested.

6.1. Compliance Monitoring. Compliance monitoring is needed to ensure compliance with the Permit, maintenance of baseline responsibilities, and effectiveness of the conservation measures as outlined in Section 4 of this CA.

6.2. Biological Monitoring. Monitoring of biological or habitat conditions will determine whether conditions on the enrolled property are responding to the conservation measures and management actions being implemented. This response will require comparisons of the established baseline conditions with current habitat or biological conditions as measured through time over the course of implementing the CA.

7. AGREEMENT DURATION

Obligations under this CA will be in effect for a minimum of [redacted] years from the date it is executed. Upon signing the CA and obtaining Service concurrence, NDOW will issue a Certificate of Inclusion to the Cooperator under Permit No: [redacted], authorizing the incidental take of LCT on the enrolled lands. The Certificate of Inclusion will authorize incidental take of LCT from [redacted] [date] to [redacted] [date], but may not exceed [redacted] [the SHA expiration date]. This CA and the Certificate of Inclusion will be recorded by NDOW in accordance with NRS 277.140, as appropriate.

8. INCIDENTAL TAKE

Incidental take is discussed in more detail in Section 11 of the SHA. Under the terms of this CA, the Cooperator is authorized to make use of enrolled property in any manner that does not result in reducing the LCT population or its occupied habitat below the established baseline, or affect the beneficial impacts of the conservation measures.

To return the enrolled property to established baseline conditions, a Cooperator must demonstrate that the activities identified in the CAs were implemented as necessary to achieve a net conservation benefit for the duration of the CA. The Certificate of Inclusion will authorize incidental take of LCT or associated habitat resulting from lawful activities on the enrolled property, from the time this CA is signed until expiration of the Permit. Lawful covered uses will be defined in Section 2.2 of this CA. Before expiration of the CA, a Cooperator may take LCT individuals or habitat back to baseline levels to avoid accruing additional take liability under the ESA. However, the Cooperator shall give the Service notice at least 30 days prior to impacting LCT or habitat so that individuals can be relocated.

9. MODIFICATIONS

9.1. Modification of Cooperative Agreement. The Cooperator or NDOW may propose modifications or amendments to a CA by providing written notice to the Service and obtaining written concurrence. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Service will respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications will become effective upon written concurrence by the Service and NDOW.

9.2. Termination of the Cooperative Agreement. As referenced in 50 CFR 17.3 (revised May 3, 2004; FR 69:24092), Cooperators may terminate their CA before the expiration date because of unforeseen circumstances. In such circumstances, the Cooperator may return the enrolled property to established baseline conditions even if the expected net conservation benefit has not been realized, provided that baseline conditions have been maintained and established conservation measures have been implemented. Cooperators may terminate their CAs, due to circumstances beyond their control, 10 calendar days after providing notice to the Service. Cooperators may also terminate their CAs at any time for reasons other than uncontrollable

circumstances, but will not have the authority to take LCT. Cooperators must give NDOW, the Service, and their representatives the opportunity to relocate LCT within 30 days of providing the termination notice. Under either termination scenario, Cooperators must relinquish their Certificates of Inclusion to NDOW.

9.2.a. Termination Under Other Circumstances. NDOW, in coordination with the Service, may terminate a CA if it is determined that use of the enrolled property is no longer necessary as a contribution to recovery efforts for LCT. Following that determination and notification to the Cooperator, NDOW, the Service, and their representatives (including the NWDPS Team members) shall remove LCT from the included properties in a manner and to an extent that is consistent with a return to baseline conditions within 60 calendar days at their own expense, and in coordination with the Cooperator, and release the Cooperator from any further obligations under the CA. Cooperators must then relinquish their Certificates of Inclusion, and may otherwise return the enrolled property to established baseline conditions.

9.3. Succession and Transfer of Cooperative Agreements and Certificates of Inclusion. The rights and obligations under each Cooperative Agreement shall apply to the owner of the enrolled property, and are transferable to subsequent non-Federal property owners pursuant to 50 CFR 13.25. After becoming a party to a Cooperative Agreement and Certificate of Inclusion, the new owner(s) will have the same rights and obligations with respect to the enrolled property as the original owner. The new owner(s) also will have the option of receiving Safe Harbor assurances by signing a new Cooperative Agreement and receiving a new Certificate of Inclusion. Cooperators shall notify NDOW of any transfer of enrolled land ownership; NDOW will attempt to contact the new owner, explain the baseline responsibilities applicable to the property, and seek to interest the new owner in signing the existing Cooperative Agreement or a new one to benefit LCT on the property. Assignment or transfer of the Cooperative Agreement shall be governed by Service regulations in force at the time.

9.4. Certificate of Inclusion Suspension or Revocation. NDOW may suspend or revoke a Certificate of Inclusion if a Cooperator has breached obligations under this CA, has failed to cure the breach in a timely manner, and the effect of the breach diminishes the likelihood that the CA will achieve stated goals. Termination of a CA, and removal of LCT from the property, at the request of the Cooperator or NDOW for reasons identified in Section 9.2, shall also result in revocation of the Cooperator's Certificate of Inclusion.

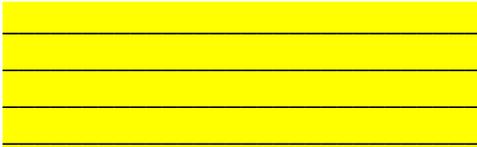
9.5. Remedies. NDOW, the Service, and the Cooperator shall have all remedies otherwise available to enforce the terms of the CA and the Certificate of Inclusion, except that none shall be liable in damages for any breach, any performance or failure to perform an obligation, or any other cause of action arising from this CA.

9.6. Emergencies. Emergency situations arising from natural disasters (e.g., fire, excessive rainfall, extreme drought, insect infestations, or epidemic disease) may require the initiation of land management actions that result in take of LCT. The Cooperator will notify NDOW within 5 working days of natural disasters, and make reasonable accommodations to NDOW, the Service, and their representatives for survey or relocation of LCT prior to initiation of land management

actions. Other emergency situations, such as the failure of diversion or pond structures, may occur outside of the control or intention of the Cooperator, and could result in the take of LCT. Under these situations, the Cooperator will notify NDOW as soon as is practicable to allow the salvage or relocation of affected LCT individuals. NDOW and the Service acknowledge that survey or relocation may be impracticable in certain situations.

10. NOTIFICATION

Communication and correspondence required by this CA should be directed to the addresses below, with a copy sent to the Service. Names and addresses may be changed upon written notice to all parties.



[Name and address of Cooperator]

Director
Nevada Department of Wildlife
1100 Valley Road
Reno NV 89512

Field Supervisor,
U.S. Fish and Wildlife Service
1340 Financial Boulevard, Suite 234
Reno, NV 89502
Tel: 775-861-6300

IN WITNESS WHEREOF, each party hereto has caused this Cooperative Agreement to be executed by an authorized official on the day and year set forth opposite their signature.

COOPERATOR

By: _____

Date: _____

NEVADA DEPARTMENT OF WILDLIFE

By: _____

Terry Crawford, Director
Department of Wildlife

Date: _____

Attachment A. Safe Harbor Agreement Certificate of Inclusion Template

CERTIFICATE OF INCLUSION

This certifies that the property described as follows [Description of portion of property covered by the Safe Harbor Permit] owned by [Cooperator's name], is included within the scope of Permit No. [] issued by the U.S. Fish and Wildlife Service to Nevada Department of Wildlife on [date] and expiring on [date] under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended 16 U.S.C.1539(a)(1)(A.). Such Permit authorizes activities by participating landowners (Cooperators), as part of the Safe Harbor program, to enhance, restore, and recover habitat for the threatened Lahontan cutthroat trout. Pursuant to that Permit and this Certificate, the holder of this Certificate is authorized to engage in lawful activities on the above-described property that may result in the incidental taking of Lahontan cutthroat trout, as appropriate, subject to the terms and conditions of the Permit and the Cooperative Agreement entered into by Nevada Department of Wildlife and [Cooperator's Name] on [date].

Terry Crawforth, Director
Nevada Department of Wildlife