

FS Agreement No. 20-MU-11015600-019
Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
IDAHO DEPARTMENT OF FISH AND GAME
And The
USDA, FOREST SERVICE
NORTHERN, INTERMOUNTAIN, AND PACIFIC NORTHWEST REGIONS

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the Idaho Department of Fish and Game, hereinafter referred to as "the Department" acting through its Commission and Director, under the authority of Title 36, and any other appropriate title and chapter of the State of Idaho code," and the USDA, Forest Service, acting by and through the Regional Foresters of the Northern, Intermountain, and Pacific Northwest Regions , hereinafter referred to as the "U.S. Forest Service."

Background: National Forest System (NFS) lands referred to in this document are the Federally owned lands administered by the Forest Service in the three Regions listed above, including wilderness, wild and scenic rivers, National Recreation Areas, and other land within these Regions under the authority of 16 U.S.C. 472. This MOU is entered under authority of the Sikes Act of September 1, 1960 (16 U.S.C. 670g-670i, 670o, Pub. L. 86-797), as amended.

This MOU supersedes and replaces Memorandum of Understanding (2010-MU-11062754-027), as executed by the parties on June 7, 2010.

Title: MOU between Idaho Department of Fish and Game and the U.S. Forest Service. Terrestrial and Aquatic Species Conservation Programs

I. PURPOSE:

The purpose of this MOU is to document the cooperation between the parties, to describe the terrestrial and aquatic species conservation programs on NFS lands, and to recognize agency commitments, responsibilities and areas of cooperation and coordination in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Department was created under the laws of the State of Idaho to preserve, protect, perpetuate, and manage the fish and wildlife populations of the State. The U.S. Forest Service's mission is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The U.S. Forest Service is authorized by Acts of Congress and regulations of the USDA to administer NFS lands in the State of Idaho, including fish and wildlife habitats. The U.S.



Forest Service operates under authorities directly related to fish and wildlife such as the National Forest Management Act, the Endangered Species Act, the Migratory Bird Treaty Act, and the Multiple Use and Sustained Yield Act. It is mutually beneficial to and the desire of the Department and the U.S. Forest Service to work together for the common purpose of developing, maintaining, and managing the fish and wildlife resources, associated habitats, and other related resources on NFS lands. Such cooperation is in the best interests of the wildlife and fish resources on NFS lands in the best interests of the people of Idaho and the United States.

In consideration of the above premises, the parties agree as follows:

III. THE DEPARTMENT SHALL:

- A. Recognize the U.S. Forest Service as the agency responsible for the management of NFS lands in Idaho and the fish and wildlife habitats on these lands.
- B. Coordinate with and provide information and assessments to the U.S. Forest Service concerning Department objectives, plans, projects, programs, and policies for fish, wildlife, and related recreation on U.S. Forest Service administered lands.
- C. Respond to requests from the U.S. Forest Service for use of Department improvements, facilities, and equipment as would be used normally in the management and protection of National Forest resources, provided they are not currently being used by Department Personnel. If there is to be a use of such equipment or services, then collaborate with the U.S. Forest Service in project implementation via the appropriate instrument and in accordance with V.J. below.
- D. Notify the Regional Forester and Forest Supervisors of changes in policies, objectives, plans, management, laws, and regulations which may affect NFS land management, policies, or U.S. Forest Service authorities on NFS lands.
- E. Actively participate with the U.S. Forest Service during land management planning processes by providing input to the development of conservation strategies, goals, objectives, management areas, standards, guidelines, and monitoring.
- F. Assist, as Department deems appropriate, in preparation of environmental analyses under NEPA and other federal laws and regulations that may be required when there is a U.S. Forest Service action or decision associated with State fish and wildlife management actions on NFS lands. The Forest Service and Department may choose to enter into separate cooperating agency agreements to define responsibilities for individual NEPA documents.
- G. Cooperate with the Forest Service in fish and wildlife population surveys and collection of harvest data to the extent possible.



- H. Involve the U.S. Forest Service in the development of state wildlife planning documents, seek comments on these documents, and coordinate actions on NFS lands directed by these documents.
- I. Cooperate with the U.S. Forest Service in the design and implementation of wildlife and fish management programs and actions on NFS lands
- J. Notify and coordinate with the U.S. Forest Service with sufficient lead time on any piscicide application proposal on NFS lands in Idaho in recognition that under extraordinary circumstances, NEPA or other authorization may be necessary (see IV. J.).
- K. Consult with the U.S. Forest Service on proposed transplants or introductions of wildlife and fish with sufficient lead-time to permit joint field investigations regarding the effects of such programs on NFS lands. Keep the U.S. Forest Service informed as to normal and recurrent trapping and transplant projects, such as fish stocking, that IDFG has planned on NFS lands.

IV. THE U.S. FOREST SERVICE SHALL:

- A. Recognize the Department as the agency with the primary authority, jurisdiction, and responsibility to manage, control, and regulate fish and wildlife populations on NFS lands.
- B. Advise and coordinate with the Department on U.S. Forest Service plans, projects, preparation of environmental analysis reports or environmental impact statements, programs, and policies having an impact on fish and wildlife resources and related recreation. Notify the Department of proposed changes in U.S. Forest Service policies and regulations that may affect Department programs on NFS lands.
- C. Coordinate with and involve the Department in a timely manner in developing goals, objectives, management areas, standards and guidelines, and monitoring that affect fish and wildlife habitat and related recreation in Forest Resource and Land Management Plans, amendments and revisions to those plans, and in subsequent fish, wildlife, plant, and habitat management or conservation activities.
- D. Make available to representatives of the Department such National Forest improvements, facilities, equipment, pack and saddle stock, aircraft and services as would be used in wildlife work, provided they are not currently being used by the U.S. Forest Service. If there is to be a charge for the use of such equipment or services rendered, then the rate will be at actual cost, and will be dealt with as provided in III. J. above.



- E. Cooperate with the Department in accordance with V.J. below, in the design, implementation, and maintenance of fish and wildlife habitat structural and non-structural improvements, on NFS lands provided they are consistent with the Department and U.S. Forest Service management plans and conform to policies, laws, and regulations concerning the use of these lands.
- F. Cooperate with the Department, when requested, and to the extent feasible, in fish and wildlife population surveys and harvest data collection.
- G. Cooperate with the Department to ensure that the appropriate level of environmental analysis is completed when State activities on NFS land require U.S. Forest Service authorization or there are other Federal actions implicated which triggers requirements for compliance with NEPA and other federal environmental laws. The Forest Service need not prepare environmental analyses under NEPA or other laws for actions undertaken solely by the State where no federal action by the Forest Service is required.
- H. Invite, as the Forest Service deems appropriate, the Department to participate on inter-disciplinary teams when impacts on wildlife or fish or habitats may be of a concern to the Department. The U.S. Forest Service and the Department may choose to enter into separate cooperating agency agreements to define responsibilities for individual NEPA documents. Such agreements shall be in compliance with the Federal Advisory Committee Act.
- I. Cooperate in the development and implementation of new analytical techniques, habitat inventories and evaluation procedures, and ecosystem and habitat type mapping.
- J. Recognize that the determination of when to apply registered piscicides to remove unwanted aquatic species from waters located on NFS lands in Idaho, and the application of piscicides consistent with label requirements, are state actions to be conducted by the Department. While federal regulations at 36 CFR 261.9(f) require that the use of all piscicides which affect NFS land be permitted by the U.S. Forest Service, applications of piscicides by the Department will generally meet the criteria for waiver of this permit requirement set forth in regulations at 36 CFR 251.50(e)(1)&(2). The U.S. Forest Service recognizes that piscicide applications conducted by the Department typically have only nominal effects on NFS lands and resources and do not conflict with NFS programs and operations, and that the Department adequately regulates its piscicide applications to assure this. Similarly, piscicide application may require ancillary uses of NFS land that are subject to U.S. Forest Service permit requirements, such as certain motorized uses, and the criteria for waiver of permit requirements will often apply to these uses of NFS land as well.
- K. When action is required by the U.S. Forest Service to permit the use of piscicides in water bodies located on NFS land, or ancillary activities, this action will



typically fall under the categorical exclusion at 36 CFR 220.6(d)(8) for minor, short-term uses of NFS land, which does not require documentation by the U.S. Forest Service. There may be exceptions where a specific piscicide proposal or ancillary activities will require more than minor, short-term uses of NFS land, or where there are extraordinary circumstances related to the proposal. Such exceptions include, but are not necessarily limited to the following situations:

- Physical disturbance of land: for example, where barriers must be constructed on NFS lands to accomplish treatment objectives.
- Presence of ESA-listed species or designated critical habitat, Congressionally designated areas such as Wilderness, Wild and Scenic Rivers, National Recreation Areas, or Research Natural Areas, and Native American cultural sites.

Notification of the U.S. Forest Service by the Department provided for under paragraph III. J. will provide the opportunity to assess whether there is any reason that the waiver of permit requirements and application of the categorical exclusion would not apply to specific proposals.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

A. The Department and U.S. Forest Service will cooperatively enforce motor vehicle restrictions on National Forest Lands Pursuant to Idaho Code 36-104(b)(10). Both agencies will assist each other in the enforcement of other applicable laws and regulations by reporting violations, or suspected violations, to the responsible Conservation Officer or Forest Officer.

B. **SPECIFIC AREAS OF COOPERATION:** The specific areas of cooperation and subjects of mutual concern listed below have been identified as potentially needing attention for establishing or improving cooperation between the Department and the U.S. Forest Service. Basic guidelines or procedures that indicate how these matters will be handled in carrying out the provisions of this MOU may be developed, signed, and added through a modification, hereto becoming an integral part of this MOU. If other areas of cooperation and/or procedures, aside from those listed herein, need to be developed in the future, they may also be added in a modification as appropriate.

1. Administrative Coordination
2. Planning
3. Special Emphasis Species
4. Information Exchange – Data Sharing
5. Activity Plan Coordination
6. Public Involvement and Information
7. Law Enforcement



8. Creation of a separate MOU for management of fish and wildlife in Wilderness areas of Idaho.
- C. Emphasis will be placed on resolving differences by the Forest Supervisor and Regional Supervisor of the Department. If disagreements cannot be resolved they may be referred to higher administrative levels.
- D. The parties agree and recognize other Federal and State laws may have a bearing on their respective authorities to manage fish and wildlife and their habitats, such as the Migratory Bird Treaty Act, Endangered Species Act and state water law. Further, all agreements and collaborative efforts involving the signatories of this MOU will be in compliance with the Federal Advisory Committee Act.
- E. Any information provided to the Department under this instrument is subject to the Idaho Public Records Law (Idaho Code section 74-101 et. seq.).
- F. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Department Contacts:

Department Program Contact	Department Administrative Contact
Idaho Department of Fish and Game Name: Paul Kline, Assistant Director Address: 600 S. Walnut City, State, Zip: Boise, ID 83707 Telephone: (208) 334-3771 Email: paul.kline@idfg.idaho.gov	Michael Pearson 600 S. Walnut Boise, ID 83707 Telephone: (208) 287-2800 Email: michael.pearson@idfg.idaho.gov

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Contact Intermountain Region	U.S. Forest Service Agreement Intermountain Region
Steven Beverlin, Director, Natural Resources 324 25 th Street Ogden, UT 84401 Telephone: (801) 625-5669 Email: sbeverlin@usda.gov	Trinity Bugger 324 25 th Street Ogden, UT 84401 Telephone: (801) 625-5796 Email: trinity.bugger@usda.gov



U.S. Forest Service Program Contact Northern Region	U.S. Forest Service Agreement Northern Region
Chris Savage, Director, Renewable Resources 26 Fort Missoula Road Missoula, MT 59804 Telephone: (406) 329-3604 Email: christopher.savage@usda.gov	Matt Gordon 24 Fort Missoula Road Missoula, MT 59804 Telephone: (406) 363-7140 Email: matthew.gordon@usda.gov
U.S. Forest Service Program Contact Pacific Northwest Region	U.S. Forest Service Agreement Contact Pacific Northwest Region
Eric Johnston, Acting Director, Natural Resources 1220 SW 3rd Avenue P.O. Box 3623 Portland, OR 97204 Telephone: (503) 808-2922 Email: ejohnston@usda.gov	Melanie Guinen 333 SW First Avenue Portland, Oregon 97204-3440 Telephone: (503) 808-2488 Email: melanie.guinen@usda.gov

- G. **NOTICES.** Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or the Department is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To the Department, at the Department's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- H. **PARTICIPATION IN SIMILAR ACTIVITIES.** This MOU in no way restricts the U.S. Forest Service or the Department from participating in similar activities with other public or private agencies, organizations, and individuals.
- I. **ENDORSEMENT.** Any of the Department's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of the Department's products or activities.
- J. **NONBINDING AGREEMENT.** This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate,



coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- K. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.
- L. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- M. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- N. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.



- O. DEBARMENT AND SUSPENSION. The Department shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should the Department or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- P. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
- Q. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through December 31, 2029 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.



R. **AUTHORIZED REPRESENTATIVES.** By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.

12/26/2019

ED SCHRIEVER, Director
Idaho Department of Fish and Game

Date

NORA
RASURE

Digitally signed by NORA
RASURE
Date: 2019.12.17
14:29:12 -0700'

NORA RASURE, Regional Forester
U.S. Forest Service, Intermountain Region

Date

Digitally signed by Leanne
Marten
Date: 2019.12.16
16:47:53 -0700'

LEANNE MARTEN, Regional Forester
U.S. Forest Service, Northern Region

Date

GINA
OWENS

Digitally signed by GINA
OWENS
Date: 2019.12.18
15:07:17 -0800'

GLENN CASAMASSA, Regional Forester
U.S. Forest Service, Pacific Northwest Region

Date

The authority and format of this agreement have been reviewed and approved for signature.

MATTHEW
GORDON

Digitally signed by
MATTHEW GORDON
Date: 2019.12.16
13:16:22 -0700'

MATT GORDON
U.S. Forest Service Grants Management Specialist

Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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