

MEMORANDUM OF UNDERSTANDING

Between the
MONTANA FISH, WILDLIFE AND PARKS
And the
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
And the
CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION
And the
TROUT UNLIMITED, MONTANA STATE COUNCIL
And the
USDI, FISH AND WILDLIFE SERVICE
And the
USDA FOREST SERVICE, FLATHEAD NATIONAL FOREST

This Memorandum of Understanding (MOU) is hereby made and entered into by and between the Montana Fish Wildlife and Parks, hereinafter referred to as the FWP, the Montana Department of Natural Resources and Conservation, hereinafter referred to as the DNRC, the Confederated Salish and Kootenai Tribes of the Flathead Nation, hereinafter referred to as the CSKT, Trout Unlimited, Montana State Council, hereinafter referred to as the TU, the USDI, Fish and Wildlife Service, hereinafter referred to as the USFWS, and the USDA Forest Service, Flathead National Forest. The entities list above may collectively be referred to as the parties to this MOU

BACKGROUND: During 2004 the parties to this MOU identified a high likelihood that lake trout (*Salvelinus namaycush*) have established a reproducing population in Swan Lake. If left unchecked, it is not a matter of whether the bull trout population in Swan Lake will eventually be dominated by lake trout, but simply a matter of the rate at which the transition will occur.

With the problem defined, the parties to this MOU adopted the following "Management Goal".

"The management goal for bull trout in Swan Lake and the Swan River drainage (including Holland and Lindbergh Lakes) is to ensure the long-term, self-sustaining persistence of bull trout as the dominant piscivore within this ecosystem. In order to accomplish that goal we will emphasize the migratory life history strategy of bull trout; strive to maintain genetic diversity; and protect or enhance current distribution and abundance of bull trout local populations. Attainment of the management goal should result in a continuing opportunity to sustain recreational fishing opportunities for bull trout."

Actions undertaken within the framework of this MOU are meant to focus primarily on a significant and developing threat, the presence of a reproducing lake trout population in Swan Lake.

The MOU recognizes the legal and regulatory authority that accompanied the formal listing, in 1998, of bull trout as a threatened species under the US Endangered Species Act. The parties enter into this MOU under federal and state law, as applicable, including, but not limited to Section 2(c)(2) of the ESA, which states, "the policy of Congress is that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species."

This MOU is subject to, and is intended to be consistent with, all applicable Federal and State laws and interstate compacts.

I. PURPOSE:

The purpose of this agreement is to develop coordinated conservation measures for the long-term protection of bull trout (*Salvelinus confluentus*) in the Swan River watershed, Montana and address the threat of lake trout to the ecological integrity of bull trout in the Swan River watershed in accordance with this MOU and the hereby incorporated Exhibits:

<u>Exhibit</u>	<u>Contents</u>
Exhibit A	Working Group Representatives
Exhibit B	Working Group Organization and Responsibilities
Exhibit C	Statutory Authorities and Agreement Types

Exhibits to this MOU may be revised or deleted by Task Force Representative consensus. The latest revision of any Exhibit will automatically be incorporated into this MOU without necessitating a formal modification as defined in Provision IV-J.

II. STATEMENT OF MUTUAL BENEFIT AND INTEREST:

This MOU represents a collaborative and cooperative effort among resource agencies, conservation and industry organizations, resource users, and private landowners. The parties agree that it is to their mutual benefit and interest to work cooperatively to ensure the long-term protection of bull trout. The parties to this MOU have determined that the following objectives must be met to ensure the Management Goal of this strategy and promote the perpetuation of a bull trout sport fishery in the Swan drainage for future generations.

Objective 1. Assess the threat that a reproducing lake trout population in Swan Lake and drainage presents to the existing bull trout resource.

Objective 2. Design an effective monitoring program in order to document population trends of bull trout and lake trout in the Swan drainage.

Objective 3. Organize and implement a Work Group action plan, to include a research agenda, educational and outreach program, and fishery management recommendations.

III. EACH PARTY SHALL:

A. Accept the goals and objectives contained herein and strive to accomplish the goals and objectives within identified time frames.

- B. Agree to formation of a Swan Valley Bull Trout Working Group(Working Group) to provide expertise and oversight to activities associated with this MOU. See Exhibit A for a list of the Working Group Representatives, and Organization.
- C. Recognize that nothing in this MOU or the Research, Education, or Management recommendations that result is intended to abrogate any of the parties' respective responsibilities. Each party has final approval authority for any activities undertaken as a result of this agreement on the lands owned or administered by the signatory party.
- D. Agree that nothing in this MOU, including its goals and objectives, shall interfere with the recovery of any species presently listed under the Endangered Species Act, 16 U.S.C. §§ 1431 *et seq.* (hereinafter “ESA”). It is realized that neither this MOU, nor any other regulatory (e.g., ESA) or voluntary effort is likely to result in complete extirpation of lake trout in the Swan drainage if reproduction is occurring and it is likely that this effort will need to be continually updated and refined over a period of many years. This plan attempts to first understand and then minimize the lake trout threat to the viability of bull trout in the Swan River drainage, and ensure the long-term persistence of robust bull trout populations.
- E. Consider entering into separate arrangement(s) to implement management activities associated with this MOU. Such arrangement(s) shall be independently authorized by appropriate statutory authority, and may include, but are not limited to: Collection Agreements, Challenge Cost Share Agreements, Participating Agreements, Volunteer Agreements, Grants, Cooperative Agreements and Procurement. *See Exhibit B for Agreement Types and Statutory Authorities.*
- F. All parties to this MOU recognize that they each have specific statutory responsibilities that cannot be abdicated, particularly with respect to the management and conservation of wildlife, their habitat, and the management, development and allocation of water resources.

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

- A. PRINCIPAL CONTACTS. The principal contacts for this MOU are the Working Group Representatives and/or key contacts for the parties of this MOU as defined in Exhibit A.
- B. Each signatory agency holds the responsibility to review planned actions for their area of concern to ensure conformance with existing land use plans, and to conduct any necessary environmental analysis and private property affects assessment under the Montana Environmental Policy Act, Mont. Code Ann. §§ 75-1-1-1 through 75-1-324 (hereinafter “MEPA”) and the National Environmental Policy Act, 42 U.S.C. §§ 4321 through 4347 (hereinafter “NEPA”) for those actions within their area.
- C. This MOU recognizes the authority of the FWP to manage fisheries, the DNRC to manage land resources, and the Forest Service to manage lands within their respective jurisdictions. This MOU also recognizes the aboriginal rights of the CSKT.

- D. Each party shall have the right to decline participation in any action it deems to conflict with its legal obligations or rights. Such determinations must be registered in writing, with a clarifying statement attached for the action proposed for adoption.
- E. All parties will make themselves available at mutually agreeable times, for continuing consultation to discuss the conditions covered by this MOU and agree to actions essential to fulfill its purposes. At a minimum, the parties will participate in at least semiannually (winter and summer).
- F. Authority of the Task Force shall be limited to making recommendations to the appropriate responsible agency.
- G. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished the Forest Service under this MOU is subject to the Freedom of Information Act (5 U.S.C. 552).
- H. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the Parties from participating in similar activities with other public or private agencies, organizations, and individuals.
- I. NON-FUND OBLIGATING DOCUMENT. This MOU is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the Parties will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to the Parties of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.
- J. MODIFICATION. Modifications within the scope of this MOU shall be made by mutual consent of the Parties, by the issuance of a written modification, signed and dated by the Parties, prior to any changes being performed.
- K. TERMINATION. Any of the parties, in writing, may terminate the MOU in whole, or in part, at any time before the date of expiration.
- L. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through **September 30, 2008** at which time it will expire.

The authority and format of this MOU has been reviewed and approved for signature.



Grants and Agreements Specialist

Date

In witness whereof, the parties hereto have executed this MOU as of the last date written below.

JAMES R. SATTERFIELD, Regional Supervisor
Montana Fish, Wildlife and Parks

DATE

MARY SEXTON, Director
Montana Department of Natural Resources & Conservation

DATE

D. FRED MATT, Tribal Chair
Confederated Salish & Kootenai Tribes of the Flathead Nation

DATE

BRUCE FARLING, Executive Director
Trout Unlimited, Montana State Council

DATE

MARK WILSON, Field Supervisor
USDI, Fish and Wildlife Service, Montana Ecological Services

DATE

CATHY BARBOULETOS, Forest Supervisor
USDA Forest Service, Flathead National Forest

DATE

EXHIBIT A

WORKING GROUP REPRESENTATIVES

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EXHIBIT B

WORKING GROUP ORGANIZATION AND RESPONSIBILITIES

The Task Force Will:

- A. Be comprised of a chairperson, and general Task Force representatives (representatives).
- B. Appoint Task Force chairperson from the representatives. Intervals of such appointment shall be annually.
- C. Initially be comprised of a general representative from each of the parties to this MOU.
- D. Make themselves available at mutually agreeable times for continuing consultation to discuss the conditions covered by this MOU. Representatives will participate in semi-annual meetings (winter and summer) to coordinate activities proposed under this MOU.
- E. Record the minutes of each meeting and provide copies to each representative.
- F. Share pertinent information, encourage and promote cooperation, and keep communication open and frequent so all representatives are informed on the status of the issues that may affect working relationships.
- G. Operate by consensus with a commitment to cooperation across jurisdictional boundaries.
- H. Operate wholly or separately to identify and acquire resources to support bull trout conservation activities.
- I. Make an annual assessment of progress toward bull trout conservation in the Swan at the winter meeting. This assessment will determine the effectiveness of this agreement and whether revisions are warranted.

EXHIBIT C

AGREEMENT TYPES & STATUTORY AUTHORITIES

FOREST SERVICE

The following is a very brief overview of Forest Service Agreement Types and Authorities available and most likely to be used in conjunction with this MOU. The general requirements of these authorities can be found in the Forest Service Manual (FSM) if referenced below. Templates of the various agreement types can be found at the Forest Service Northern Region internal website at http://fsweb.r1.fs.fed.us/property/grants/index/index_page.htm. Be sure to consult with your Forest Service Grants and Agreements Specialist if you have any questions. *See MOU Provisions III-E and IV-I.*

Collection Agreement

A Collection Agreement is normally used to document the acceptance of funds by the Forest Service from a non-federal party. Funds are usually accepted under the authority of the Cooperative Funds Act or the Granger Thye Act depending upon who is responsible for the work to be completed.

Cooperative Funds Act of June 30, 1914 (16 U.S.C. 498 as amended by Pub. L. 104-127). This Act authorizes the Forest Service to accept funds as contributions toward cooperative work in forest investigations or protection, management and improvement of the National Forest System (FSM 1584.11).

Granger-Thye Act of April 24, 1950 (16 U.S.C. 572). Section 5 of this Act authorizes the Forest Service to perform work to be completed for the benefit of the depositor, for administration, protection, improvement, reforestation, and such other kinds of work as the Forest Service is authorized to complete on National Forest System lands: (a) on State, county, municipal, or private land within or near National Forest land, or (b) for others who occupy or use National Forests or other lands administered by the Forest Service (FSM 1584.12).

Challenge Cost Share Agreement

A Challenge Cost Share Agreement is used to document the relationship when a cooperator and the Forest Service will jointly perform work on or affecting National Forest System lands, or in the furtherance of Forest Service functions. Subject to conditions, the Forest Service may reimburse the cooperator for expenses incurred toward completion of the project.

The Interior and Related Agencies Appropriations Act of 1992. This Act authorizes the Forest Service to cooperate with other parties to develop, plan, and implement projects that are of mutual interest and mutually beneficial to the parties that enhance Forest Service activities. Projects are financed with matching funds from cooperators. Cooperators may be public or private agencies, organizations, institutions, and individuals (FSM 1587.12).

Participating Agreement

A Participating Agreement is used to document the relationship when the Forest Service and a cooperator wish to perform work for which they will accrue mutual benefit (non-monetary). These arrangements are usually accepted under the authority of the Cooperative Funds and Deposits Act or the (Wyden Amendment) depending upon a variety of requirements.

Cooperative Funds and Deposits Act of December 12, 1975 (16 U.S.C. 565a1-a3, Pub. L. 94-148).

This Act authorizes the Forest Service to enter into cooperatively performed, mutually beneficial National Forest projects with non-Federal parties in four specific areas including Forestry Protection. The Forestry Protection section of the Act authorizes the Forest Service to cooperate with other parties to accomplish noxious weed control (FSM 1587.11a).

Section 334 of the 1998 Department of Interior and Related Agencies Appropriations Act (Wyden Amendment). This Act provides the Forest Service with authority to expend NFS funds off NFS lands, provided that certain conditions are met. This authority, commonly referred to as the Wyden amendment, was originally limited to fiscal year 1998. Subsequent revisions and extensions of this authority were provided for in Sections 323 and 330 of the FY 1999 and FY2002 (respectively) of the Department of Interior and Related Agencies Appropriations Acts. These modifications allow for an extension of the use of this authority through FY 2005 (FSM 1587.15).

Grant

A Grant is a federal financial assistance document used for transferring federal funds to a recipient in order to accomplish a public purpose where the Forest Service is not substantially involved. Authorities for grants are numerous but the Wyden Amendment described immediately above is perhaps the most likely authority to be used under this MOU.

Volunteer Agreement

Individual or Sponsored Volunteer Agreements are used to document the relationship when an individual or a sponsored volunteer wishes to give time and talent to advance the mission of the Forest Service and receive no salary or wages from the Forest Service (FSM 1830.1).

Volunteers in the National Forests Act of 1972, as amended , 16 U.S.C. 558a-558d. This Act authorizes the Forest Service to make agreements with individuals or institutions, organizations, or units of State or local government, who recruit and supervise their own people as volunteers on Forest Service Projects.

Cooperative Agreement

A Cooperative Agreement is a federal financial assistance document used by the Forest Service for the purpose of transferring funds to a recipient when the Forest Service is substantially involved. Substantially involved means both the Forest Service and the recipient must both be actively involved in the activity to be performed.

Federal Noxious Weed Act of 1974 (Pub. L. 93-629, 7 U.S.C. 2801 et seq., Pub. L. 101-624). This Act authorizes the Forest Service to issue cooperative agreements only to State agencies (or political subdivisions thereof responsible for the administration or implementation of undesirable plant laws of a State) for establishment of an undesirable plant management program and integrated management systems to control or contain undesirable plant species, and to issue specific cost-sharing cooperative agreements with State and local agencies to manage noxious weeds in an area if a majority of landowners in that area agree to participate in a noxious weed program (FSM 1581.23).

Procurement

In addition to these methods, the Forest Service may procure services or goods from private or other non-government sources in accordance with the Federal Acquisition Regulations.