

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES DEPARTMENT OF THE INTERIOR,
UNITED STATES FISH AND WILDLIFE SERVICE
AND
NATIONAL PARK SERVICE,
NORTH CASCADES NATIONAL PARK SERVICE COMPLEX
AND
THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE,
MT. BAKER/SNOQUALMIE & OKANOGAN/WENATCHEE NATIONAL FORESTS
AND
THE WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

COOPERATIVE DEVELOPMENT OF THE ENVIRONMENTAL IMPACT STATEMENT
FOR THE NORTH CASCADES ECOSYSTEM
GRIZZLY BEAR RESTORATION PLAN

This Memorandum of Understanding (MOU or Agreement) is entered into jointly by the following parties: the United States Fish & Wildlife Service (FWS), North Cascades National Park Service Complex, National Park Service (NPS); the U.S. Department of Agriculture Forest Service, Mt. Baker/Snoqualmie and Okanogan/Wenatchee National Forests, (USFS); and the Washington Department of Fish and Wildlife (WDFW). The NPS, FWS, USFS, and WDFW are together referred to in this MOU as the Parties, and individually may be referred to as a Party.

The purpose of this MOU is to outline how the FWS and NPS, as the joint Lead Agencies under the National Environmental Policy Act (NEPA), assisted by the USFS and WDFW as Cooperating Agencies, will jointly develop the North Cascades Ecosystem Grizzly Bear Restoration Plan and Environmental Impact Statement (plan/EIS). This MOU:

- Describes how the Parties will work together to prepare the EIS in compliance with all applicable laws, including the Endangered Species Act (ESA);
- Describes the general roles and responsibilities of each Party, as Joint Lead or Cooperating agency; and
- Provides a framework for cooperation and coordination between the Parties to successfully complete the NEPA process in a timely, efficient, and thorough manner.

ARTICLE I—BACKGROUND AND OBJECTIVES

Situated in the core of the North Cascades Ecosystem (NCE), the North Cascades National Park Complex (Park) is surrounded by more than 2.6 million contiguous acres of federally designated wilderness, including protected lands and de facto wilderness in British Columbia, Canada. The United States portion of the NCE is contiguous with habitat north of the international border in British Columbia, Canada, but isolated from other grizzly bear populations in both the United States and Canada. Research indicates that this wilderness landscape is capable of supporting a

self-sustaining grizzly bear population. However, there has only been one observation of a solitary bear during the past 10 years.

Given the low number of grizzly bears, very slow reproductive rate, and other recovery constraints, grizzly bears in the NCE are the most at-risk grizzly bear population in the United States today. The FWS recently reaffirmed (79 FR 72450, December 5, 2014) that the NCE grizzly bear warrants uplisting from threatened to endangered under the Endangered Species Act (ESA, 16 U.S.C. 1531 et. seq.). However, a change in listing status remains precluded by lack of funding and the Service's need to make listing determinations for other species not yet protected under the ESA. The main threat to grizzly bears in this recovery zone is a small population size, with resulting demographic and genetic risks. Natural recovery in the NCE is challenged by the absence of verified reproduction, as well as isolation from any contiguous population in British Columbia, Canada, and the United States.

A nationwide Grizzly Bear Recovery Plan was finalized by the FWS in 1982, and updated in 1993. The NCE recovery plan chapter was finalized in 1997. Current recovery efforts in the United States are focused on limiting human-caused mortality, protecting habitat by emphasizing no net loss of core habitat, providing information and education efforts regarding grizzly bears and their habitat, and enhancing sanitation by providing and/or enforcing proper garbage and food storage in bear habitat. Education programs continue to inform people about grizzly bear biology and techniques to avoid conflicts when living or recreating in bear habitat, as well as research efforts on bear ecology.

The FWS and NPS will jointly prepare an EIS to determine how to restore grizzly bears in the NCE.

As established in the Council on Environmental Quality (CEQ) regulations (40 CFR Part 1501.6), Executive Order 13352, and Department of the Interior (DOI) regulations (43 CFR §§ 46.225-46.230), DOI bureaus will cooperate to the "fullest extent possible" with other agencies that have jurisdiction by law or special expertise, although "whether to invite, accept or end cooperating agency status" should be determined on a case-by-case basis considering all relevant information and factors." (January 30, 2002, CEQ Memorandum for the Heads of Federal Agencies).

The mission of the FWS is to work with others to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

The NPS is responsible for conserving the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations (16 U.S.C. 1).

The United States Forest Service is responsible for sustaining the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The Forest Service will actively protect and restore sustainable ecological conditions that support the full range of plant and animal species diversity and interactions in naturally occurring abundance across all Forest Service landscapes using a collaborative

approach. In addition, the Forest Service conducts activities and programs to assist in the identification and recovery of threatened and endangered plant and animal species

The WDFW's Mission is: *To preserve, protect and perpetuate fish, wildlife and ecosystems while providing sustainable fish and wildlife recreational and commercial opportunities; their Vision is the Conservation of Washington's fish and wildlife resources and ecosystems, and they have the following Goals related to this Agreement: to Conserve and protect native fish and wildlife; Provide sustainable fishing, hunting, and other wildlife-related recreational and commercial experiences; and , Promote a healthy economy, protect community character, maintain an overall high quality of life, and deliver high-quality customer service.*

Revised Code of Washington (RCW) 77.12.035 (Protection of grizzly bears — Limitation on transplantation or introduction — Negotiations with federal and state agencies) states:

The commission shall protect grizzly bears and develop management programs on publicly owned lands that will encourage the natural regeneration of grizzly bears in areas with suitable habitat. Grizzly bears shall not be transplanted or introduced into the state. Only grizzly bears that are native to Washington state may be utilized by the department for management programs. The department is directed to fully participate in all discussions and negotiations with federal and state agencies relating to grizzly bear management and shall fully communicate, support, and implement the policies of this section.

ARTICLE II—LEGISLATIVE AUTHORITY

- A. **U.S. Fish and Wildlife Service:** This MOU is entered into under the provision of the following laws and authorities available to the FWS:
 - Endangered Species Act, as amended (16 U.S.C. 1531 et. seq.)
 - Fish and Wildlife Coordination Act (16 U.S.C. 661)
 - Fish and Wildlife Conservation Act of 1980, as amended (16 U.S.C. 2901-2911)
 - Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742 et. seq.)
 - National Environmental Policy Act, as amended (42 U.S.C. 4321 et. seq.)
- B. **National Park Service:** This MOU is entered into pursuant to the National Park Service Organic Act (16 U.S.C. §§ 1-3).
- C. **Forest Service:** This MOU is entered into pursuant to the National Forest Management Act of 1976 (NFMA) (P.L. 94-588).
- D. **Washington Department of Fish and Wildlife:** This MOU is entered into pursuant to Agreements for purposes related to fish, shellfish, and wildlife (RCW 77.12.320).

ARTICLE III—STATEMENT OF WORK

The Parties agree to the following regarding their roles and responsibilities:

- A. **The FWS and NPS will:**

1. Serve as Joint Lead Agencies under NEPA in developing the plan/EIS, in accordance with 40 CFR § 1501.5(b).
2. Prepare the internal and public review versions of the draft and final EISs and be responsible for the quality and content of these documents. NPS and FWS will, in their sole discretion, identify a preferred alternative in the EIS.
3. Develop a reasonable range of alternatives, including a proposed action; and identify the potential direct, indirect, and cumulative impacts of the proposed action and alternatives and potential mitigation for those impacts.
4. Seek meaningful input from the USFS and WDFW at key steps in the NEPA process, including: during scoping; when issues and alternatives to be addressed in the EIS are identified; during development of the range of alternatives that will be analyzed in the EIS; and when assessing impacts related to issues that may impact WDFW or USFS resources and/or for which USFS and WDFW have jurisdiction by law or special expertise.
5. Consider and use the environmental analyses and proposals (i.e., ideas or alternative concepts) of the USFS and WDFW to the maximum extent possible consistent with NPS' and FWS' responsibilities as Joint Lead Agencies.
6. Incorporate in the draft and final EISs, to the extent practicable, the comments, recommendations, and data submitted by the USFS or WDFW within their particular area of expertise or jurisdiction. If such input is not incorporated, the NPS and FWS will discuss the reasons with USFS and WDFW, respectively.
7. Share substantive public comments received on the draft plan/EIS.
8. Select an alternative for implementation, in their sole discretion, in the Record of Decision (ROD).
9. Ensure other requirements related to NPS and FWS actions are met (Endangered Species Act, Wilderness Act, etc.) and obtain the input of the USFS and WDFW in meeting these requirements as appropriate.
10. Keep the USFS and WDFW informed about the timeframes for the NEPA process, primarily by phone or email.
11. Hold joint meetings or conference calls with the USFS and WDFW as deemed necessary by NPS and FWS.
12. Identify the USFS and WDFW as Cooperating Agencies, and acknowledge their roles and responsibilities in the EIS.

13. Hereby designate one person for each agency listed in Article IV (Key Officials) as NPS' and FWS' Joint Lead Agency Representatives for purposes of implementing the terms of this MOU. The Joint Lead Agency Representatives shall be responsible for ensuring that the terms of this MOU are followed by the Joint Lead Agency's employees, consultants, and contractors.
14. Provide reasonable notice of meeting dates and adequate review periods for Cooperating Agencies to effectively participate.
15. The NPS will assist WDFW in establishing a formal agreement with the Skagit Environmental Endowment Commission (SEEC) for the transfer of funds from SEEC to WDFW for WDFW's participation in the EIS process. All formal agreements/contracts will be between SEEC and WDFW.

B. The USFS and WDFW will:

1. Serve as Cooperating Agencies and assist the FWS and NPS in developing the plan/EIS, in accordance with 40 CFR § 1501.6.
2. Provide technical assistance in those areas for which the USFS or WDFW has special expertise or jurisdiction by law, by evaluating the potential alternatives, impacts, and mitigation effectiveness in the plan/EIS.
3. Cooperate and assist in the scoping process, including public scoping, and preparation of the plan/EIS. This will be accomplished primarily through information exchange and participation in teleconference or face-to-face team meetings regarding the NEPA document.
4. Identify issues to be addressed in the plan/EIS; provide necessary resource, environmental, social, economic, and institutional data; and assist in developing and evaluating alternatives.
5. Provide necessary information to be included in the decision file for the preparation of the NEPA document.
6. If appropriate, and within their special expertise, provide written evaluations of the effects of implementing each alternative; and carry out any other tasks necessary for the development of the environmental analysis and documentation.
7. Review internal drafts of the EIS and comment on potential impacts that are in their area of expertise. The cooperating agencies will provide comments on drafts within mutually agreed upon timeframes.
8. Identify and fully address any National Forest Management Act and State Environmental Policy Act responsibilities, as applicable.

9. Hereby designate the persons listed in Article IV (Key Officials) as the respective Cooperating Agency's Representative. The Cooperating Agency's Representatives shall be responsible for implementing the terms of this MOU, and ensuring their respective agency's employees and consultants follow the terms of this MOU. The Cooperating Agency's Representatives, or their designees, will attend meetings and workshops (if any), and serve as the point of contact for the exchange of materials and documents, including distributing information or documents within his or her agency as needed, and consistent with Article IX, B (the confidentiality provisions).
10. Maintain the confidentiality of all documents and deliberations, prior to the public release by NPS and FWS of any NEPA document, including drafts, to the extent allowable by law. The USFS and WDFW may disclose such materials to its officers and employees, provided such persons agree to keep the information confidential and not share or disclose the information unless required by law.

C. The Parties agree:

1. To participate in the planning process for the EIS in good faith and make every effort to resolve areas of conflict. The agencies agree to fully explore issues before coming to conclusions, and to commit to searching for opportunities for resolution in order to contribute to an effective planning process.
2. Not to employ the services of any contractor having a potential conflict of interest, including a financial interest in the outcome of the NEPA document, in implementing the terms of this MOU, including developing alternatives and providing expertise and analyses for the EIS, to the extent allowed by law. The Parties will take all reasonably necessary steps to ensure that no conflict of interest exists with any consultants, counsel, or representatives they may employ.
3. That the cooperation of the Parties under this MOU does not transfer any jurisdictional roles or responsibilities.
4. That implementation of specific actions tendered under this MOU is contingent upon availability of funds and staff.
5. That the Parties may enter into subsequent separate agreements under specific authorities that allow for transfer and receipt of funding. This may include the Association of Fish and Wildlife Agencies (AFWA) Agreement, Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management Wilderness (as amended June 2006) and the 1998 MOU between the USFS and WDFW.

ARTICLE IV - KEY OFFICIALS

- A. Key officials are essential to ensure maximum coordination and communications between the Parties and the work being performed. They are:

1. For NPS:

Signatory/Administrative

Karen Taylor-Goodrich
Superintendent
North Cascades National Park Service Complex
810 State Route 20
Sedro-Woolley, WA 98284
Telephone: 360-854-7200
Fax: 360-856-1934

Lead Agency Representative

Jack Oelfke
Chief, Natural and Cultural Resources
North Cascades National Park Service Complex
810 State Route 20
Sedro-Woolley, WA 98284
Telephone: 360-854-7310
Fax: 360-856-1934

2. For FWS:

Signatory/Administrative

Theresa Rabot
Assistant Regional Director, Ecological Services
911 NE 11th Ave
Portland, OR 97232-4181
Telephone: 503-231-6151
Fax: 503-231-2240

Joint Lead Agency Representative

Mark Miller
Supervisory Fish and Wildlife Biologist
510 Desmond Dr SE
Lacey, WA 98503
Telephone: 360-534-9347
Fax: 360-753-9407

3. For USFS:

Administrative

Mike Williams
Forest Supervisor
Okanogan/Wenatchee N. F.
215 Melody Lane

Jennifer Eberlien
Forest Supervisor
Mt. Baker/Snoqualmie N. F.
2930 Wetmore Avenue, Suite 3A

Wenatchee, WA 98801
Telephone: 509-664-9200

Everett, WA 98201
Telephone: 425-783-6040

Signatory

James M. Peña
Regional Forester, Region 6
1220 SW 3rd Avenue, PO Box 3623
Portland, Oregon 97204-2825
503-808-2468

Cooperating Agency Representatives

John Rohrer
Forest Wildlife Program Manager
Okanogan/Wenatchee National Forest
24 West Chewuch Road
Winthrop, WA 98862
Telephone: 509-996-4001

John Chatel
Regional TES Coordinator
1220 SW 3rd Avenue, PO Box 3623
Portland, Oregon 97204-2825
Telephone: 503-808-2972

3. For WDFW:

Signatory/Administrative

James W Unsworth, Ph.D.
Director
600 Capitol Way
Olympia, WA 98501-1091
Telephone: (360) 902-2200
Fax: (360) 902-2947

Cooperating Agency Representative

Eric Gardner
Acting Deputy Assistant Director, Wildlife Program
600 Capitol Way
Olympia, WA 98501-1091
Telephone: (360) 902-2510
Fax: (360) 902-2162

- B. **Communications:** The USFS and WDFW will address any communication with their Agency letterhead regarding this Agreement to the Joint Lead Agency Representatives with a copy to the NPS Superintendent and the FWS Assistant Regional Director for Ecological Services. All other communications that relate solely to routine matters described in this Agreement may be sent only to the Joint Lead Agency Representatives. The FWS and NPS will address any communication regarding this Agreement to the Cooperating Agency Representative(s) with a copy to the Forest Supervisors and the WDFW Director. Communications that relate solely to routine matters described in this Agreement may be sent only to the Cooperating Agency Representative(s).

- C. **Changes in Key Officials:** No Party may make any permanent change in a key official without written notice to the other Parties reasonably in advance of the proposed change.

ARTICLE V—LIABILITY

- A. Nothing in this MOU shall make or be deemed to make any Party to this MOU the agent for or the partner of any other Party.
- B. This MOU is intended to enhance the working relationship between the Parties by outlining the roles, responsibilities, and objectives of each Party in order to develop the plan/EIS. It is not intended to and does not create any third party rights or benefits, substantive or procedural, enforceable at law or equity against the United States or the State of Washington, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

ARTICLE VI—ACCESS TO RECORDS

- A. The Parties agree to keep and maintain records concerning this Agreement, and afford another Party access to such records pursuant to a written request to the extent allowed by applicable law. The Parties recognize the records maintained and exchanged pursuant to this Agreement may be disclosed to the public pursuant to the Freedom of Information Act and/or Washington's Public Records Act.
- B. The FWS, NPS, and USFS will give the WDFW or any authorized representative the right to examine any records related to this Agreement that otherwise would be available to WDFW under the Freedom of Information Act, 5 U.S.C. §552.
- C. The Parties will inform each other before disclosing any document required by law (including the Washington Public Records Act). The USFS will consult with FWS and NPS prior to the release of any documents, including deliberative drafts, required by the Freedom of Information Act or other applicable law.

ARTICLE VII—STANDARD CLAUSES

- A. **Civil Rights:** During the performance of this Agreement, the participants agree to abide by the terms of U.S. Department of the Interior - Civil Rights Assurance Certification, non-discrimination and will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
- B. **Participation in Similar Activities:** This Agreement in no way restricts any of the parties from participating in similar activities with other public or private agencies, organizations, and individuals.

- C. **Members of U.S. Congress:** Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this Agreement, or benefits that may arise therefrom, either directly or indirectly.
- D. **Anti-Deficiency Act:** 31 U.S.C. § 1341 – Nothing contained in this Agreement shall be construed as binding the NPS or FWS to expend in any one fiscal year any sum in excess of appropriations made by Congress for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.

ARTICLE VIII—MODIFICATION AND TERMINATION

- A. This Agreement may be modified only by a written instrument executed by the Parties.
- B. This Agreement shall terminate upon issuance of the ROD by the NPS and FWS. Any Party may terminate this Agreement earlier by providing the other Parties with 30 days advance written notice. In the event that one Party provides the other Parties with notice of its intention to terminate, the Parties will meet promptly to discuss the reasons for the notice and to try to resolve their differences. Notwithstanding any other provision of this Agreement, if termination occurs prior to the issuance of the ROD, all parties will remain accountable, to the extent allowed by Federal and State law, to the confidentiality of all documents.
- C. Any Cooperating Agency may withdraw from the Agreement with 30 days advance written notice to the FWS and NPS. If the Cooperating Agency withdraws from this Agreement it will no longer be considered a Cooperating Agency for the purposes of the plan/EIS. Upon withdrawal, the Party will remain accountable, to the extent allowed by Federal and State law, to the confidentiality of all documents.

ARTICLE IX—SIGNATURES


U.S. FISH AND WILDLIFE SERVICE

By: Theresa Rabot Date: 4-27-15
 Theresa Rabot, Assistant Regional Director, Ecological Services

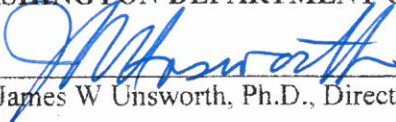
NATIONAL PARK SERVICE

By: Karen Taylor-Goodrich Date: 4/27/15
 Karen Taylor-Goodrich, Superintendent, North Cascades National Park Service Complex

USDA FOREST SERVICE

By:  Date: 5.18.15
for James M. Peña, Regional Forester, Region 6, U. S. Forest Service

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

By:  Date: 5/19/15
James W. Unsworth, Ph.D., Director