

MEMORANDUM OF UNDERSTANDING

Between the

U.S. DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service
Bureau of Indian Affairs – Northwest Region

CONFEDERATED SALISH & KOOTENAI TRIBES

STATE OF MONTANA

Montana Fish, Wildlife & Parks

LAKE COUNTY

Via Lake County Board of Commissioners
A political subdivision of the State of Montana

SANDERS COUNTY

Via Sanders County Board of Commissioners
A political subdivision of the State of Montana

Concerning

Agency Cooperation on the National Bison Range
Comprehensive Conservation Plan and Environmental Impact Statement

I. Introduction

The Fish and Wildlife Service (Service) requests the federal, state, county, and Native American tribal governments listed above to be Cooperating Agencies in the development of the Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) for the National Bison Range (NBR). The planning area for this CCP is the congressionally-designated NBR boundary located within the Flathead Indian Reservation in the Mission Valley, Lake and Sanders Counties, Montana.

The CCP/EIS process must comply with the provisions of the National Environmental Policy Act of 1969 (NEPA) 42 U.S.C. Sec. 4321 and all subsequent regulations implementing NEPA (see Council on Environmental Quality (CEQ)) regulations, 40 CFR Part 1500-1508, Department of the Interior (DOI) regulations 43 CFR part 46 and requirements listed in Departmental Manual 516 "Environmental Quality"). In addition, the Service is guided by the Fish and Wildlife Service Manual (602 FW3) on Comprehensive Conservation Planning. The Service also considered the CEQ *Memorandum for the Heads of Federal Agencies, Subject: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act*, January 30, 2002 and the CEQ *Memorandum for Heads of Federal Agencies, Subject: Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act*, July 28, 1999, Executive Order 13352, August 26, 2004, Facilitation of Cooperative Conservation, and other CEQ, DOI, and Service guidance.

II. Purpose of Agreement

The purpose of this Memorandum of Understanding (MOU) is to establish an agreement between the Service and the entities listed above regarding the roles and responsibilities of the agencies during the NEPA process. The Service will be the lead federal Agency and the listed agencies will be Cooperating Agencies on the project.

III. Justification and Roles of Cooperating Agencies

A. Justification for Cooperating Agency Status

1. Each Agency has been appointed as a Cooperating Agency because they meet one or more of the following criteria:

- the Agency has jurisdiction by law of resources within the NBR
- the Agency has specific areas of expertise/knowledge needed for completion of the CCP/EIS

2. Each Cooperating Agency agrees to provide information or data within their area(s) of expertise, attend planning team meetings, and review and comment on documents. Cooperating Agency status comes with an expectation that the Cooperating Agency will bring resources to the table to facilitate the timely completion of the NEPA process. Cooperating agencies may also help prepare or submit alternatives or mitigation measures to be considered in the process.

3. Nothing in this MOU shall obligate the Cooperating Agencies to expend appropriations or to enter into any contract or other obligation. Specific work projects or activities that involve the transfer of fund, service, or property between the parties to this MOU will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, services, or property shall be made in writing

and shall be independently authorized by appropriate statutory authority and regulations, including those applicable to procurement activities.

4. The Cooperating Agencies agree to assist the Service in providing accurate information to the public (43 CFR 46.225 (a) – (d)). The CCP/EIS planning process for the NBR is intended to be transparent with all agencies, organizations, stakeholder groups and the general public. The Service regularly provides information about its planning process through planning updates, press releases, briefings, hard copies of documents, and posting documents on the Service’s website. All information presented to the public must be approved for publication by the Service. The Service recognizes that other Federal agencies, county representatives, and Native American tribal government representatives must adhere to their public disclosure laws as necessary; however, releases of predecisional information (including working drafts) in a manner that purposely undermines or circumvents the spirit of this MOU, which is to develop a framework to work cooperatively in developing the CCP/EIS, or consistently misrepresents the planning process may be grounds to terminate the Cooperating Agency status. When information is received, the Service cannot agree to maintain confidentiality of this information except to the extent that is permitted under the Freedom of Information Act (FOIA) and the Privacy Act of 1974.

B. Cooperating Agencies

Bureau of Indian Affairs, Northwest Region (BIANR)

- The Service provides an opportunity for other Federal agencies to serve on planning teams (Planning Policy, Fish and Wildlife Service Manual 602 FW3).
- BIANR has information and expertise that will assist the Service in the preparation of the CCP/EIS pertaining to:
 - Federal government relationships with the Confederated Salish and Kootenai Tribes and other Native American tribal governments
 - Tribal lands irrigation facilities management and expertise
- BIANR will provide representatives to serve on the planning team.

Confederated Salish & Kootenai Tribes (CSKT)

- The Service provides an opportunity for Tribal Governments agencies to serve on planning teams (Planning Policy, Fish and Wildlife Service Manual 602 FW3).
- CSKT has information and expertise that will assist the Service in the preparation of the CCP/EIS pertaining to:
 - Cultural resources management and conservation
 - Biological information on wildlife and habitat conditions
 - Fire management expertise
 - Socioeconomic conditions and trends in the planning area
 - Transportation
 - Land Use Information and Plans
 - Noxious or invasive weeds and invasive aquatic species
 - Tourism and visitor services

- Public health issues
- Emergency management and response
- Law enforcement assistance and expertise
- Fisheries
- CSKT shall assign representatives and designated alternates to speak on behalf of the Tribal Government. It is the responsibility of the assigned representatives to keep the CSKT Chairman and other Tribal Government officials briefed on the key developments of the CCP/EIS. To ensure consistency in communications, the same representatives shall serve for the duration of the project if at all possible. On occasion and as necessary and appropriate, other CSKT members may be briefed on key developments in the planning process.

Montana Fish, Wildlife & Parks (MTFWP)

- The Service provides an opportunity for State conservation agencies that have a direct land management relationship with the refuge, the opportunity to serve on planning teams (Planning Policy, Fish and Wildlife Service Manual 602 FW3). The Service and MTFWP work cooperatively on many issues pertaining to wildlife, habitat, noxious weeds, and fire.
- MTFWP have information and expertise that will assist the Service in the preparation of the CCP/EIS pertaining to:
 - Biological information on wildlife and habitat conditions
 - Fisheries
 - Hunting and fishing data
 - Law enforcement expertise and assistance
 - Fire management and data
 - Noxious or invasive weeds and invasive aquatic species
- MTFWP will assign representatives and designated alternates to serve on the planning team and speak on behalf of MTFWP.

LAKE AND SANDERS COUNTIES (Counties) - Political Subdivisions of the State of Montana

Via Lake County Board of Commissioners

Via Sanders County Board of Commissioners

- The Counties and their agencies have information and expertise (Executive Order 13352) that will assist in the preparation of the CCP/EIS pertaining to:
 - Cultural resources, custom heritage and history
 - Biological information on wildlife, flora, fauna and habitat conditions
 - Fisheries
 - Fire management expertise
 - Socioeconomic conditions and trends in the planning area
 - Transportation
 - Land Use Information and Plans

- Noxious or invasive weeds and invasive aquatic species
 - Tourism and visitor services
 - Public health issues
 - Emergency management and response
 - Law enforcement assistance and expertise
 - Resource utilization at or adjacent to the premises
- The Counties shall assign representatives and designated alternates to speak on behalf of the Counties. It is the responsibility of the assigned representatives to keep the Board of County Commissioners for the Counties briefed on the key developments of the CCP/EIS. To ensure consistency in communications, the same representatives shall serve for the duration of the project if at all possible. On occasion and as necessary and appropriate, other County Commissioners may be briefed on key developments in the planning process.

C. Roles and Responsibilities

1. The agencies listed above understand that their Cooperating Agency status does not confer to them any special authority to change, edit, or veto all or part of the CCP or EIS.
2. In cases where a Cooperating Agency provides information it considers confidential, the Service will work with a Cooperating Agency to present the information in a manner that protects the rights of the Cooperating Agency before sharing the information necessary for the environmental analysis with the other Cooperating Agencies. The release of Service information to a Federal, Tribal, State or local Agency that includes proprietary or confidential information must be reviewed under FOIA and adhere to statutory and regulatory authorities. The parties to this MOU will have access to all information necessary for their Cooperating Agency participation in the environmental analysis to the extent permitted by applicable law. The parties agree not to release pre-decisional information (including working drafts) in a manner that undermines the Service's intent to provide accurate information to the public about its planning process as described under III. A. 4. When any of the Cooperating Agencies in this MOU must disclose information under their disclosure laws, the Service requests notification of any public disclosure of CCP/EIS documents made by an Agency to this agreement (43 CFR 46.225 (d)).
3. The Service possesses sole authority to direct the actions of its Contractors.
4. The Service is responsible for making all substantive decisions involving the CCP/EIS and is the final decision maker for disputes that may arise in the process. The Cooperating Agencies agree that, once such disputes are resolved, they will not be revisited. However, the Cooperating Agencies retain the right to comment on all issues related to the CCP/EIS, including those in dispute, through the normal NEPA process.
5. Veto or decision-making power does not accompany Cooperating Agency status. As the lead Agency charged with carrying out the NEPA process under Section 102(2) (c) of NEPA, the Service retains sole decision-making authority over the CCP/EIS and its process.
6. The Service or Cooperating Agencies may terminate this agreement by providing written notice of the termination to the other parties.

IV. Authority

This memorandum is entered into under the following laws, authorities and regulations:

- A. National Environmental Policy Act of 1969, as amended, PL 91-190, 42 U.S.C. 4321
- B. Council of Environmental Quality NEPA Regulations (40 CFR Parts 1500-1508)
- C. National Wildlife Refuge System Administration Act of 1966, as amended (16 USC 668dd et seq.)
The act formally defines the mission of the Refuge System as the administration of *“a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitat within the United States for the benefit of present and future generations of Americans” (16 USC 668dd(a)(2)).*

V. Process and Procedure

1. The Service is the lead Agency for ensuring full compliance of the CCP and EIS with the requirements of NEPA. Under applicable laws, rules, regulations, orders, and policies, the Service shall ensure that all necessary consultation and consideration is performed with all Federal, State, Tribal, and local governments and private organizations.
2. The Service will coordinate and consult with the Cooperating Agencies throughout the preparation of the CCP/EIS, particularly during the scoping and the Draft CCP/EIS development and impact analysis. This consultation is to assess alternatives accurately; identify areas that require clarification; and to avoid, mitigate, or otherwise address impacts to the natural environment.
3. The Service has full responsibility for implementing procedures and regulations including, but not limited to, public review of the CCP/EIS, public distribution of the CCP/EIS, and required decision documentation.
4. The Service will arrange, announce, and conduct scoping meetings and will analyze the results.
5. The Service will meet with the Cooperating Agencies at least once during each strategic phase of the planning process (Scoping, Alternatives, Draft CCP/EIS, and Final CCP/EIS) and more often if needed. All Cooperating Agencies may participate in discussions on the proposed action and on special or critical resource needs related to the plan. The Service will provide the Cooperating Agencies with opportunities to submit alternatives and mitigation measures, and to review and comment on all of these and the preliminary Draft and Final CCP/EIS. The Cooperating Agencies will provide comments to the Service within the overall time schedule.
6. The Service will provide copies of correspondence to the Cooperating Agencies as it applies to their area(s) of expertise, and the development of alternatives and the plan.
7. Through consultation with the Cooperating Agencies, the Service is responsible for selection of the Preferred Alternative and preparation of the Record of Decision. The Service’s Regional Director for Region 6, Mountain-Prairie Region is the final decision maker for the Record of Decision.
8. The primary designated points of contacts for the Service shall be the NBR Complex Project Leader, Jeff King, and Planning Team Co-Leaders, Bernardo Garza and Toni Griffin (Region 6, Mountain-Prairie Region,

Division of People, Policy and Planning, Branch of Policy and Planning, Lakewood, Colorado). Other NBR Complex staff and personnel from the Service's Region 6 may also serve on the planning team.

9. Each Cooperating Agency shall designate representatives to serve on the planning team. If the designated representative(s) is not able to fulfill the duties, the Cooperating Agency shall designate a new representative in writing to the Service. Given the three-year planning schedule, those contacts are not specifically identified in this MOU, but will be documented in Memorandum to the Files by the Planning Team Leaders of all planning team members and updated as necessary. In order to ensure the consistency in communications, the designated representatives should make every effort to attend planning team meetings over the length of the planning process.

10. The Cooperating Agencies shall provide responses to data requests and provide review comments to the Service within the overall planning schedule.

11. The Service will document all meetings, emails, and phone conversations for inclusion in the Administrative Record for the CCP/EIS. The Service will maintain the official Administrative Record.

12. The Service will have primary responsibility for writing and rewriting all sections, parts, or chapters of the CCP/EIS and for reestablishing a schedule for completion of chapters consistent with the overall planning schedule. As appropriate, Cooperating Agencies may also help accomplish the same.

13. The Service will be the recipient of all comments on the CCP/EIS resulting from the review and comment periods.

13. Upon revision of the Draft CCP/EIS, the Service will provide the Cooperating Agencies with a list of the significant changes in the Final CCP/EIS.

VII. Administration

1. Modifications to this MOU may be proposed by the Service or by the Cooperating Agencies and shall become effective upon the written approval of all parties. Changes to this MOU must be initialed and dated on each replacement page by an authorized agent of each party.

2. Any party may withdraw from this MOU after 30 days written notice of their intention to do so to the other parties.

3. Nothing in this agreement will be construed as limiting or affecting in any way the authority or responsibility of the Service or the Cooperating Agencies to perform within their authority.

4. This MOU is not intended to create, nor shall this MOU be construed or interpreted as creating, a binding or legally enforceable contract among the parties. The sole remedy for the failure of a party to fully comply with the provisions of this MOU shall be termination hereof.

This MOU will become effective upon the signature of all of its participants.

Approved

Jeff King, Project Leader,
National Bison Range Complex

Date

Stanley Speaks, Regional Director
Bureau of Indian Affairs – Northwest Regional Office

Date

Vernon Finley, Chairman
Confederated Salish & Kootenai Tribes

Date

Neil Anderson, Regional Wildlife Program Manager
Montana Fish, Wildlife & Parks

Date

Gale Decker
Lake County Board of Commissioners
A political subdivision of the State of Montana

Date

Carol Brooker, Presiding Officer
Sanders County Board of Commissioners
A political subdivision of the State of Montana

Date