Memorandum of Understanding
between the
Department of the Interior, Bureau of Land Management
Oregon/Washington State Office
and the
Skokomish Indian Tribe as a Cooperating Agency
for
Preparation of the San Juan Islands National Monument
Resource Management Plan/Environmental Impact Statement

I. Introduction

This Memorandum of Understanding (MOU) establishes a Cooperating Agency relationship between the Bureau of Land Management's Oregon/Washington State Office (BLM) and the Skokomish Indian Tribe (Cooperator) for the purpose of preparing the San Juan Islands National Monument Resource Management Plan and Environmental Impact Statement (RMP/EIS). The BLM is the lead Federal agency for development of the San Juan Islands National Monument RMP/EIS. The BLM acknowledges that the Cooperator has jurisdiction by law and special expertise applicable to the RMP/EIS effort as defined at 40 Code of Federal Regulations (CFR) 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by the Skokomish Indian Tribe as a Cooperating Agency and the BLM (the Parties).

The Cooperating Agency relationship established through this MOU shall be governed by all applicable statutes, regulations, and policies, including the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (in particular, 40 CFR 1501.6 and 1508.5), the BLM's planning regulations (in particular, 43 CFR 1601.0-5, 1610.3-1, and 1610.4), and the Department of the Interior Manual (516 DM 2.5).

The BLM shall engage in government-to-government consultation with affected Indian tribes during all phases of the planning process in accordance with applicable Federal statutes, regulations, and other authorities, including the National Historic Preservation Act, the American Indian Religious Freedom Act, Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and Executive Order 13007 (Indian Sacred Sites). The Cooperating Agency relationship established here supplements and is subordinate to the government-to-government relationship between the Skokomish Indian Tribe and the BLM.

II. Purposes

The purposes of this MOU are:

A. To designate the Skokomish Indian Tribe as a Cooperating Agency in the RMP/EIS process.
B. To provide a framework for cooperation and coordination between the BLM and the Cooperator that will ensure successful completion of the RMP/EIS in a timely, efficient, and thorough manner.

C. To recognize that the BLM is the lead agency with responsibility for the completion of the RMP/EIS and the Record of Decision (ROD).

D. To describe the respective responsibilities, jurisdictional authority, and expertise of each of the Parties in the planning process.

III. Authorities for the MOU

A. The authorities of the BLM to enter into and engage in the activities described within this MOU include, but are not limited to:

1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
2. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)
3. Presidential Proclamation 8947 – Establishment of the San Juan Islands National Monument (March 25, 2013)

B. Regulations implementing the above authorities:

1. Council on Environmental Quality regulations (40 CFR 1501 et seq.)
2. Bureau of Land Management planning regulations (43 CFR 1601 et seq.)

C. The authorities of the Skokomish Tribe to enter into this MOU include, but are not limited to:

1. The Point-No-Point Treaty of 1859
2. Constitution of the Skokomish Indian Tribe, Article V, Section 1 (m) which authorizes the Tribal Council on behalf of the tribe to consult, negotiate, and contract with agencies and officers of Federal, state, local, and tribal governments and with private persons and organizations.
3. <insert additional authorities as appropriate>

IV. Roles and Responsibilities

A. BLM Responsibilities

1. As the lead agency, the BLM retains final responsibility for the content of all planning and NEPA documents, which include the Draft RMP/Draft EIS, the Proposed RMP/Final EIS, and the ROD. The BLM's responsibilities include determining the purpose of and need for the RMP, selecting alternatives for analysis, identifying effects of the proposed alternatives, selecting the preferred alternative, and determining appropriate mitigation measures. In meeting these responsibilities, the BLM will follow all applicable statutory and regulatory requirements.
2. To the fullest extent consistent with its responsibilities as the lead agency, the BLM will consider the comments, recommendations, data, and/or analyses provided by the Cooperator in the RMP/EIS planning process, giving particular

consideration to those topics on which the Cooperator is acknowledged to possess jurisdiction by law and special expertise.

3. To the fullest extent practicable, after consideration of the effect such releases may have on the BLM's ability to withhold this information from other parties, the BLM will provide the Cooperator with copies of documents underlying the RMP/EIS relevant to the Cooperator's responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and Draft and Final RMP/EISs.

B. Cooperating Agency Responsibilities

1. The Skokomish Indian Tribe is a Cooperating Agency in this planning process and is recognized to have jurisdiction by law and special expertise in the following areas:
   a. cultural resources, specifically traditional cultural properties
   b. subsistence resources
2. The Cooperator will provide information, comments, and technical expertise to the BLM regarding those elements of the RMP/EIS, and the data and analyses supporting them, in which it has jurisdiction or special expertise or for which the BLM requests its assistance. In particular, the Cooperator will provide information on the following topics:
   a. botanical and wildlife species of tribal concern
   b. locations of tribal interest
   c. cultural and natural history interpretation, education, and outreach
   d. other information that is relevant to planning issues or data needs
3. Within the areas of its jurisdiction or special expertise, the Cooperator may participate in any of the activities identified in Attachment A. These activities include, but are not limited to:
   a. providing guidance on public involvement strategies, identifying data needs, suggesting management actions to resolve planning issues
   b. providing input to the draft Analysis of the Management Situation
   c. identifying effects of alternatives, suggesting mitigation measures, and providing written comments on working drafts of the RMP/EIS and supporting documents (See also Section C.2.)

   Nothing in this agreement precludes the Skokomish Indian Tribe or tribal members from participating in all phases of the planning process generally available to the public, including the ability to seek administrative remedy.

C. Responsibilities of the Parties

1. The Parties agree to participate in this planning process in good faith and make all reasonable efforts to resolve disagreements. Where procedural or substantive disagreement may impede effective and timely completion of the San Juan Island National Monument RMP/EIS, the Parties agree to utilize the facilitation and conciliation procedures described below (see Section V.I).
2. The Parties agree to comply with the planning schedule provided as Attachment B, which includes dates for RMP/EIS milestones and timeframes for Cooperator reviews and submissions. The Skokomish Indian Tribe may request amendment of the schedule; however, the BLM retains final decision-making authority regarding revisions to the schedule.
3. Each Party agrees to fund its own expenses associated with the San Juan Island National Monument RMP/EIS process.
4. The Parties agree to carefully consider whether proposed meetings or other activities would waive the Unfunded Mandates Reform Act exception to the Federal Advisory Committee Act (2 U.S.C. 1534(b) and 5 U.S.C App.).

V. Other Provisions

A. Authorities Not Altered. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within its respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond their respective authority.

B. Financial Obligations. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available. This agreement is neither a fiscal nor a funds obligation document. Any endeavor to transfer anything of value involving reimbursement or contribution of funds between the Parties to this agreement 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 agreement does not provide such authority. Specifically, this agreement does not establish authority for noncompetitive award to the cooperator of any contract or other agreement.

C. Immunity and Defenses Retained. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

D. Conflict of Interest. The Parties agree not to utilize any individual or organization for purposes of plan development, environmental analysis, or Cooperator representation, including officials, employees, or third-party contractors, having a financial interest in the outcome of the San Juan Island National Monument RMP/EIS. Questions regarding potential conflicts of interest should be referred to the BLM headquarters in

Washington, DC, or field ethics counselors for resolution. The Skokomish Indian Tribe may also choose to utilize the ethics procedures adopted by the Skokomish Indian Tribe.

E. Documenting Disagreement or Inconsistency. Where the BLM and the Cooperator disagree on substantive elements of the RMP/EIS (such as designation of the alternatives to be analyzed or analysis of effects), and these disagreements cannot be resolved, the BLM will include a summary of the Cooperator's views in the Draft RMP/Draft EIS and the Proposed RMP/Final EIS. The BLM will also describe substantial inconsistencies between its proposed action(s) and the objectives of State, tribal, or local land use plans and policies.

F. Records Management. Each Party owns the rights to all data/records it may produce as part of this agreement. All records (in all media, paper, and electronic) created or produced in part or in whole are to be maintained for the duration of the agreement, made available upon request, and, upon termination of the agreement, will be turned over to the BLM for inclusion in the project record.

G. The Skokomish Indian Tribe, as part of this specific RMP/EIS project, shall not retain, use, sell, or disseminate copies of any data that contains information covered by the Privacy Act of 1974 or that which is generally protected by the Freedom of Information Act.

H. Management of Information. The Cooperator acknowledges that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act (5 U.S.C 552) and other Federal statutes. The BLM acknowledges that the Cooperator's handling of these materials may be impacted by the Washington Public Records Act, RCW 42.56. The Parties agree that the BLM, at its discretion, may withhold from the Cooperator those documents that would otherwise be available for public release under the Washington Public Records Act. The Parties also agree that the Skokomish Indian Tribe, at its discretion, may withhold from the BLM those documents that would otherwise be available for public release under the Freedom of Information Act and other Federal statutes. Information withheld or otherwise not submitted cannot be considered in the San Juan Islands National Monument RMP/EIS process.

I. Conflict Resolution. The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts and may agree to initiate an Alternative Dispute Resolution (ADR) process. The Parties acknowledge that the BLM retains final responsibility for preparation and the decisions identified in the San Juan Islands National Monument RMP/EIS and ROD.

1. Facilitation. If the Parties deem it necessary, they agree to retain an independent facilitator to foster clear and efficient communication.

2. Joint Fact-finding. Where the Parties disagree on matters of scientific information, data collection, or analysis, the Parties will use their best, good-faith effort to agree on mediation procedures to be employed to prepare a neutral assessment of the contested scientific issues.

J. The BLM, at its discretion, may select a contractor, or contractors, to assist in preparation of the San Juan Islands National Monument RMP/EIS. The Cooperator may only communicate with the BLM contractor through or with the approval of the BLM's representative. Specific opportunities will be provided for the Cooperator to provide information and comments directly to the contractor. In addition, workgroups and/or sub-teams will be established as needed to collaborate with the BLM and the contractor's technical staff on matters within the Cooperator's jurisdiction or area of special expertise. The Cooperator acknowledges that the BLM retains the exclusive responsibility to authorize modifications to any BLM contracts and that the Cooperator is not authorized to provide technical or policy direction regarding the performance of the contract.

VI. Agency Representatives

Each Party will designate an Agency Representative and an Alternate Agency Representative, as described in Attachment C, to ensure coordination between the Cooperator and the BLM during the planning process. Each Party may change its Agency Representative at will by providing written notice to the other Party. The representative of each Party will ensure that appropriate technical staff is made available during working sessions and workgroup and/or sub-team meetings. When formal reviews of Administrative Draft documents are conducted, the Agency Representative shall provide the consolidated comments of the Skokomish Indian Tribe. In addition, each Agency Representative shall be responsible for ensuring that appropriate tribal leaders, staff, and members are briefed on substantive project issues, deadlines, and schedule adjustments.

VII. Administration of the MOU

A. Approval. This MOU becomes effective upon signature by the authorized officials of the BLM and the Cooperator.

B. Amendment or Modification. Amendment or modification of this MOU, within the scope of the agreement, 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.

C. Termination. If not terminated earlier, this MOU will end when the ROD for the San Juan Islands National Monument RMP/EIS is approved by the BLM Oregon/Washington State Director. Either of the Parties, in writing, may terminate the agreement, in whole or in part, at any time before the date of expiration.

VIII. Signatures

The Parties hereto have executed this MOU on the dates shown below.

Jerome E. Perez, State Director
Oregon/Washington Bureau of Land Management

July 6, 2015
Date

Charles "Guy" Miller, Chairperson
Skokomish Tribal Council

7-20-15
Date

Cooperating Agency Participation in the San Juan Islands National Monument RMP/EIS
Attachment A

RMP/EIS Stage	**Potential Activities of Cooperating Agencies (CA) within their acknowledged areas of expertise**
1. Conduct scoping and identify issues	Provide scoping comments and input on coordination requirements based on CA plans; identify significant issues; identify relevant local and regional organizations and interest groups; provide non-financial sponsorship of public forums with the BLM; collaborate in assessing scoping comments; identify connected, similar, and cumulative actions; identify other relevant agencies.
2. Develop planning criteria	Provide advice on proposed planning criteria.
3. Collect inventory data	Identify data needs; provide data and technical analyses within the CA's expertise.
4. Analyze management situation	Provide input on the Draft Analysis of the Management Situation (AMS) and aid in interpreting the AMS to constituents.
5. Formulate alternatives	Collaborate with field manager in developing alternatives. Suggest land allocations or management actions to resolve issues. **[Decision to select alternatives for analysis is reserved to the BLM.]**
6. Estimate effects of alternatives	Provide effects analysis within the CA's expertise; identify direct, indirect, and cumulative effects within the CA's expertise; suggest mitigation measures for adverse effects.
7. Select the preferred alternative; issue Draft RMP/EIS	Collaborate with field manager in evaluating alternatives and in developing criteria for selecting the preferred alternative; provide input on Preliminary Draft RMP–DEIS. The CAs may provide written, public comments on draft if desired. **[Decision to select a preferred alternative and to issue a draft is reserved to the BLM.]**
8. Respond to comments	As appropriate, review comments within the CA's expertise and provide assistance in preparing BLM's responses.
8a. Issue Proposed	**[Action reserved to BLM.]**

RMP/FEIS	
8b. Initiate Governor's Consistency Review	Once initiated by the BLM, state CAs should contribute to the Governor's Consistency Review.
9. Sign Record of Decision [or]	**[Action reserved to the BLM.]**
9a. Resolve protests; modify Proposed RMP/FEIS if needed; sign ROD	**[Action reserved to the BLM.]** A CA that has provided information relevant to a protest may be asked for clarification.

Schedule
Attachment B

Task	Responsibility	Dates
Conduct scoping and identify issues	core team, cooperators	Spring 2015
Formulate alternatives	cooperators (advisory), core team	Summer/Fall 2015
Review and comment on affected environment chapter (administrative draft)	cooperators	Winter 2015/2016
Estimate effects of alternatives (for identified areas of cooperator expertise)	cooperators	Spring 2016
Review and comment on Administrative Draft RMP/EIS	core team, cooperators	Summer 2016
Review Draft RMP/EIS and provide specialized expertise in developing responses	core team, cooperators	Winter 2016/2017
Review and comment on Administrative Final RMP/EIS	core team, cooperators	Summer 2017

Agency Representatives
Attachment C

Bureau of Land Management
Plan: San Juan Islands National Monument RMP/EIS
Primary Representative: Marcia deChadenedes, Monument Manager
Backup Representative: Lauren Pidot, RMP Team Lead

Skokomish Indian Tribe
Primary Representative: Charles "Guy" Miller, Chairperson
Backup Representative: Earl Lees, Tribal Attorney