

**Memorandum of Understanding
between
United States Department of the Interior
Bureau of Land Management, Spokane District
and
United States Department of the Interior
Fish and Wildlife Service
Regarding
Cooperating Agency Status for Preparation of the Eastern Washington Resource
Management Plan and Environmental Impact Statement**

I. INTRODUCTION

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the United States Department of the Interior Bureau of Land Management's Spokane District (BLM) and the United States Department of the Interior Fish and Wildlife Service (USFWS) for the purpose of preparing the Eastern Washington Resource Management Plan and Environmental Impact Statement (RMP/EIS). The BLM is the lead Federal agency for the development of the RMP/EIS. The BLM acknowledges that the USFWS has 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 USFWS 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.

II. PURPOSE

The purposes of this MOU are:

- A. To designate the USFWS as a Cooperating Agency in the RMP/EIS process.
- B. To provide a framework for cooperation and coordination between the BLM and the USFWS 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.)
- 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 USFWS to enter into this MOU include, but are not limited to:
 - 1. Council on Environmental Quality regulations (40 CFR 1501 et seq.)
 - 2. National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
 - 3. Endangered Species Act of 1973 (16 U.S.C. 1531-1544, 87 Stat. 884), as amended.
 - 4. Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat. 755), as amended
 - 5. Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. 668-668c), as amended

IV. ROLES AND RESPONSIBILITIES

- A. Responsibilities of the BLM:
 - 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. These 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. The BLM will keep the USFWS apprised of current status and timeframes in relation to the RMP/EIS process.
 - 3. To the fullest extent consistent with its responsibilities as lead agency, the BLM will consider the comments, recommendations, data, and/or analyses provided by the Cooperator in the EIS process, giving particular consideration to those topics on which the Cooperator is acknowledged to possess jurisdiction by law or special expertise.
 - 4. 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 EIS relevant to the Cooperator's responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final Environmental Impact Statements.

B. Responsibilities of the USFWS:

1. The USFWS, as a Cooperating Agency in this planning process, is recognized to have special expertise in management of species listed as threatened or endangered in accordance with the Endangered Species Act, candidate species for listing, eagles, and migratory birds.
2. The USFWS will participate in the RMP/EIS process by providing information regarding environmental issues for which it has special expertise.
3. The USFWS will assist the BLM in developing reasonable alternatives, providing timely information, and reviewing preliminary environmental documents and may participate in any of the activities as indicated in Attachment A.
4. The USFWS will advise the BLM regarding conservation measures to incorporate into the RMP/EIS.
5. Within the areas of its jurisdiction or special expertise, the USFWS may participate in any of the activities identified in Attachment A. These activities include, but are not limited to: providing guidance on public involvement strategies, identifying data needs, suggesting management actions to resolve planning issues, identifying environmental effects of alternatives, and providing written comments on working drafts of the EIS and supporting documents. (See also Section C.4.)
6. The USFWS will maintain confidentiality of documents and deliberations during the period prior to the public release of any documents related to the RMP/EIS.

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.
2. The Parties agree to comply with the planning schedule provided as Attachment B, which includes dates for RMP/EIS milestones and timeframes for the USFWS reviews and submissions.
3. This MOU does not authorize funding from or to either party.

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 its 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. Funding agreements may be arranged through means other than this MOU.
- 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 RMP/EIS. Questions regarding potential conflicts of interest should be referred to BLM Headquarters or Field Ethics Counselors for resolution.

- E. Documenting Disagreement or Inconsistency: Where the BLM and the USFWS 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 views of the USFWS in the Draft RMP/Draft EIS and the Proposed RMP/Final EIS. The BLM will also describe substantial inconsistencies between its proposed action and the objectives of Federal, state, local, or tribal land use and species management plans and policies.
- F. Management of Information: The USFWS 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 (FOIA) and other Federal statutes. The USFWS agrees not to release these materials to individuals or entities other than the Parties to this MOU and the BLM's contractor, if so directed by the BLM. The BLM acknowledges that the handling of these materials by the USFWS may implicate the requirements of certain state statutes or local ordinances governing release of information. The Parties agree that the BLM, at its discretion, may withhold from the USFWS those documents that would otherwise be available for public release under such statutes or ordinances.
- G. Conflict Resolution: The Parties agree to make reasonable efforts to resolve procedural or substantive conflicts and may agree to use an Alternative Dispute Resolution (ADR) process. The Parties acknowledge that the BLM retains final responsibility for the decisions identified in the EIS and ROD.
- H. Records Management: The BLM owns the rights to all data/records produced 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.
- I. The USFWS 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 FOIA.
- J. Public Records: Any information furnished to any of the undersigned agencies is subject to the FOIA (5 U.S.C. 552) and state public records laws.
- K. Modifications: Modifications 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 all Parties, prior to any changes being performed.
- L. Non-fund Obligating Document: 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 non-competitive award to the cooperator of any contract or other agreement.

M. Termination: Any of the Parties, in writing, may terminate the agreement, in whole or in part, at any time before the date of expiration.

VI. AGENCY REPRESENTATIVES

Each Party will designate a primary and alternate representative, as listed below, to ensure coordination between the USFWS and the BLM during this planning process. Each Party may change its representative at will by providing written notice to the other Party.

Designated representatives and contacts for each Party are:

A. BLM

Primary Representative

Chris Carlton
Planning and Environmental Coordinator
BLM Spokane District
1103 N. Fancher Rd.
Spokane Valley, WA 99212
Phone: (509) 536-1252
Email: jpavey@blm.gov

Alternate Representative

Dennis Strange
Acting Border Field Manager
BLM Spokane District
1103 N. Fancher Rd.
Spokane Valley, WA 99212
Phone: (509) 536-1263
Email: dstrange@blm.gov

B. USFWS

Primary Representative

Jessica L. Gonzales
Assistant Project Leader
Central Washington Field Office
215 Melody Lane # 103

Wenatchee, WA 98801-8122
Phone: 509 665-3508 ext. 2000
Email address: Jessica_Gonzales@fws.gov

Alternate Representative

Jeff Krupka
Consultation Branch Manager
Central Washington Field Office
215 Melody Lane # 103
Wenatchee, WA 98801-8122
Phone: 509 665-3508 ext. 2008
Email address: Jeff_Krupka@fws.gov

VII. ADMINISTRATION FOR THE MOU

- A. Approval: This MOU becomes effective upon signature by the authorized officials of the BLM and the USFWS.
- B. Amendment: This MOU may be amended through written agreement of both signatories.
- C. Termination: If not terminated earlier, this MOU will end when the ROD for the Eastern Washington RMP/EIS is approved by the BLM Oregon/Washington State Director. Any Party may end its participation in this MOU by providing written notice to the other Party.

VIII. SIGNATURES

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



Jerome E. Perez
State Director
BLM Oregon/Washington

March 23, 2015.
Date



Theresa Rabot
Assistant Regional Director
US Fish and Wildlife Service

3/25/15
Date

**Cooperating Agency Participation in the Eastern Washington
Resource Management Plan and Environmental Impact Statement
Attachment A**

Resource Management Plan/Environmental Impact Statement (RMP/EIS) Stage	Potential Activities of the U.S. Fish and Wildlife Service (USFWS) within Its Acknowledged Areas of Expertise
Formulate alternatives	Collaborate with the Bureau of Land Management (BLM) in developing alternatives. Suggest goals, objectives, or management actions to resolve Endangered Species Act (ESA) listed and candidate species issues. Participate in BLM interdisciplinary team meetings.
Analyze the effects of alternatives	Provide expertise, advice, and data needed for a thorough analysis of the effects of the proposed RMP alternatives on ESA listed and candidate species.
Identify the preferred alternative; prepare Draft RMP/EIS	Collaborate with the BLM in evaluating alternatives and provide input to the BLM for use in selecting the preferred alternative; provide input on Preliminary Draft RMP/Draft EIS.
Respond to comments	As appropriate, review comments within the expertise of the USFWS and provide assistance in preparing the BLM's responses.
Resolve protests; modify Proposed RMP/Final EIS if needed; sign Record of Decision	If the USFWS has provided information relevant to a protest, the BLM may ask for assistance or clarification.

**Cooperating Agency Participation in the Eastern Washington
Resource Management Plan and Environmental Impact Statement
Schedule – Attachment B**

Task	Participant	Approximate Dates
Formulate alternatives	U.S. Fish and Wildlife Service/Bureau of Land Management (USFWS/BLM)	May 2014
Conduct effects analysis and select preferred alternative	USFWS/BLM	May-June 2014
Prepare preliminary Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS)	BLM	July 2014
Review and comment on preferred alternative and preliminary Draft RMP/EIS	USFWS	July-August 2014
Publish Draft RMP/EIS	BLM	Sept 2014
Conduct 90-day public review/comment period, and public meeting(s)	BLM	Oct 2014
Address/respond to comments received	USFWS/BLM	Jan 2014
Prepare preliminary Proposed RMP/Final EIS	BLM	June 2015
Review/comment on preliminary Proposed RMP/Final EIS	USFWS	July 2015
Publish Proposed RMP/Final EIS	BLM	Sept 2015
Allow 30-day protest and comment period	BLM	Oct 2015
Respond to protests, address comments	BLM (USFWS may assist if any protests or comments related to its input or expertise.)	Jan 2016
Prepare and publish Record of Decision/Approved RMP	BLM	Sept 2016