

MEMORANDUM OF UNDERSTANDING

BETWEEN:

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT
UNITED STATE DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE
STATE OF OREGON, OREGON DEPARTMENT OF FISH AND WILDLIFE
STATE OF OREGON, OREGON DEPARTMENT OF FORESTRY
DEPARTMENT OF AGRICULTURE, UNITED STATES FOREST SERVICE
UNITED STATES DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE

FOR

THE CONSERVATION OF FISHERS IN WESTERN OREGON

This Memorandum of Understanding (MOU) is hereby made and entered into by and between the Oregon Department of Fish and Wildlife (ODFW), Oregon Department of Forestry (ODF), U.S. Forest Service (USFS) Region 6, Oregon/Washington State Office of the Bureau of Land Management (BLM), National Park Service (NPS) and the U.S. Fish and Wildlife Service (FWS), collectively referred to as “parties.”

A. BACKGROUND

The west coast distinct population segment (DPS) of fisher (*Pekania pennanti*) became a candidate for listing as threatened under the Federal Endangered Species Act (ESA) in 2004. Since then, a suite of conservation efforts and fisher research has occurred within the DPS. Fishers have been reintroduced in the Olympic Peninsula in Washington and in the northern Sierra Nevada in California. In both instances, it is too soon to judge the success of the reintroductions, but signs are encouraging with evidence of reproduction, including a second generation being born in Washington. A third reintroduction began late 2015 in the southern Washington Cascade Range; upon its completion, a fourth one is planned in the northern Washington Cascades. Research and monitoring of these reintroduced populations, as well as other fisher research projects throughout the DPS, has increased our knowledge about fisher populations, distribution, and habitat.

Several actions facilitating fisher conservation in Oregon have been implemented in recent years (see list of specific actions in Section E) For example, fisher response to timber harvest and fuels treatments has been monitored in southwest Oregon, and a telemetry study in the Oregon Southern Cascades has recently begun to assess fisher use in an area of checkerboard ownership. Surveys in this area have also improved our understanding of the likelihood of overlap between the fisher population in southwest Oregon and the population in the Southern Cascades, which is a reintroduced population of a different genetic source. Finally, a systematic survey effort is being implemented in the Southern Cascades to better understand the distribution of fishers and other carnivores.

A feasibility assessment for reintroducing fishers in western Oregon was completed in 2015. The assessment, while not a decision document, concluded that fishers are a good candidate for reintroduction into large landscapes of contiguous forests such as the west slope of the Northern Cascades of Oregon, assuming protocols established for successful reintroductions are followed. The feasibility assessment also made several recommendations for actions that should occur before any

reintroduction, including developing an implementation plan, surveying areas lacking recent data to determine whether unknown fisher populations may exist, and collaboratively work with stakeholders and cooperators to garner logistical, financial, and political support for fisher reintroductions.

An earlier interagency effort resulted in a draft conservation strategy for fishers in south central British Columbia, Canada, western Washington, western Oregon, and California. The overarching goals and objectives in that draft provide guiding principles for fisher conservation, lay a foundation for collaborations among stakeholders and cooperators, and form a basis for contributions from parties under this MOU (see Section F).

Working cooperatively and collaboratively with others is key for conservation of fishers in western Oregon. Combining the knowledge, expertise, and limited resources (staffing and funding) among multiple parties may be most effective in meeting conservation needs. Actions such as population surveys and reintroductions are expensive and complex, requiring collaboration among governmental entities and landowners (public and private). Concerns over potential land-use restrictions that may occur if the species were listed under the ESA will necessitate developing regulatory assurance mechanisms prior to any reintroductions to alleviate concerns and facilitate reception and conservation of fishers. The collaborative and cooperative nature of the parties to this MOU has already been exhibited in the ongoing monitoring and conservation actions described above, displaying their ability to engage with each other in overcoming challenges and facilitating fisher conservation actions in Oregon.

B. PURPOSE:

The purpose of this MOU is to provide a framework for cooperation and achievement of mutual goals among the participating State and Federal agencies regarding conservation of the fisher in western Oregon (the historical range of fishers in western Oregon, which is approximately the Cascade Range west to the coast). Roles and responsibilities of all parties are clearly established, helping them achieve these mutual interests. The goals of the participants in this MOU are to collectively support each party's accomplishment of their individual responsibilities and objectives, including:

1. Ensure coordination and communication between all parties to promote the conservation of the fisher and meet fisher conservation objectives as described in section F.1 consistent with individual agency authorities and competing priorities and capacity (i.e., staffing and funding);
2. Provide a framework for the parties to initiate comprehensive surveys to obtain more reliable population assessments/estimates, explore, and potentially implement reintroduction of fishers in Oregon (if warranted), support post-reintroduction monitoring efforts, and, where feasible, share in a timely manner such data and their analysis with participating agencies and their appropriate representatives;
3. Work cooperatively to ensure implementation of fisher conservation measures such that any potential listing of fishers under the ESA will not be necessary;
4. Ensure coordination and communication in developing and implementing regulatory assurance mechanisms, as appropriate, prior to any reintroductions; and
5. Formally recognize ongoing actions and future efforts by the parties in furtherance of fisher conservation to inform a pending decision on listing fishers under the ESA.

C. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Parties are governmental entities that are the primary stewards for fishers and fisher habitat within western Oregon and are committed to conserving fishers and their habitat within the context of their

overall management responsibilities and authorities. The parties are already implementing a suite of management practices and policies that are expected to benefit fishers now and into the future (see Section E).

Federal and State land management agencies have been individually managing fisher habitat for decades. As the primary Federal landowners within the range of the fisher in Oregon, the USFS and the BLM manage extensive amounts of fisher habitat that is key to fisher conservation. The ODF is another public landowner within the fisher range, but with different management obligations than Federal landowners. Accommodating different ownerships and management priorities requires developing a suite of conservation measures that can be implemented based on agency mission, local conditions, site potential, and other considerations.

As the primary wildlife management agency in the State of Oregon, the ODFW is responsible for the conservation, management, and protection of Oregon's fish and wildlife resources. The ODFW's cooperation in the conservation of at-risk species, such as fisher, is essential. The Oregon Conservation Strategy (OCS) is the state's overarching blueprint for conserving fish, wildlife, and their habitat. The OCS builds on all of Oregon's regulations, conservation plans, and voluntary efforts by providing an implementation framework for a cohesive, statewide, non-regulatory approach to habitat and conservation. Further, Oregon's collaborative approach is linked to a "big-picture" national approach. The OCS defines key conservation issues that threaten species (including fisher) and their habitats offering a menu of recommended actions to address those problems. The ODFW is responsible for providing accurate technical information and expertise to Oregon agencies.

Priority actions identified in the OCS require continued coordination to build partnerships across jurisdictions and management authorities. Successful protection, conservation, and improvement of fisher populations require a unified and integrated approach to management by all agencies to improve the status of fisher populations in Oregon.

Should the fisher become listed under the ESA, take of the species will be prohibited by the act. In addition, section 6 of the Act provides a framework for the ODFW and the FWS to work cooperatively to conserve the species. Finally, section 7(a)(1) of the ESA requires all Federal agencies to utilize their authorities in the furtherance of the purposes of the ESA by carrying out programs for the conservation of endangered and threatened species.

D. DEFINITIONS

"Regulatory assurance mechanisms" is a term used throughout this MOU. It is a collective term for instruments under the ESA that can be used to provide regulatory assurances to affected parties should listing of the fisher occur. These mechanisms include 4(d) rules, 10(j) experimental populations, Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, Habitat Conservation Plans, and Safe Harbor Agreements. Some of these mechanisms can only be executed after a species is listed, while others can be implemented for species not currently listed so that regulatory assurances are in place should the species become listed.

E. EXISTING FISHER CONSERVATION CONTRIBUTIONS FROM PARTIES CONSISTENT WITH THIS MOU

All parties are either currently funding or supporting actions to further academic knowledge or conservation of fishers in western Oregon, or have policies in place that specifically address fisher conservation. These actions and policies are acknowledged below.

1. Fish and Wildlife Service contributions
 - a. Recently funded a feasibility assessment for reintroducing fishers into western Oregon.
 - b. Funding surveys in the northern Oregon Cascades to assess fisher presence per recommendations in the fisher reintroduction feasibility assessment.
 - c. Assessing the status of the fisher to determine whether it warrants listing under the ESA. Several distinct population segments of fisher are under consideration.
 - d. Lead agency for the development of regulatory assurance mechanisms.
2. BLM contributions
 - a. Provide support (e.g. funding, staff, etc.) for the multi-species carnivore monitoring project in SW Oregon to increasing our understanding of fisher distribution; evaluate sampling techniques (baits, spacing of stations, hair snares, etc.); and record observations of Sierra Nevada red fox, Pacific marten (coastal and inland populations), gray wolf, and other carnivore species.
 - b. Funding radio telemetry study in the Klamath Falls Resource Area to better assess fisher habitat use in an area that is uncharacteristic of known fisher habitat use.
 - c. The fisher is designated as a special status species. As such, the BLM policy directs actions to reduce or eliminate threats and minimize the likelihood of listing under the ESA.
 - d. Continue to manage fisher habitat in accordance with the BLM Resource Management Plans, and with the Critical Habitat Rule and the Recovery Plan for the northern spotted owl, all of which directly benefit fisher habitat by maintaining large blocks of suitable habitat.
3. Forest Service contributions
 - a. Continued support for the Ashland Forest Resiliency Fisher Project (Rogue-Siskiyou National Forest) to assess knowledge gaps in fisher ecology and habitat requirements in southwest Oregon and address the uncertainty surrounding the effects of timber harvest and fuels treatments on fishers and their habitats.
 - b. Because the fisher is currently proposed for listing as threatened under the ESA, it is designated as such by the Forest Service, requiring management to achieve recovery objectives so that special protection measures provided under the ESA are no longer necessary. If the fisher is not listed under the ESA, it will be designated as a sensitive species, requiring the Forest Service to assist and coordinate with other Federal agencies and states to conserve the species. The agency must maintain viable populations and avoid actions which may cause a species to become threatened or endangered.
 - c. Provide support (e.g. funding, staff, etc.) for the multi-species carnivore monitoring project in SW Oregon to increasing our understanding of fisher distribution; evaluate sampling techniques (baits, spacing of stations, hair snares, etc.); and record observations of Sierra Nevada red fox, Pacific marten (coastal and inland populations), gray wolf, and other carnivore species.
 - d. Provide support (e.g. funding, staff, etc.) for actions recommended in the fisher reintroduction feasibility assessment, specifically surveys on the Mt. Hood and Willamette National Forests to determine if fisher populations exist and to assess presence of other carnivores within potential release areas.

- e. Complete periodic fisher surveys and monitoring outside of the above study areas. An example includes funding GPS and VHF collars on 10 fishers within Klamath Falls area on the Fremont Winema National Forest in 2015-2016 to determine: (1) size and configuration of fisher home range within; (2) the locations and habitat characteristics of denning habitat and resting sites within the project area; and (3) Identify how fishers are moving in the BLM checkerboard ownership landscape.
 - f. Continue to manage fisher habitat in accordance with the Northwest Forest Plan and with the Critical Habitat Rule and the Recovery Plan for the northern spotted owl, all of which directly benefit fisher habitat by maintaining large blocks of suitable habitat.
4. National Park Service contributions
- a. Share results of monitoring of reintroduced fisher populations outside of Oregon, such as the ongoing monitoring of fishers in Olympic National Park, and the ongoing and planned translocations in the Washington Cascades.
 - b. Share results from past fisher surveys including still cameras, videos, smoke plate track surveys, and wildlife sightings records.
 - c. Conduct new camera surveillance (where feasible) to determine presence/absence and share the information gained with other participating agencies and individuals. Examples include a general meso-carnivore survey at Crater Lake in 2015, and planned surveys at Oregon Caves National Monument and Preserve in 2016.
 - d. Continue to manage fisher habitat in accordance with the Northwest Forest Plan and with the Critical Habitat Rule and the Recovery Plan for the northern spotted owl, all of which directly benefit fisher habitat by maintaining large blocks of suitable habitat.
 - e. If the fisher is not listed under the ESA, it will be designated as a sensitive species, requiring the Park Service within the area of concern to coordinate and consult with other affected Federal agencies and the State of Oregon on all of its major actions that will affect the conservation of the species as required under the National Environmental Policy Act.
5. Oregon Department of Fish and Wildlife contributions
- a. The fisher is a protected non-game species (OAR 635-044-0130), making it illegal to “hunt, trap, pursue, kill, take, catch, angle for, or have in possession, either dead or alive, whole or in part,” fishers.
 - b. The fisher is listed in Oregon as a Sensitive Species-Critical Category, meaning the species is threatened with extirpation from a specific geographic area due to small population size, habitat loss, degradation, or other immediate threats. This is not a regulatory mechanism, but used to encourage voluntary actions to improve the species status and prevent species decline to the point of qualifying for listing.
 - c. The fisher is identified as a “strategy species” (i.e. low and declining or otherwise at-risk) in the Oregon Conservation Strategy. Specific to fishers, the strategy recommends maintaining late successional habitats within the fisher’s range, improving habitat patch size and connectivity, and using the results of feasibility studies to guide specific conservation actions and management decisions for reintroductions.
 - d. Provide support (where feasible) for the multi-species carnivore monitoring project in southwest Oregon.

- e. Conduct camera surveillance (where feasible) to determine presence/absence.

6. Oregon Department of Forestry contributions

- a. ODF operates under different management authorities for regulating private forests and for managing State forest lands. These programs and their contributions are described separately below.
 - i. ODF State Forests: The ODF State Forest lands comprise < 1% of the fisher's current range. The ODF Forest Management Plans include active management strategies to: contribute to biological diversity of forest stand types and structures at the landscape level and over time; manage forest conditions to result in protecting, maintaining, and enhancing native wildlife habitats, including managing for a range of forest conditions. These plans are expected to benefit fishers now and into the future. The ODF participates in survey efforts related to fishers (e.g., multi-species carnivore surveys) when and where feasible.
 - ii. ODF – Private Forests: The ODF Private Forest Program implements the Forest Practices Act which includes regulations that are likely to contribute to fisher habitat, including riparian buffer retention, leave tree and downed wood retention during some operations, clearcut harvest size limitations, and buffers for certain wildlife sites, etc. Non-regulatory programs, such as stewardship agreements and the associated Safe Harbor Agreement for spotted owls also may benefit fisher. Currently most enrolled properties in the Spotted Owl Safe Harbor Agreement are within the historic range of the fisher.

F. PARTY CONTRIBUTIONS UNDER THIS MOU

- 1. Nothing in this MOU is intended to obligate parties to operate beyond their existing management responsibilities and authorities. Under this MOU parties shall, to the maximum extent practicable and as funding is available, manage for the conservation of fishers in western Oregon as follows:
 - a. Ameliorate threats to existing populations of fishers and facilitate their expansion, where ecologically appropriate.
 - b. Maintain, restore, and develop resilient landscapes that support fishers.
 - c. Parties will cooperate in developing regulatory assurance mechanisms to support fisher expansion in western Oregon. Regulatory assurance mechanisms will be in place prior to fisher reintroductions in western Oregon.
 - d. Cooperatively manage fishers and/or fisher habitat in a manner that is consistent with any regulatory assurance mechanisms or land use plans parties may be subject to.
 - e. Cooperate with parties to provide technical assistance regarding fisher conservation.
 - f. Provide access to party lands for research or monitoring.
 - g. Share relevant data, information, reports, or publications regarding fisher biology and conservation when available.
 - h. Initiate comprehensive surveys to obtain more reliable estimates of population trends and distribution in Oregon.
 - i. Facilitate fisher reintroductions in areas of Oregon where appropriate and based on sound science. This would include:

- i. Completion and peer-review of a feasibility study for reintroduction of fishers in Oregon (completed March 2015).
- ii. Identify areas for reintroductions to establish self-sustaining populations and to restore the ecological role of fishers.
- iii. Support, seek, and share information in the development of fisher reintroduction plans.
- iv. Monitor population growth and stability of reintroduced fisher populations to evaluate the success of reintroduction.
- j. Identify and support high-priority research, inventory, and monitoring needs to further guide fisher conservation actions.
- k. Coordinate public outreach specific to fishers and other forest carnivores.
- l. Clean-up illegal marijuana grow sites found on party ownership.
- m. Form an interagency Forest Carnivore Working Group in western Oregon to collaborate and coordinate research, monitoring, and conservation actions for fishers and other forest carnivores. A second duty of this workgroup will be to coordinate and monitor the implementation of this MOU.

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

1. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the Federal agencies under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
2. RECORDS MANAGEMENT. The signing parties own the rights to all data/records produced by them 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 other signing parties.

The signing parties 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.
3. OREGON PUBLIC RECORDS LAW. Any information furnished to the State agencies under this instrument is subject to the Oregon Public Records Law (ORS 192) unless inapplicable in a matter of Federal law.
4. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts the parties to this MOU from participating in similar activities with other public or private agencies, organizations, and individuals.
5. COMMENCEMENT/EXPIRATION/TERMINATION. This MOU takes effect upon the signature of the USFS, BLM, FWS, NPS, ODFW and ODF. This MOU may be amended upon written request of any party and the subsequent written concurrence of the other(s). Any party may terminate this MOU with a 60 day written notice to the other(s). This MOU will expire 5 years from the date of signature, at which time parties may renew, revise, or determine the MOU is no longer needed.
6. RESPONSIBILITIES OF PARTIES. Each party will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

Principal Contacts. The principal contacts for this instrument are:

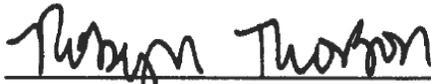
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7. NON-LIABILITY. The parties to this agreement do not assume liability for any third-party claims for damages arising out of this instrument.
8. ENDORSEMENT. Any one party's contributions made under this MOU do not by direct reference or implication convey any of the other party's endorsement of their products or activities.
9. NON-FUND OBLIGATING DOCUMENT. Nothing in this MOU shall obligate any party to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the parties will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.
10. ESTABLISHMENT OF RESPONSIBILITY. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
11. AUTHORIZED REPRESENTATIVES. By signature below, the cooperator certifies that the individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this MOU.

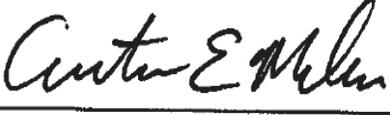
THE PARTIES HERETO have executed this instrument. BY:

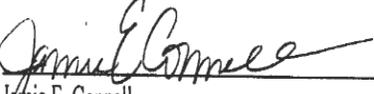
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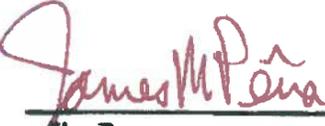
 Date _____

Robyn Thorson
Regional Director
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Date 2-9-2016
Doug Decker
State Forester
Oregon Department of Forestry
Salem, Oregon


Date 2/25/16
Curt Melcher
Director
Oregon Department of Fish and Wildlife
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Date 3/10/2016
Jamie E. Connell
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Date 3/4/2016
Jim Pena
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for Martha L Date 4/8/16

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