

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
THE DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
OREGON STATE OFFICE
AND THE
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
NORTHWEST REGION AS A COOPERATING AGENCY FOR
REVISION OF THE RESOURCE MANAGEMENT PLANS AND PREPARATION OF
ENVIRONMENTAL IMPACT STATEMENT FOR THE WESTERN OREGON BLM DISTRICTS

I. Introduction

This Memorandum of Understanding (MOU) establishes a cooperating agency relationship between the Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, Northwest Region (Cooperating Agency or National Marine Fisheries Service), and the Department of the Interior, Bureau of Land Management (BLM), Oregon State Office, for the purpose of preparing the Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for BLM-managed lands within the Coos Bay, Eugene, Medford, Roseburg, and Salem Districts and the Klamath Falls Resource Area of the Lakeview District (collectively known as the Western Oregon Districts). The BLM is the lead Federal agency for development of the RMP/EIS. The BLM acknowledges that the Cooperator has special expertise applicable to the RMP/EIS effort, as defined at 40 CFR 1508.15 and 1508.26. This MOU describes responsibilities and procedures agreed to by the National Marine Fisheries Service 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).

Pursuant to this MOU, the NMFS will participate as a cooperating agency in revision of the RMPs and preparation of an EIS for the Western Oregon Districts.

II. Purposes

The purposes of this MOU are:

A. To designate the National Marine Fisheries Service as a Cooperating Agency in the RMP/EIS process.

B. To provide a framework for cooperation and coordination between the BLM and the Cooperating Agency 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. BLM 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. The Oregon & California Lands Act of 1937 (43 U.S.C. 118(a) et seq.)

B. Regulations implementing the above authorities:

1. Council on Environmental Quality regulations (40 CFR 1501 et seq.)
2. BLM planning regulations (43 CFR 1601 et seq.)

IV. NMFS Authorities for the MOU

A. The authorities of the NMFS 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. Endangered Species Act of 1973 as amended (16 U.S.C. 1531 et seq.)
3. Magnuson-Stevens Fisheries Conservation and Management Reauthorization Act of 2006 (16 U.S.C. 1801 et seq.)
4. Fish and Wildlife Coordination Act of 1934 as amended (16 U.S.C. 661-667e; 48 Stat. 401 et seq.)

B. Regulations implementing the above authorities:

1. Council on Environmental Quality regulations (40 CFR 1501 et seq.)
2. Endangered Species Act regulations (50 CFR §402 et seq.)
3. Magnuson-Stevens Fisheries Conservation and Management Act regulations (50 CFR §600 et seq.)

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 lead agency, the BLM will consider the comments, recommendations, data, and/or analyses provided by the Cooperating Agency in the RMP/EIS planning process, giving particular consideration to those topics on which the Cooperator is acknowledged to possess or 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, and in consideration of BLM's authorities and responsibilities to not disclose and/or to protect certain non-public and/or sensitive data (e.g., Section 9 of the Archaeological Resources Protection Act and Section 304 of the National Historic Preservation Act), the BLM will provide the Cooperating Agency with copies of documents underlying the RMP/EIS relevant to the Cooperating Agency's responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and draft and final RMPs/EISs.

B. Cooperating Agency Responsibilities:

1. The NMFS is a Cooperating Agency in this planning process and is recognized as having special expertise in the management, conservation, and protection of marine and coastal living resources as provided under statutes such as the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Fish and Wildlife Coordination Act.

2. The Cooperating Agency may 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 special expertise.

3. The Cooperating Agency will participate in coordination meetings, as possible, with a preference for conference calls and web meetings. As resources allow, and within the areas of special expertise, the Cooperating Agency will commit personnel to: provide input relevant to the scope of the environmental review (e.g., range of reasonable alternatives, scope of analysis for direct, indirect and cumulative effects) and review and comment on working drafts of the RMP/EIS. Within the areas of special expertise, and as resources allow, the Cooperating Agency may also participate in the activities identified in Attachment A.

4. The Cooperating Agency will use its own funds for activities in furtherance of this MOU, unless funding is otherwise provided for in separate agreements with the BLM. In no event is Cooperating Agency obligated under this MOU to incur any expense, except as it may choose to do so in furtherance of its participation hereunder.

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 RMP/EIS, the Parties agree to utilize the facilitation and conciliation procedures described below. In all instances involving questions regarding content or relevance of environmental data and analyses, evaluation, and wording in preparing the RMP/EIS and Record of Decision, the BLM shall make the final determination on the inclusion, deletion, or modification of such items in the document. (See Section V.G. below)

2. The Parties agree to comply with the planning schedule provided as Attachment B, which includes dates for RMP/EIS milestones and timeframes for Cooperating Agency's reviews and submissions.

3. Each Party agrees to fund its own expenses associated with the RMP/EIS process, except that the BLM may contract with a Cooperator for technical studies within its jurisdiction or special expertise, as provided for in Section IV.B.4.

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 USC 1534(b) and 5 USC 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 jurisdiction. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.

B. 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, turned over to the BLM.

The NMFS 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.

C. 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 documents 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.

D. 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.

E. 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 in Washington, DC, or Field Ethics Counselors for resolution.

F. Documenting Disagreement or Inconsistency. Where the BLM and the Cooperating Agency 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 Cooperating Agency's views in the Draft RMP/Draft EIS and the Proposed RMP/Final EIS.

G. Management of Information. The Cooperating Agency 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.

H. 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 so long as it would not result in binding arbitration. The Parties acknowledge that the BLM retains final responsibility for the decisions identified in the 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, they will use their best, good-faith efforts to agree on mediation procedures to be employed to prepare a neutral assessment of the contested scientific issues.

VI. Agency Representatives

Each Party will designate a representative and alternate representative, as described in Attachment C, to ensure coordination between the Cooperating Agency and the BLM during the planning process. Each Party may change its representative at will by providing written notice to the other Party.

VII. Administration of the MOU

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

B. Amendment. This MOU may be amended through mutual written agreement, signed by the parties hereto.

C. Termination. If not terminated earlier, this MOU will end on the date that the ROD for the RMP/EIS is signed by the BLM State Director. Any Party may end its participation in this MOU upon 30 days 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, Oregon/Washington
Bureau of Land Management

April 16, 2013.
Date



William W. Stelle, Jr.
Regional Administrator, Northwest Region
National Marine Fisheries Service

4/24/2013
Date

Attachment A

Cooperating Agency Optional Participation in the RMP/EIS

| | RMP/EIS Stage | Potential Activities of Cooperating Agencies (CAs) within their acknowledged areas of expertise |
|----|--|--|
| 1 | Conduct scoping and identify issues | Provide input on preparation plan; identify 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 BLM in developing alternatives. Suggest land allocations or management actions to resolve issues. [Decision to select alternatives for analysis is made by 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 BLM 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 made by 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 RMP/FEIS | [Action reserved to BLM.] |
| 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 (ROD) | [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. |

Attachment B

Schedule

| Task | Responsibility | Dates |
|---|-----------------------------------|----------------------------|
| Review and comment on affected environment chapter (administrative draft) | cooperators | Spring /Summer 2013 |
| Formulate alternatives | cooperators (advisory), core team | Summer 2013 |
| Estimate effects of alternatives (for identified areas of cooperator expertise) | cooperators | Summer 2013 Winter 2014 |
| Review and comment on DEIS (administrative draft) | cooperators | Summer 2014 |
| Review DEIS comments | core team, cooperators | Spring/Summer 2014 |
| Review and comment on FEIS (administrative draft) | cooperators | Winter/Spring 2015 |

Attachment C

Agency Representatives

FOR REVISION OF THE RESOURCE MANAGEMENT PLANS AND PREPARATION OF ENVIRONMENTAL IMPACT STATEMENT FOR THE WESTERN OREGON BLM DISTRICTS

| Bureau of Land Management | Primary Representative | Alternate Representative |
|----------------------------------|-------------------------------|---------------------------------|
| Name | Mark Brown | Richard Hardt |
| Title | Project Manager | ID Team Leader |
| Address | 333 SW 1 st Avenue | 3106 Pierce Parkway, Suite E |
| City, State, Zip | Portland, OR 97208-3623 | Springfield, OR 97477 |
| Telephone | 503-808-6233 | 541-683-6690 |
| Email | m4brown@blm.gov | rhardt@blm.gov |

| National Marine Fisheries Service | Primary Representative | Alternate Representative |
|--|--------------------------------|---|
| Name | Kim Kratz | Ben Meyer |
| Title | Oregon State Habitat Director | Branch Chief, Willamette/Lower Columbia |
| Address | 1201 NE Lloyd Blvd, Suite 1100 | 1201 NE Lloyd Blvd, Suite 1100 |
| City, State, Zip | Portland, OR 97232 | Portland, OR 97232 |
| Telephone | 503-231-2155 | 503-230-5425 |
| Email | kim.kratz@noaa.gov | ben.meyer@noaa.gov |