

M10-02182344

**MASTER MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
SOUTHWESTERN REGION
AND
THE ARIZONA GAME AND FISH COMMISSION AND DEPARTMENT**

This **MEMORANDUM OF UNDERSTANDING (MOU)** is hereby entered into by and between the Forest Service, U.S. Department of Agriculture, Southwestern Region, hereinafter referred to as U.S. Forest Service and the Arizona Game and Fish Commission hereinafter referred to as the Commission and the Arizona Game and Fish Department hereinafter referred to as the Department. The U.S. Forest Service, the Commission and Department are together herein referred to as "the Parties".

I. PURPOSE

The purpose of this MOU is to establish a framework for statewide cooperation, coordination, and collaboration between the U.S. Forest Service and the Department for management and conservation of fish and wildlife populations and habitats on National Forest System lands in Arizona. This MOU describes respective roles, responsibilities, jurisdictional authority, and expertise of the Parties.

II. JOINT POLICY STATEMENT

The U.S. Forest Service and the Arizona Game and Fish Department work cooperatively to manage fish and wildlife resources on National Forest System Lands throughout the State of Arizona. The U.S. Forest Service is responsible for managing fish and wildlife habitat on National Forest System Lands, and the Department and Commission have statutory authority and public trust responsibility to manage fish and wildlife populations in Arizona, including on National Forest System Lands. The Parties consider the management of fish and wildlife resources as a high priority and agree to work cooperatively to achieve a shared goal to actively manage, sustain, and enhance those resources.

The parties support Executive Order 13443 – Facilitation of Hunting Heritage and Wildlife Conservation (Appendix A) to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat. The parties support the use of safe recreational shooting areas, and agree that the development of formal shooting facilities is an appropriate use of Forest Service lands.

The Department's mandate to meet statutory trust responsibilities to manage fish and wildlife populations is supported by the U.S. Forest Service and incorporated where appropriate in Forest Land and Resource Management Plans. Similarly, the Department recognizes the responsibility of the U.S. Forest Service to manage for sustainable ecosystems. Implementation level plans and site-specific projects will be evaluated and finalized through appropriate coordination, partnerships, and processes that reflect the spirit and intent of this MOU.

III. AUTHORITIES

A. The authorities of the U.S. Forest Service to enter into this MOU include, but are not limited to:

1. National Forest Management Act of 1976.
2. Federal Land Policy and Management Act of 1976, as amended.
3. Endangered Species Act of 1973, as amended.
4. Sikes Act of 1974, as amended.
5. Wilderness Act of 1964, as amended.
6. Public Rangelands Improvement Act of 1978.
7. National Environmental Policy Act of 1969, as amended.
8. Council on Environmental Quality regulations (40 CFR Part 1501).
9. Alternative Dispute Resolution Act of 1998.
10. Intergovernmental Cooperation Act of 1968, as amended.

B. The authorities of the Department, acting as administrative agent for the Commission, to enter into this MOU include, but are not limited to:

1. Arizona Revised Statutes (A.R.S.) §§ 17-231(A)(2) and 17-231(B)(7).
2. A.R.S. § 17-452(C).
3. MOU between Region 2, U.S. Fish and Wildlife Service, and Department for State Wildlife Agency Participation in Implementing the Endangered Species Act: Staff of Arizona dated June 26, 2002.
4. Fish and Wildlife Coordination Act (16 U.S.C. 661-667e; the Act of March 10, 1934; Ch. 55; 48 Stat. 401), as amended 1946, 1958, 1978 and 1995.
5. Endangered Species Act, Section 6.

IV. ROLES AND RESPONSIBILITIES

The U.S. Forest Service, through legislation enacted by Congress, administers the National Forests for outdoor recreation, range, timber, watershed, fish and wildlife (includes all wild birds, mammals, amphibians, reptiles, invertebrates, and fish, whether classified as game or nongame, predators, beneficial or detrimental) habitat purposes. The Secretary of Agriculture, through the U.S. Forest Service, is authorized to cooperate with interested State agencies in the development and management of National Forests and National Grasslands.

The U.S. Forest Service is directed to conform to the provisions of Federal law including but not limited to the National Environmental Policy Act of 1969 (NEPA), National Forest Management Act of 1976 (NFMA), the Endangered Species Act of 1973 (ESA), and subsequent Executive Orders. The Silces Act of 1960 authorizes the U.S. Forest Service to plan, develop, maintain, and coordinate comprehensive conservation and rehabilitation programs for fish and wildlife on National Forests and Grasslands in consultation and cooperation with State Game and Fish agencies.

The Commission has been created under the laws of the State of Arizona to provide a system of control, propagation, protection, regulations, management or use of all wildlife as well as administrative and enforcement activities necessary to provide for public safety and education,

and protection of fish and wildlife resources. The Department's actions are directed through policy and strategic planning documents approved by the Commission. The Commission and Department serve the people of Arizona as stewards of the State's wildlife. These resources are a public trust, managed for the benefit of present and future generations. The Department's mission is to conserve, enhance, and restore Arizona's diverse wildlife resources and habitats through aggressive protection and management programs, and to provide wildlife resources and safe watercraft and off-highway vehicle recreation for the enjoyment, appreciation, and use by present and future generations.

It is the mutual desire of the Parties to work in harmony for the common purpose of developing, maintaining, and managing fish and wildlife populations and their habitats on the National Forests in Arizona for the best interests of the people of Arizona and of the United States.

A. The U.S. Forest Service agrees:

1. To uphold its responsibility for managing National Forest System lands for the multiple use benefits in accordance with federal laws, regulations, policies, and applicable land management plans.
2. To maintain healthy ecosystems for fish and wildlife through coordination of uses within the National Forests following the direction and guidance found in individual Arizona Forest Land and Resource Management Plans.
3. To recognize the Commission and Department as having primary responsibility for managing fish and wildlife populations consistent with state and federal law.
4. To give prior notice of proposed and scheduled management activities and provide opportunities for inclusion of input and recommendations in the National Environmental Policy Act (NEPA) process, as early as possible, at the appropriate project or program level.
5. To invite the Department to participate in the NEPA process as authorized under 40 CFR 1501.6, 1508.5, and Title II, Section 204(b) of the Unfunded Mandates Act, as a cooperating agency and/or member of interdisciplinary teams and to receive, review, and consider Department recommendations regarding impacts to fish and wildlife from land management activities and document their input including recommendations in the NEPA process. The U.S. Forest Service will make efforts to address the Department's recommendations throughout the planning process, and notify the Department of the actions taken in final decision documents.
6. To cooperatively develop management programs and projects with the Department for the conservation and recovery of federally listed fish and wildlife and their associated habitats, and seek the involvement of the Department to provide expertise concerning federally listed species and their habitats in Arizona during the Section 7 consultations with the U.S. Fish and Wildlife Service.

7. To recognize and give full consideration to conservation of the State's fish and wildlife species of concern and their habitats, including Species of Greatest Conservation Need, federally listed species, and U.S. Forest Service designated species, and to treat these fish and wildlife populations as desirable and co-equal with other resources on the National Forests under the multiple resource management concept of the U.S. Forest Service.
8. To coordinate requests for renewal of existing Department Special Use Permits per 36CFR 251(F)(l)(i). Where no change in use is anticipated, the U.S. Forest Service will issue the renewal within 60 days, or notify the Department in writing as to the cause of the delay and the projected date for a decision on the request.
9. To coordinate development and issuance of free special-use permits for the construction and maintenance of structures needed to facilitate fish and wildlife management activities of the Department within the National Forests; provided such structures and intended uses conform in character and location with law, regulation and policy.
- D. To coordinate approval of radio communication abilities to the Department for interagency use under the appropriate instrument to facilitate timely communications during emergency and law enforcement actions and jointly conducted projects.
- II. To cooperate with the Department in all ways practical to aid in the enforcement of applicable Arizona laws affecting wildlife, watercraft, and off-highway vehicles on national forest system lands and/or waters.
12. To meet with the Animal and Plant Health Inspection Service (APHIS) Regional Director, and the Department as needed or required, to coordinate animal (fish and wildlife) damage management operations on National Forest System Lands.
13. To recognize the Commission's and Department's responsibility to make determinations as to which fish and wildlife species are native or naturalized to the state of Arizona, and in which areas of the state those species should be established or maintained.
14. To coordinate with the Department when the State controls undesirable or diseased fish, aquatic animals, and wildlife populations on National Forest System Lands.
15. To notify the Department in advance, except in emergency circumstances, of closures on National Forest System Lands, including OHV, pre- and post-fire management activities, and recreational shooting.
16. To allow cooperative projects under this MOU with appropriately tiered project agreements and fiscal instruments.
17. Coordinate with the Department to facilitate their administrative access needs consistent with laws, regulation, and policy.

18. Coordinate with the Department to minimize potential effects on sport hunting and fishing from future federal permit considerations.

B. The Department agrees:

1. To uphold its responsibility for managing statewide fish and wildlife populations and enforcing applicable laws on the National Forests.
2. To recognize the U.S. Forest Service as the agency responsible for regulating the use of National Forest system lands in a sustainable manner to maintain healthy ecosystems for fish and wildlife, and to secure proper use of the habitat, in coordination with the Department, compatible with other land uses under their administration.
3. To cooperate with the U.S. Forest Service in all ways practical to aid in the enforcement of applicable laws and regulations affecting national forest system resources, lands, and/or waters.
4. To provide the opportunity for the U.S. Forest Service to review and comment on environmental documents, and coordinate with the U.S. Forest Service when controlling undesirable or diseased fish, aquatic animals, and wildlife on National Forest System Lands.
5. To coordinate Department project proposals with the U.S. Forest Service in appropriate environmental documentation, land use applications, etc., and assure approval is acquired, if necessary, from the appropriate U.S. Forest Service Line Officer prior to implementation of projects on National Forest System Lands.
6. To notify the Forest Supervisor when special permits to take fish and wildlife out of season are issued, including the locality, wildlife species involved, and time period of the permits.
7. To participate early in the National Environmental Policy Act (NEPA) process and to make meaningful and timely input regarding impacts to fish and wildlife and their associated habitats from proposed land management activities.
8. To coordinate with the U.S. Forest Service regarding the development of strategic documents and proposals for hunting, fishing, and other wildlife conservation programs affecting National Forest System Lands so as to allow U.S. Forest Service timely input into the process whereby regulations are set; and to notify the U.S. Forest Service of its actions taken in the final decision document.
9. To seek input and coordination from the U.S. Forest Service regarding the listing of species and conservation actions necessary for State designated fish and wildlife species of concern, including Species of Greatest Conservation Need, and their habitats on U.S. Forest Service Lands.

10. To annually notify the Regional Forester of changes in State fish and wildlife laws or regulations.
11. To seek early U.S. Forest Service input regarding the Department's evaluations to make determinations of native or indigenous species that could potentially occur on National Forest System Lands and coordinate prior to introductions on National Forest System Lands.
12. To coordinate with the U.S. Forest Service on any proposals for release, introduction, or establishment of fish and wildlife populations (including threatened and endangered species) within National Forests; and, in the event of anticipated introduction, transplant, or stocking, provide notice (in advance to the fullest extent possible) to the U.S. Forest Service for review of environmental analysis and documentation (where appropriate) and coordination.
13. To work cooperatively with the U.S. Forest Service to identify and resolve impacts to fish and wildlife resources and habitats on National Forest System Lands.

C. The U.S. Forest Service and the Department mutually agree:

1. To pursue opportunities for cooperatively funding and accomplishing projects and studies of mutual interest and benefit, pending availability of funds and resources and to convey those funds or accomplish these projects through appropriate instrument(s) and statutory authority(ies) consistent with the requirements of both agencies.
2. To coordinate the use of facilities and equipment as may be needed in connection with the administration of fish and wildlife programs and projects, provided that the extent of such service is made under the appropriate instrument, citing federal statutory authority and is consistent with Parties' respective needs, regulations, and funds availability, and that such service is coordinated with Parties' designated line officers and Regional Supervisor.
3. That both parties recognize the other's law enforcement authority and agree that cooperative law enforcement efforts are beneficial to each other's respective mission. Both parties will communicate and coordinate as needed and appropriate regarding significant actions or issues that affect each other's enforcement missions.
4. To work closely and continuously to jointly develop proposals for habitat improvement projects and management of populations, including working with the U.S. Fish and Wildlife Service when Federally-listed species are involved.
5. To work together at the District, Forest, State, and Regional levels to integrate both agencies' conservation efforts into U.S. Forest Service fish and wildlife programs.
6. To work cooperatively to obtain conservation and access easements for purposes of fish and wildlife resource conservation and to work toward long-term public access to National Forest System lands consistent with laws, regulation, and policy.

7. To coordinate management of National Forest System Lands adjacent to properties or wildlife areas established pursuant to A.R.S. 17-231(B)(2) which the Commission owns, or on which the Commission has easements, for fish and wildlife related benefits and in ways that are consistent with Forest Land and Resource Management Plans and Department Management Plans.
8. To coordinate efforts that ensure continued conservation of the State's fish and wildlife species of concern, including Species of Greatest Conservation Need, Species of Economic and Recreational Importance, federally listed species, and U.S. Forest Service designated species. The U.S. Forest Service and the Department will meet no less than yearly, as part of an interagency endangered species committee, to share information and develop strategies for conservation and recovery of these species.
9. To coordinate on proposals for establishing, transplanting, and supplementing fish and wildlife populations to or from National Forest System Lands following the processes outlined within this MOU.
10. To recognize fish and wildlife as important wilderness resources and work collaboratively to ensure that within designated wilderness, fish and wildlife management programs are consistent with the Wilderness Act (1964), and to work cooperatively in following the purpose and intent of the "Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management Wilderness (as amended June, 2006)" (Appendix B).
11. To cooperate at appropriate organizational levels in the development, implementation, and revision of fish and wildlife programs to provide integrated activities consistent with each agency's programs to obtain efficiency and capture collaborative opportunities.
12. To share and exchange information on fish, wildlife, and habitat. Specific data sharing agreements will be developed as needed and appropriate. Any information furnished to the Parties under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552) and Arizona's Public Records Law.
13. To hold a joint meeting each year attended by the Director of the Department or his or her representative, the Regional Forester or his or her representative, the Forest Supervisors, the Department Branch Chiefs, Regional Supervisors, and other appropriate personnel, for discussion of matters of mutual interests relating to the management of the National Forests and National Grasslands and fish and wildlife resources.
14. To hold a joint meeting with each National Forest each year attended by the Forest Supervisors, the Department Regional Supervisors, and other appropriate personnel, for discussion of matters of mutual interest.

15. That publicity referring to the fish and wildlife programs shall identify the cooperative nature of the work undertaken by the Department and the U.S. Forest Service.
16. To provide reports and copies of vital correspondence relating to matters of mutual interest.
17. That each and every provision of this Memorandum of Understanding is subject to the laws and regulations of the State of Arizona and the laws of the United States.
18. That this MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The Parties will manage their respective resources and activities in a separate, coordinated, and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the Parties to obligate or transfer funds. Specific projects or activities that involve the transfer of funds, services, or property among the Parties require execution of separate agreements and are contingent upon the availability of appropriated funds. These activities must be independently authorized by statute. This MOU does not provide that authority. Negotiation, execution, and administration of these agreements must comply with all applicable law. Each Party will be operating under its own laws, regulations, and policies, subject to the availability of appropriated funds. Nothing in this MOU is intended to alter, limit, or expand the Parties' statutory and regulatory authority.
19. Any communications affecting the operations covered by this agreement given by the Forest Service or the Department is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:
 - a. To the Forest Service Program Manager, at the address specified in the grant/agreement.
 - b. To the Department, at the Department's address shown in the grant/agreement or such other address designated within the grant/agreement.
 - c. Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.
20. That any supplemental or specific agreements shall be prepared consistent with the framework of this MOU.
21. That 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 any person or entity against the State of Arizona, the United States, or any of their officers or employees.
22. That this MOU supersedes the MOU between the Southwestern Regional Forester and the Department made the 16th day of March, 1991, the associated Amendments 1 and 2, dated April 14, 1993 and February 8, 1996 respectively, and the 1980 Supplement to the April, 1958 Master MOU regarding consultation on projects

affecting state listed species or habitats. Notwithstanding the foregoing, this MOU does not invalidate any additional supplemental agreements that may be in force not identified herein, or that may be hereafter entered between the Parties covering special projects or other activities of mutual concern.

That all work performed under the MOU shall be in compliance with all applicable state and federal laws and regulations.

24. That neither Party assumes liability for any third party claims for damages arising out of this instrument.
25. The Department shall immediately inform the Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the Federal Government according to the terms of 2 CFR Part 180. Additionally, should the Department or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
26. This instrument in no way restricts the Forest Service or the Department from participating in similar activities with other public or private agencies, organizations, and individuals.
27. Any Department contributions made under this agreement or subsequent project agreement(s) do not by direct reference or implication convey Forest Service endorsement of any Department products or activities.
28. Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this instrument, or benefits that may arise therefrom, either directly or indirectly.
29. Public access to grant or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552) and Arizona's Public Records Laws.
30. Modifications within the scope of this instrument shall be made by mutual consent of the Parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
31. This instrument is executed as of the date of the last signature and shall remain in effect without expiration from the date of execution unless terminated pursuant to the provisions of this section. This MOU will be reviewed at least every 5 years by both Parties to determine appropriateness and viability.

32. Either Party may terminate this MOU in whole, or in part, at any time with a 60-days' written notice to the other Party. *This* MOU is also subject to termination pursuant to A.R.S. § 38-511.
33. That this Master MOU constitutes the entire MOU agreement between the Parties.
34. That the remainder of the MOU shall be enforced should any of its provisions be deemed unenforceable.

V. CONFLICT RESOLUTION

A. The U.S. Forest Service and the Department mutually agree:

1. To respect each Party's respective statutory authorities and mission, and to work cooperatively in the management of fish and wildlife resources.
2. To provide adequate consideration of the biological needs and benefits when proposing fish and wildlife management projects.
3. To work cooperatively to minimize and mitigate negative impacts to land and wildlife resources from land management proposals.
4. To work cooperatively to identify and resolve issues with proposed projects at the individual Forest and Department Regional level consistent with Item 5 in this section.
5. To acknowledge the accepted policies and plans of the other Party and to resolve conflicts at the lowest level within both agencies following the process outlined below, and to ensure that all questions pertaining to the cooperative work of the Parties which arise in the field will be discussed on-the-ground by the local representative of the Department, and the U.S. Forest Service District Ranger.
 - a. Upon determination by the individual Ranger District Office and/or the Department Regional Office that agreement or resolution cannot be reached, a letter documenting the conflict will be issued to the other Party, but only after exhausting all appropriate and reasonable good faith efforts to resolve the issue. Issues and conflicts identified in the letter that cannot be resolved within a timely manner at the individual Ranger District/Department Regional Office level will then be elevated to the Forest Supervisor's Office and Department Regional Supervisor for dispute resolution within 10 business days of receipt of the letter.
 - b. Upon determination by appropriate staff at the Forest Supervisor's Office and/or the Department Regional Supervisor that agreement or resolution cannot be reached, a letter will be issued to the other Party, but only after exhausting all appropriate and reasonable good faith efforts to resolve the issue. Issues and conflicts that cannot be resolved within a timely manner at the Forest Supervisor's Office/Department Regional Supervisor level will then

be elevated to the Regional Forester and the Department's Director for final dispute resolution within 10 business days of receipt of the letter.

6. The parties agree to engage in any alternative dispute resolution procedures authorized by their statutes, and regulations, including but not limited to 5 U.S.C. § 575 and A.R.S. § 12-1218.
7. Nothing in this section shall be construed as a delegation of the legal authority of either Party.

VI. PRINCIPLE CONTACTS AND SIGNATURES

A. The U.S. Forest Service and the Department mutually agree:

1. That by signature the Parties certify that the individuals listed in this document are authorized to act in their respective areas for matters related to this agreement.
2. That the principal contacts for this instrument are:

U.S. Forest Service Contact	Arizona Game & Fish Department Contact
<p>Don DeLorenzo, Director Wildlife, Fish, and Rare Plants U.S. Forest Service, Southwestern Region, 333 Broadway Blvd. SE Albuquerque, NM 87102 Phone: (505) 842-3260 Fax: (505) 842-3152 e-mail: ddlorenzo@fs.fed.us</p>	<p>Josh Avey, Habitat Branch Chief Wildlife Management Division Arizona Game and Fish Department 5000 W. Carefree Hwy Phoenix, Arizona 85086 Phone: (623) 236-7605 Fax: (623) 236-7366 e-mail: azgfd.gov</p>
 <p>Carmen Melendez Grants & Agreements Specialist U.S. Forest Service, Southwestern Region, 333 Broadway Blvd. SE Albuquerque, NM 87102 Phone: (505) 842-3199 Fax: (505) 842-3111 e-mail: cmelendez@fs.fed.us</p>	<p>Arizona Game & Fish Administrative Contact Rick Miller Funds and Planning Manager Arizona Game and Fish Department 5000 W. Carefree Hwy Phoenix, Arizona 85086 Phone: (623) 236-7522 Fax: (623) 236-7358 e-mail: rmiller@azfd.gov</p>

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum as of the last date shown below.

For Arizona Game and Fish Commission and Department:

t4t' 8}2-tt/6
Date/

LARRY V. YLESZ/
Secretary of the Commission and Director
Arizona Game and Fish Department

For the U.S. Forest Service:

U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE
SOUTHWESTERN REGION

U.S. FOREST SERVICE
LAW ENFORCEMENT AND INVESTIGATIONS

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CORBIN NEWMAN Date

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Acting Special Agent in Charge Date

Regional Forester
The authority and format of this instrument
has been reviewed and approved for
signature.

Carmen Melendez 3/11/08
CARMEN MELENDEZ Date
FS Grants and Agreements Specialist tJ/O

Enclosures

Appendix A:

'Executive Order 13443 – Facilitation of Hunting Heritage and Wildlife Conservation (August 16, 2007)'

Appendix B:

'Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management Wilderness (as amended June, 2006)'

Presidential Documents

Title 3-

Executive Order 13443 of August 16, 2007

The President

Facilitation of Hunting Heritage and Wildlife Conservation

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Purpose.* The purpose of this order is to direct Federal agencies that have programs and activities that have a measurable effect on public land management, outdoor recreation, and wildlife management, including the Department of the Interior and the Department of Agriculture, to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat.

Sec. 2. *Federal Activities.* Federal agencies shall, consistent with agency **missions:**

[a] Evaluate the effect of agency actions on trends in hunting participation and, where appropriate to address declining trends, implement actions that expand and enhance hunting opportunities for the public;

[b] Consider the economic and recreational values of hunting in agency **actions, as appropriate;**

[c] Manage wildlife and wildlife habitats on public lands in a manner that expands and enhances hunting opportunities, including through the use of hunting in wildlife management planning;

[d] Work collaboratively with State governments to manage and conserve game species and their habitats in a manner that respects private property rights and State management authority over wildlife resources;

[e] Establish short and long term goals, in cooperation with State and tribal governments, and consistent with agency missions, to foster healthy and productive populations of game species and appropriate opportunities for the public to hunt those species;

[f] Ensure that agency plans and actions consider programs and recommendations of comprehensive planning efforts such as State Wildlife Action Plans, the North American Waterfowl Management Plan, and other range-wide management plans for big game and upland game birds;

[g] Seek the advice of State and tribal fish and wildlife agencies, and, as appropriate, consult with the Sporting Conservation Council and other organizations, with respect to the foregoing Federal activities.

Sec. 3. *North American Wildlife Policy Conference.* The Chairman of the Council on Environmental Quality (Chairman) shall, in coordination with the appropriate Federal agencies and in consultation with the Sporting Conservation Council and in cooperation with State and tribal fish and wildlife agencies and the public, convene not later than 1 year after the date of this order, and periodically thereafter at such times as the Chairman deems appropriate, a White House Conference on North American Wildlife Policy (Conference) to facilitate the exchange of information and advice relating to the means for achieving the goals of this order.

Sec. 4. *Recreational Hunting and Wildlife Resource Conservation Plan.* The Chairman shall prepare, consistent with applicable law and subject to the availability of appropriations, in coordination with the appropriate Federal agencies and in consultation with the Sporting Conservation Council, and in cooperation with State and tribal fish and wildlife agencies, not later

than 1 year following the conclusion of the Conference, a comprehensive Recreational Hunting and Wildlife Conservation Plan that incorporates existing and ongoing activities and sets forth a 10-year agenda for fulfilling the actions identified in section 2 of this order.

Sec. 5. *Judicial Review.* This order is not intended to, and does not, create any right, benefit, trust responsibility, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, **its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.**

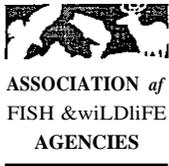


THE WHITE HOUSE,
August 16, 2007.

[FR Doc. 07-4115

Filed 8-17-{}7; 10:46 am]

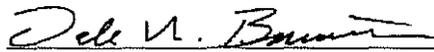
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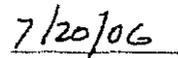
POLICIES AND GUIDELINES FOR FISH AND
WILDLIFE MANAGEMENT IN NATIONAL FOREST AND
BUREAU OF LAND MANAGEMENT WILDERNESS

(as amended June, 2006)

These policy and guidelines are intended to serve as a framework for enhanced cooperation between State fish and wildlife agencies, the Fish and Wildlife Service, and the Bureau of Land Management in the management of fish and wildlife in National Forest and Bureau of Land Management administered wildlands.



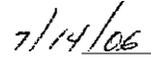
DALE N. BOSWORTH, Chief, USDA Forest Service



Date



KATHLEEN B. CLARKE, Director, Bureau of Land Management



Date



Date

Fish and Wildlife Agencies



POLICIES AND GUIDELINES FOR FISH AND
WILDLIFE MANAGEMENT IN NATIONAL FOREST AND
BUREAU OF LAND MANAGEMENT WILDERNESS
(as amended June, 2006)

A. PURPOSE

This statement of policy and the following guidelines are intended to provide guidance to State fish and wildlife agencies, Forest Service (FS) and Bureau of Land Management (BLM) personnel for the management of fish and wildlife populations in wilderness in accordance with the Wilderness Act of 1964 (16 USC 1131-1136). Both State and Federal agencies are responsible for fostering mutual understanding and cooperation in the management of fish and wildlife in wilderness. The purpose of these guidelines is to develop and expand a framework of cooperation upon which projects and activities may be planned and accomplished while working cooperatively at the national, regional, and local levels. These guidelines serve as a framework for cooperation among the FS, BLM and the States in the coordination of fish and wildlife management and in the development of cooperative agreements or other management plans.

B. STATEMENT OF MUTUAL INTERESTS AND BENEFITS

The FS and BLM are land management agencies dedicated to the management of National Forest System (NFS) and public lands for a variety of uses and activities including wilderness stewardship and protection. Both agencies are mandated through the Secretary of Agriculture and Secretary of the Interior to administer Federally designated wilderness areas in accordance with the Wilderness Act. The FS and BLM are required to preserve wilderness character as directed by the Wilderness Act, while supporting the States' fish and wildlife objectives, to the extent such objectives are consistent with the Act.

The Association of Fish and Wildlife Agencies (AFWA) is an association representing government agencies responsible for North America's fish and wildlife resources. The AFWA serves as a national and international voice on wildlife and conservation issues using expertise in science, policy, economics and coalition-building. The AFWA is dedicated to supporting the State fish and wildlife agencies' work to meet fish and wildlife management objectives in wilderness while preserving wilderness character consistent with the Act.

Section 4(d)(7) of the Wilderness Act provides that "nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests." The parties acknowledge that, consistent with applicable Federal and State laws, the States and the Federal government each have management responsibilities affecting fish and wildlife, and will endeavor to work cooperatively in the fulfillment of these responsibilities.

In consideration of the above premises, the parties agree as follows:

C. THE FS AND BLM SHALL:

Participate with the States in annual coordination meetings and encourage **communication**, coordination and identification of State-originated fish and wildlife projects satisfying mutually beneficial objectives.

Enter into individual agreements with States in order to make these guidelines as relevant to individual States as they are to the FS and BLM. The FS and BLM will jointly encourage individual States to incorporate these guidelines into statewide agreements or encourage states to adopt a resolution endorsing these guidelines. Work with AFWA and States to identify opportunities and jointly pursue projects that meet fish and wildlife objectives for wilderness subject to compliance with applicable Federal law.

D. AFWA SHALL:

Encourage States to participate with the FS and BLM in annual coordination meetings and encourage communication, coordination, and identification of mutually beneficial projects.

Encourage the States to identify opportunities and jointly pursue projects that meet fish and wildlife objectives for wilderness subject to compliance with applicable Federal law.

Encourage individual States to enter into individual agreements with the FS and BLM in order to make these guidelines as relevant to individual States as it is to the FS and BLM. AFWA will encourage individual States to incorporate these guidelines into statewide agreements or encourage States to adopt resolution endorsing these guidelines.

E. GENERAL POLICY

Fish and wildlife management activities in wilderness will be planned and implemented in conformance with the Wilderness Act's purpose of securing an "enduring resource of wilderness" for the American people. The wilderness resource is defined in section 2(c) of the Act, as an area "untrammled by man," where natural ecological processes operate freely and the area is "affected primarily by the forces of nature." The National Wilderness Preservation System will be managed to ensure that ecological succession, including fire and infestation of insects, operate as freely as possible with only minimal influence by humans.

Angling, hunting, and trapping are legitimate activities in wilderness areas, subject to applicable State and Federal laws and regulations. Fish and wildlife management activities will emphasize the conservation of natural processes, to the greatest extent possible.

Management activities will be guided by the principle of doing only the minimum necessary to conserve and, if necessary, to enhance fish and wildlife resources, and to manage the area as wilderness.

Section 4(c) of the Wilderness Act states: "Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no

permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such **area."**

State fish and wildlife management activities that do not involve Wilderness Act prohibitions identified above in Section 4(c) or that are expressly authorized under specific wilderness acts are generally exempt from authorizations by the Federal administering agencies. However, there may be activities that do not involve prohibitions under Section 4(c) that may require authorizations, such as certain types of activities proposed to address fire or disease under Section 4(d) of the Act.

Proposed State fish and wildlife management activities that would involve uses generally prohibited under Section 4(c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency. The FS and BLM will consult closely with the States and give careful consideration to State fish and wildlife interests when considering these proposed activities, subject to applicable National Environmental Policy Act (NEPA) review, where determined through the Minimum Requirements Decisions Process (MRDP) to be a necessary action (Attachment A Step 1). Additionally, the minimum tool to accomplish necessary fish and wildlife management activities as determined through the MRDP (Attachment A, Step 2), will be recommended by the State and reviewed by the Federal administering agency, in close consultation with the State, and approved where determined appropriate. Units with special provisions mandated by legislation subsequent to the Wilderness Act of 1964 must ensure full consideration of these other legal requirements. Wilderness managers in Alaska must ensure that their decisions are in accordance with the provisions of Alaska National Interest Lands Conservation Act (ANILCA).

Section 4(d)(7) of the Wilderness Act stipulates that "Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests." These policies and guidelines should not be construed as diminishing or expanding State jurisdiction and responsibility to manage fish and wildlife.

This nation is fortunate in having a National Wilderness Preservation System encompassing a wide range of ecosystems. Specific on-the-ground conditions will result in slightly different application of these guidelines in so vast a system. These different applications may be necessary because of enabling legislation for designated wilderness areas.

For purposes of this document, indigenous wildlife and fish species are those that naturally occur within a wilderness area and that were not introduced by humans. Additionally, fish species introduced for management purposes prior to wilderness designation may be managed as indigenous fish species if the species is likely to survive. The State has the responsibility to make the determination as to which wildlife and fish species are indigenous.

F. PROJECT IMPLEMENTATION

The following topics should be reviewed and discussed during annual coordination meetings or during any discussions relative to projects proposed by the State to meet fish and wildlife conservation objectives in wilderness:

1. Use of Motorized Equipment

As outlined in Section E. General Policy, the States' fish and wildlife management activities within wilderness can be accomplished with motor vehicles, motorized equipment, or mechanical transport, only if these devices are necessary to meet the minimum requirements for the administration of the area as wilderness or are specifically permitted by other provisions of the Act. Any such use should be rare and temporary; no roads can be built; and proposals for use of motorized equipment will be considered and may be authorized by the Federal land management agency, in cooperation with the State, through application of the MRDP as outlined in Section E., General Policy. Any use of motorized equipment or mechanical transport requires advance approval by the Federal administering agency.

2. Application of Pesticides

The use of pesticides may be necessary in management of fish and wildlife resources, and their use must be approved by the Federal administering agency.

Guidelines for Application of Pesticides

- a. Use pesticides only where other measures are impractical.
- b. Use only registered pesticides according to label directions and subject to the following restrictions:
 - (1) Pesticides may be applied only by certified applicators.
 - (2) The placement of pesticides shall be accurately indicated on the largest scale USGS map available.
 - (3) Place warning signs at the entrance to the area where pesticides are being used to warn the public of any dangers to themselves or their pets.
 - (4) In the selection of pesticides, give preference to those that will have the least impact on non-target species and on the wilderness environment.

3. Fish and Wildlife Research and Management Surveys

Research and evaluation related to fish and wildlife, their habitats and the recreational users of these resources are legitimate activities in wilderness when conducted in a manner compatible with the area as wilderness. Coordination of all research and survey activities is essential between State and Federal agencies. Methods that temporarily infringe on the wilderness environment may be authorized by the Federal administering agency if alternative

methods or other locations are not reasonably available. Research or management survey activities that would involve uses generally prohibited under Section 4 (c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.

Helicopters and fixed-wing aircraft over flights may be used to conduct fish and wildlife research and management activities. Use of aircraft for these activities will be coordinated among the State and Federal agencies to minimize conflicts with other wilderness uses. To the greatest extent possible, aircraft must be used in a manner that minimizes disturbance to wilderness character and to human and wildlife use of the wilderness.

Aerial counts and observations (i.e. surveys) of wildlife are allowed in the management of fish and wildlife resources in wilderness. Capturing and marking of animals, radio telemetry, and occasional installations (such as shelters for cameras and scientific apparatus and enclosures essential for wildlife research or management surveys) that would involve uses generally prohibited under Section 4 (c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.

Guidelines for Fish and Wildlife Research and Management Surveys

- a. Obtain specific written approval or permits from the Federal administering agency before erecting any structure, enclosure, or exclosure.
- b. Locate and construct all structures so as to make them unobtrusive on the landscape.
- c. Construct structures of native materials or camouflage to make them blend with their natural surroundings.
- d. Plan aircraft flights over wilderness to minimize disturbance. Consider time of day, season of the year, route and altitude of flight, and location of landing areas on the perimeter of the wilderness.
- e. Research projects underway when a wilderness is designated may continue, but research methods should be modified, if possible, to minimize disturbance of the wilderness environment.
- f. Installation of base stations for monitoring of radio-instrumented animals will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.
- g. The Federal administering agency should only approve methods that minimize the impact on the wilderness environment to the greatest extent possible.

4. Facility Development and Habitat Alteration

Facility development and habitat alteration may be necessary to alleviate adverse impacts caused by human activities on fish and wildlife, including human/wildlife conflicts, and to conserve fish and wildlife resources in wilderness. Facility development and habitat alteration

that would involve uses generally prohibited under Section 4 (c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy. For the benefit of wildlife that spend only part of the year in wilderness, give first priority to locating facilities or habitat alterations outside wilderness.

Flow-maintenance dams, water developments, water diversion devices, ditches and associated structures, and other fish and wildlife habitat developments necessary for fish and wildlife management (which were in existence before wilderness designation) may remain in operation.

Maintenance of existing water supplies and development of additional water supplies, including wildlife water developments, that would involve uses generally prohibited under Sec. 4 (c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.

Clearing of debris that impedes the migratory movements of fish on primary spawning streams that would involve uses generally prohibited under Section 4 (c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.

Guidelines for Facility Development and Habitat Alteration

- a. Submit proposals for new structures or habitat alterations to the Federal administering agency for approval.
- b. Build or maintain new and existing structures permitted for wildlife management in a manner that minimizes the visual impacts on the landscape.
- c. Limit clearing of debris from spawning streams to those identified in the wilderness management plan as being critical to the propagation of fish.
- d. Proposals involving use of motorized equipment generally prohibited under Sec. 4(c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.
- e. If it is necessary to restore essential food plants after human disturbance, use only indigenous plant species. Plant species that naturally occurred or occur in a wilderness area and were not introduced by humans are considered indigenous.

5. Threatened and Endangered Species

Many wilderness areas provide important habitat for Federally listed threatened and endangered species of wildlife. For purposes of this document, threatened and endangered species means Federally listed species applicable to the geographic area. Actions necessary to conserve or recover threatened or endangered species, including habitat manipulation and special conservation measures, that involve uses generally prohibited under Section 4 (c) of the Wilderness Act, will be considered and may be authorized by the Federal administering agency

through application of the MRDP as outlined in Section E., General Policy.

Guidelines for Threatened and Endangered Species

- a. When alternative areas outside of wilderness offer equal or better opportunities for habitat improvement or species conservation, actions to recover threatened or endangered species outside of wilderness should be considered first, but this does not preclude analyzing or implementing projects in wilderness.
- b. Threatened and endangered species may be transplanted into previously occupied habitat within wilderness. Proposals that would involve uses generally prohibited under Section 4 (c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.
- c. Proposals for transplants of indigenous species and proposals for habitat improvement projects require close coordination and cooperation between the State and Federal administering agencies.
- d. To prevent Federal listing, manage and conserve indigenous species that could become threatened or endangered.

6. Angling, Hunting, and Trapping

Angling, hunting, and trapping are legitimate activities in wilderness subject to applicable State and Federal laws and regulations.

7. Population Sampling

Scientific sampling of fish and wildlife populations is an essential activity in wilderness.

Guidelines for Population Sampling

- a. When possible, use only methods that are compatible with the wilderness environment.
- b. **Gill** netting, battery-operated electrofishing, and other standard techniques of population sampling that would involve uses generally prohibited under Section 4 (c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.
- c. Closely coordinate sampling activities with the Federal administering agency and schedule them to avoid heavy public-use periods.

8. Chemical Treatment

• Chemical treatment may be necessary to prepare waters for the reestablishment of indigenous fish species, consistent with approved wilderness management plans, to conserve or recover Federally listed threatened or endangered species, or to correct undesirable conditions

resulting from human activity. Proposals for chemical treatments will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy. Any use of chemical treatments in wilderness require prior approval by the Federal administering agency,

Guidelines for Chemical Treatment

- a. Use only registered pesticides according to label directions.
- b. In selecting pesticides, give preference to those that will have the least impact on non-target species and on the wilderness environment.
- c. Schedule chemical treatments during periods of low human use, insofar as possible.
- d. Immediately dispose of fish removed in a manner agreed to by the Federal administering agency and the State agency.

9. Spawn Taking

The collection of fish spawn in wilderness shall be permitted when alternative sources are unavailable or unreliable, or where spawn taking was an established practice before wilderness designation.

Guidelines for Spawn Taking

- a. Spawn taking proposals that would involve uses generally prohibited under Section 4(c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.
- b. Use of techniques and facilities necessary to take spawn, which were in existence before wilderness designation, may continue as provided for in the wilderness management plan.
- c. Facilities for spawn-taking stations approved after wilderness designation must be removed after the termination of each season's operation.
- d. Decisions to prohibit spawn taking, where it was an established practice before wilderness designation, will be made in close cooperation and coordination between the Federal administering agency and the State agency.

10. Fish Stocking

Fish stocking may be conducted by the State agency in coordination with the Federal administering agency to perpetuate or recover a threatened or endangered species, or to reestablish or maintain indigenous fish species. Any species of fish introduced for management purposes prior to wilderness designation may be managed as indigenous fish species if the species is likely to survive. State agencies may continue to stock those waters traditionally stocked prior to wilderness designation. State and Federal agencies should carefully evaluate stocking those waters that consistently require supplementation for reasons other than angler-

induced mortality.

Selected species for stocking will be determined by the State agency in close cooperation and coordination with the Federal land management agency. In order of preference for stocking fish species is (a) Federal threatened or endangered species, and (b) indigenous species. Numbers and size of fish and time of stocking will be determined by the State in coordination with Federal agencies.

Lakes and streams currently without fish may be considered for stocking, if there is mutual agreement that no appreciable loss of scientific values or adverse effects on wilderness resources will occur. It is generally undesirable to stock previously unstocked waters. Because these areas generally reflect natural ecosystem processes, they may possess high scientific values. Proposals for fish stocking that would involve uses generally prohibited under Section 4 (c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.

Guidelines for Fish Stocking

- a. The State agency shall make fish stocking schedules available to the Federal administering agency, indicating what species and numbers are planned for each water within a wilderness.
- b. Adjust stocking rates to minimize the likelihood of exceeding the carrying capacity of the water being stocked so as to reduce the chance of producing a population imbalance.

11. Aerial Fish Stocking

Aerial stocking of fish shall be permitted for those waters in wilderness where this was an established practice before wilderness designation or where other practical means are not available. Proposals that would involve uses generally prohibited under Section 4 (c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.

Guidelines for Aerial Fish Stocking

- a. The State agency will supply the Federal administering agency a list of those waters where stocking with aircraft was an established practice before wilderness designation, indicating the type of aircraft used (fixed-wing or helicopter).
- b. To stock waters that had not been aurally stocked before wilderness designation, the State agency will demonstrate to the Federal administering agency the need for using aircraft.
- c. Plan aircraft flights over wilderness to minimize disturbance. Consider season of year, time of day, route and altitude of flight, and location of landing areas on the perimeter of the wilderness.

12. Transplanting Wildlife

Transplants (removal, reintroduction, or supplemental introduction) of terrestrial wildlife

species in wilderness may be permitted if necessary: (a) to perpetuate or recover a threatened or endangered species; (b) to restore the population of an indigenous species; or (c) to manage wildlife populations in accordance with the States' wildlife populations objectives.

Transplants shall be made in a manner compatible with the wilderness character of the area. Transplant projects require advance written approval by the Federal administering agency. Follow-up monitoring surveys that would involve uses generally prohibited under Section 4 (c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.

Guidelines for Transplanting Wildlife

Proposals for motorized methods and temporary holding and handling facilities that involve uses generally prohibited under Sec. 4 (c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.

13. Wildlife Damage Control

Wildlife damage control in wilderness may be necessary to conserve Federally listed threatened or endangered species, to prevent transmission of diseases or parasites affecting wildlife and humans, or to prevent serious losses of domestic livestock. Refer to MOUs between the Animal and Plant Health Inspection Service (APHIS) and the Federal administering agencies regarding permissible action in wilderness. Proposals that would involve uses generally prohibited under Section 4 (c) of the Wilderness Act will be considered and may be authorized by the Federal administering agency through application of the MRDP as outlined in Section E., General Policy.

Guidelines for Wildlife Damage Control

- a. Acceptable control measures include lethal and nonlethal methods, depending upon need, justification, location, conditions, efficiency and applicability of State and Federal laws.
- b. Control measures will be implemented by APHIS, the Federal administering agency, the State fish and wildlife agency, or other approved State agency, pursuant to cooperative agreements or MOUs.
- c. Direct control at individual animals causing the problem.
- d. Use only the minimum amount of control necessary to solve the problem.

14. Visitor Management to Conserve Wilderness Wildlife Resources

Many wildlife species are sensitive to human encroachment on their ranges. Grizzly bear, bighorn sheep, elk, mountain goat, birds of prey (such as peregrine falcon and bald eagle), other migratory and resident birds, and certain other wilderness wildlife species may be sensitive to excessive human disturbance, particularly during certain seasons of the year.

Guidelines for Visitor Management to Conserve Wilderness Wildlife Resources

- a. Specify in the wilderness management plan the management actions necessary and the agency responsible to reduce conflicts with wildlife.
- b. If and when **it** becomes apparent that public use is significantly degrading the wilderness wildlife resources, limitations on visitor use may be imposed and enforced by the appropriate Federal administering agency in coordination with the State wildlife agency. Any limitations will be applied equitably to all wilderness visitors.

15. Management of Fire

The objectives of fire management in wilderness are to: (a) permit lightning-caused fires to play, as nearly as possible, their natural ecological role within wilderness and (b) reduce, to an acceptable level, the risks and consequences of wildfire within wilderness or escaping from wilderness. Fire ignited by lightning may be permitted to burn or will be suppressed as prescribed in an approved plan. Prescribed fires may be permitted to reduce unnatural buildup of fuels only if necessary to meet objectives (a) and (b) above and require approval from the Federal administering agency.



AGENCIES

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ATTACHMENT A

Minimum Requirements Decisions Process Outline

Pursuant to the Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management (BLM) Wilderness, the intent of this attachment is to document the analysis process used by the BLM and Forest Service, in cooperation with the State fish and wildlife agencies, to determine the "minimum requirements" for accomplishing fish and wildlife projects and activities within a wilderness area. It is also intended to reemphasize that continued State and Federal coordination and cooperation is necessary to meet each agency's management objectives in wilderness.

The following outlines the "Minimum Requirements Decisions Process" (MRDP) for certain proposed projects within wilderness. For certain projects proposed by State fish and wildlife agencies, this analysis will be completed by the applicable State agency in coordination with the responsible Federal agency. Unless specifically exempted by law, all proposed projects and activities within wilderness involving the eight Wilderness Act prohibitions listed below will require the completion of the MRDP to determine whether they can be authorized in wilderness. Section 4(c) of the Wilderness Act lists ten prohibited uses in wilderness. Eight of these prohibited uses could be allowed if they are *"...necessary to meet the minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area)..."*.

The eight prohibited uses recognized by this exception are temporary roads, use of motor vehicles, motorized equipment or motorboats, landing of aircraft, other forms of mechanical transport, and structures or installations. The two Section 4(c) prohibited uses that may not be authorized in wilderness under the above exception are commercial enterprises and permanent roads.

The 1964 Wilderness Act directs that the determination to employ a generally prohibited use can only be made by the federal agency administering the affected wilderness area. The Act in Section 4(d)(8) also states that "Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish ..." within wilderness areas. For projects proposed by State wildlife agencies in designated wilderness it is crucial that Federal and State agencies respect each other's jurisdictions and responsibilities when employing the MRDP. The Federal land management agency must work closely and cooperatively with State agencies in determining how best to meet their needs within the allowable legal framework of the 1964 Wilderness Act and the legislation designating the area as

wilderness.

For project proposals where a National Environmental Policy Act (NEPA) analysis is required, the MRDP prepared by the State agency will be included in the NEPA process. The Federal land management agency will work with the State agency to complete the applicable

NEPA analysis in a timely manner. As a part of the MRDP, the State agency will conduct the Minimum Requirements Decisions Process, in close coordination and cooperation with the Federal administering agency, and will document the conclusion from Step I and the decision from Step 2. The Federal administering agency will make the final determination of the minimum requirements.

Minimum Requirements Decisions Process Outline

Step 1a: Determine if the action proposed by the State agency or Federal administering agency, to meet conservation objectives for fish and wildlife, is *necessary* to manage the area as wilderness.

First, describe the situation that may prompt the State agency or Federal administering agency action and describe how the action will address a problem or issue, or will otherwise contribute to fish or wildlife conservation objectives.

Then, determine whether the action is necessary in wilderness by describing why the action is necessary in terms of the following:

1. Options Outside of Wilderness

Determine whether the purpose of the proposed action can safely, successfully and reasonably be accomplished outside of a wilderness area. However, this does not preclude analyzing or implementing projects in wilderness, so long as they meet the minimum requirement standard (if the project involves uses generally prohibited under Sec. 4(c) of the Wilderness Act). For wildlife species that spend only part of the year in wilderness, give first priority to locating facilities or habitat alterations outside of wilderness.

2. Legal and Policy Consistency

Determine whether the proposed action is consistent with law, regulations, policies, and plans. Consider valid existing rights or special provisions of wilderness acts.

3. Consider Requirements of Other Legislation (ESA, ARPA, ANILCA, etc.)

4. Consider other Guidance (State wildlife conservation strategies, comprehensive plans, State listed threatened or endangered species or sensitive species lists, State or tribal agreements, etc.).

5. Wilderness Character

Determine whether the proposed action contributes to the preservation of wilderness character (i.e., how does the proposed action contribute to maintaining the wilderness character?).

6. Public Purposes of Wilderness

Determine whether the proposed action is necessary for the purpose of wilderness (i.e., how would the proposed action support the public purposes for wilderness of recreation, scenic, scientific, education, conservation and historical uses?).

Step 1b: Conclusion: *Is the Action Necessary?*

If the action is necessary, proceed to Step 2 to determine the minimum tool or method for the action. If no action is necessary, stop here.

Step 2a: Determine the *minimum tool*

1. Describe the Proposed Action and Alternative Actions

Analyze at least one feasible alternative, if available, that does not involve a generally prohibited act. This alternative must be one that could accomplish both the wilderness management objectives and the fish and wildlife conservation objectives of the proposed action.

2. Compare the Effects of the Alternatives

Analyze whether the tools and techniques used to accomplish the proposed action are the least degrading to wilderness characteristics while safely, successfully and reasonably accomplishing the task. This entails analyzing the impacts of each alternative on the wilderness characteristics (naturalness, outstanding opportunities for solitude-or primitive and unconfined recreation, and other special features). Criteria such as time, convenience, and cost effectiveness may also be considered but are less significant than the potential for impacts to wilderness characteristics.

Step 2b: Decision - *What is the Minimum Tool?*

- Identify the selected alternative.
- Describe the rationale for selecting this alternative, based on the analysis from 2a, law and policy.
- List management requirements for minimizing effects (timing, location, frequency, design standards for this action).
- Describe any monitoring and reporting requirements.

The MRDP used to determine the necessity to either employ or not employ a generally prohibited use meets the intent of the "...minimum requirement ..." exception in Section 4(c) of the Wilderness Act. However, any Federal authorization of a generally prohibited use must include a rationale in the decision record that clarifies why the use is needed to manage the wilderness area for the purpose of wilderness and the legislation designating the area as wilderness.

- Decisions resulting from the MRDP outline can be documented in a format that best suits the Federal administering agency and the State wildlife agency.

