

MEMORANDUM OF UNDERSTANDING

**Between the
CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION
And the
MONTANA FISH, WILDLIFE AND PARKS
And the
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
And the
TROUT UNLIMITED, MONTANA STATE COUNCIL
And the
USDI, FISH AND WILDLIFE SERVICE
And the
NATIONAL PARK SERVICE
And the
US GEOLOGICAL SURVEY
And the
USDA FOREST SERVICE, FLATHEAD NATIONAL FOREST
And the
FLATHEAD BASIN COMMISSION
And the
ANGLERS/COMMERICAL INTERESTS**

This Memorandum of Understanding (MOU) is hereby made and entered into by and between the Kootenai Tribes of the Flathead Nation, hereinafter referred to as the CSKT, the Montana Fish Wildlife and Parks, hereinafter referred to as the FWP, the Montana Department of Natural Resources and Conservation, hereinafter referred to as the DNRC, the Trout Unlimited, Montana State Council, hereinafter referred to as the TU, the USDI, Fish and Wildlife Service, hereinafter referred to as the USFWS, the US Geological Survey hereinafter referred to as USGS, the National Park Service, hereinafter referred to as NPS, the USDA Forest Service, Flathead National Forest, hereinafter referred to as the USFS, the Flathead Basin Commission, hereinafter referred to as FBC, the Flathead Lakers, hereinafter referred to as FL, and *somebody*, represented *anglers and/or commercial fishing interests*. The entities listed above may collectively be referred to as the parties to this MOU.

BACKGROUND: The Flathead Lake and River System Co-Management Plan (Plan) was adopted in 2000. The overarching goal of the plan is to benefit native fish by addressing the primary limiting factor; a recently expanded and highly predacious lake trout population (Attachment A). The Plan committed to establish a balance between native and non-native fish species and to maintain angler opportunity. Specifically, the goal of the Plan is to benefit native fish by reducing non-native lake trout while preserving angler participation at 40,000 angler days. Managers set out to achieve this goal by incremental steps, postponing immediate

intervention with “aggressive actions” until all other alternatives were exhausted. The Flathead Reservation Fish and Wildlife Board (Board) chartered under a cooperative agreement (Attachment B) between FWP and CSKT has provided guidance as well as a constructive platform for communication with the public during implementation of the Plan. Managers began Plan implementation as outlined in Strategy 5 and have successfully increased the harvest (lake trout control) by innovatively creating contests among anglers that emphasize harvest of a targeted size group of lake trout.

In 2006 at the time of the “mid-term review” managers reported that while we had succeeded in building a program, in increasing angler participation in fishery management, and modest increases in lake trout harvest, we had not affected the goals for species population balance as defined in the Plan. Despite calls for moving beyond angler-based approaches to more aggressive approaches for lake trout control as outlined in the Plan, until now we have remained committed to expanding fishing contests to their full potential. However, we committed in 2006 in the midterm review (Attachment C) to using specific harvest targets within specific timeframes to measure success in reaching the goal. The mid-term review established a lake trout harvest target of 60,000 fish to be achieved by 2008. This target was not met, providing evidence that agency action in addition to fishing contests would likely be necessary to achieve the goal of Plan. In response to comments to the mid-term review in 2006, (Attachment C) we committed to moving to “more aggressive” actions if necessary to achieve the harvest target. The Plan also states that if and when this action is necessary, we would re-engage the public in scoping the necessary actions and strategies. We have proposed a Pilot Project to test the hypothesis that lake trout can be reduced to benefit bull trout (Attachment D). This MOU fulfills the Plan’s commitment to involve stakeholders from the public and agencies in the more aggressive efforts to reduce lake trout than the current angler-based approach.

The parties to this MOU adopt the following Goal.

“The goal for this MOU is to involve stakeholders in the test of the hypothesis that the lake trout population (the limiting factor for bull trout abundance) in the Flathead Lake ecosystem can be cost-effectively reduced while maintaining angler participation in the fishery. This test will be conducted within the constraints of a Pilot Project initiated by the CSKT. The signatories of this MOU will refine the terms of the pilot project, and address key issues such as degree of lake trout reduction, measures of success and the period of the pilot project.”

The MOU recognizes the legal and regulatory authority that accompanied the formal listing, in 1998, of bull trout as a threatened species under the US Endangered Species Act. The parties enter into this MOU under federal and state law, as applicable, including, but not limited to Section 2(c)(2) of the ESA, which states, “the policy of Congress is that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.”

This MOU is subject to, and is intended to be consistent with, all applicable Federal and State laws and interstate compacts.

Attachments	Content
Attachment A	Flathead Lake and River Fisheries Co-Management Plan
Attachment B	FWP CSKT Cooperative Agreement & Reservation Fish and Wildlife Advisory Board direction on a netting program.
Attachment C	Flathead Co- Management Mid-Term Review & Response to Comments on Mid-term Review
Attachment D	Draft Pilot Project to Reduce Lake Trout Numbers in Flathead Lake

I. PURPOSE:

The purpose of this MOU is to facilitate the cooperative efforts between stakeholders to finalize a Pilot Project to address the over-abundant lake trout population that is the limiting factor for bull trout in the Flathead Lake watershed. The intent of the Pilot Project is to answer the question of whether we have the ability to cost-effectively reduce the lake trout population in a reasonable period of time to benefit native fish while not compromising the recreational fishery of Flathead Lake.

In accordance with this MOU and the hereby incorporated Exhibits:

<u>Exhibit</u>	<u>Contents</u>
Exhibit A	Working Group Representatives
Exhibit B	Working Group Organization and Responsibilities

Exhibits to this MOU may be revised or deleted by consensus of the Task Force representatives. The latest revision of any Exhibit will automatically be incorporated into this MOU without necessitating a formal modification as defined in Provision IV -J.

II. STATEMENT OF MUTUAL BENEFIT AND INTEREST:

This MOU represents a collaborative and cooperative effort among resource agencies, conservation and industry organizations, resource users, and private landowners. The parties agree that it is to their mutual benefit and interest to work cooperatively to ensure the long-term protection of bull trout and other native fish. The parties to this MOU have determined that the following objectives must be met to ensure the Management Goal of this strategy and promote the perpetuation of bull trout in the Flathead Lake-River ecosystem for future generations.

Objective 1. Reduce the high numbers of younger lake trout by an agreed upon percentage in an agreed upon period of time by using a combination of strategies outlined in the Plan.

Objective 2. Document the cost associated with the resultant lake trout control program to assist in the future decision-making process.

Objective 3. Monitor the fishery to ensure that at least 40,000 angler days are sustained.

ID. EACH PARTY SHALL:

A. Accept the goals contained herein and strive to accomplish them within identified time frames.

B. Agree to formation of a Flathead Lake and River Lake Trout Working Group (Working Group) to provide expertise in final development of the Pilot Project, annual evaluations of success criteria, and annual determinations of adaptive adjustments. See Exhibit A for a list of the Working Group Representatives, and Organization.

C. Recognize that nothing in this MOU or the Research, Education, or Management recommendations that result is intended to abrogate any of the parties' respective responsibilities. Each party has final approval authority for any activities undertaken as a result of this agreement on the lands owned or administered by the signatory party.

D. Agree that nothing in this MOU, including its goals, shall interfere with the recovery of any species presently listed under the Endangered Species Act, 16 U.S.C. §§ 1431 *et seq.* (hereinafter "ESA"). This plan attempts to document the viability of a lake trout control program to address the threat to bull trout by lake trout in hopes that this information will help decision makers ensure the long-term persistence of robust bull trout populations.

F. All parties to this MOU recognize that they each have specific statutory responsibilities that cannot be abdicated, particularly with respect to the management and conservation of wildlife, their habitat, and the management, development and allocation of water resources.

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

A. PRINCIPAL CONTACTS. The principal contacts for this MOU are the Working Group Representatives and/or key contacts for the parties of this MOU as defined in Exhibit A.

B. Each signatory agency holds the responsibility to review planned actions for their area of concern to ensure conformance with existing land use plans, and to conduct any necessary environmental analysis and private property affects assessment under the Montana Environmental Policy Act, Mont. Code Ann. §§ 75-1-1-1 through 75-1-324 (hereinafter "MEP A") and the National Environmental Policy Act, 42 U.S.C. §§ 4321 through 4347 (hereinafter "NEPA") for those actions within their area.

C. This MOU recognizes the authority of the FWP and CSKT to manage fisheries, the DNRC to manage land resources, and the Forest Service to manage lands within their respective jurisdictions. This MOU also recognizes the aboriginal rights of the CSKT.

D. Each party shall have the right to decline participation in any action it deems to conflict with its legal obligations or rights. Such determinations must be registered in writing, with a clarifying statement attached for the action proposed for adoption.

E. All parties will make themselves available at mutually agreeable times, for continuing consultation to discuss the conditions covered by this MOU and agree to actions essential to fulfill its purposes. At a minimum, the parties will participate in a meeting to complete the Pilot Project and at least annual progress evaluation meetings.

F. Authority of the Task Force shall be limited to making recommendations to the appropriate responsible agency.

G. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished the Forest Service under this MOU is subject to the Freedom of Information Act (5 D.S.C. 552).

H. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the Parties from participating in similar activities with other public or private agencies, organizations, and individuals.

I. NON-FUND OBLIGATING DOCUMENT. This MOU is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the Parties will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to the Parties of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition

J. MODIFICATION. Modifications within the scope of this MOU shall be made by mutual consent of the Parties, by the issuance of a written modification, signed and dated by the Parties, prior to any changes being performed.

K. TERMINATION. Any of the parties, in writing, may terminate the MOU in whole, or in part, at any time before the date of expiration.

L. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through April 30, 2013 at which time it will expire.

In witness whereof, the parties hereto have executed this MOU as of the last date written below.

JAMES STEELE JR., Chairman
Confederated Salish & Kootenai Tribes

DATE

JOE MAURIER, Director
Montana Fish, Wildlife and Parks

DATE

MARY SEXTON, Director
Montana Dept. of Natural Resources & Conservation

DATE

BRUCE FARLING, Executive Director
Trout Unlimited, Montana State Council

DATE

MARK WILSON, Field Supervisor
USDI, Fish and Wildlife Service, Montana Ecological Services

DATE

CATHY BARBOULETOS, Forest Supervisor
USDA Forest Service, Flathead National Forest

DATE

JEFF KERSHNER, Center Director
US Geological Survey

DATE

JAKE POTTER, Chief of Science and Natural Resources
National Park Service

DATE

BOB ORSUA, Flathead Lake Outfitter
Commercial Angler

DATE

EXHIBIT A

WORKING GROUP REPRESENTATIVES

USFS Project Contact

Craig Kendall
Flathead National Forest
1935 3rd Ave. East
Kalispell, MT 59901
Voice (406) 758-5342
Fax (406) 758-5363
Email: ckendall@fs.fed.us

FWP Project Contact

Travis Horton
Montana Fish, Wildlife and Parks
1420 East Sixth Ave
POB 200701
Helena, MT 59620
Email: THorton@mt.gov

CSKT Project Contact

Barry Hansen
Confederated Salish & Kootenai Tribes
Box 278
Pablo, MT 59855
Voice (406) 883-2888 x 7282
Email: barryh@cskt.org

TU Project Contact

Bruce Farling
Trout Unlimited
Montana State Council
Box 7186
Missoula, MT 59807
Voice (406) 543-0054
Email: bruce@montanatu.org

USFWS Project Contact

Wade Fredenberg
US Fish & Wildlife Service Creston National Fish Hatchery
780 Creston Hatchery Road Kalispell, MT 59901
Voice (406) 758-6872
Email: wade_fredenberg@fws.gov

DNRC Project Contact

Jim Bower
Montana Dept of Natural Resources & Conservation
2705 Spurgin Road
Missoula, MT 59801
Voice (406) 542-4232
Fax (406) 542-4274
Email: jbower@mt.gov

USGS Project Contact

Clint Mulfield
USGS-Northern Rocky Mountain Science Center
Glacier Field Office, Glacier National Park
West Glacier, Montana, USA, 59937
Voice (406) 888-7926
Email: cmuhlfeld@usgs.gov

NPS Project Contact

Chris Downs
Glacier National Park
West Glacier, MT 59937
Chris_Downs@nps.gov

Flathead Lakers Contact

Robin Steinkraus
213 1st Street West
Polson, MT 59860-2131
Voice: 406-883-1346
lakers@flatheadlakers.org

Flathead Basin Commission Contact

Caryn Miske
Flathead Basin Commission
19 Second Street East, Suite C
Kalispell, Montana 59901
406-752-0081
fbc@mt.gov

Bob Orsua

Mo Fisch Charters
167 West Nicklaus Ave
Kalispell, MT 59901
orsuas@yahoo.com

EXHIBIT B

WORKING GROUP ORGANIZATION AND RESPONSIBILITIES

The Task Force Will:

- A. Be comprised of a chairperson, and general Task Force representatives (representatives).
- B. Initially be comprised of a general representative from each of the parties to this MOU.
- C. Make themselves available at mutually agreeable times for continuing consultation to discuss the conditions covered by this MOU. Representatives will participate in annual meetings to review activities proposed under this MOU.
- D. Record the minutes of each meeting and provide copies to each representative.
- E. Share pertinent information, encourage and promote cooperation, and keep communication open and frequent so all representatives are informed on the status of the issues that may affect working relationships.
- F. Operate by consensus with a commitment to cooperation across jurisdictional boundaries.
- G. Make an annual assessment of progress toward achieving the objectives of the Pilot Project. This assessment will determine the effectiveness of this agreement and whether revisions are warranted.

EXHIBIT C

AGREEMENT TYPES & STATUTORY AUTHORITIES