

**MEMORANDUM OF UNDERSTANDING**  
**MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS**  
**AND**  
**MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION**  
December 1, 2002

This Memorandum of Understanding is entered into by and between two Departments of the State of Montana: 1) Department of Fish, Wildlife and Parks (FWP) and 2) Department of Natural Resources and Conservation (DNRC) under authority of the Montana Constitution and appropriate titles and chapters of the codes of the State of Montana.

**WHEREAS**, FWP is authorized under the laws of the State of Montana to provide for the protection, preservation, propagation, and management of wildlife and fish within the state [87-1-201, MCA];

**WHEREAS**, DNRC is authorized under the constitution and laws of the State of Montana to manage trust lands for support of the common schools and “. . . for the attainment of other worthy objects helpful to the well-being of the people of this State as provided in the Enabling Act, [77-1-202(1), MCA]; and

**WHEREAS**, both departments desire to work together for the common purpose of maintaining, and managing all natural resources, fish, wildlife, wildlife habitat, and public recreational opportunities on state trust lands administered by DNRC for the best interests of the Trust and of the people of Montana;

**WHEREAS**, this agreement replaces the Memorandum of Understanding between FWP and DNRC dated July 21, 1999.

**NOW, THEREFORE, BE IT RESOLVED THAT** both Departments agree as follows:

**I. DNRC shall:**

1. Manage state trust lands for the best interests of the Trust and of the people of Montana, while conserving wildlife and fish habitats to the extent permitted and required by laws, regulations, rules and policy.
2. Recognize FWP as the lead agency responsible for managing wildlife and fish populations on all lands in Montana not included within designated Indian Reservations.
3. Consider FWP's goals and objectives regarding fish and wildlife when planning and implementing management activities on state trust lands. Specifically, to the extent possible, DNRC would manage to provide for fish and wildlife habitat. Measures to mitigate potential impacts would be implemented if they are consistent with overall management objectives as described in the constitution, state statute, the State Forest Land Management Plan (SFLMP), and other DNRC rules and policies. Further, DNRC would consult with FWP to determine which fish and wildlife habitat values are most

likely to be affected by proposed management actions on state trust lands and would cooperate with FWP to limit detrimental impacts to fish and wildlife populations.

4. Ensure conservation/management plans for sensitive species and fish species of special concern, and other management activities on forested trust lands that may affect wildlife and fish species, are implemented in a manner consistent with DNRC's agreed-upon responsibilities defined in the State Forest Land Management Plan and applicable DNRC rules and policies.
5. Invite FWP representatives to review and comment on proposed management activities on state trust lands when those activities are perceived by either DNRC or FWP as having a potential to cause impacts on wildlife and fish populations or their habitats.
6. Keep FWP informed of any substantive changes in planned state trust land management activities to ensure that FWP has the opportunity to provide timely review and comments on proposed management actions that affect fish and wildlife populations or their habitats.
7. Provide FWP with review copies of project plans (e.g., scoping notices, one- to three-year timber sale lists and other relevant reports) which could affect fish and wildlife habitats.
8. Make reasonable attempts to pursue cooperative forest planning with major adjoining landowners. The objectives of cooperative planning would be to: (a) maintain appropriate amounts and distribution of stand structures and species mixtures to promote biodiversity at a landscape level; and (b) equitably maintain or promote trust revenue opportunities over the long term.
9. With regard to individual timber sales:
  - A. Provide FWP with a lead time of 60 days when requesting field reviews and an additional 15 days to provide written comments on individual sale proposals.
  - B. Keep FWP informed on the status of individual sales by:
    - 1) Providing written or oral feedback to FWP detailing how FWP's comments were considered in timber sale plans and sale prescriptions.
    - 2) Notifying FWP area biologist when a timber sale that the biologist reviewed and commented on has been completed.
  - C. If requested by FWP or DNRC, schedule post-sale, on-site visits with DNRC foresters and FWP biologists to review the application and effectiveness of efforts to mitigate impacts on wildlife and fish.

10. Give permission to FWP, at no cost, to enter upon DNRC lands at any time for the purpose of collecting biological data that may be relevant for state trust land management. For example, this data may be collected to develop species management plans, or be specific to a proposed DNRC project. As a courtesy, FWP will contact DNRC field office and lessees prior to entering trust lands to engage in these activities.
11. Provide consideration of FWP activities designed to engage in habitat enhancement and restoration activities that promote long-term fish and wildlife resource values on trust lands and thus enhance the value of those lands. DNRC and FWP agree that well-designed habitat projects can enhance long-term values similar to pre-commercial timber stand thinning or other resource management activities. DNRC-approved activities will be permitted with a land use license pursuant to the terms of this MOU.

**II. FWP shall:**

1. Recognize DNRC as the agency responsible for managing state trust lands and recognize DNRC's revenue-producing responsibilities under the Enabling Act, state statutes pertaining to management of school trust lands, and policies described in the SFLMP and applicable DNRC rules and policies.
  - A. If a FWP project on state trust land results in the state trust land being taken out of production or directly impacts the ability of DNRC to manage those lands pursuant to its responsibilities outlined above, FWP will compensate the affected Trust accordingly.
  - B. Prior to undertaking the project DNRC and FWP staff must agree on the direct impacts identified in 1.A. If the local staff cannot reach agreement, the issue will be elevated to the Trust Land Management Division administrator and the appropriate FWP division administrator.
  - C. Compensation will be determined using standard appraisal methodology and assessed through issuance of a land-use license, lease, or easement. FWP retains the right to obtain the services of an independent third party appraiser. DNRC retains the right to review third party appraisals.
2. Upon request, provide DNRC with FWP's Species Management Plans, reports, findings, or other written materials relating to management of wildlife and fish habitats that are relevant to state land management.
3. Coordinate with DNRC personnel when FWP develops fish and wildlife plans, conservation easements or project proposals that may affect state trust lands.
  - a. Provide appropriate DNRC field office an adequate amount of lead time to review and comment on such proposals.
4. Review annual one- to three-year timber sale lists. Let DNRC know, in writing, which sales in the upcoming year will and will not require field review or subsequent coordination.

5. Follow-up with field review for projects FWP previously indicated would require review. The field reviews (conducted within 60 days of request) will be followed by written comments (within 15 days of review) evaluating the effects of DNRC management activities on fish and wildlife populations and/or their habitats.
6. Provide biological expertise at DNRC's request for land management activities.

**C. Both parties mutually agree to and understand the following:**

1. To cooperate in developing, implementing, evaluating and monitoring plans, programs and activities that affect management of fish and wildlife populations and their habitats on state trust lands.
2. To periodically arrange meetings at the appropriate level to discuss matters relating to management of wildlife and fish resources on state trust lands.
3. To erect on state trust lands structures and improvements, where mutually agreeable and appropriate, that benefit wildlife and fish resources (e.g., road closure devices, river restoration and other habitat improvement projects) in accord with other state cooperative agreements.

**A. Navigable Waterways:** For projects proposed by FWP within commercially navigable waters, where the State claims ownership to the bed of the waterway, FWP shall comply with DNRC Special Use Management Memo 97-1-1 (Policy for Licensing Structures in, over, below, or above Navigable Waterways) dated 10/31/97, except where these uses are specifically designed to promote long-term fish and wildlife resource values on state trust lands.

1. FWP shall prepare the environmental documents necessary to comply with MEPA for projects described under section VI of the above referenced policy.
2. DNRC shall waive the application and land use fees described in section VII.1 and 3 of the above referenced policy.
3. DNRC shall review and provide comments on the FWP-prepared MEPA documents as applicable.

**B. Non-navigable Waterways:** For projects proposed by FWP within non-navigable waters on state trust lands, the following procedures shall apply:

1. FWP shall prepare the environmental documents necessary to comply with MEPA.
2. Land use fees, where appropriate, will be assessed according to B(1)1, 2 & 3.
3. Application fees shall be waived for land-use licenses.

4. DNRC shall review and provide comments on the FWP-prepared MEPA documents as applicable.

4. To undertake mutual signing and to facilitate enforcement of road closures and restrictions on recreational use on state land. Details of the location and type of signs that DNRC or FWP desire to erect on state trust lands that deal with recreational use, fish and wildlife management practices, policy or benefits will be worked out cooperatively between local FWP personnel and the local DNRC Area/Unit Managers.
5. When views of one Department are contrary to established policy or plans of the other, representatives of both Departments shall meet in advance and attempt to resolve differences before either Department publicly expresses a view contrary to established policy or plans of the other Department. Differences and disagreements between DNRC and FWP representatives will be resolved at the lowest administrative level possible. If disagreements cannot be resolved, they will be referred to the next higher administrative level. This is not intended to prevent either Department from providing pertinent information to the public. Instead, the intent is to encourage both Departments to cooperate in making decisions that affect the state's natural resources.

If disagreements cannot be resolved, even at the highest administrative level, then written correspondence acknowledging those disagreements shall only come from the DNRC Area Manager and the FWP Regional Supervisor.

6. That each and every provision of this Memorandum is subject to applicable laws of the State of Montana and laws of the United States, and regulations promulgated by each.
7. That nothing in this Memorandum shall obligate either Department or the State of Montana to expend funds or to make payments of money in excess of appropriations authorized by state laws.
8. That nothing contained in this Memorandum of Understanding shall limit or affect in any way the authority of:
  1. FWP in connection with the harvest, protection, preservation, and propagation of wildlife and fish resources for which it is responsible.
  2. DNRC in connection with the management, administration and protection of State trust lands in accordance with the purpose for which the lands were acquired and reserved.
9. To develop and maintain supplements to this Memorandum between individual DNRC Area Managers or Unit Managers and FWP's Regional Supervisors to promote better understanding and cooperation between the Departments and to describe procedures for more effective communication and coordination. These supplements shall follow the same format and content as this Master Memorandum of Understanding, and shall refer to this agreement.

10. This agreement may be terminated by mutual consent or by either party upon 90 days written notice.
11. Attachment A further illustrates how this memorandum of understanding would be applied to timber sale project coordination.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement as of the last date written below.

12/17/02  
Date

M. Jeff Nagel  
Director  
MONTANA DEPARTMENT OF FISH,  
WILDLIFE AND PARKS

12/21/02  
Date

Bud Clark  
Director  
MONTANA DEPARTMENT OF  
NATURAL RESOURCES AND  
CONSERVATION

**ATTACHMENT A**

**Montana DNRC and FWP Timber Sale Project Coordination Protocol  
Combined Agency Project-Level Responsibilities**

<b>Project Stage</b>	<b>Without DNRC Staff Bio. Involvement</b>	<b>With DNRC Staff Bio. Involvement</b>
<b>3-Year Review</b>	<p>One- to three-year lists would be sent to the FWP Regional Supervisor from the DNRC Area Timber Program Manager for review annually for each DNRC Unit Office. This does not constitute formal scoping because projects are not well-defined enough to provide for detailed review. Scoping will occur once the proposed action is better defined. Prior to public scoping, FWP will initially indicate their concerns with 1-3 Year Project Listings and the sales expected to require <i>and</i> not require field reviews in writing within 30 days of receipt to the local DNRC Area Timber Program Manager. For projects where FWP does not have concerns, but DNRC has needs for further FWP involvement, the DNRC Project Leader would notify the appropriate FWP terrestrial and/or fisheries Area Biologists for projects where field reviews and follow-up documentation are needed (this would occur between the time of 1-3 year list review and the end of formal public scoping).</p>	<p>One- to three-year lists would be sent to the FWP Regional Supervisor from the DNRC Area Timber Program Manager for review annually for each DNRC Unit Office. Prior to public scoping FWP will initially indicate their concerns with 1-3 Year Project Listings and the sales expected to require <i>and</i> not require field reviews in writing within 30 days of receipt to the local DNRC Area Timber Program Manager [the Area Timber Program Manager would be responsible for forwarding this information to DNRC's Project Leaders and Area Biologist(s)].</p>

Project Stage	Without DNRC Staff Bio. Involvement	With DNRC Staff Bio. Involvement
<p><b>Scoping—Coordinating Level of Project Involvement and Documentation of Concerns.</b></p>	<p>DNRC Project Leaders would indicate those projects where field reviews and follow-up documentation are needed by Area FWP Biologists for project development <i>between the time of 1-3 Year List review and the end of formal public scoping.</i> Formal Public Scoping Notices for each timber sale proposal will be sent to the appropriate FWP Regional Supervisor for review and distribution to "in-house" Regional Wildlife, Fisheries and Parks Managers (FWP managers and biologists would have discretion in voicing concerns not previously considered during review of 1-3 Year Lists). Concerns of Area FWP Biologists raised at the time of Formal Public Scoping, and requests for additional field reviews (if any) will be provided to the DNRC Project Leader in writing by the deadline indicated on each applicable scoping notice.</p>	<p><i>Between the time of 1-3 Year List review and the end of Alternative Development,</i> DNRC's Area Biologist would coordinate clarification of concerns, alternative development and mitigation measures with appropriate local FWP Area Biologists for projects where concerns are were previously indicated from 1-3 Year List Reviews. The extent of necessary biological review and documentation will be coordinated between DNRC and FWP's local Area Biologists throughout development of these and other individual projects. Formal Public Scoping Notices for each timber sale proposal will be sent to the appropriate FWP Regional Supervisor for review and distribution to "in-house" Regional Wildlife, Fisheries and Parks Managers (FWP managers and biologists would have discretion in voicing concerns not previously considered during review of 1-3 Year Lists). Concerns of Area FWP Biologists raised at the time of Formal Public Scoping and requests for additional field reviews (if any) will be provided to the DNRC Project Leader in writing by the deadline indicated on each applicable scoping notice--Project Leaders will promptly forward responses from FWP Area Biologists to the DNRC Area Biologist.</p>

<b>Project Stage</b>	<b>Without DNRC Staff Bio. Involvement</b>	<b>With DNRC Staff Bio. Involvement</b>
<b>Field Review, Written Evaluations and Turn-Around Time</b>	Field reviews will be coordinated between individual Project Leaders and the local FWP Area Biologist, and will be conducted within 60 days of request. Written comments will be provided by the FWP Biologist to the Project Leader within 15 days of the review. All written comments will be considered and incorporated into environmental documents.	Field reviews and written evaluations will normally be conducted by DNRC Area Biologists; however, DNRC Biologists may request information in writing regarding issue clarification and mitigations. DNRC Area Biologists will coordinate field reviews and information sharing with appropriate FWP biologists and Project Leader as needed. Should FWP opt not to participate in a scheduled field review, the DNRC Area Biologist would complete the biological evaluation without FWP's input regarding observed field conditions. DNRC biologists will respect the professional opinions of FWP biologists when FWP provides data and information with the intent of displaying appropriate and available information as accurately as possible. All written comments will be considered and incorporated into environmental documents.
<b>Environmental Document Review</b>	FWP may provide written comments as deemed appropriate for any and all projects.	FWP may provide written comments as deemed appropriate for any and all projects.

Project Stage	Without DNRC Staff Bio. Involvement	With DNRC Staff Bio. Involvement
<p><b>Resolving Disagreements</b></p> <p>Should disagreements arise regarding any aspect of a particular project, attempts at resolution should take place at the following levels and order displayed in this Table.</p> <p>Should either of the individuals in the initial conflict resolution process feel that a concern has not been adequately addressed, <u>both</u> individuals at the next higher administrative level will be immediately informed and included in the resolution process.</p> <p>If disagreements cannot be resolved, even at the highest administrative level, then written correspondence acknowledging those disagreements shall only come from the DNRC Area Manager and the FWP Regional Supervisor.</p>	<ol style="list-style-type: none"> <li>1) DNRC Project Leader, FWP Area Biologist.</li> <li>2) DNRC Project Leader, FWP Area Biologist, DNRC Forest Management Bureau Biologist.</li> <li>3) DNRC Unit Manager, DNRC Area-Level Program Manager, FWP Regional Wildlife Manager, DNRC Project Leader, FWP Area Biologist, DNRC Forest Management Bureau Biologist.</li> <li>4) DNRC Area Manager, DNRC Forest Management Bureau Chief, FWP Regional Supervisor, DNRC Unit Manager, FWP Regional Wildlife Manager, DNRC Project Leader, FWP Area Biologist, DNRC Forest Management Bureau Biologist.</li> <li>5) DNRC and FWP Division Administrators <u>and/or</u> Directors, DNRC Area Manager, DNRC Forest Management Bureau Chief, FWP Regional Supervisor, DNRC Unit Manager, FWP Regional Wildlife Manager, DNRC Forest Management Bureau Biologist.</li> </ol>	<ol style="list-style-type: none"> <li>1) DNRC Project Leader, FWP Area Biologist, DNRC Area Biologist.</li> <li>2) DNRC Project Leader, FWP Area Biologist, DNRC Forest Management Bureau Biologist, DNRC Area Biologist.</li> <li>3) DNRC Unit Manager, FWP Regional Wildlife Manager, DNRC Project Leader, FWP Area Biologist, DNRC Forest Management Bureau Biologist, DNRC Area Biologist.</li> <li>4) DNRC Area Manager, DNRC Forest Management Bureau Chief, FWP Regional Supervisor, DNRC Unit Manager, FWP Regional Wildlife Manager, DNRC Project Leader, FWP Area Biologist, DNRC Forest Management Bureau Biologist, DNRC Area Biologist.</li> <li>5) DNRC and FWP Division Administrators <u>and/or</u> Directors, DNRC Area Manager, DNRC Forest Management Bureau Chief, FWP Regional Supervisor, DNRC Unit Manager, FWP Regional Wildlife Manager, DNRC Forest Management Bureau Biologist.</li> </ol>