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Subject: MOU between USFS and California Dept. of Fish and Game

To: Forest Supervisors, RO Staff Directors, and
Office of General Counsel

This letter transmits the recently signed Memorandum of Understanding (MOU) between the US Forest Service and the California Department of Fish and Game (CDF&G). This MOU is now our policy on how Forests, Districts and the Regional Office coordinate with CDF&G, and it provides important new information on how our roles and responsibilities for managing fish, wildlife and native plants interrelate. This September 1995 MOU supersedes all previous MOUs with CDF&G. It is consistent with all current laws, regulations and policies, including the Federal Advisory Committee Act (FACA).

Also enclosed is a copy of the "Guidelines for Fish and Wildlife Management in Wilderness Areas." These "Guidelines" are in fact a national MOU between USFS, BLM and International Association of Fish and Wildlife Agencies, which our USFS/CDF&G MOU tiers to.

This MOU has been a long time in negotiation, and I appreciate your time and patience over the past few years spent in reviewing and providing comments to RO staff who worked on finalizing the MOU with CDF&G. It feels good to have a finished product which will improve our working relationship and simplify procedures.

Please take the time to read the MOU over carefully, and make sure that your biologists, recreation planners, agreement specialists, and other appropriate staff at the Forest and District receive copies. Any questions you have can be addressed at the November Regional Management Team meeting in November, where we have planned time on the agenda for a discussion of the MOU.

Jim Lawrence
REGIONAL FORESTER TEAM

Enclosures

cc:
RF-R4
RF-R6
WO-FWRP Staff



Caring for the Land and Serving People



MEMORANDUM OF UNDERSTANDING

between

State of California, Department of Fish and Game

and

Forest Service

United States Department of Agriculture

This Memorandum of Understanding (MOU) is made on this 1st day of September, 1995, by and between the California Department of Fish and Game, hereinafter called the Department; and the United States Department of Agriculture, Forest Service, through the Regional Foresters of the Pacific Southwest, Intermountain and Pacific Northwest Regions, hereinafter called the Forest Service.

WHEREAS, the Department has been established under the laws of the State of California as trustee for the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species; and

WHEREAS, the Forest Service is authorized by Acts of Congress and by regulations issued by the Secretary of Agriculture to manage National Forest System (NFS) lands which include wildlife, fisheries and plant resources; and

WHEREAS, the intent of this MOU is to strengthen, at all levels of the two agencies, the cooperative approach to management of fish, wildlife, plants, and their habitats, on NFS lands; and

WHEREAS, conservation of these resources requires close cooperation and coordination between the two agencies, each having specified rights and responsibilities, and it is the intent of the parties to use their knowledge and resources towards conservation of fish, wildlife, plants, and their habitats; and

Now, therefore, in fulfillment of the public trust bestowed upon them by the people of California and the United States, the Department and the Forest Service hereby agree as follows:

I. The Forest Service agrees:

- A. To recognize that the Department has been designated by the State of California as the trustee for the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species.
- B. To the extent authorized by law and as appropriate, make available to the Department such National Forest improvements, facilities, equipment, and projects as would normally be used in conservation of fish, wildlife, plants, and their habitats, and related law enforcement activities.
- C. To enter into supplemental agreements or other legal instruments with the Department for the design, installation, and maintenance of structures associated with habitat improvements on NFS lands where they are deemed necessary by the Department to facilitate management activities of the Department; provided such structures meet the requirements of and their intended use conforms with applicable Federal laws, Forest Land Management Plans, policy and regulations.
- D. To involve the Department in a timely manner when developing goals, objectives, standards and guidelines affecting fish and wildlife habitat in Forest Land Management Plans (and amendments) and in management activities which will conserve fish, wildlife, plants, and habitat.

- E. To notify the Department of changes in regulations or policies on NFS lands that affect the conservation of fish, wildlife, plants, and their habitats.
- F. To consult with, where appropriate enter into agreements with, and where required, obtain approval from, the Department for activities that will result in the attraction to bait, capture, or marking of any native or desired non-native fish or wildlife.
- G. To recognize and obtain Department agreements and permits including streambed alteration permits where such agreements and permits are required by State law and where the requirement is not preempted by Federal law and does not conflict with the performance of a Federal function.

II. The Department agrees:

- A. To recognize the Forest Service as the agency responsible for administering, managing and protecting NFS lands for multiple uses including the fish, wildlife and plant resources in accordance with Federal law.
- B. To the extent authorized by law and as appropriate, make available to the Forest Service such Department improvements, facilities, equipment and projects as would normally be used in the conservation of fish, wildlife, plants and their habitats, and related law enforcement activities.
- C. To actively participate with the Forest Service during the land management planning process and to assist in developing conservation objectives and management standards, guidelines, and monitoring programs for fish, wildlife, plants and their habitats.
- D. To notify and respond to comments received from the Forest Service on all petitions for listing of species under the California Endangered Species Act.
- E. To notify the Forest Service of changes in State fish and wildlife laws, regulations, and policies which may affect Forest Service land management or policy on National Forest System lands.
- F. To recognize the need for and secure Forest Service approval, where required by Federal law, for activities conducted on NFS lands including but not limited to the construction and installation of structures or pesticide use.

III. The Department and Forest Service mutually agree:

- A. To work cooperatively on programs for fish, wildlife, and plant habitat restoration and conservation. Funds, personnel time, and equipment may be used individually, or in combination, as a basis for cooperative programs, as authorized by a Federal or State legal instrument.
- B. To cooperate in the formulation and application of comprehensive plans and programs for the conservation and rehabilitation of fish, wildlife, plants, and their habitats on National Forest System lands supplemental to and consistent with each Forest's Land and Resource Management Plan.
- C. To coordinate with respect to compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) and, where appropriate, to prepare joint environmental documents.
- D. The parties will make every effort to resolve issues at the field level, and the parties


recognize that some issues may require resolution at higher levels. Issues which cannot be resolved by Forest Supervisors and Regional Managers will be referred to the Regional Forester(s) and the Director of the Department (Director), through appropriate channels.

- E. The Forest Service shall inform, where appropriate, the Department on matters and programs on NFS lands that may affect fish, wildlife, plants, or their habitat and shall solicit, consider, and incorporate, where appropriate, Department recommendations. The Department shall inform, where appropriate, the Forest Service on matters or programs of the Department that may affect NFS lands and their management and shall solicit, consider, and incorporate, where appropriate, Forest Service recommendations.
- F. To meet at least annually at the Regional Forester and Director level to discuss and coordinate program goals and objectives, and resolve matters concerning conservation of fish, wildlife, and plant resources on NFS lands.
- G. To meet at least annually at the Forest Supervisor, Regional Manager, and Division Chief level to discuss any work that the Forest Service plans for the ensuing fiscal year that may affect fish, wildlife, plants, or their habitats, or work that the Department plans on NFS lands.
- H. To standardize and share, where practicable, natural resource information, data storage and collection, field methodologies, and analytical procedures bearing on conservation of fish, wildlife, plants, and their habitats on NFS lands.
- I. To exchange to the extent authorized by law and where appropriate, reports and copies of correspondence or other material pertinent to conservation of fish, wildlife, plants, or their habitats on NFS lands.
- J. To the extent authorized by law and as appropriate, provide assistance for the enforcement of State fish and wildlife laws on NFS lands. A supplemental agreement will be required before assistance will be provided.
- K. That each and every provision of this agreement is subject to the laws of the State of California and laws of the United States. However, this is in no way construed as a waiver of the sovereign immunity of the United States.
- L. That nothing in this agreement be construed as obligating the Forest Service, the Department, or the State of California for payment of money in excess of appropriations authorized by law.
- M. That this agreement supersedes all previous MOUs and subsequent amendments hereto between the Forest Service and the Department.
- N. That Appendix I, Planning and Coordination; Appendix II, Management Activities; and Appendix III, Special Management Areas are hereby incorporated as part of this agreement.
- O. That no member of or delegate to Congress, or resident commissioner shall be admitted to any share or part of this agreement, or any benefit that may arise therefrom; but this provision shall not be construed to extend to this agreement if made for a corporation for its general benefit.
- P. That amendments or supplements to this agreement may be proposed by either party. Such amendments are incorporated into this agreement and shall become effective upon approval by the signatures of the Regional Forester and the Director.

- Q. That in carrying out the terms of the agreement, there shall be no discrimination against any person because of race, religion, color, handicapped condition, sex, or national origin.
- R. That this agreement shall become effective when signed by both parties, and shall continue in force until terminated by either party thirty (30) days after written notice is received by the other.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized officials, have executed this agreement as of the last date written below.

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME



Director

9/25/95
Date

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE



Regional Forester
Pacific Southwest Region

9/5/95
Date

APPENDIX I
PLANNING AND COORDINATION

A. Meetings

Meetings between Department and Forest Service personnel should be conducted as needed at appropriate levels. However, Forest Supervisors and Regional Managers should meet at least annually to discuss specific projects and programs, such as livestock management, project funding, cooperative habitat management, five-year timber plans, proposed timber sales, fish stocking and wildlife translocations, Forest Land and Resource Management Plan standards and guidelines, threatened and endangered species management, hunting and fishing regulations, planned road closures, off-highway vehicle plans, special use permits, changes in access management, joint law enforcement activities, research proposals, and any other activities on National Forest System lands that may affect fish, wildlife, plants, or their habitats. These meetings also provide a forum to determine the types of reports, correspondence, and other information that will be shared on a regular basis. Any unresolved issues from these meetings, in addition to general agency policies, will be topics for inclusion on the agenda for the annual meeting between the Department Director and Regional Forester(s).

B. Species and Habitat Management Plans, Agreements and Technical Studies on National Forest System Lands

The Forest Service and the Department should, at the Forest Supervisor and Regional Manager/Division Chief levels, coordinate when developing and implementing species and habitat management plans, agreements, or technical studies on NFS lands.

These plans, agreements, or studies include, but are not limited to: deer herd, wild trout, goshawk and spotted owl management plans; prescribed burn plans; recreation plans; fish-stocking plans; five year fish, wildlife and botany program documents; recovery plans; and species survey and monitoring projects.

This coordination will be accomplished by ensuring, where possible, that the agency with responsibility for preparing the plan, agreement, or technical study, notifies the other agency at the earliest opportunity and solicits its comments and input. This can include, for example, joint site visits, cooperative design of mitigation measures, or joint identification of habitat restoration areas.

C. Road Closure and Access

The following procedure will be followed to coordinate road closure or other transportation plans on NFS lands:

1. Forests will coordinate with the Department in developing road closure or other transportation plans. Appropriate Department and Forest Service personnel will coordinate details at the field level.
2. The Forest Supervisors or their staffs will notify the Department of any emergency road closures at the earliest possible date. Notification will include supplying information on the location and times of the prohibition, and the reasons for closure. The Department will assist the Forest Service by providing information to the public, when requested, on which areas are open or closed.

D. Public Information

The agencies will work cooperatively to present and promote to the public fish, wildlife, plants, and environmental education programs, hunting and fishing opportunities, and wildlife and fish habitat restoration and enhancement work.

APPENDIX I - contd.

Credit shall be given to both agencies to the degree that each agency was involved in planning, funding, or implementation of the particular program. Programs, reports, posters, and displays with implications for conservation of fish, wildlife, plants, or their habitats that are presented at conferences, banquets, or public gatherings will clearly identify both agencies to the degree that each agency participated in planning, funding, or implementation of the program.

E. Resource Data Management

Both agencies will at least annually exchange resource inventory information, where appropriate, including, but not limited to, cover/habitat types, species distributions, and physical attributes.

Both agencies agree to cooperatively develop, where appropriate, standards for resource inventories of fish, wildlife, plants, and their habitats, and standards for the analysis and reporting of these data. The goal is to strive for consistency in assessment and analysis of fish, wildlife, native plants, and their habitats statewide. Both agencies will strive to implement compatible technologies to address landscape management issues. Both agencies agree to share information, where appropriate, at the earliest possible opportunity.

The Forest Service will provide new or updated species information for inclusion in the California Natural Diversity Database (CNDDDB) on an annual basis. The Department will provide, without cost, a copy of the CNDDDB on an annual basis to the Forest Service for internal use in the support of Forest Service activities. The Forest Service is responsible for distribution of copies of the CNDDDB to its field units. The Department agrees to confer with the Forest Service regarding the priorities and timetables for incorporating data provided by the Forest Service. The Department and Forest Service will pursue partnership opportunities to expedite resource data management and ensure its availability.

All requests for use of the CNDDDB that originate outside of the Forest Service will be referred to the Department for disposition.

APPENDIX II MANAGEMENT ACTIVITIES

A. Animal Damage Management

Animal damage management in this section refers to physical, mechanical, and chemical activities done directly or indirectly to the wildlife species causing the damage. This does not include protective measures applied to the vegetation, such as fencing and tubing. Animal damage management may be necessary to protect State and Federally listed threatened and endangered plant and animal species, and other fish and wildlife resources; to prevent loss or damage of property; and to protect human health or safety.

Control measures may be developed or implemented by the Animal and Plant Health Inspection Service (APHIS), the Forest Service, the Department, or other legally authorized State agencies pursuant to applicable State and Federal laws and other policies or MOUs. The Forest Service and the Department will work with other agencies including APHIS to develop an annual plan of work for animal damage control on NFS lands. For animals other than predators, the agency proposing control will notify the other agency to ensure timely review and input into environmental documentation.

B. Pesticide Treatments

Pesticides include, but are not limited to, herbicides, fungicides, nematocides, insecticides, piscicides, rodenticides, and avicides.

Pesticide use must be based on site specific analysis of effectiveness, specificity, environmental impacts, economic efficiency, and human exposure. If pesticides are used, the following guidelines shall apply:

1. Only pesticides registered or otherwise permitted in accordance with FIFRA, as amended (7 U.S.C. 136), may be used on National Forest System lands. In addition, pesticides must be registered or otherwise permitted by the State of California. Only those pesticides that most specifically meet management objectives will be used.
2. A Pesticide Use Report must be submitted to the local County Agricultural Commissioner by the 10th day of the month following the month of application. A copy of this report will also be submitted to the appropriate Forest Supervisor(s).
3. Animals removed (where applicable) shall be disposed of in a manner agreed upon by the Department and the Forest Service.
4. All pesticide proposals from the Department should be accompanied by a written pest control recommendation as per Section 12003 of the California Food and Agriculture Code. Pesticide applications will be made under the supervision of a Certified Pesticide Applicator or a Qualified Applicator Certificate holder.
5. All pesticide uses on NFS lands must be approved by the appropriate Forest Service line officer.

Applications should be restricted to those areas where control is needed. Treatments shall be designed to have minimal effects on nontarget fish, wildlife, and plant populations.

Each agency agrees to consult with the other prior to pesticide applications that potentially affect fish, wildlife, plants, and their habitats. Forest Supervisors and Regional Managers will notify each other of the intent to use pesticides. Each agency will be given the opportunity to

APPENDIX II - contd.

review and provide input to environmental documentation for proposed pesticide applications. Objections or concerns about the use of pesticides should be expressed and resolved through comments on the environmental documents.

C. Introduction, Stocking, and Translocations

The Department is the lead agency for introduction, stocking, and translocation projects. Proposed and ongoing introductions, stockings, or translocations will be planned and conducted to avoid adversely affecting the NFS resources. The intent is to reach joint agreement on these projects. Where conflicts cannot be resolved at the Forest Supervisor/Regional Manager level they will be elevated to the Regional Forester/Director level as stated in Section III D of this MOU.

The Forest Service acknowledges that fish stocking in waters on NFS lands is an appropriate activity where it is consistent with State and Federal law, Forest Land Management Plans and policies. Formal coordination and agreement on waters appropriate for stocking will occur at the Forest Supervisor/Regional Manager level. Agreement is anticipated on waters suitable for stocking where resource impacts are not a concern. Fish stocking schedules will be provided by Regional Managers to Forest Supervisors.

Upon completion of research studies, such as "Introduced Trout in Sierra Nevada Lakes: A Proposal to Study Their Distribution and Impacts on Aquatic Ecosystems," the Forest Service and the Department will jointly reassess the fish stocking program in light of the new information provided.

The Department will prepare any necessary environmental documents after requesting important issues be identified by the appropriate Forest Supervisor.

APPENDIX III
SPECIAL MANAGEMENT AREAS

A. Wilderness

Wilderness is managed pursuant to unique laws, regulations and policies and requires special operational procedures and agreements. Both agencies are committed to the International Association of Fish and Wildlife Agencies Memorandum of Understanding (IAFWA MOU) entitled, "Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management Wilderness (FS, BLM, and IAFWA - August 1986)." These guidelines serve as a framework for cooperation between the Forest Service and the Department.

Both agencies will continue to work out fish stocking agreements at the local level. Mutual agreement on waters suitable for stocking is expected if no appreciable loss of scientific values or adverse effects on wilderness resources would occur.

The Department will supply the Forest Service a list of waters within designated wilderness that were aerielly stocked before wilderness designation, including the type of aircraft that were used. Aerial stocking of these waters shall continue where there is joint agreement on the selection of species to be stocked. In other waters, (not aerielly stocked before Wilderness designation), where stocking agreements have been reached, aerial stocking can occur where other practical means are not available.

Trapping and depredation control activities in the Wilderness authorized by State law under a commercial trapping license and/or depredation permit, do not require Forest Service approval. The Forest Service can require that associated activities be consistent with Wilderness regulations and policies.

To request approval for a project within a wilderness, the Department will contact the appropriate Forest Supervisor. The Forest Supervisor will evaluate the proposal and either approve it or make a recommendation to the Regional Forester. Project proposals will be discussed with the appropriate Regional Manager or Division Chief.

Consistent with the IAFWA MOU and the above discussion, the following activities require Forest Service approval in Wilderness:

- * use of motorized equipment or mechanical transport
- * research or management surveys that may infringe on the wilderness environment (e.g. motorized equipment or structures)
- * new structures, habitat improvement projects or habitat alterations
- * wildlife transplants, including follow-up monitoring
- * aerial fish stocking
- * animal damage control
- * use of pesticides or chemical treatments

Activities that require joint decisions by the two agencies include:

- * removal of existing water-related improvements
- * decisions to prohibit spawn taking, where it was established before wilderness designation
- * fish stocking, including selection of species or stocking of barren lakes

Activities that do not require Forest Service approval, but do require coordination with the appropriate Forest Supervisor are:

- * population sampling schedules

APPENDIX III - contd

- * helicopter and fixed-wing aircraft overflights in compliance with Federal laws and regulations
- * research or management surveys that do not infringe on the wilderness environment
- * fish stocking schedules

B. Significant Natural Areas and Research Natural Areas

The Department may propose State identified Significant Natural Areas (SNA) for consideration as Special Interest Areas (SIA) or Research Natural Areas (RNA) during the Forest land management planning process. In addition, the Forest Service will consider the Department's management recommendations for fish, wildlife and plant populations occurring in designated SIAs and established RNAs.

C. Inholdings and Land Exchanges

Land acquisition or transfer of fish, wildlife, or plant habitat, will be coordinated, where appropriate, between the Forest Service and the Department. Both agencies will work cooperatively to acquire private land valuable to fish, wildlife, and plants to maintain those values. Where the Department has land adjacent to Forest Service administered land, both agencies agree to notify each other of land management activities affecting their adjacent land holdings.