

MEMORANDUM OF UNDERSTANDING AMONG
THE UNITED STATES DEPARTMENT OF THE INTERIOR, UNITED STATES FISH AND
WILDLIFE SERVICE AND NATIONAL PARK SERVICE, NORTH CASCADES
NATIONAL PARK SERVICE COMPLEX AND WHATCOM

COOPERATIVE DEVELOPMENT OF THE ENVIRONMENTAL IMPACT STATEMENT
FOR THE NORTH CASCADES ECOSYSTEM
GRIZZLY BEAR RESTORATION PLAN

This Memorandum of Understanding (MOU) is entered into jointly by the following parties: the United States Fish & Wildlife Service (FWS); National Park Service (NPS); and Whatcom County. The NPS, FWS, and Whatcom County are together referred to in this MOU as the Parties, and individually may be referred to as a Party.

The Parties understand and acknowledge that a number of steps that cooperating agencies typically participate in have already been completed (e.g., scoping, development of a range of alternatives, development and release of the draft Environmental Impact Statement (EIS)). Therefore, this MOU covers the remaining steps in the NEPA process about Whatcom County's participation as a cooperating agency.

The purpose of this MOU is to outline how the FWS and NPS, as the joint Lead Agencies under the National Environmental Policy Act (NEPA), will work with Whatcom County as a Cooperating Agency, during the steps of the NEPA process that remain to be completed for the North Cascades Ecosystem Grizzly Bear Restoration Plan and Environmental Impact Statement (plan/EIS). This MOU:

- Describes how the Parties will work together in compliance with all applicable laws, including the Endangered Species Act (ESA).
- Describes the general roles and responsibilities of each Party, as Joint Lead or Cooperating agency; and
- Provides a framework for cooperation and coordination between the Parties to successfully complete the NEPA process in a timely, efficient, and thorough manner.

ARTICLE I – BACKGROUND AND OBJECTIVES

Situated in the core of the North Cascades Ecosystem (NCE), North Cascades National Park Service Complex (NOCA) is a part of over 3.3 million contiguous acres of federally designated wilderness and designated roadless areas, and de facto wilderness in provincial parks along the international border in British Columbia, Canada. The NCE, as a whole (Washington and British Columbia), is isolated from grizzly bear populations elsewhere in the US and Canada.

Research indicates this wilderness landscape can support a self-sustaining grizzly bear population. Research also indicates the continued effects of climate change would not hinder, and may aid, a recovering population.

The FWS has determined the NCE no longer contains a population based on: (1) the amount of search effort without finding any evidence of grizzly bears or a confirmed population; (2) a limited number of grizzly bear detections in the NCE in the past few decades; and (3) the length of time since the last confirmed detection in the US, in 1996. Natural recovery in the NCE is challenged by the absence of verified reproduction, as well as isolation from any contiguous population in British Columbia, Canada, and the United States. A nationwide Grizzly Bear Recovery Plan was finalized by the FWS in 1982 and updated in 1993. The NCE recovery plan chapter was finalized in 1997.

The FWS and NPS are jointly preparing an EIS to determine how to restore grizzly bears in the NCE.

The mission of the FWS is to work with others to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

The NPS is responsible for conserving the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations (54 U.S.C. § 100101).

Whatcom County is a Cooperating Agency in this planning process and is recognized to have special expertise in the following areas relevant to the proposed action: law enforcement, social and economic conditions, recreation and tourism, county government services, and funding needs and sources. The NPS and FWS recognize that Whatcom County has knowledge and expertise relative to social and economic aspects of the county and its subdivisions in providing long-term direction for community growth and development and in county planning, resources, economic growth and development, recreation, and other county matters which may be affected by the proposed action. Additionally, the NPS, FWS, and Whatcom County have obligations to the public in maintaining the quality of the human environment, regional economy, sustainability of local communities, public health, and regional resource base.

ARTICLE II – LEGISLATIVE AUTHORITY

- A. **U.S. Fish and Wildlife Service:** This MOU is entered into under the provision of the following laws and authorities available to the FWS:
 - Endangered Species Act, as amended (16 U.S.C. § 1531 et. seq.)
 - Fish and Wildlife Coordination Act (16 U.S.C. § 661)
 - Fish and Wildlife Conservation Act of 1980, as amended (16 U.S.C. §§ 2901-2912)
 - Fish and Wildlife Act of 1956, as amended (16 U.S.C. § 742a et. seq.)
 - National Environmental Policy Act, as amended (42 U.S.C. § 4321 et. seq.)

- B. **National Park Service:** This MOU is entered into pursuant to the National Park Service Organic Act, as amended (54 U.S.C. § 100101 et seq.), and the National Environmental Policy Act, as amended (42 U.S.C. § 4321 et. seq.).

- C. **Whatcom County:** This MOU is entered into pursuant to the aforementioned

Federal Acts and Whatcom County Charter Article 1, Section 1.20 and Article 3, Section 3.22(h).

ARTICLE III – ROLES AND RESPONSIBILITIES

The Parties agree to the following regarding their roles and responsibilities:

A. The FWS and NPS will:

1. Serve as Joint Lead Agencies under NEPA in developing the plan/EIS, in accordance with 40 CFR § 1501.7(b) (2022).
2. Prepare the internal and public review versions of the draft and final EISs and be responsible for the quality and content of these documents. NPS and FWS will, in their sole discretion, identify a preferred alternative in the EIS.
3. Develop a reasonable range of alternatives, including a proposed action; and identify the potential direct, indirect, and cumulative impacts of the proposed action and alternatives and potential mitigation for those impacts.
4. Seek meaningful input from Whatcom County regarding impacts related to issues that may involve Whatcom County resources and/or for which Whatcom County has special expertise.
5. Consider and use the environmental analyses and proposals of Whatcom County to the extent practicable consistent with NPS' and FWS' responsibilities as Joint Lead Agencies.
6. Incorporate in the final EIS, to the extent practicable, the comments, recommendations, and data submitted by the Whatcom County within its particular area of expertise. If such input is not incorporated, the NPS and FWS will discuss the reasons with Whatcom County.
7. Share substantive public comments received on the draft plan/EIS and coordinate appropriate responses relating to cooperating agency area of expertise and jurisdiction.
8. Select an alternative for implementation, in their sole discretion, in the Record of Decision (ROD).
9. Ensure other requirements related to NPS and FWS actions are met (Endangered Species Act, Wilderness Act, etc.) and obtain the input of the Whatcom County in meeting these requirements as appropriate.
10. Keep Whatcom County informed about the timeframes for the NEPA process, primarily by phone or email.
11. Hold joint meetings or conference calls with Whatcom County as deemed

necessary by NPS and FWS, or if requested by Whatcom County.

12. Identify Whatcom County as a Cooperating Agency and acknowledge its role and responsibility in the EIS.
13. Hereby designate one person for each agency listed in Article IV (Key Officials) as NPS' and FWS' Joint Lead Agency Representatives for purposes of implementing the terms of this MOU. The Joint Lead Agency Representatives shall be responsible for ensuring that the terms of this MOU are followed by the Joint Lead Agency's employees, consultants, and contractors.
14. Provide reasonable notice of meeting dates and review periods for Cooperating Agencies to effectively participate.

B. Whatcom County will:

1. Serve as a Cooperating Agency and assist the FWS and NPS, providing input, as requested, into development of the final EIS, in accordance with 40 CFR § 1501.8.
2. Provide technical input into those areas for which the County has special expertise, by evaluating the potential alternatives, impacts, and mitigation effectiveness in the plan/EIS.
3. Cooperate and assist in the preparation of the final EIS. This will be accomplished primarily through information exchange and participation in teleconference or face- to-face team meetings regarding the NEPA document.
4. Identify issues to be addressed in the final EIS; provide necessary resource, environmental, social, economic, and institutional data; and assist in developing and evaluating alternatives.
5. Provide necessary information to be included in the decision file for the preparation of the NEPA document.
6. If appropriate, and within their special expertise, provide written evaluations of the effects of implementing each alternative; and carry out any other tasks necessary for the refinement of the environmental analysis and documentation.
7. As appropriate, as determined by the lead agencies, review portions of internal draft text of the final EIS and provide comments that are within the County's area of expertise. The cooperating agencies will provide comments on drafts within timelines requested by NPS/FWS to meet the schedule of publication of the final EIS and Record of Decision in early spring 2024.

8. Hereby designate the persons listed in Article IV (Key Officials) as the respective Cooperating Agency's Representative. The Cooperating Agency's Representatives shall be responsible for implementing the terms of this MOU and ensuring their respective agency's employees and consultants follow the terms of this MOU. The Cooperating Agency's Representatives, or their designees, will attend meetings and workshops (if any), and serve as the point of contact for the exchange of materials and documents, including distributing information or documents within his or her agency as needed, and consistent with Article III, B.10 (the confidentiality provisions).
9. Maintain the confidentiality of all documents and deliberations, prior to the public release by NPS and FWS of any NEPA document, including drafts, to the extent allowable by law. Whatcom County may disclose such materials to its officers and employees, provided such persons agree to keep the information confidential and not share or disclose the information unless required by law. Whatcom County acknowledges that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act (FOIA) and other Federal statutes. The NPS and FWS acknowledge that Whatcom County's handling of these materials may be impacted by the Washington public records laws. The Parties agree that the NPS and FWS retain the discretion to withhold under FOIA, and at their discretion may withhold from Whatcom County, those documents that would otherwise be available for public release under the Washington public records laws.

C. The Parties agree:

1. To participate in the planning process for the final EIS in good faith and make every effort to resolve areas of conflict. The agencies agree to fully explore issues before coming to conclusions, and to commit to searching for opportunities for resolution in order to contribute to an effective planning process.
2. Not to employ the services of any contractor having a potential conflict of interest, including a financial interest in the outcome of the NEPA document, in implementing the terms of this MOU, including providing expertise and analyses, as requested by the lead agencies, for the EIS, to the extent allowed by law. The Parties will take all reasonably necessary steps to ensure that no conflict of interest exists with any consultants, counsel, or representatives they may employ.
3. That the cooperation of the Parties under this MOU does not transfer any jurisdictional roles or responsibilities.
4. That implementation of specific actions tendered under this MOU is

contingent upon availability of funds and staff.

5. That the Parties may enter into subsequent separate agreements under specific authorities that allow for transfer and receipt of funding.

ARTICLE IV – KEY OFFICIALS

- A. Key officials are essential to ensure maximum coordination and communications between the Parties and the work being performed. They are:

1. For NPS:
Signatory/Administrative
Randy Lavasseur
Acting Regional Director
National Park Service
Interior Regions 8, 9, 10, and 12
555 Battery Street, Suite 122
San Francisco, CA 94111
Telephone: 415-623-2100

Joint Lead Agency Representative
Don Striker
Superintendent
North Cascades National Park Service
Complex
810 State Route 20
Sedro-Woolley, WA 98284
Telephone: 360-854-7205
2. For FWS:
Signatory/Administrative
Brad Thompson
State Supervisor
500 Desmond Drive Southeast
Lacey, WA 98503-1273
Telephone: 360-790-8187

Joint Lead Agency Representative
Ann Froschauer
Assistant Regional Director,
Ecological Services
500 Desmond Drive Southeast
Lacey, WA 98503-1273
Telephone: 360-561-2018

3. For Whatcom County:
Signatory
Satpal Sidhu
Whatcom County Executive
311 Grand Ave.
Bellingham, WA 98225
Phone: _____

Agency Representative
Ben Elenbaas
Whatcom County Councilmember
311 Grand Ave.
Bellingham, WA 98225
Phone: _____

B. **Communications:** Whatcom County will address any formal communication with their Agency letterhead regarding this MOU to the Joint Lead Agency Representatives with a copy to the NPS Regional Director and the FWS State Supervisor. All other communications that relate solely to routine matters described in this MOU may be sent only to the Joint Lead Agency Representatives. The FWS and NPS will address any communication regarding this MOU to the Cooperating Agency Representative Ben Elebaas with a copy to signatory Satpal Sidhu. Communications that relate solely to routine matters described in this MOU may be sent only to the Cooperating Agency Representative(s).

C. **Changes in Key Officials:** A Party shall provide advance written notice of a change in a key official.

ARTICLE V – LIABILITY

- A. Nothing in this MOU shall make or be deemed to make any Party to this MOU the agent for or the partner of any other Party.
- B. This MOU is intended to enhance the working relationship between the Parties by outlining the roles, responsibilities, and objectives of each Party in order to develop the plan/EIS. It is not intended to and does not create any third-party rights or benefits, substantive or procedural, enforceable at law or equity against the United States or the State of Washington, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

ARTICLE VI – ACCESS TO RECORDS

- A. The Parties agree to keep and maintain records concerning the NEPA process and

this MOU and afford another Party access to such records pursuant to a written request to the extent allowed by applicable law. The Parties recognize the records maintained and exchanged pursuant to the NEPA process and this MOU may be disclosed to the public pursuant to the Freedom of Information Act and/or Washington's Public Records Act.

- B. The FWS and NPS, will give the Whatcom County the right to examine any records related to the NEPA process and this MOU that otherwise would be available to Whatcom County under the Freedom of Information Act, 5 U.S.C. §552.
- C. The Parties will inform each other before disclosing any document required by law (including the Washington Public Records Act).

ARTICLE VII – STANDARD CLAUSES

- A. **Participation in Similar Activities:** This MOU in no way restricts any of the parties from participating in similar activities with other public or private agencies, organizations, and individuals.
- B. **Members of U.S. Congress:** 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 MOU, or benefits that may arise therefrom, either directly or indirectly.
- C. **Anti-Deficiency Act:** 31 U.S.C. § 1341 - Nothing contained in this MOU shall be construed as binding the NPS or FWS to expend in any one fiscal year any sum in excess of appropriations made by Congress for the purposes of this MOU for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
- D. **Non-Fund Obligating Document:** This MOU is neither a fiscal nor a funds obligating document. Any endeavor involving reimbursement, contribution of funds, or transfer of anything of value between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for government procurement and printing, subject to available funding.

ARTICLE VIII – MODIFICATION AND TERMINATION

- A. This MOU may be modified only by a written instrument executed by the Parties.
- B. This MOU shall terminate upon issuance of the ROD by the NPS and FWS, or, if no ROD is issued, this MOU shall terminate upon the Department of the Interior publishing a Federal Register notice announcing the termination of the EIS process, unless terminated earlier. Any Party may terminate this MOU earlier by providing the other Parties with 30 days advance written notice. In the event one Party provides the other Parties with notice of its intention to terminate, the Parties will meet promptly to discuss the reasons for the notice and to try to resolve their differences. Notwithstanding any

other provision of this MOU, if termination occurs prior to the issuance of the ROD, all parties will remain accountable, to the extent allowed by Federal and State law, to the confidentiality of all documents.

- C. Any Cooperating Agency may withdraw from the MOU with 30 days advance written notice to the FWS and NPS. If the Cooperating Agency withdraws from this MOU, it will no longer be considered a Cooperating Agency for the purposes of the plan/EIS. Upon withdrawal, the party will remain accountable, to the extent allowed by Federal and State law, to the confidentiality of all documents.

ARTICLE IX – SIGNATURES

Randy Lavasseur

Acting Regional Director, Interior Regions 8, 9, 10, and 12, National Park Service

Brad Thompson

State Supervisor, U.S. Fish and Wildlife Service

Satpal Sidhu

Whatcom County Executive, Signatory

Ben Elenbaas

Whatcom County Councilmember, Representative