

From: [Kathleen Rapley](#)
To: [Hilary Cooley](#)
Subject: Section 6 Cooperative Agreement with IDFG
Date: 02/06/2012 02:10 PM
Attachments: [IDFG and Service 2003 sect 6 Cooperative Agreement.pdf](#)



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United States Department of the Interior

SEP 22 2003

FISH AND WILDLIFE SERVICE

911 NE. 11th Avenue

Portland, Oregon 97232-4181

IN REPLY REFER TO:
AES/Recovery

SEP 17 2003

Steve Huffaker, Director
Idaho Department of Fish and Game
P.O. Box 25
Boise, Idaho 83707

Dear Director Huffaker,

I am pleased to transmit with this letter, the Cooperative Agreement between the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service pursuant to the Endangered Species Agreement. I have signed two copies that were previously signed by you, and am returning one copy for your files.

We welcome your agency's assistance in the gray wolf recovery program in the State of Idaho. As we have discussed with your staff, the take authority in section X(2)(c) of the enclosed cooperative agreement does not apply for gray wolves, as our regulations, (50 CFR 17.31(c)) specify that whenever a 4(d) or 10(j) rule is in effect for a threatened species, as is the case for gray wolves in Idaho, the section 6 cooperative agreement take authority no longer applies. Both the 4(d) and 10(j) rules for gray wolves contain provisions for designating or authorizing the State as our agents, and we look forward to working with you and your staff to accomplish this in the future. We appreciate Idaho's leadership on wolf recovery issues, and look forward to continuing our cooperative efforts.

We also look forward to continuing our successful cooperative efforts for the conservation and recovery of other threatened or endangered species in Idaho.

Sincerely,

Regional Director

Enclosures

Type of Organization (Recipient)

☐ Grant
☒ Cooperative Agreement
☐ Private Lands
☐ Challenge Cost Share
☐ Inter-Agency
☐ Intra-Agency

☒ State, Local, Indian Gov.
☐ Non-Profit Organization
☐ Higher Education Inst.
☐ Private Individual
☐ Business Organization
☐ Federal Agency

I. PARTICIPANTS

Funding Organization:

U.S. Fish and Wildlife Service
Federal Aid Division
911 N.E. 11th Avenue
Portland, Oregon 97232

Cooperating Organization:

Idaho Department of Fish and Game
P.O. Box 26
600 S. Walnut Street
Boise, Idaho 83702

II. PROJECT OFFICERS

Fish and Wildlife Service:

Name: Rachel Miller
Phone: 503-231-6739

Cooperator:

Name: Steve Huffaker, Director
Phone: 208-334-3700

III. PURPOSE/OBJECTIVES

To provide a mechanism for the Idaho Department of Fish and Game (IDFG) to receive monies through the USFWS Federal Aid Program for implementation of projects assigned to the benefit trust fish, wildlife, and plant resources in the State of Idaho.

IV. AUTHORITY

Endangered Species Act of 1973
31 U.S.C. 6301-6308, Federal Grant and Cooperative Agreement Act of 1977
16 U.S.C. 661-666, Fish and Wildlife Coordination Act

V. FUNDING INFORMATION

Funding is subject to change annually depending on the amount of Section 6 funds allocated to Region 1 and the relative priority of the competitive grant proposals submitted by the agencies eligible to receive funds.

VI. TERMS OF THE AGREEMENT

This agreement will be in effect from the date of signature of all parties.

VII. MODIFICATION PROCEDURES

By mutual agreement, the parties may modify this Agreement. The Cooperator shall submit a request in writing stating the reasons and any supporting documentation for the change. The modification is not approved until the USFWS and the Cooperator agree to the modification in writing. Any work completed prior to the approval of a written modification is done at the

Cooperator's risk, without expectation of reimbursement.

VIII. TERMINATION

This Agreement may be terminated:

1. By mutual agreement;
 2. By IDFG upon 60 day written notice to the USFWS; or
- Notwithstanding the renewal provisions of this Cooperative Agreement, by the USFWS upon 60 days written notice to the signatory party for the State of Idaho, stating that the State's Endangered and Threatened (plant, wildlife, etc.) conservation program is no longer in compliance with the criteria of section 6(c) of the Act or that the State has violated a provision of this Agreement. IDFG may submit a written request for review to the USFWS, within 30 days of receipt of the termination notice. The USFWS will consider all evidence submitted by IDFG in its request for review and either reaffirm the conclusion of the USFWS, and terminate this Agreement at the end of the 60-day notification period, or reverse the conclusion of the USFWS, and revoke the notice of termination. All Federal funds which have been obligated to but not expended by IDFG as of the date of the termination notice shall be retained by the USFWS for reallocation pursuant to section 6(d) of the Act, unless:

- a. Those funds are specifically approved by the USFWS, for expenditure before the date of actual termination; or
- b. The notice of termination is revoked by the USFWS.

IX. BACKGROUND INFORMATION

COOPERATIVE AGREEMENT BETWEEN STATE OF IDAHO, DEPARTMENT OF FISH AND GAME AND THE U.S. FISH AND WILDLIFE SERVICE

Endangered and Threatened Fish, Wildlife and Plants

A. This Cooperative Agreement is entered into pursuant to Section 6(c) of the Endangered Species Act of 1973, as amended, See 16 U.S.C. § 1535-et seq. (hereinafter referred to as "the Act"), and § 36-104 and §18-3913 Idaho Code, between the U.S. Fish and Wildlife Service, U.S. Department of the Interior, and the Department Fish and Game, State of Idaho. Hereinafter, the parties shall be referred to as USFWS and IDFG, respectively.

B. WHEREAS, the Congress of the United States has found that there are resident species of fish, wildlife and plants which are in danger of extinction and that these species of fish, wildlife and plants are of aesthetic, ecological, educational, scientific, economic, and other value to the Nation and its people;

C. WHEREAS, the purposes of the Act are to provide a means whereby the ecosystems upon which endangered and threatened fish, wildlife and plants depend may be conserved, to provide a program for the conservation of such species, and to take such steps as may be appropriate to achieve the purposes of the various treaties and conventions related to the conservation of fish, wildlife and plants;

D. WHEREAS, the Congress of the United States has declared that encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards as expressed in the said Endangered Species Act is a key to meeting the Nation's international commitments and to better safeguard, for the benefit of all citizens, the Nation's heritage in its fish,

wildlife and plants;

E. WHEREAS, THE Secretary of the Interior has delegated his/her responsibilities under the Act to the USFWS;

F. WHEREAS, the USFWS, desires to enter into this Cooperative Agreement for the purpose of assisting in the implementation of the endangered and threatened fish, wildlife, and plant conservation program of the IDFG for those species under his/her jurisdiction;

G. WHEREAS, the State of Idaho, acting through the Department of Fish and Game, wishes to administer its program for the conservation of endangered and threatened fish, wildlife and plants in harmony with the terms and spirit of the Act;

H. WHEREAS, the parties agree that programs of the IDFG are designed to assist in the conservation and recovery of resident endangered and threatened fish, wildlife and plants, and that it is the mutual desire of the IDFG and the USFWS to work in harmony for the common purposes of planning, developing and conducting programs to protect and enhance populations of all resident endangered and threatened fish, wildlife and plants within the State of Idaho;

I. WHEREAS, the USFWS Director has the statutory and administrative responsibility to establish programs for the conservation of endangered and threatened fish, wildlife and plants which are under his/her jurisdiction; to provide periodic review of the IDFG's program at no greater than annual intervals; to provide funding to that program as such funding is available and in accordance with the terms of the Act; to provide coordination among the programs of the various Agencies and; to exchange with the IDFG such biological data or other information which may result in the enhancement and recovery of endangered and threatened fish, wildlife and plants;

J. WHEREAS, the IDFG has a statutory responsibility to conserve endangered and threatened fish, wildlife and plants which are resident in the State of Idaho. Resident fish and wildlife species is defined for purposes of this Act in 50 CFR Part 81 and plant species as included in the term "species" under amended definitions; and

K. WHEREAS, the IDFG (a) has the authority to conserve resident fish or wildlife and plants determined by the IDFG or the Secretary to be endangered and threatened; (b) has established an acceptable conservation program, consistent with the purposes and policies of the Act, for all resident fish, wildlife and plants in the State of Idaho which are deemed by the Secretary to be endangered and threatened and has furnished a copy of such a program together with all pertinent details, information, and data requested by the Secretary; (c) has the authority to conduct investigations to determine the status and requirements for survival of resident fish, wildlife and plants; (d) has the authority to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered and threatened fish, wildlife and plants; and (e) has provided for public participation in designating resident fish, wildlife and plants as endangered and threatened;

X. SPECIFIC OBLIGATIONS OF EACH PARTY

Now therefore the parties agree as follows:

1. Conservation Program:

a.. The IDFG will carry out the activities identified in its program for the benefit of the endangered and threatened fish, wildlife and plants which are resident. The conservation program includes using all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as

research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking. In addition to these activities, the IDFG conservation program provides for: inventory and monitoring of the abundance and distribution of Federally listed species and those species in danger of being listed, determining the life history and habitat requirements of those species, assessing the conservation status of those species and the habitats and ecosystems that support them, maintaining records of the aforementioned programs and distributing that information to interested and affected publics, and in cooperation with land owners, land managers, public and private entities developing conservation plans to ensure the recovery of Federally listed species and the long-term persistence of those species in danger of being listed; and

b. The USFWS may agree to provide the State of Idaho with financial assistance for the implementation of acceptable projects for the conservation of endangered and threatened fish, wildlife and plants. Such financial assistance will require the submission of an application for Federal Assistance and the successful negotiation of a Grant Agreement. These will comply with the Secretary's Rules and Regulations, 50 CFR Part 81, and the Service Federal Aid Handbook.

c. As a part of this cooperative program, the law enforcement authorities of the USFWS and the IDFG shall cooperate in the detection, apprehension, and prosecution of violators of the Act or State of Idaho law intended to conserve endangered and threatened fish, wildlife and plants.

d. As additional species of resident fish or wildlife and plants in the State of Idaho are listed as endangered or threatened by the Service, the parties agree to cooperate in the development of programs and projects for the benefit of such species.

e. It is understood that any Federal funding pursuant to Section 6(d) of the Act is contingent on the continued implementation of an adequate and active program for the conservation of Federally listed endangered and threatened fish, wildlife and plants that are resident in the State of Idaho as defined in 50 CFR Part 81. If the program for the conservation of such fish, wildlife or plants is determined by the USFWS to be inadequate or inactive, this Agreement and funding shall be terminated in accordance with Sections 5 and 7 of this Agreement.

f. As part of the listing process pursuant to Section 4 of the Act for the determination of endangered and threatened fish, wildlife and plants, and of critical habitat for Federally listed endangered or threatened species, the parties agree to exchange biological and other data as necessary to facilitate such determination by the USFWS.

g. As part of the interagency cooperation and consultation process provided for by section 7 of the Act, the parties agree to exchange data and information, as appropriate, during their respective consultation processes.

2. Permits:

a. General rule:

The IDFG agrees not to engage in, or issue a permit authorizing the taking of resident Federally listed endangered or threatened fish, wildlife or plants as defined in 50 CFR Part 81, without prior issuance of a permit to the applicant by the USFWS except as authorized in subsection 2(b), (c), of this Agreement, pursuant to a special rule in 50 CFR § 17.21.

b. Taking Endangered Species:

Any qualified employee or agent (contractor to the IDFG for implementation of specific recovery actions) of the IDFG who is designated by that Agency for such purposes, may, when acting in the course of his/her official duties, take any resident Federally listed endangered fish, wildlife or plant for conservation purposes in accordance with this Cooperative Agreement, any approved Application for Federal Assistance attached thereto, or any recovery recommendation in a recovery plan, provided that such taking is not reasonably anticipated to result in:

- (1) the death or permanent disabling of the specimen;
- (2) the removal of the specimen from the State of Idaho;
- (3) the introduction of the specimen or any of its progeny into an area beyond the historical range of the species; or
- (4) the holding of the specimen in captivity for a period of more than 45 consecutive days in the case of animals; and
- (5) that the authority conveyed to the IDFG by this subsection may, at any time, be temporarily suspended for a particular project or that part of the conservation program by written notification from the USFWS Regional Director, upon his/her receipt and determination that there is substantial evidence demonstrating the IDFG is using this authority for purposes inconsistent with the purposes of the Act. Such suspension will not be imposed until after consultation between the Regional Director and the IDFG. Upon notification of the temporary suspension and the reasons therefore, the IDFG may request from the USFWS Director, an opportunity to demonstrate compliance with the purposes of the Act. The Director shall promptly consider the evidence so submitted and either reaffirms the conclusion of the Regional Director, and revoke the authority temporarily suspended pursuant to this subsection, or reverse the conclusion of the Regional Director, and reinstate the authority temporarily suspended.

c. Taking of Threatened Species:

Any employee or agent of the IDFG who is designated by that Agency for such purposes, may, when acting in the course of his/her official duties, take those threatened species of wildlife that are covered by this cooperative agreement to carry out conservation programs.

d. Emergency Situations:

Any employee or agent of the IDFG who is designated by that Agency for such purposes may, when acting in the course of his/her official duties, take Federally listed endangered and threatened fish, wildlife or plants without a permit if such action is necessary to:

- (1) aid a sick, injured, or orphaned specimen; or
- (2) dispose of a dead specimen; or
- (3) salvage a plant or dead animal specimen which may be useful for scientific study; or
- (4) remove specimens which constitute a demonstrable, but non-immediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring animals only if it has not been reasonably possible to eliminate such threat by live capturing and releasing the specimen unharmed in a remote area; or
- (5) defend his/her own life or the lives of others.

Any taking pursuant to this subsection 2(c) must be reported in writing within 5 days to the USFWS Regional Director, for transmission to the Division of Law Enforcement in Washington, D.C. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the USFWS.

3. Records:

The IDFG agrees to maintain records of:

- a. the Federally funded projects for the conservation of endangered and threatened fish, wildlife or plants in accordance with Chapters 1 and 2 of the USFWS Federal Aid Handbook; and
- b. the number of specimens of each species of Federally listed endangered and threatened fish, wildlife or plants taken by IDFG employees or agents pursuant to 50 CFR § 17.21(c)(5) and §17.31(b) as amended (Px.2.b-c of the Agreement), the conservation purposes for which they were taken, and any mortalities or permanently disabling injuries resulting from the taking.

4. Notification:

The IDFG agrees to inform the USFWS of any change in circumstances that could cause the program to be in nonconformance with the requirements of Section 6(c) of the Act. Included without limitation are changes in the IDFG's relevant constitutional, statutory, or regulatory authority. The IDFG shall promptly furnish the USFWS with an assessment of the effect of such a change on their ability to remain in compliance with the requirements of Section 6(c) of the Act. The USFWS Director agrees to notify the IDFG of all regulations and rulemakings made pursuant to the provisions of the Act, that might affect the IDFG program.

XI. REPORTING

1. Effective Date and Renewal:

This Agreement shall become effective when signed by the USFWS Regional Director, and the Director of Idaho's Department of Fish and Game, and may be renewed in the following manner: Not later than June 30th of each year the IDFG shall submit to the USFWS Regional Director, the following items:

- a. additions and/or deletions to the Federal and State of Idaho lists of endangered and threatened fish, wildlife or plants which are resident in the State of Idaho;
- b. a Memorandum of Law analyzing any changes in the IDFG's statutory authority for endangered and threatened fish, wildlife or plants which were made since the date of the previous program submission. This Memorandum shall also analyze the application of State of Idaho law to any resident fish, wildlife or plant species that have been added to the Federal endangered and threatened species list since the date of the previous program submission;
- c. a list of any substantial changes in the State of Idaho's endangered and threatened fish, wildlife or plant conservation programs since the date of the previous program submission;
- d. a detailed description of the number of specimens of each species of Federally listed endangered and threatened species taken by IDFG employees or agents pursuant to 50 CFR §17.21(c)(5) and §17.3(b) as amended, the conservation purposes for which they were taken, and any mortalities or permanently disabling injuries to them resulting from the taking; and
- e. copies of such reports the IDFG has prepared since the previous program accomplishments for resident, Federally listed endangered and threatened species.

2. The USFWS will either (1) before October 1st of each year, notify the IDFG in writing that the Cooperative Agreement is renewed effective October 1st of the next fiscal year or, (2) by approving an active Grant Agreement for the next fiscal year demonstrate a continuing valid Cooperative Agreement. If after USFWS review of the material submitted in PXI(1) of this Agreement it is determined that the IDFG endangered and threatened fish, wildlife and plant

conservation program or authorities are not in compliance with the criteria of Section 6(c) of the Act, the USFWS shall notify IDFG in writing that unless appropriate changes are made by June 30th of the following year, this Agreement shall be terminated.

XII. APPLICABLE REGULATIONS

1. General Provisions

- a. The recipient must submit with this agreement Standard form 424B (or 424D), Assurances - Construction (Non-Construction). In addition to the assurances listed of SF242 B (or D), the recipient certifies compliance with the following regulations, as applicable, incorporated by reference with the same force and effect as if they were provided in full text. Failure of a recipient to comply with any provision may be the basis for withholding payments for proper charges made by the recipient and for termination of support.

OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments as codified at 43 CFR Part 12, Subpart C

OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations as codified at 42 CFR Part 12, Subpart F

OMB Circular A-21, Cost Principles for Educational Institutions

OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments

OMB Circular A-122, Cost Principles for Non-Profit Organizations

OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations
43 CFR Part 12, Subpart D – Government-wide Debarment and Suspension (Non-procurement)
and Government-wide Requirements for Drug Free Workplace

43 CFR Part 12, Subpart E - Buy American Requirements for Assistance Programs

43 CFR Part 18 - New Restrictions on Lobbying

{Copies of the above documents are available at the following websites:
<http://www.whitehouse.gov/OMB/circulars/index.html> or www.doi.gov/pam/pamfaeg.html

2. Small Business Policy

Reference 505 DM 3.5 C(1)(a):

It is National policy to award a fair share of contracts to small and minority business firms. The Department of Interior is strongly committed to the objectives of this policy and encourages all recipients of its grants and cooperative agreements to take affirmative steps to ensure such fairness.

- (a) The grantee and subgrantee shall take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps shall include:
 - (i) Placing qualified small and minority businesses and women's enterprises on solicitation lists;
 - (ii) Assuring that small and minority businesses and women's enterprises are solicited whenever they are potential sources;
 - (iii) Dividing total requirements, when economically feasible into smaller tasks or quantities to permit

- (iv) maximum participation by small and minority businesses and women's enterprises;
- (v) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's enterprises;
- (vi) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce as appropriate; and
- (vii) Requiring the prime contractor, if subcontractors are to be let, to take the affirmative steps listed in (2)(i) through (v) above.

3. Payment via Electronic Funds Transfer

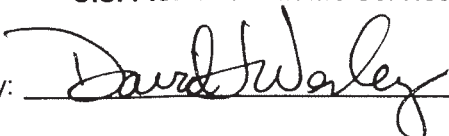
In accordance with the Debt Collection Improvement Act of 1996, recipients of Federal government funds will receive those payments via electronic funds transfer.

XIII. SPECIAL PROVISIONS

Nothing herein shall be considered as obligating the USFWS to expend funds or otherwise obligate the USFWS for the future payment of money in excess of appropriations authorized by law and administratively allocated for the activities associated with the USFWS.

XIV. SIGNATURE BLOCKS

U.S. Fish and Wildlife Service

By:  Date: 9/17/03

Title: Acting Regional Director

Idaho Department of Fish and Game

By:  Date: 8-28-03

Title:

CGS CONTRACT SUFFICIENCY REVIEW:

By: _____ Date:

Title: