



MEMORANDUM OF UNDERSTANDING
Between the
Wyoming Game and Fish Commission
And the
Forest Service, USDA
On
FISH, WILDLIFE, AND HABITAT MANAGEMENT
WITHIN NATIONAL FOREST WILDERNESS IN WYOMING

May 7, 2010

**MEMORANDUM OF UNDERSTANDING
FOR FISH, WILDLIFE AND HABITAT MANAGEMENT
WITHIN NATIONAL FOREST WILDERNESS IN WYOMING**

BETWEEN

The Wyoming Game and Fish Commission

And

Forest Service, United States Department of Agriculture
Rocky Mountain Region

And

Intermountain Region

THIS MEMORANDUM OF UNDERSTANDING is hereby made and entered into by and between the Wyoming Game and Fish Commission (hereinafter “Wyoming Game and Fish), and the US Forest Service (hereinafter the “Forest Service”).

A. BACKGROUND AND PURPOSE

In June 2006, the Association of Fish and Wildlife Agencies (AFWA), the Forest Service and Bureau of Land Management (BLM) signed a revised agreement establishing policies and guidelines for cooperative management of fish and wildlife in Congressionally designated wilderness areas. (See **ATTACHMENT A – “Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management Wilderness”**, amended 2006, hereinafter “AFWA Agreement”)

The AFWA agreement recognizes the importance of coordination and communication between individual States and the Forest Service and encourages the agencies to establish State-specific agreements. In the spirit of this direction, this Memorandum of Understanding (MOU) between Wyoming Game and Fish and the Forest Service’s Intermountain (R4) and Rocky Mountain (R2) Regions is developed. Though the agencies have different authorities and responsibilities, the fish, wildlife and habitat resources will benefit through a cooperative approach to management. The AFWA Agreement and this MOU are intended to serve as a framework for enhanced cooperation between the Wyoming Game and Fish Department and the Forest Service Regions 2 and 4 in the management of fish, wildlife and habitat on Forest Service-administered wilderness areas in Wyoming.

This MOU represents our collective vision and shared practices to implement the AFWA Agreement and to improve communication and joint activities between our agencies within wilderness areas on National Forests in Wyoming.

B. RELATIONSHIP TO THE WILDERNESS ACT

The 1964 Wilderness Act defines wilderness, describes the purpose for wilderness, and directs the land management agencies to protect wilderness character in Congressionally designated areas. This MOU is consistent with the provisions of the Wilderness Act of 1964 while recognizing Wyoming Game and Fish’s jurisdiction and responsibilities to manage fish and wildlife populations.

Paraphrasing from the Act:

The purpose of Wilderness is: “In order to assure that an increasing population...does not occupy and modify all areas...leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” [Section 2 (a)]

The Act defines Wilderness as: “A wilderness, in contrast with those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain.”

Wilderness is further defined as an area ... “which is protected and managed so as to preserve its natural conditions and which ... generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable....” [Section 2 (c)].

Further, the Act defines the purposes of wilderness in Section 4 and specifically states that, “Except as otherwise provided in this Act, each agency administering any area designated as wilderness shall be responsible for preserving the wilderness character of the area.....”. [Section 4 (b)]

Section 4(c) of the Wilderness Act states: “Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area.”

Though the Wilderness Act does not specifically define wilderness character, the agencies have determined that wilderness character may be defined by the four statutory qualities of wilderness: untrammelled, natural, undeveloped and solitude or a primitive and unconfined type of recreation. These qualities are defined in **ATTACHMENT C – National Environmental Policy Act (NEPA) Requirements**. When projects are proposed in wilderness, effects to these four wilderness qualities will be assessed and disclosed, and project design criteria [mitigation measures], if necessary, will be mutually identified by the Forest Service and the Wyoming Game and Fish Department.

It is important to note that the Wilderness Act also specifically acknowledges the role the States have in management of fish and wildlife. Section 4(d)(7) of the Wilderness Act provides that "nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish in the national forests."

The Forest Service and Wyoming Game and Fish acknowledge that each agency has important management responsibilities relating to fish and wildlife resources in wilderness and will endeavor to work cooperatively to fulfill these responsibilities.

C. AUTHORITY:

This MOU is authorized pursuant to the Organic Act of 1897, 16 U.S.C. §551; Multiple Use, Sustained Yield Act, 16 U.S.C. §§528-531; Forest and Renewable Resource Planning Act of 1974, as amended by the National Forest Management Act of 1976, 16 U.S.C. §§1601-1614; see also 23 U.S.C. 201, 205, Administrative Procedure Act 5 U.S.C. §553, 7 C.F.R. §1.28; 40 C.F.R. Parts 1500-1508; and Forest Service Handbook 1909.15. The Wyoming Game and Fish is authorized to enter into this MOU by Wyoming Statute 23-1-302.

This MOU is created in harmony and complementary to the current Master MOU between the Forest Service and Wyoming Game and Fish for wildlife and fish on the National Forests in Wyoming dated December 11, 2000 and will be complementary to any future revisions of the Master MOU. (The 2000 MOU supercedes the Master MOU dated 1977.)

D. STATEMENT OF MUTUAL INTERESTS AND BENEFITS

The Wyoming Game and Fish is responsible for the conservation and management of fish and wildlife populations throughout the state. Many species of fish and wildlife travel between private and public lands, including Wilderness, at least on a seasonal basis, which adds to the complexity of fish and wildlife management.

The Forest Service is responsible for the management of National Forest System (NFS) lands for a variety of uses and activities including wilderness stewardship and protection and the management of fish and wildlife habitat. The Forest Service administers 3.1 million acres of Federally designated wilderness areas in Wyoming in accordance with the Wilderness Act, including supporting the State's fish and wildlife objectives, to the extent such objectives are consistent with the Wilderness Act.

Both agencies acknowledge each other's interests and agree that it is to the benefit of the resource to work collaboratively to manage the fish and wildlife resources and their habitat in a manner that is compatible with the purpose and definition of Wilderness, including the preservation of wilderness character.

All parties involved will benefit through increased communication, sharing of information, participation, cooperation, and coordination in implementing their respective missions to conserve and enhance fish and wildlife that resides or uses habitat within Wyoming's National Forest wilderness areas.

E. THE FOREST SERVICE AND WYOMING GAME AND FISH SHALL:

1. Recognize that angling, hunting, trapping, wildlife viewing, and recreational boating (non-motorized) are all legitimate activities in wilderness. Management actions related to these activities will be planned and implemented in conformance with the Wilderness Act and other applicable state and federal laws. Fish and wildlife management activities will emphasize the

conservation of natural processes, to the greatest extent possible. Management activities will be guided by the principle of doing only the minimum necessary to conserve and, if necessary, enhance fish and wildlife resources, and to manage the area as wilderness.

2. Recognize that for the purposes of this document, indigenous fish and wildlife species are those that naturally occur within a wilderness area and that were not introduced by humans.

Additionally, fish and wildlife species introduced for management purposes prior to wilderness designation may continue to be managed as indigenous fish and wildlife species if the species is likely to survive. State and federal agencies should carefully evaluate stocking those waters that consistently require supplementation for reasons other than angler-induced mortality. The Wyoming Game and Fish has the responsibility to make the determination as to which fish and wildlife species are indigenous within the State of Wyoming and will cooperate with the Forest Service during this process.

3. Recognize that some proposed Wyoming Game and Fish management activities may involve techniques, equipment and methods generally prohibited under Section 4(c) of the Wilderness Act that may be considered and authorized by the Federal administering agency. The Forest Service will consult closely with Wyoming Game and Fish and give careful consideration to State fish and wildlife interests when considering these proposed actions. Both agencies will use the minimum requirements analysis process that has been developed to assist project managers in determining whether an action is the minimum necessary, and if so, the minimum requirement to complete the action. That process is described in the Minimum Requirements Decision Process (MRDP) outline (See **Attachment A – AFWA Agreement**) If the action is determined to be the minimum necessary, a final decision may be subject to the further analysis under NEPA. Wyoming Game and Fish and the Forest Service will work cooperatively to determine who should take the lead in the NEPA process and to appoint an interdisciplinary team consisting of personnel from both agencies, when necessary.

4. Recognize that some Wyoming Game and Fish wildlife management actions in wilderness do not require Forest Service authorization, but do require communication, cooperation, and coordination. A list of those actions is found in **Attachment B – Process for Addressing Management Proposals**. More detailed information about specific actions can also be found in **Attachment A – AFWA Agreement** of this MOU or Forest Service Manual 2320.

5. Encourage Wyoming Game and Fish and Forest Service employees with responsibilities that involve activities within wilderness to attend wilderness management training, including on-line courses, preferably in conjunction with local counterparts.

6. Local Coordination: Conduct annual coordination meetings, and others as needed, between respective local Forests or Ranger Districts and Wyoming Game and Fish Regions to identify opportunities, and jointly pursue projects that meet mutually beneficial fish, wildlife and habitat objectives, subject to compliance with applicable State and Federal law.

- Discussion of Wyoming Game and Fish projects or management actions, such as decisions on stockings, transplants, species objectives, etc.
- Presentation of general information on proposals or management actions not requiring Forest Service line officer approval for the upcoming year or future projects.

- Discussions of compliance with NEPA, the Minimum Requirements Decision Process (MRDP), review of the effects to wilderness character of actions during the last year and the approval process for projects or management actions that require Forest Service approval.
- Discussion of Forest Service projects or management actions, such as decisions on outfitter and guide service days, locations, camps, etc. that may have an effect on wildlife or fisheries.

7. Agency Leadership Coordination: Conduct annual coordination meetings between agency leadership (Forest Supervisors and Game and Fish Director, Deputy Director(s), and appropriate Division Administrators to discuss issues and opportunities related to implementing the Policies and Guidelines and this MOU.

The annual agency leadership coordination meeting agendas will include at a minimum:

- Wyoming Game and Fish and Forest Service reports on previous year projects and accomplishments.
- Review of policies and guidelines and MOU – status and issues
- Address local issues requiring direction from agency leadership
- Discussion of priority issues of concern

9. Collaborately and cooperatively develop and implement training and orientation for staff and decision makers in both agencies on the AFWA Agreement (**Attachment A**), dated June 2006.

10. Review and follow relevant Forest Plan and other applicable management area direction regarding wilderness settings, such as pristine and semipristine zones, when determining the scope and scale of proposed management actions in wilderness areas.

F. THE FOREST SERVICE SHALL:

1. Advise Wyoming Game and Fish of any proposed projects or management actions that may affect fish, wildlife, and habitat within wilderness prior to release of public scoping documents in the NEPA process.
2. Encourage Wyoming Game and Fish to participate in any project activities or analyses that affect fish, wildlife and habitat in wilderness as a Cooperating Agency.
3. Seek comments and participation from Wyoming Game and Fish during project analysis for activities that affect fish, wildlife and habitat in wilderness.
4. Actively seek participation from Wyoming Game and Fish during Forest or wilderness area planning processes.
5. Ensure that fish, wildlife and habitat management objectives, cooperatively developed with the Wyoming Game and Fish, are considered and included in wilderness management plans.
6. Process project proposals and special use permit authorizations as agreed to through local

coordination.

7. Recognize that registered piscicide applications to remove unwanted aquatic species on NFS lands in Wyoming, consistent with label requirements, are a state action to be conducted by the Wyoming Game and Fish. The Forest Service will work with Wyoming Game and Fish to complete the minimum requirements analysis to protect wilderness values, and if determined the minimum necessary, authorize those activities and complete the appropriate level of NEPA.

G. THE WYOMING GAME AND FISH SHALL:

1. Inform the Forest Service of all fish and wildlife projects or management actions within wilderness including those that do and do not require Forest Service approval. Discussion of the projects should be initiated early so that the Forest Service may incorporate these activities and their analysis into their annual program of work. This would typically mean 30 days prior for activities that do not require a NEPA decision and from three months to one year in advance for decisions involving NEPA analysis and decisions, depending on the scope of the project proposal. (See **ATTACHMENT C – NEPA Requirements**)

2. Encourage the Forest Service to participate in any project activities or analyses that affect fish and wildlife in wilderness as a cooperator.

3. Seek comments and participation from the Forest Service for Wyoming Game and Fish planning activities that affect fish and wildlife in wilderness, such as big game species planning, fish stocking planning, season setting and wildlife transplant planning. Wyoming Game and Fish will consult with the Forest Service and give consideration to Forest Service Wilderness interests when evaluating these proposed actions.

4. Participate with the Forest Service in developing the MRDP for projects that require Forest Service approval, especially those that trigger a NEPA decision and an agency action. Where it is determined mutually beneficial the Wyoming Game and Fish project manager may complete an initial MRDP for the development of a proposed action for the NEPA process. (see E.3)

5. Secure a Forest Service Special Use permit for any proposed activity that uses or occupies National Forest land and requires Forest Service approval. It is understood that permit fees will typically be waived for these activities and that sufficient time for authorizing and issuing special use permits will be factored into Wyoming Game and Fish timelines for project implementation.

6. Recognize that certain Wyoming Game and Fish management actions outside of wilderness (for example, transplant of non-native species) can still impact wilderness resources. Wyoming Game and Fish will consult with the Forest Service and give consideration to Forest Service Wilderness interests when evaluating proposed actions.

7. Notify and coordinate with the Forest Service on any piscicide application proposal to remove unwanted aquatic species within wilderness in Wyoming. Provide sufficient lead-time to accomplish the analysis/authorization process associated with piscicide applications within wilderness.

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

1. APPROVAL. The Secretary of Agriculture, or the Secretary's designee, shall make the final decision for authorizing any of the 4(c) prohibited uses within National Forest wilderness. Consultation will be sought from Wyoming Game and Fish regarding the management need, implementation issues and effects of proposed actions.
2. NON-LIABILITY. The U.S. Forest Service does not assume liability for any third party claims for damages arising out of this MOU.
3. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or the Cooperator is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To Cooperator, at the Cooperator's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

4. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. §552).
5. ENDORSEMENT. Any Cooperator contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of the Cooperator's products or activities.
6. FEDERAL ADVISORY COMMITTEE ACT (FACA). In order to meet the intergovernmental committee exception to FACA, all participants of any NEPA ID team must be a full-time or part-time officer or employee of the Federal Government or elected officer of the State, local, or tribal government (or their designated employee with authority to act on their behalf), acting in their official capacity (41 C.F.R. 102—3.40(g)).
7. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts any entity from participating in similar activities with other public or private agencies, organizations, and individuals.
8. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purposes(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer funds. Specific projects or activities that involve the transfer of funds, services, or property among the parties require execution of separate agreements and are contingent upon the availability of appropriated funds. These activities must be independently authorized by statute. This MOU does

not provide that authority. Negotiation, execution, and administration of these agreements must comply with all applicable law. Each party operates under its own laws, regulations, and policies, subject to the availability of appropriated funds. Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

9. USE OF U.S. FOREST SERVICE INSIGNIA. In order for the Cooperator to use the U.S. Forest Service Insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications prior to use of the insignia.

10. 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.

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

12. DEBARMENT AND SUSPENSION. The Cooperator shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should the Cooperator or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

13. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.

14. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through 12/31/2015 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.

15. IMPLEMENTATION AND MONITORING. All parties agree that there may be benefits to continuing the relationship represented by this MOU. All parties agree to consider extending this MOU or developing a new MOU once the initial time period is reached.

16. DISPUTES. Disputes between entities concerning any aspect of this MOU and associated environmental analysis will be resolved through good faith efforts, at the lowest level possible, between the parties to the MOU. Unresolved disputes from the National Forests and Wyoming Game and Fish Regions will be addressed by the appropriate Forest Supervisor(s) and Game and Fish Regional Supervisor(s). Disputes that cannot be resolved at that Forest/Region level will be addressed by the Regional Foresters and Wyoming Game and Fish Director.

17. RESPONSIBILITIES OF THE PARTIES. All participating entities and their respective agencies and officers will handle their own activities and contribute their own personnel and

financial resources, in pursuing these objectives, with exception of any funding that might be provided to the State separately by the U.S. Department of Agriculture, under a separate agreement. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.

18. **PRINCIPAL CONTACTS.** While it is critical that both the wilderness and fish and wildlife disciplines be involved in the planning and execution of projects, the principal contacts for this instrument are:

Principal State of Wyoming Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
John Emmerich Deputy Director, External Operations Address: 5400 Bishop Blvd. City, State, Zip: Cheyenne, WY 82006 Telephone: 307-777-4591 FAX: 307-777-4699 Email: J.Emmerich@wgf.state.wy.us	Name: Richard Reynders Address: 5400 Bishop Blvd. City, State, Zip: Cheyenne, WY 82006 Telephone: 307-777-4591 FAX: 307-777-4591 Email: R.Reynders@wgf.state.wy.us

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Contact	U.S. Forest Service Administrative Contact
Name: Cheryl Chatham Wyoming Capitol City Coordinator Address: Herschler Bldg 3 West, Rm 3603- 122 W. 25th St. City, State, Zip: Cheyenne WY 82002-0600 Telephone: 307-777-6087 FAX: 307-777-5400 Email: cchatham@fs.fed.us	Name: Monica H. Cordova Address: 740 Simms St. City, State, Zip: Golden, CO 80401 Telephone: 303-275-5068 FAX: 303-275-5396 Email: mcordova@fs.fed.us

19. **FUNDING ASSISTANCE TO THE STATE.** The Forest Service may provide financial assistance to the State in association with actions undertaken pursuant to this MOU. However, those negotiations and agreements will occur separately from this document.

20. **ESTABLISHMENT OF RESPONSIBILITY.** This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

21. **SOVEREIGN IMMUNITY**

- Neither the United States nor the State of Wyoming, waives its sovereign immunity by entering into this MOU, and each fully retains all its immunities and defenses as provided by applicable law with respect to any action based on or occurring as a result of this MOU.

- The provisions in this MOU are subject to the applicable laws and regulations of the State of Wyoming, the applicable laws of the United States, and the applicable regulations of the Secretary of Agriculture, Environmental Protection Agency, and the Council on Environmental Quality.
- Further, nothing in this MOU shall constitute a waiver of sovereign immunity by the **State of Wyoming or its agencies, each of which specifically retain sovereign immunity** and all defense available to them as sovereigns pursuant to Wyo. Stat. 1-39-104 and all other state law.

22. AUTHORIZED REPRESENTATIVES. By signature below, the cooperator certifies that the individuals listed in this document as representatives of the cooperator are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date below.

WYOMING GAME AND FISH COMMISSION

JOHN KENNEDY, Deputy Director, Wyoming Game and Fish Department Date

USDA FOREST SERVICE:

RICHARD CABLES, Regional Forester, Region 2 Date

HARV FORSGREN, Regional Forester, Region 4 Date

Forest Service Technical Review Signatures

The authority and format of this instrument has been reviewed and approved for signature by:

MONICA H. CORDOVA, R2 Date
Rocky Mountain Region Grants & Agreements Specialist

DORIS K. MACKEY, R4 Date
Intermountain Region Grants & Agreements Specialist

Wyoming Game and Fish Legal Review

The authority and format of this instrument have been reviewed and approved for signature by:

DAVID WILLMS, Assistant Attorney General Date

Reviewed by:

WILLIAM T. BASS, Forest Supervisor, Bighorn National Forest Date

CAROLE "KNIFFY" HAMILTON, Forest Supervisor, Bridger-Teton National Forest Date

BRENT LARSON, Forest Supervisor, Caribou-Targhee National Forest Date

MARY PETERSON, Forest Supervisor, Medicine Bow-Routt National Forest Date

REBECCA AUS, Forest Supervisor, Shoshone National Forest Date

**ATTACHMENT A – ASSOCIATION OF FISH AND WILDLIFE AGENCIES (AFWA)
AGREEMENT**

**Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of
Land Management Wilderness (as amended June, 2006)**

(attached .pdf file)

ATTACHMENT B -- PROCESS FOR ADDRESSING MANAGEMENT PROPOSALS

This MOU establishes a standard process for addressing fish, wildlife and habitat management proposals on National Forest Wilderness proposed by Wyoming Game and Fish. The process is described below. These permissions and authorities mirror those found in the AFWA Agreement.

A. Management Actions requiring a Federal Decision

In accordance with the national AFWA Agreement (see **Attachment A**), dated June 2006, the following actions require federal agency approval:

- Any action involving a Section 4 (c) prohibition, including:
 - Use of motorized equipment
 - Landing of aircraft
 - Use of motorized vehicles and any other kind of mechanical transport
 - Temporary or permanent facility development, structures or installations
- Use of chemicals (piscicides, pesticides or herbicides)
- Habitat alteration
- Stocking previously unstocked waters
- Transplanting (removal, reintroduction, or supplemental introduction) wildlife , including the transplanting of federally listed threatened and endangered species into previously occupied habitat
- Fish stocking using motorized equipment or mechanical transport: Where established prior to designation, fish stocking, including aerial stocking, will continue as specified in state stocking plans, subject to periodic review. Congress provided for the allowance of fish stocking to continue subject to changed conditions or circumstances that would endanger wilderness character exceeding the existing situation at time of designation. Identify all State stocked waters at time of designation, including the method of stocking and type of motorized use or mechanical transport used in State stocking plans. A new federal decision would only be needed if a change from the current situation is warranted due to adverse effects to wilderness character, proposed changes in stocking species, or methodology (non-motorized to motorized).

*See specific agency or regional policy to determine who the Responsible Official is for these actions (FSM 2320)

B. Management Actions that do not Require a Federal Decision

The following actions do not require federal agency approval (provided the project does not include on-the-ground use of Section 4 (c) prohibitions on motorized equipment, mechanical transport, landing of aircraft, structures or installations):

- Overflights, aerial counts and observation
- Scientific sampling, capturing and marking animals and using radio telemetry
- Angling, hunting, trapping
- Animal research and survey work
- Fish surveys using gill-netting or battery operated electrofishing
- Spawn taking
- Ongoing fish stocking of indigenous species that were established prior to wilderness designation.
- Changes in fish species stocked in areas where stocking was established prior to designation, provided they are indigenous.

- **Wildlife Damage Control.** Wildlife damage control in wilderness may be necessary to conserve Federally listed threatened or endangered species, to prevent transmission of diseases or parasites affecting wildlife and humans, or to prevent serious losses of domestic livestock. Refer to the AFWA Agreement (Attachment A) for further guidance on wildlife damage control.

C. Step by Step Process for NEPA Analysis of Fish and Wildlife Management Actions Covered by this MOU that Require a Federal Decision.

The following is a step-by-step explanation of the NEPA process to follow when there is a project proposal that requires a federal decision.

Step 1. The action does not require a federal decision or the action is adequately covered by previous NEPA analysis, such as in a wilderness or land management plan. (See **ATTACHMENT D** for current Forest and Wilderness Plan direction references.)

The project can be implemented without further analysis. For instance, fish stocking is allowed where it was established prior to wilderness designation by means that were traditionally used. The Wyoming Game and Fish will make available to the Forest Service a stocking schedule so that in any given year the line officer will know which lakes will be stocked and by what means. The line officer will work with the Wyoming Fish and Game to identify mitigation measures to protect wilderness character and to minimize effects to the public.

If the action does require a federal decision or is not covered by previous NEPA, the Wyoming Game and Fish should proceed through the flowchart. Go to Step 2.

Step 2. If the action is not adequately covered by NEPA, Wyoming Game and Fish responds to the question: can this project be accomplished outside of wilderness and still meet stated goals and objectives?

If **yes**, the project should be implemented outside of wilderness.

If **no**, the Wyoming Game and Fish, with assistance from the Forest Service should complete the minimum requirement decision process (MRDP) as described in **Attachment A** of the AFWA Agreement dated June 2006. Though the question, “can this project be accomplished outside of wilderness” is included in the MRDP, it is significant enough to warrant it as a first step. If project can be accomplished outside of wilderness, there is no need to proceed with the MRDP.

Step 3. Does the action require a federal agency action?

If **yes**, the MRDP identifies that the project is necessary in wilderness and requires a federal agency approval (such as for the need for motorized equipment and/or mechanical transport) an analysis is required under the NEPA. Go to Step 4.

If **no**, the MRDP indicates that the project is necessary in wilderness but no federal agency approval is required, notify the line officer and discuss implementation. Implement

project.

Step 4. Enter the NEPA Process. The first step in the NEPA process is public scoping which helps determine the extent of analysis required. The Wyoming Game and Fish should develop a purpose and need for the project at this time. The purpose and need for the project will define the level of scoping necessary. See **Attachment C** for more information on NEPA requirements and scenarios.

ATTACHMENT C -- NEPA REQUIREMENTS FOR PROJECTS RELATED TO FISH AND WILDLIFE MANAGEMENT IN WILDERNESS

This attachment to the MOU provides guidance on application of the National Environmental Policy Act for projects proposed by Wyoming Game and Fish.

Projects can be categorically excluded (CE) from an Environmental Assessment (EA) or Environmental Impact Statement (EIS) if:

1. the proposed action is within one of the categories created by the Forest Service, USDA or Congress (FSH 1909.15 Chapter 30)
2. there are no extraordinary circumstances (FSH 1909.15 Chapter 30.3) See note below.
3. scoping performed in accordance with FSH 1909.15 Chapter 11 identifies that a **CE** is appropriate and that the action will cause no significant effects. If the responsible official determines, based on scoping, that it is uncertain whether the proposed action may have a significant effect on the environment, prepare an **EA** (ch. 40). If the responsible official determines, based on scoping, that the proposed action may have a significant environmental effect, prepare an **EIS** (ch. 20). Scoping is required on all proposed actions, including those that would appear to be categorically excluded.

Note: Congressionally designated wilderness is one of the resource conditions to be evaluated to determine if extraordinary circumstances exist. The mere presence of this resource condition does not preclude the use of CE. It is (1) the existence of a cause-effect relationship between a proposed action and the potential effect on the resource condition and (2) if such a relationship exists, the degree of the potential effect of a proposed action on the resource condition that determines whether extraordinary circumstances exist. (FSH 1909.15, 30.3)

Timelines for completion of NEPA can vary depending upon appeals and litigation. Typically, if there are no appeals or litigation, an EA can be completed in 12-18 months and an EIS in 18-24 months. Decisions that are categorically excluded from further documentation can be implemented as soon as the decision memo is signed, typically taking between 30 to 45 days depending on the scoping period length and if a decision memo and/or a special use permit is required..

In all proposals the following apply:

- 1—Effects to wilderness character must be assessed. The four qualities of Wilderness character identified in the Wilderness Act are described below.
- 2—All CEs for fish and wildlife projects require a project or case file and a decision memo.
- 3—A special use permit will be issued when a federal decision is required.

Potential project effects can be gathered and documented in the Effects on Wilderness Attributes Worksheets. (see **Attachment E**)

See also the Implementation Toolbox for additional guidance, including scenarios, explanations of wilderness character and how to address effects to wilderness character.

ATTACHMENT D — WILDERNESS AREAS AFFECTED BY THIS MOU

Forest	Wilderness Area	Date and Name of Wilderness or Forest Plan
Bighorn NF	Cloud Peak Wilderness Area	Bighorn Land and Resource Management Plan, 2005
Bridger-Teton NF	Bridger Wilderness Gros Ventre Wilderness Teton Wilderness	Bridger-Teton Land and Resource Management Plan, 1990
Caribou-Targhee NF	Jedediah Smith Wilderness Winegar Hole Wilderness	Targhee Land and Resource Management Plan, 1997
Medicine Bow – Routt NF	Encampment River Wilderness Huston Park Wilderness Platte River Wilderness Savage Run Wilderness	Medicine Bow Land and Resource Management Plan, 1998 Routt Land and Resource Management Plan, 2003
Shoshone NF	Absaroka-Beartooth Wilderness Fitzpatrick Wilderness North Absaroka Wilderness Popo Agie Wilderness Wasakie Wilderness	Shoshone Land and Resource Management Plan, 1985

ATTACHMENT E – WILDERNESS QUALITIES OR ATTRIBUTES OF WILDERNESS CHARACTER

Evaluating the Effects of Project Activities on Wilderness Character

Date:	
Wilderness Area:	

Description of Project Activity or Impact to Wilderness Area:
(note – describe the activity that is affecting the wilderness area, ie wildlife transplanted, fish restoration, radio collaring , etc...)

Effect to Wilderness Character

Wilderness Quality or Attribute	(Note: delete attribute descriptions after data is entered to save space if desired.)	Is there an effect? Yes or No	Which direction is the effect? Improving, Stable or Degrading?	Describe the actual effect. Use descriptive terms that discuss the effect, not the activity. May use GIS layers (ROS, SMS, Roads, etc...) to quantify effects.
<p>Untrammeled This quality monitors modern human <u>actions</u> that control or manipulate the components or processes of ecological systems inside wilderness. In short, <i>wilderness is essentially unhindered and free from modern human control or manipulation.</i></p>	<p>Address this attribute by describing the management actions included in your proposed project that would alter natural processes or wildlife and fish populations and their habitat within wilderness</p>			

Natural

This quality monitors both intended and unintended effects of modern people on ecological systems inside wilderness since the time the area was designated. In short, *wilderness ecological systems are substantially free from the effects of modern civilization.*

Address this attribute by describing the effects of the proposed project on ecological systems in the wilderness – soil, water, vegetation, wildlife, fish, air, etc.

<p>Undeveloped This quality monitors the presence of structures, installations, habitations, and the use of motor vehicles, motorized equipment, and mechanical transport that facilitate people’s ability to occupy or modify the environment. In short, <i>wilderness retains its primeval character and is essentially without permanent improvements or modern human occupation.</i></p>	<p>Address this attribute by describing the type and spatial and temporal extent of occupation (i.e. structures or facilities required, motorized equipment use, mechanical transport, aircraft landings, etc.) that will occur during the project duration or resulting after the project is finished.</p>			
<p>Outstanding opportunities for solitude or a primitive and unconfined type of recreation This quality monitors conditions that affect the opportunity for people to experience solitude or primitive, unconfined recreation in a wilderness setting, rather than monitoring visitor experiences <i>per se</i>. In summary,</p>	<p>Solitude - Described as opportunities to experience solitude, or the isolation from the sights and sounds of management activities inside wilderness, the presence of others. . Solitude is measured by considering the presence of screening, distance from impacts to the rest of the area, mitigation measures such as the timing of disturbances. Address solitude by discussing how the project activities affect the ability of a visitor to escape project impacts on solitude within the area. Consider linking to ROS mapping for size and remoteness criteria for Primitive and SPMN.</p>			

<p><i>wilderness provides outstanding opportunities for people to experience solitude or primitive and unconfined recreation, including the values of inspiration and physical and mental challenge.</i></p>	<p>Opportunities for Primitive Recreation –A measure of the experiences available without the developments and to feel a part of nature, with a high degree of challenge and reliance on outdoor skills rather than facilities. Address this attribute by describing how the project activities might affect, the number and type of opportunities available, the challenge of the opportunities, and the addition or absence of facilities.</p>			
<p>Special Features (Ecological, Geologic, Scientific, Educational, Scenic or Historical Values)</p>	<p>An attribute that recognizes that wilderness may contain other values of ecological, geologic, scientific, educational, scenic or historical or cultural significance. Unique fish and wildlife species, unique plants or plant communities, potential or existing research natural areas, outstanding landscape features, and significant cultural resource sites should all be considered as types of values that might exist. Identify any of these values that exist within the project area. Address this attribute by describing the effect proposed activities would have on these values.</p>			

Summary	Will the proposed project have a significant effect upon wilderness character?	No	Yes	If Yes, Explain how the project would affect wilderness character.