

FS Agreement No. 23-MU-11132422-075

Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between The
USDA Animal and Plant Health Inspection Service -Wildlife Services
And The
USDA, FOREST SERVICE
NATIONAL FOREST SYSTEM

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between the U.S. Department of Agriculture Animal and Plant Health Inspection Service -Wildlife Services, hereinafter referred to as “APHIS-WS,” and the United States Department of Agriculture (USDA), Forest Service, National Forest System, hereinafter referred to as the “U.S. Forest Service.”

Background: The Animal and Plant Health Inspection Service -Wildlife Services (APHIS-WS) and the Forest Service are agencies within the U.S. Department of Agriculture (USDA). Both agencies are involved with wildlife damage management (WDM) and research on National Forest System (NFS) lands.

For the purposes of this Memorandum of Understanding (MOU), WDM actions refer to managing damage caused by indigenous, non-native, or feral vertebrates on NFS lands; minimizing livestock losses due to predation; managing wildlife disease; managing damage caused by invasive species such as feral swine; and protecting other wildlife, plants, habitat, and other resources from wildlife damage. The Forest Service incorporates wildlife damage management as part of the stewardship of NFS resources (range, timber, recreation, water, wilderness wildlife). Both agencies may take WDM actions on NFS lands to protect resources on adjacent federal, tribal, or non-federal lands through coordination with appropriate land managers .

Title: WILDLIFE DAMAGE MANAGEMENT ACTIVITIES ON NATIONAL FOREST SYSTEM LANDS

- I. PURPOSE:** The purpose of this MOU is to document the cooperation between the parties to promote collaboration of APHIS-WS and the Forest Service (jointly, Parties) to (1) identify responsibilities and foster a partnership in discharging their statutory authorities; (2) establish general guidelines to assist field personnel in carrying out their WDM responsibilities consistent with the policies of the Forest Service and APHIS-WS; and (3) strengthen the cooperative approach to WDM on NFS lands through exchange of information and mutual program support, in accordance with the following provisions. Relevant statutory authorities include:

1) The Act of March 2, 1931 (46 Stat. 1468-69, 7 U.S.C. §§ 8351-8352), as amended



- 2) The Act of December 22, 1987 (Public Law No. 100-202, § 101(k), 101 Stat. 1329-331, 7 U.S.C. § 8353)
- 3) Organic Administration Act (30 Stat. 35, 16 U.S.C. 551) and Multiple Use Sustained-Yield Act of 1960 (16 U.S.C. §§ 528-532)
- 4) The Wilderness Act of 1964 (16 U.S.C. §§ 1131-1136)
[https://cite.case.law/citations/?q=16 U.S.C. §§ 1131-36](https://cite.case.law/citations/?q=16%20U.S.C.%20%24%24%201131-36) in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Forest Service is responsible for managing land and resources under its jurisdiction. The mission of the Forest Service is to sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs of present and future generations. The Forest Service is responsible for management of the National Forest and Grasslands, comprising 193 million acres, across the United States, and providing significant amounts of habitat for wildlife while also providing for multiple use of natural resources and livestock grazing on rangelands. The Forest Service is dedicated to ensuring the sustainability of the Nation's resources, and has responsibility for the protection, conservation, and management of fish, wildlife, and plants and their habitats.

APHIS-WS provides federal leadership in managing problems caused by wildlife. APHIS-WS recognizes that wildlife is an important public resource greatly valued by the American people. Wildlife is a dynamic and mobile resource that can damage agricultural and industrial resources, pose risks to human health and safety, and affect other natural resources. The APHIS-WS program carries out the federal responsibility for helping to solve problems that occur when human activity and wildlife conflict with one another. APHIS-WS follows an integrated approach that uses wildlife damage management strategies that includes non-lethal and lethal management tools and techniques that are effective, biologically sound, environmentally safe, and socially acceptable. APHIS-WS also strives to reduce damage caused by wildlife with minimal effects on local wildlife populations.

The National Wilderness Preservation System has been established by Congress through the Wilderness Act and other enabling legislation (16 U.S.C. § 1131(c)). Laws establishing wilderness areas may contain instructions addressing WDM activities. Both agencies are committed to ensuring that WDM in wilderness areas are conducted in a manner that protects wilderness areas in their natural condition and preserves wilderness character for current and future generations. Both agencies will assure that all WDM activities conform to Forest Service directives concerning WDM within wilderness areas in FSM 2323.33.



In consideration of the above premises, the agencies agree as follows:

III. WILDLIFE SERVICES SHALL:

- A. Evaluate WDM needs on NFS lands in coordination with the Forest Service.
- B. Annually coordinate and prepare integrated wildlife damage management plans (annual work plans) that anticipate WDM needs on NFS lands, considering applicable non-lethal and lethal methodologies to resolve anticipated wildlife damage.
- C. Serve as the lead agency for NEPA compliance for wildlife damage, invasive species, and wildlife disease management activities requested of APHIS-WS by: (1) entities other than the Forest Service; or (2) the Forest Service in certain circumstances as agreed upon between both agencies. APHIS-WS will include WDM activities expected to occur on NFS lands in applicable APHIS-WS state-level National Environmental Policy Act (NEPA) documents. When serving as the lead agency for NEPA compliance, APHIS-WS will coordinate with the Forest Service and appropriate State and local agencies and tribes in completing the NEPA process for such activities. APHIS-WS will identify appropriate opportunities for Forest Service to serve as a cooperating agency in the development of WS-led NEPA documents.
- D. Coordinate the planned use of pesticides on NFS lands using the Forest Service's Pesticide-Use Proposal process (form FS-2100-2). Pesticides shall not be used on NFS lands to control pests without an annual work plan jointly developed by APHIS-WS and the affected Forest Service NFS. Pesticide use not covered in the annual work plan may be allowed, subject to emergency request and collaboration, only when a WDM need arises that requires control measures which were not anticipated at the time an annual proposal was submitted. Only those products registered, or otherwise authorized, by the U.S. Environmental Protection Agency and the relevant state authority, for the intended purpose shall be used on NFS lands.
- E. Include anticipated WDM activities in wilderness areas, and a process for coordination of unplanned activities, in the annual work plan. The agencies will meet annually or as needed with the Regional Forester or designee to review all APHIS-WS activities in wilderness areas.
- F. Notify the Forest Service prior to the implementation of WDM activities that may, generate media attention, or occur in wilderness areas or areas of high public interest. As part of the pre-action planning process, address communication expectations in the annual work plan. Inform the Forest Service about the results of WDM activities initiated by APHIS-WS in accordance with the annual work plan. Additionally, provide the Forest Service national headquarters with an annual report summarizing WDM activities on NFS lands. The annual report shall include a geographic component (e.g., state or National Forest or Grassland), resource(s) protected, type and amounts of pesticides used, the methods applied, and the species captured, removed, or deterred.



- G. Provide Forest Service personnel with WDM training sessions and technical information on WDM tools and techniques when requested.

IV. THE U.S. FOREST SERVICE SHALL:

- A. Evaluate WDM needs on NFS lands in coordination with APHIS-WS. Facilitate WDM where necessary to protect natural resources, federally listed threatened or endangered species, public health and safety, infrastructure, and to prevent losses of livestock to predators.
- B. Timely facilitate, support, and review APHIS-WS preparation of integrated wildlife damage management plans (annual work plans) for WDM activities on NFS lands.
- C. Serve as the lead agency for NEPA compliance for WDM activities initiated (or requested of APHIS-WS) by the Forest Service (except as provided for in III. C) and participate as a cooperating agency in NEPA processes where APHIS-WS is the lead agency as appropriate. When participating as a cooperating agency on APHIS-WS-led NEPA, the Forest Service will identify subject matter experts (NEPA, Wildlife, Wilderness, and Pesticides) who will cooperate with APHIS-WS as part of the interdisciplinary NEPA team.
- D. For the purpose of incorporation into jointly developed annual work plans facilitate and provide timely assistance in the Pesticide-Use Proposal process. . For non-emergency pesticide use not anticipated in the annual work plan, PUPs will be processed within 60 calendar days.
- E. Facilitate the analysis of all WDM activities proposed in wilderness areas by APHIS-WS in annual work plans in accordance with Forest Service policies on Wildlife and Wilderness Management (FSM 2323.33c, FSM 2650.42). Forest Service will provide documentation of the analysis to APHIS-WS in a timely manner. Annual work plans will address the agencies' agreed upon process for responding to unplanned activities in Wilderness Areas. Provide APHIS-WS prompt notification of any changes to Forest Service policies and procedures on wildlife and wilderness area management.
- F. Coordinate with APHIS-WS in the amendment/revision of forest plans which may influence WDM activities.
- H. Inform APHIS-WS of opportunities to participate in applicable Forest Service training at the national, regional, and forest levels, especially NEPA and Wilderness training.



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

- G. All WDM activities on NFS lands will be coordinated as appropriate with states, tribes, local governments, and federal agencies prior to implementation of these programs.
- H. All WDM activities on NFS land will be carried out in conformance with the Endangered Species Act, Wilderness Act, and other applicable laws and regulations, USDA policy on Fish and Wildlife (Departmental Regulation 9500-4), and applicable APHIS-WS, and Forest Service policies and manual direction.

Native wildlife and non-native wild or feral animals can pose threats and damage to humans, natural and cultural resources, and permitted grazing livestock in Wilderness Areas and in areas adjacent to Wilderness Areas. When a need is identified, the agencies will cooperate and collaborate through NEPA processes and subsequent work planning meetings to ensure that WDM is carried out in accordance with the Wilderness Act and other relevant direction. In appropriate circumstances, APHIS-WS provides WDM assistance in Wilderness Areas to protect: human health and safety; threatened, endangered and other native animals and plants; cultural resources; permitted grazing livestock; and other vulnerable or sensitive resources

- I. Both agencies will evaluate the work plans with emphasis on responding to requests for assistance with damage or the threat of damage by wildlife and meeting the objectives stated in this MOU and relevant NEPA documents. WDM work plans will be developed and annually reviewed and updated in cooperation with appropriate State and Federal agencies, tribes, permittees, and others. Human health and safety zones and other areas where mitigation or restriction of WDM activities may be needed will be jointly identified.
- J. The APHIS-WS Deputy Administrator and the Forest Service Deputy Chief for National Forest System (or their designees) will meet annually to discuss coordination of WDM activities nationwide. APHIS-WS Regional Directors and Forest Service Regional Foresters (or their designees) will meet annually, or as needed, to discuss coordination of WDM activities in their respective States or regions.
- K. Problems regarding implementation of this MOU that arise and cannot be resolved will be reviewed and resolved by elevating to the next higher organizational level for prompt action.
- L. The agencies will cooperate on WDM research of mutual interest.



- M. The agencies shall manage their respective resources and activities in a coordinated and mutually beneficial manner to meet the purposes of this agreement. Nothing in this agreement authorizes either agency to obligate or transfer funds. Specific projects or activities that involve the transfer of funds, services, or property among the agencies require execution of separate agreements and are contingent upon the availability of appropriated funds. Each agency operates under its own laws, regulations, and policies, subject to the availability of appropriated funds.
- N. Forest Service and APHIS-WS are each responsible for fulfillment of their specific delegated statutory authorities and responsibilities concerning WDM activities on NFS lands. The Forest Service and state natural resource management agencies have a shared responsibility for managing fish and wildlife populations and their associated habitats on NFS lands.
- O. This MOU is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.
- P. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Wildlife Services Program Contacts:

Program Contact	Administrative Contact
Robert Hromack, Staff Wildlife Biologist Operational Support Staff USDA Animal and Plant Health Inspection Service, Wildlife Services, 4700 River Rd., Unit 87 Riverdale, MD 20737 Telephone: (240) 446-2647 Email: robert.j.hromack@usda.gov	Debra Marin, Financial Management Division, Agreement Services Branch USDA APHIS Animal and Plant Health Inspections Service Email: Debra.Marin@usda.gov

Principal Forest Service Contacts:

Forest Service Program Manager Contact	Forest Service Administrative Contact
Brian Logan USDA Forest Service, Biological and Physical Resources, 1400 Independence Ave., SW. Stop Code 1121 Washington, DC 20250-1121 Telephone: (202) 603-8982 Email: brian.logan@usda.gov	Mason Edwards USDA Forest Service, Biological and Physical Resources, 1400 Independence Ave., SW Stop Code 1121 Washington, DC 20250-1121 Telephone: 202-981-3041 Email: Mason.Edwards@usda.gov



Q. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or APHIS-WS 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 APHIS-WS, at APHIS-WS'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.

R. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or APHIS-WS from participating in similar activities with other public or private agencies, organizations, and individuals.

S. ENDORSEMENT. Any of APHIS-WS's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of APHIS-APHIS-WS's products or activities.

T. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law.

Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.



STATEMENT OF NO FINANCIAL OBLIGATION

Signature of this MOU does not constitute a financial obligation on the part of APHIS. Each signatory party is to use and manage its own funds in carrying out the purpose of this MOU. Transfers of funds or items of value are not authorized under this MOU.

- U. USE OF U.S. FOREST SERVICE INSIGNIA. In order for APHIS-WS 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 (Washington Office) prior to use of the insignia.
- V. 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).
- W. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- X. TRIBAL EMPLOYMENT RIGHTS ORDINANCE (TERO) The U.S. Forest Service recognizes and honors the applicability of the Tribal laws and ordinances developed under the authority of the Indian Self-Determination and Educational Assistance Act of 1975 (PL 93-638).
- Y. PUBLIC NOTICES. It is the U.S. Forest Service's policy to inform the public as fully as possible of its programs and activities. APHIS-WS is encouraged to give public notice of the receipt of this agreement and, from time to time, to announce progress and accomplishments. Press releases or other public notices should include a statement substantially as follows:

"National Forest System of the U.S. Forest Service, Department of Agriculture, collaborates with many partners on the sound management of the nation's national forests and grasslands."



APHIS-WS may call on the U.S. Forest Service's Office of Communication for advice regarding public notices. APHIS-WS is requested to provide copies of notices or announcements to the U.S. Forest Service Program Manager and to The U.S. Forest Service's Office of Communications as far in advance of release as possible.

Z. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. APHIS-WS shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.

AA. CONGRESSIONAL RESTRICTION

Under 41 USC 6306, no member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.

BB. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. APHIS-WS shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:

"This institution is an equal opportunity provider."

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

DD. 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.



EE. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through 5 years after the last signature at which time it will expire.

FF. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties 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 written below.

JANET L. BUCKNALL, Deputy Administrator,
APHIS Wildlife Services

Date

CHRISTOPHER FRENCH, Deputy Chief
U.S. Forest Service,

Date

The authority and format of this agreement have been reviewed and approved for signature.

9/19/2023

JOHN HEFNER, WO
U.S. Forest Service Grants Management Specialist

Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.