



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

AUG 03 2009

Mr. Philip P. Durocher
Director, Inland Fisheries Division
Texas Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744

Dear Mr. Durocher:

Thank you for your letter dated June 9, 2009 concerning the draft Memorandum of Understanding (MOU) for the Reservoir Fisheries Habitat Partnership (RFHP). After reviewing the agreement, I am pleased to inform you that I would like to support the partnership by signing the MOU. However, as you have been informed by Army Corps of Engineers staff my ability to sign this MOU is predicated on you making several changes required by the Office of the Army General Counsel. I have modified the MOU document accordingly and signed the signature page with the annotation "AS AMENDED." Please add the following language to the document under section D. Administration of MOU:

- "This MOU is neither a fiscal nor funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to the MOU will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors, if any, will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. The MOU does not provide such authority. Specifically, this MOU does not establish authority for the noncompetitive award to RFHP of any contract or other agreement."

- "This MOU is intended only to improve cooperation between the parties to the MOU and is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person."

- "Nothing in this MOU shall be construed as affording RFHP any preferential treatment, exclusive rights, or privileges."

The Army Corps of Engineers point of contact for the MOU is Mr. Tim Toplisek, (202) 761-4259. Please let Mr. Toplisek know if the revisions to the MOU are acceptable, and provide him with a copy of the final MOU when all parties have signed it.

Very truly yours,

Terence C. Salt
Acting Assistant Secretary of the Army
(Civil Works)

Enclosure

SACW: C. Smith

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AGC: C. Schmauder
HQACOE Tim Toplisek

MEMORANDUM OF UNDERSTANDING

For Establishment of a Reservoir Fisheries Habitat Partnership

A. PURPOSE.

This Memorandum of Understanding (MOU) confirms the intent of the signatories to develop and implement a Reservoir Fisheries Habitat Partnership (RFHP). The purpose of the RFHP is to promote restoration, conservation and enhancement of fish habitat through actions that contribute to: (a) the ecological health and functions of reservoirs and associated watersheds; (b) the well-being of fish and other aquatic species, therein; (c) the quality of life of the American people; and (d) public awareness of the conservation issues and challenges facing reservoir and watershed management in the 21st Century.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS

The mission of the RFHP is: *"To promote and facilitate the conservation of fish habitat in reservoirs and associated watersheds through partnerships and cooperative efforts, coordination and sharing of information, and public awareness and knowledge of issues and challenges."*

A partnership refers to a voluntary collaboration among organizations working towards a common purpose. A partnership leverages the time, talent, and support of each partner to the mutual benefit and interest of all partners. Benefits of partnership include: (1) shared purpose; (2) enhanced communication; (3) greater access to information and management practices; (4) increased resources for conservation projects; (5) share efficiencies (6) innovative solutions to problems; and more efficient outreach to increase public support and participation.

The RFHP is established to achieve these benefits and to apply them to the management and conservation of the fish habitat in the reservoirs and associated watershed systems of the United States for the benefit of the citizens, therein. The parties in this agreement acknowledge the critical role reservoirs play in the condition of fisheries, the economy of communities, the recreational pursuits of citizens, and the security of the nation. The parties further acknowledge the vital role reservoirs play in indicating the health of the watershed upstream and, in turn, managing riverine health downstream.

The parties recognize that successful management of reservoirs and their associated watershed systems will require the ability to work across traditional jurisdictional lines, pool information and resources, and garner national support for efforts that are often multi-state in nature. The parties also recognize that successful fish habitat conservation in reservoir systems will require a broad range of strategies at multiple geographic scales. For this reason and towards this end, the parties agree and confirm to support the RFHP mission.

C. COMMITMENT OF THE PARTIES

The partners to this MOU, to the extent practical, hereby affirm their mutual understanding and agree to use their best effort to take the following steps:

1. To support the overall mission and purpose of the RFHP, consistent with their own missions, operating plans, and governing laws, regulations, and policies.
2. To collectively design and implement the RFHP conservation strategy in order to address the mission and purpose of the partnership.
3. To work together to facilitate current and future agreed upon conservation activities in reservoirs and associated watersheds for the benefit of the American people.
4. To use the resources of their agencies and organizations in a manner that avoids duplication.
5. To collectively pursue funding initiatives to support the RFHP through private, local, tribal, corporate, state, and federal resources.
6. To collectively pursue interagency/organization agreements, cooperative agreements, and/or contracts to fund projects.
7. To encourage and support the participation of other appropriate agencies and organizations.

D. ADMINISTRATION OF MOU

1. Nothing in this MOU shall alter the statutory authority of the signatory Federal, State, or tribal agencies, nor shall this agreement be deemed to cede authority for the management of aquatic resources from one agency to another, nor cause any non-governmental signatory to cede or alter its purpose or mission.
2. Nothing in this MOU shall be construed to obligate the United States or federal agencies, tribes, state or other agencies, or non-governmental organizations party to the MOU to any current or future expenditure of resources, for the purpose of the RFHP, to which they have not voluntarily agreed. To the extent the RFHP may involve the transfer of funds, property, or services in the future, this document creates no obligations apart from those entered into voluntarily by the parties to the MOU.
3. Nothing in the agreement restricts the signatories to the MOU from participating in similar activities with other public or private agencies, organizations, or individuals.
4. Any changes to this MOU must be mutually agreed upon by all parties to the MOU. Such changes shall be executed as an addendum to the original MOU.
5. Any party may unilaterally terminate its participation in this MOU by providing the RFHP Steering Committee a written 30-day notice of withdrawal from participation. After such an action this MOU will no longer be in force for that party.

6. This MOU shall be effective upon the date the RFHP's application for Fish Habitat Partnership is formally approved by the National Board of the National Fish Habitat Action Plan.
7. This MOU shall be reviewed as needed or at least once every 5 years to address changes or additions. Annually, representatives from the signatory parties shall report on the function of the RFHP at the AFWA annual conference.
8. This MOU is neither a fiscal nor funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to the MOU will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors, if any, will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. The MOU does not provide such authority. Specifically, this MOU does not establish authority for the noncompetitive award to RFHP of any contract or other agreement."
9. This MOU is intended only to improve cooperation between the parties to the MOU and is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person."
10. Nothing in this MOU shall be construed as affording RFHP any preferential treatment, exclusive rights, or privileges."
11. The principal contact for this instrument is:

Name: Mr. Phil Durocher
Title: Director of Inland Fisheries
Organization: Texas Parks and Wildlife Department
Address: 4200 Smith School Yard
City/State/Zip: Austin, Texas 78744
Phone: 512 389-4643
Email: phil.durocher@tpwd.state.tx.us

Memorandum of Understanding

For Establishment of a Reservoir Fisheries Habitat Partnership

Signature Page

Signature:  Date: AUG 03 2009
(AS AMENDED)

Title: Acting Assistant Secretary of the Army (Civil Works)

Organization: Department of the Army