STATE OF WASHINGTON

Memorandum of Agreement
between the
Washington Department of Fish and Wildlife
and the
Washington Department of Natural Resources
Related to United States Environmental Protection Agency, Region 10, Request for Proposal for Puget Sound Action Agenda: Ecosystem Restoration and Protection, EPA-R10-PS-1007
Marine and Nearshore Protection and Restoration

DFW Interagency Agreement No. 10 - 1635
DNR Interagency Agreement No. 11-103

This agreement is made by and between the Washington State Department of Natural Resources (DNR) and the Washington Department of Fish and Wildlife (DFW), both agencies of the State of Washington (Agreement), and is effective upon the date of joint execution for the term specified herein.

RECITALS

A. The United States Environmental Protection Agency (EPA) is soliciting proposals through the Catalog of Federal Domestic Assistance (CFDA) program with respect to CFDA No. 66.123 relating to the Puget Sound Action Agenda: Technical Investigations and Implementation Assistance Program to implement priority work consistent with the Puget Sound 2020 Action Agenda (adopted by EPA as an approved Comprehensive Conservation and Management Plan) ("Action Agenda CFDA"); and
B. The current Request for Proposals under the Action Agenda CFDA is EPA's Puget Sound Ecosystem Restoration and Protection Request for Proposals, due on November 1, 2010, which seeks lead organizations in each of four areas of emphasis relating to ecosystem restoration and protection, including; Marine and Nearshore Protection and Restoration; Watershed Protection and Restoration; Toxics and Nutrients Prevention, Reduction, and Control; and Pathogens Prevention, Reduction and Control ("EPA RFP"); and
C. The EPA RFP authorizes groups of two or more eligible applicants to form a coalition and submit a single application, requiring that one of the members of the coalition be the signatory recipient of, and responsible for the Cooperative Agreement with EPA ; and
D. DFW and DNR are each uniquely situated, as land managers and stewards of natural resources across the State of Washington, to implement a leadership strategy that focuses funding for Puget Sound ecosystem restoration and protection on priority projects with the greatest likelihood of achieving desired outcomes and preventing or reducing threats to overall ecosystem health; and
E. DFW and DNR individually and collectively have significant scientific resources and a thorough understanding of Puget Sound Management Conference efforts based upon their respective involvement in the efforts of the Puget Sound Partnership; and

F. DFW and DNR desire to form a coalition to demonstrate state leadership in a coordinated and cooperative manner that relies on their comprehensive authorities, management, and regulatory responsibilities, and makes the maximum efficient use of agency resources collaboratively aimed at restoration of the Puget Sound; and
G. DNR and DFW desire to enter this Agreement to define their respective roles and responsibilities in the preparation of a proposal for the EPA RFP, the implementation of the contract should EPA select their proposal, and the communications with other state agencies, tribes, local governments and other stakeholders regarding the EPA RFP and resulting contract(s); and
H. This Agreement is entered into pursuant to statutory authority in RCW 39.34.

AGREEMENT

1. Term of Agreement and Period of Performance. This Agreement shall take effect upon mutual execution and remain in effect until February 1, 2017, or 90 days following the expiration of any Cooperative Agreement awarded by EPA under the EPA RFP, whichever is earlier, unless otherwise terminated as provided in this Agreement.

2. Purpose of Agreement and Creation of Coalition. The primary purpose of this Agreement is to establish DNR and DFW as co-lead organizations for developing and implementing a proposal to EPA for the Marine and Nearshore Protection and Restoration category. The primary motivating factor for the development of this Agreement is to assure that funding decisions that are made with funds provided through the EPA RFP are consistent with the Puget Sound 2020 Action Agenda. In the proposal submitted to EPA, DFW will be listed as the intended recipient of the Cooperative Agreement with EPA. DFW and DNR will be listed as a "coalition" as defined in the EPA RFP, III.A., and will agree regarding management of sub-awards prior to engaging with other relevant entities. This Agreement does not create a new administrative entity.

3. Funding Source and Budget. Each of DNR's and DFW's staff time for developing the proposal will be derived from their respective budget allotments. Neither DNR nor DFW intend to utilize any portion of the other entity's budget in carrying out their respective commitments under this Agreement. The parties agree to identify in the proposal each agency's cost share commitment, pursuant to III.B of the EPA RFP. Implementing any Cooperative Agreement awarded by EPA shall be funded by the EPA award and the respective agencies' budgets as mutually agreed.

4. Project Administrator and Agency Coordinators. For purposes of this Agreement, the Director of DFW will be the project administrator responsible for this Agreement. Project coordination within each of DFW and DNR will be conducted by the following persons unless otherwise communicated in writing:

For DFW:
Lisa Veneroso
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091
(360)902-2836
Lisa.Veneroso@dfw.wa.gov

For DNR:
Bridget Moran
Washington State Department of Natural Resources
PO Box 47000
1111 Washington Street SE
Olympia, WA 98504-7000
360-902-1034
Bridget.Moran@dnr.wa.gov

5. Property Ownership. Management of any real property owned by the State of Washington is not intended to be transferred between DNR and DFW as a result of this Agreement. Any transfer of management responsibilities over state land as a result of any actions taken under this Agreement is subject to all applicable constitutional and statutory restrictions. In addition, this Agreement is not intended to result in the transfer of personal property owned by either DFW or DNR without complying with all requirements of applicable law.

6. DFW Commitments and Statement of Work. As set forth below as DFW's Statement of Work (DFW SOW), DFW commits to perform the following obligations under this Agreement:
   6.1. register on grants.gov in a timely manner in order to maintain eligibility to submit a proposal for the EPA RFP consistent with this Agreement;
   6.2. clearly delineate DFW's legal authorities to implement priority elements of the proposal, as specified in IV.C.3. of the EPA RFP;
   6.3. describe DFW's matching funds available to demonstrate compliance with the matching requirements of specified in III.B. of the EPA RFP;
   6.4. submit a complete application package demonstrating eligibility for the RFP on grants.gov on or before noon Pacific Daylight Time on November 1, 2010 following its joint development pursuant to Section 8.1;
   6.5. include DNR in the negotiations with EPA and reach agreement with DNR about the content of the Cooperative Agreement;
   6.6. administer the Cooperative Agreement, be accountable to the EPA for proper expenditure of the funds and reporting, and provide DNR with copies of all written reports provided to EPA;
   6.7. serve as the point of contact for the coalition with respect to all communications with EPA, providing DNR with copies of all written communications provided to EPA; and
   6.8. fulfill all responsibilities undertaken by DFW as a result of the EPA RFP process.

7. DNR Commitments and Statement of Work. As set forth below as DNR's Statement of Work (DNR SOW), DNR commits to perform the following obligations under this Agreement:
   7.1. clearly delineate DNR's legal authorities to implement priority elements of the proposal, as specified in IV.C.3. of the EPA RFP;
   7.2. describe DNR's matching funds available to demonstrate compliance with III.B. of the EPA RFP;
   7.3. provide information requested by DFW to complete the proposal narrative described in the EPA RFP;
   7.4. provide timely input as requested by DFW to enable DFW to submit a complete application package demonstrating eligibility for the RFP on grants.gov on or before noon Pacific Daylight Time on November 1, 2010;
   7.5. participate in the negotiations with EPA and reach agreement with DFW about the content of the Cooperative Agreement;
   7.6. provide information requested by DFW to meet DFW's obligations for proper expenditure of the funds and reporting; and
   7.7. fulfill all responsibilities undertaken by DNR as a result of the EPA RFP process.

8. Cooperative Decision-Making. DFW and DNR commit to cooperative and transparent decision-making, and a dedication to a collaborative approach in engaging with one another and external parties, work groups, and stakeholders.
   8.1. Phase I. Proposal Development. In order to assure a comprehensive proposal that is responsive to the EPA RFP, both DFW and DNR commit to transparent and timely collaboration on the development of the application package. DNR and DFW agree to identify which agency will lead the drafting of the proposal elements identified by EPA in IV.C. DNR and DFW will allow a minimum of 3 days before agreed upon timelines for each party to review content provided by the other party.
   8.2. Both parties commit to use their best efforts to meet all deadlines in this Agreement.
   8.3. *Phase II. Cooperative Agreement Implementation.* In the event that the DFW-DNR coalition proposal(s) is selected by EPA for the EPA RFP, DFW and DNR will reach agreement before taking action to implement the terms of the Cooperative Agreement. DFW and DNR commit to work together in a transparent, respectful, and collaborative manner in implementing the Cooperative Agreement and with all third parties who may seek funding in compliance with the Cooperative Agreement. Upon execution of the Cooperative Agreement per 6.5 above, DFW and DNR will convene to develop a governance structure consistent with the requirements of the Cooperative Agreement and that reflects the intent set forth in this Agreement. For the elements of the proposal(s) that contemplate offering competitive grants to third parties, DFW and DNR shall convene a meeting with RCO in an effort to develop an agreement with RCO that authorizes RCO to administer competitive grants consistent with the Cooperative Agreement and establishing efficient interaction among DFW, DNR, and RCO with respect to grant implementation. If an agreement cannot be reached with RCO that is satisfactory to both DNR and DFW, DFW shall administer the competitive grant making process consistent with the Cooperative Agreement unless otherwise agreed by DFW

and DNR.

9. Satisfaction of Public Bid Requirements through DFW and RCO Procedures. To the extent that any element of implementation of any contract awarded to the DFW-DNR coalition for the EPA RFP requires compliance with public bidding requirements, it is the intent of the parties that DFW or RCO comply with their statutory requirements regarding such requirements and that DNR will not offer contracts for public bidding unless it is a required element of the sub-award methods specified in the proposal and subsequent cooperative agreement.

10. Dispute Resolution Process. In order to demonstrate a substantial commitment to achieving cooperative decision-making under this Agreement, DFW and DNR agree to abide by the following dispute resolution process in the event of a dispute regarding the implementation of this Agreement. This dispute resolution process does not apply to assistance agreement competition-related disputes that are subject to the process set forth in 70 Federal Register 3629, 3630 (January 26, 2005), except to the extent that DFW and DNR may be able to agree upon an approach to participating in the federal dispute resolution process.
    10.1. *Initial Attempt to Resolve Dispute.* The Puget Sound policy leads for DNR and DFW shall attempt to resolve all issues under this Agreement. If these policy leads are not able to agree upon any issue that must be resolved in order to complete the EPA RFP application package or implement any Cooperative Agreement awarded by EPA, then they shall notify the Agency Coordinators of the existence of a dispute and any information relevant to its resolution.
    10.2. *Agency Coordinators.* Within five (5) days of notice of the dispute, the Agency Coordinators will review the information submitted by the Puget Sound policy leads regarding the dispute. At a minimum, the Agency Coordinators shall hold at least one meeting within ten (10) days of notice of the dispute to resolve the disputed issue(s). If the meeting fails to resolve the dispute, then the Agency Coordinators shall notify the Director of the Department of Fish and Wildlife and the Commissioner of Public Lands of the existence of the dispute and all information considered by the parties at the meeting, within five (5) days of the meeting.
    10.3. *Policy Level Dispute Resolution.* At a minimum, the DFW Director and the DNR Commissioner shall hold at least one meeting within ten (10) days of the notice of the dispute from the Agency Dispute Resolution Coordinators to resolve the disputed issue(s).
    10.4. All dispute resolution outcomes shall be consistent with terms of the Cooperative Agreement between DFW and EPA, if occurring after the EPA RFP proposal is submitted.
    10.5. *Time Periods.* Any of these time periods may be reasonably shortened or extended by agreement as necessary to conform to any timelines set forth in or dictated by the Cooperative Agreement.

11. Termination of Agreement. This Agreement shall automatically terminate in the event DFW is not selected as a "Lead Organization" following submission of a proposal(s) for the EPA RFP, or by mutual agreement of the parties. Termination of the Agreement does not relieve

either party of any obligations incurred prior to the date of termination.

12. Amendment. This Agreement shall not be amended without the agreement of both DFW and DNR, and no amendments shall be valid unless made in writing and signed by the signatories to this Agreement. This Agreement shall be automatically amended to incorporate the Cooperative Agreement following its execution, in the event that DFW is selected as a "Lead Organization" following submission of a proposal for the EPA RFP.

13. Assignment. None of the rights or obligations under this Agreement shall be assigned to any party without the prior express written consent of both DFW and DNR made in writing by signatories to this Agreement.

14. No Third Party Beneficiaries. Although this Agreement may result in decisions that benefit persons or entities not a party to this Agreement, this Agreement is not intended to benefit any third party nor to authorize any non-party to maintain a suit of law or equity against DFW, DNR, or the State of Washington.

15. Posting Agreement on Agency Websites. Upon mutual execution of this Agreement, each of DNR and DFW shall cause it to be posted to their respective external websites.

16. Authority of Parties and Approval of State Officer and Agency. Each of the signatories to this Agreement represents that he or she is authorized to execute this Agreement. To the extent this Agreement requires approval of an office or agency of state government under RCW 39.34.050, approval by the signatories is deemed such approval.

17. Maintenance of Records. All records created as a result of the obligations set forth in this Agreement shall be retained by each of DFW and DNR according to their agency retention policies and procedures. To the extent that EPA requires the maintenance of records for a longer period or in excess of those required by DFW and DNR's respective records retention policies and procedures, those requirements shall apply and each agency shall cause their public records officers to maintain records in accordance with EPA's requirements.

18. Applicable Law. This Agreement shall be governed by the laws of the State of Washington.

19. Non-waiver and Reservation of Authority. Nothing in this Agreement shall be construed to waive any rights, claims or privileges, nor to expand or diminish any existing authority, and each of DFW and DNR reserves each of their respective claims, rights, and responsibilities that they each have with respect to matters requiring agency decisions within their respective jurisdiction and as to matters not addressed in this Agreement. A failure by either party to require strict conformance with any of the provisions of this Agreement shall not be deemed a waiver as to any of the requirements of this Agreement.

20. Insurance. DFW and DNR are part of the State of Washington and participants in the State's self-insurance liability program as provided by RCW 4.92.130. This Agreement is not intended to alter or affect either party's continued participation in the State's self-insurance

program.

21. Potential Liability. Each of DFW and DNR shall be responsible for its own acts and/or omissions of each of its respective officers, employees, and agents in carrying out its commitments under this Agreement.

22. Entire Agreement. This Agreement contains all of the terms and conditions agreed upon by the parties with respect to the subject matter of this Agreement and this Agreement supersedes any oral or written agreements between DFW and DNR prior to the effective date of this Agreement with respect to the subject matters addressed in Agreement.

Phil Anderson, Director
Washington State Department of Fish and Wildlife

Date 10/5/2010

Peter Goldmark, Commissioner of Public Lands
Washington State Department of Natural Resources

Date Oct 5, 2010