

Memorandum of Understanding Concerning the Kootenai River/Kootenay Lake Burbot Conservation Strategy

PARTICIPANTS

This Memorandum of Understanding (MOU) is made among the Kootenai Valley Resource Initiative (KVRI), Bonneville Power Administration (BPA), BC Hydro, the British Columbia Ministry of Water, Land, and Air Protection (MWLAP), the City of Bonners Ferry, the Boundary County of the State of Idaho, Department of Fisheries and Oceans of Canada (CDFO), the Idaho Department of Fish and Game (IDFG), the Idaho Office of Species Conservation (OSC), the Kootenai Tribe of Idaho (KTOI), Montana Fish, Wildlife and Parks (MFWP), the National Oceanic and Atmospheric Administration (NOAA), the U.S. Army Corps of Engineers, (USACE), the U. S. Fish and Wildlife Service (USFWS), and the United States Geological Survey (USGS).

The above entities are collectively known as the Participants.

RECITALS

WHEREAS, burbot (*Lota lota*) is a fish species endemic to the Kootenai River in Idaho, and the Kootenay River and Kootenay Lake in British Columbia (hereafter referred to as Kootenai River/Kootenay Lake); and

WHEREAS, imminent threats coupled with reductions in the numbers of native burbot caused populations in these areas of the Kootenai/y River Basin to be listed as a species of special concern in the States of Idaho and Montana; and

WHEREAS, the protection and conservation¹ of burbot require the coordinated effort of all the Participants; and

WHEREAS, it is the intent of the Participants to prevent extinction of local burbot populations and promote the recovery and conservation of burbot through coordinated research, management, and funding; and

WHEREAS, the KVRI was formed under a Joint Powers Agreement (JPA) between the KTOI, the City of Bonners Ferry, and Boundary County, in October 2001. Under the JPA, the KVRI is empowered to assist in restoration and enhancement of the resources of the Kootenai Valley and to foster community involvement and development. The mission of KVRI is to act as a locally based effort to improve coordination, integration, and implementation of existing local, state, and federal programs that can effectively maintain, enhance, and restore the social, cultural, and natural resource bases in the community. The KVRI membership and partners include the KTOI, regional city and county governments, private citizens and landowners, federal, state, and provincial

¹ The definition of the term “conservation” in this MOU is to restore and maintain a viable and ultimately harvestable burbot population

agencies, environmental advocacy groups, and regional representatives of business and industry; and

WHEREAS, the KTOI and the KVRI have facilitated the development of the Kootenai River/Kootenay Lake Burbot Conservation Strategy (CS) for the protection and conservation of burbot (Attachment 1); and

WHEREAS, the CS provides for coordination of conservation efforts among the Participants to adaptively manage this species and coordinate monitoring to measure success toward conservation of this species; and

WHEREAS, the actions described in the burbot CS are grounded in rigorous review and analysis of this species in the Kootenai/y River Basin, and are consistent with the Kootenai Subbasin Plan prepared for the Northwest Power and Conservation Council; and

WHEREAS, the Participants desire to formalize their commitment to implement the CS consistent with their respective authorities and responsibilities;

NOW, THEREFORE, the Participants have reached the following understanding:

A. Purpose

The purpose of the CS is to restore and maintain a viable and ultimately harvestable burbot population in the Kootenai River and in the South Arm of Kootenay Lake. In furtherance of this objective, the Participants have entered into this MOU to establish an effective and efficient process to coordinate burbot conservation activities. In coordinating their entities' efforts, the Participants desire to adaptively manage burbot by sharing information and coordinating research and monitoring activities. The CS provides the framework for implementation of this adaptive management approach and may be modified as more information is obtained.

B. Commitment to the Burbot Conservation Strategy

Burbot Restoration – The KTOI and the KVRI Burbot Committee, along with the USFWS, the IDFG, and additional committed stakeholders, have developed an integrated, innovative approach to provide a viable harvestable burbot population in the Kootenai River/Kootenay Lake.

The KTOI proposed to the USFWS that a collaborative approach be used in the Kootenai River drainage to develop, implement, and evaluate the CS for Kootenai River/Kootenay Lake burbot as a “pilot project”. The project gained broad support from a wide range of stakeholders in the Kootenai/y Valley, which led to the formation of the KVRI Burbot Committee. Additionally, the project has obtained the support of the Idaho Congressional Delegation, as well as other members of the United States Congress.

It is this multifaceted international focus and commitment to implement actions to reduce threats that empower this CS. If Kootenai River/Kootenay Lake burbot are considered in any future Endangered Species Act listing decision, both the commitment to implement the adaptive management approach reflected in the CS and its effectiveness will be measured through the improved status of the burbot, and will be key considerations (See the Policy for Evaluation of Conservation Efforts, PECE, FR Vol. 65 No. 114, June 13). Please refer to the CS for more details.

C. Annual Project Communication and Management

1. The KVRI Burbot Committee is serving as the forum to coordinate implementation of the CS. The Committee will meet at least annually in the fall to discuss progress during the past year, and to be updated on priorities and funding needs for future years. The Participants commit to participation in these meetings and to exchange information, provide project updates, and discuss the course of future burbot research, conservation, and management. Annual project updates and reports currently provided by the management agencies (e.g. IDFG, KTOI, MWLAP) will be the primary sources of resource information used in discussions by the Committee regarding ongoing and future burbot research, conservation, and management.
2. Consistent with the CS (Section 9.7, “Information and Outreach”), the KVRI Burbot Committee meetings will also serve to:
 - a. Increase public awareness of the need for Kootenai River/Kootenay Lake burbot conservation by sharing informational and educational materials.
 - b. Pursue opportunities to link Kootenai River/Kootenay Lake burbot conservation activities with other ongoing fish and wildlife research and management, and with current and future habitat and ecosystem restoration efforts.
 - c. Distribute annual monitoring, evaluation, and research reports.
 - d. Continue to involve a broad coalition of interested stakeholders in burbot conservation, working collaboratively through the KVRI Process (See CS, Section 5.0, “Existing Conservation Measures” for more details).

D. Funding

1. Funding of current burbot conservation actions is primarily through the Northwest Power and Conservation Council’s Fish and Wildlife Program (Program), implemented by BPA, and from Congressional appropriations granted through the Department of the Interior to the KTOI and other Participants. As the project selection process is developed, future funding under the Program will be based on regional prioritization and will be guided in part by subbasin plans. It is anticipated that these funding sources will

continue and that many of the actions within the CS will proceed upon execution of this MOU.

2. The Participants commit to continue to seek funds and/or provide support to implement the CS. It is anticipated that additional sources of funding through federal, state, provincial, private, and public sources will be needed to fully implement the CS. However, it is recognized that entities retain discretion concerning their expenditures. The Participants will work cooperatively to investigate additional funding sources and to pursue use of existing funding sources, including cost-sharing mechanisms. It is also recognized that the CS outlines funding coordination activities with other ongoing Kootenai/y Basin projects.
3. This MOU is neither a fiscal nor a funds obligation document. Nothing in the MOU will obligate any Participant to enter into any contract or otherwise create new or additional legal obligations. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between Participants to this instrument will be handled in accordance with applicable laws, regulations, and procedures, including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that will be made in writing by representatives of the Participants and will be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

E. Miscellaneous Provisions

1. Successful implementation of the CS and adaptive management processes contained therein are intended to reduce the threats to Kootenai River/Kootenay Lake burbot and produce and maintain stable burbot size and age class distributions that promote fisheries conservation in the Kootenai River/Kootenay Lake.
2. Efficiency and degree of certainty of success for the implemented CS will be maximized by this MOU and the commitment of all Participants to collaboratively support implementation of CS elements, along with a formal, evolving adaptive management approach that uses the best available science.
3. If any Participant anticipates or determines that actions in the CS cannot be carried out by their agency as described, they will coordinate with other appropriate Participants to pursue alternatives that are consistent with CS objectives.

4. This MOU is intended to provide a mechanism to further the objective of burbot conservation and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity against any Participant. Without limiting the applicability of rights granted to the public pursuant to any law, this MOU and the CS will not create any right or interest in the public, or any member thereof, as a third Participant beneficiary hereof, nor will they authorize anyone to maintain a suit for enforcement of the MOU, or CS, personal injury or damages. The duties, obligations, and responsibilities of the Participants to this MOU with respect to third Participants will remain as imposed under existing law.
5. This MOU does not delegate any authority or responsibility established by law, nor does it limit the discretion of any Participant. If the processes and procedures related to this MOU and/or the CS would delay the implementation of any actions for which a Participant is obligated to provide under law, that Participant reserves the right to proceed with fulfilling such obligations in the manner it deems appropriate or necessary. The Participants intend that this MOU be interpreted to be fully consistent with their respective statutory and regulatory authorities and obligations.

F. MOU Duration, Modification, and Termination

1. This MOU will become effective upon the date of signature of the last listed Participant and will remain in effect for ten years, at which time the MOU may be renewed, amended, or reconsidered.
2. Additional Participants in this MOU may be considered once the MOU is in effect. Entities interested in being considered as future Participants should notify the KVRI Burbot Committee in writing.
3. This MOU may be modified or amended only with the written consent of all Participants. This MOU may also be suspended or terminated upon unanimous written agreement of all Participants. Documentation of modification, amendment, suspension, or termination of the MOU will be provided to the KVRI Burbot Committee.
4. Any Participant may suspend or terminate its participation in the MOU by giving 90 days written notice of its intent to all other Participants.

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Collective Participant Signature Page

The Undersigned agree to the Memorandum of Understanding Concerning the Kootenai River/Kootenay Lake Burbot Conservation Strategy

Kootenai Valley Resource Initiative
(KVRI) Co-Chair 1

Idaho Department of Fish and Game
(IDFG)

Kootenai Valley Resource Initiative
(KVRI) Co-Chair 2

Idaho Office of Species Conservation
(OSC)

Kootenai Valley Resource Initiative
(KVRI) Co-Chair 3

Kootenai Tribe of Idaho (KTOI)

Bonneville Power Administration (BPA)

Montana Fish, Wildlife and Parks
(MFWP)

BC Hydro

National Oceanic and Atmospheric
Administration (NOAA)

British Columbia Ministry of Water,
Land, and Air Protection (MWLAP)

U.S. Army Corps of Engineers,
(USACE)

City of Bonners Ferry, the Boundary
County of the State of Idaho

U. S. Fish and Wildlife Service
(USFWS)

Department of Fisheries and Oceans of
Canada (CDFO)

United States Geological Survey
(USGS)

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Individual Participant Signature Page

The Undersigned agrees to the Memorandum of Understanding Concerning
the Kootenai River/Kootenay Lake Burbot Conservation Strategy

Dated this _____ day of _____, 200__

Name of Party: _____

By: _____

Title: _____

Address: _____

Telephone #: _____

<p>Gary Aitken, Sr. Co-chair Kootenai Valley Resource Initiative</p>	<p>Charles E. Corsi Regional Supervisor Idaho Department of Fish & Game</p>
<p>Darrell Kerby Co-chair Kootenai Valley Resource Initiative</p>	<p>James L. Caswell Administrator Idaho Office of Species Conservation</p>
<p>Dan Dinning Co-chair Kootenai Valley Resource Initiative</p>	<p>Gary Aitken Sr. Tribal Chairman Kootenai Tribe of Idaho</p>
<p>Steven J. Wright Administrator and CEO Bonneville Power Administration</p>	<p>Chris Hunter Chief of Fisheries Montana Fish, Wildlife and Parks</p>
<p>Cam Matheson Manager, Generator Operations British Columbia Hydro</p>	<p>David J. Wesley Deputy Regional Director U.S. Fish and Wildlife Service</p>
<p>Wayne L. Stetski Regional Manager, Kootenays British Columbia Ministry of Water Land, and Air Protection</p>	<p>William T. Grisoli Brigadier General, USA Division Engineer U.S. Army Corps of Engineers</p>
<p>Darrell Kerby Mayor City of Bonners Ferry, State of Idaho</p>	<p>Kathy D. Peter Director, Idaho Science Water Center United States Geological Survey</p>
<p>Ronald R. Smith Chairman, Boundary Co. Commissioners Boundary County, State of Idaho</p>	<p>Barry Rosenberger Area Director of BC Interior Department of Fisheries and Oceans of Canada</p>