

Cooperative Agreement No. 03HQURU1516

AGREEMENT FOR ESTABLISHMENT AND OPERATION

of the

MONTANA COOPERATIVE FISHERY RESEARCH UNIT

by the

U.S. GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

and the

MONTANA STATE UNIVERSITY

and the

MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

This agreement, effective on the date signed by all parties, is entered into by the Unit Cooperators: the U.S. Geological Survey, hereinafter referred to as "USGS", the Montana State University, hereinafter referred to as the "University", and the Montana Department of Fish, Wildlife and Parks, hereinafter referred to as the "Department".

I. Authorization:

The Department of the Interior is authorized under Public Law 86-686 (as amended November 8, 1978), to enter into cooperative agreements with colleges and universities and State fish and wildlife departments relating to Cooperative Research units for the purpose of developing adequate, coordinated, cooperative unit programs of research and education relating to fish and wildlife.

The University is authorized by the laws of the State of Montana to enter into agreements or contracts with the Federal Government or agencies thereof, as well as into agreements or contracts with agencies of other governments, and other colleges or universities, where such agreements or contracts, in the judgment of the trustees, will promote the objectives of the University.

The Department is authorized by the laws of the State of Montana to enter into agreements and investigate questions related to fish and wildlife and related resources, to initiate and conduct inquiries pertaining to such questions, and to conduct such biological research that in its opinion will conserve, improve, and enhance the status of these resources in the State of Montana.

II. Purpose:

The Cooperators enter this agreement to provide for active cooperation in the advancement, organization, and conduct of research, graduate education, in-service training, technical assistance, public relations, and demonstration programs relating to fishery and aquatic resources as outlined in the following sections.

### III. Objectives:

1. To conduct research into the ecology of fishery and aquatic resources and to investigate the production, use, management, protection, and restoration of such resources. This research will be relevant to the needs of the State, the geographical region, and the Nation and will be endorsed as such by the Unit's Coordinating Committee.
2. To provide technical and professional education on the graduate and professional levels, in the field of fishery science.
3. To make available to resource managers, landowners, other researchers, and other interested public, such facts, methods, literature, and new findings discovered through research.
4. To disseminate research findings through the publication of reports, bulletins, circulars, films, and journal and magazine articles. These may include scientific, technical, semi-popular and popular media at all levels.

### IV. USGS Agrees To:

1. Designate up to two full-time employees of USGS to staff the Cooperative Research Unit. One of these employees shall serve as Unit Leader, and one shall serve as Assistant Unit Leader. Other USGS employees may be appointed to carry out specific education or research assignments. All Unit staff appointments shall be made with the concurrence of the University and the Department. All USGS employees shall meet the qualifications for graduate faculty status within the University unless otherwise agreed upon by the Cooperators.
2. Pay the salaries of USGS personnel assigned to the Unit, and to provide incidental expense funds for these personnel as provided for in PL86-686.
3. Make available such services, and facilities,

including equipment, buildings, and land under control of USGS, as may be mutually agreed upon.

4. Cooperate in the planning and development of research, education, in-service training, and the preparation of publications and demonstration programs.
5. Permit USGS scientific personnel assigned to the Unit to participate in teaching graduate courses and seminars in their areas of specialization. This commitment is expected to be limited to the equivalent of one formal graduate level course per year per person.
6. Call Coordinating Committee Meetings for the purpose of coordinating the activities and programs of the Unit and cooperating agencies in accordance with local, regional, and national requirements.
7. Recognize as participating cooperators those faculty, staff, and students of the University and employees of the Department participating in an approved activity of the Unit.
8. Provide funds through this Cooperative Agreement to support specific research, Unit operations, or educational projects of primary interest to the Cooperators, including mutually agreed upon university administrative and support services, which meet the terms of the Cooperative Units Act as amended. On the basis of statements of work that are mutually agreeable to all Cooperators, funds will be obligated through this agreement to the cooperating agencies to carry out the work.

V. The University Agrees To:

1. Make available to the Unit one full-time position for secretarial and administrative assistance; a minimum of three offices (one for Unit Leader, one for Assistant Unit Leader, one for Administrative Assistant) totaling at least 300 square feet; laboratory space for Unit research totaling at least 700 square feet; access to a

wet lab; secure storage space for Unit watercraft and equipment; parking decals for the Unit's State and Federal vehicles; computer facilities, including Internet connections, as are regularly made available to other University faculty; publication channels; museum facilities; library; equipment; utilities, including telephone services in the same manner as provided other university departments; indirect cost waivers on Department and USGS supported research as defined in V.4, and account services for Cooperator contributions to the Unit and other personnel and facilities as may be mutually agreed upon for the efficient conduct of the Unit program. Monetary equivalence for services and facilities will be shown in reports of annual Cooperative Unit budgets.

2. Recognize as regular members of the University staff those research scientists of USGS who are assigned to the Unit. These personnel shall be granted faculty rights and privileges and be given rank appropriate to their qualifications. USGS personnel shall be given graduate faculty appointments, providing such personnel meet the standards and requirements of the University. USGS personnel shall be eligible for promotion in University rank in accordance with normal University standards and procedures but will not be tenured or salaried by the University.
3. Recognize that graduate students who receive financial and logistic support through the Unit will be members of an appropriate graduate program and subject to all established admittance review and evaluation procedures of that program. All normal graduate support facilities of the program accrue to those individuals by virtue of their being regular members of the graduate program.
4. Make available the means for the Unit to establish accounts with no fiscal year limitations with the University through which operating and research expenditures may be transacted. This service will be provided by the

University without overhead charges on the annual contributions from USGS and the Department (as defined in section VI.3). Indirect costs at a rate of 15% will be charged on all USGS supported Unit research contracts. The difference between the 15% rate and the University's regular indirect cost rate on contracts will be considered as part of the University's contribution to the Unit. Indirect costs at a rate of 0% will be charged on all Department supported Unit research contracts up to a maximum of \$200,000 annually per State fiscal year. The difference between the 0% rate and the University's regular indirect cost rate on contracts will be considered as part of the University's contribution to the Unit. Department supported Unit research in excess of \$200,000 annually per State fiscal year will be assessed indirect costs at a rate of 15%. Indirect costs charged on grants and contracts coming to the Unit from non-Cooperator sources will be negotiated on a case-by-case basis. Unit personnel services to the University and Department operating-expense contributions to the Unit are to be considered in part to be in lieu of reduced University indirect cost rates for contract research supported by Cooperators.

5. Cooperate in planning, developing, and executing research, education, in-service training, publications, demonstration projects, and other programs of the Unit.

VI. The Department Agrees To:

1. Make available such personnel and facilities, including equipment, buildings, and land under its control, as may be mutually agreed upon for execution of the program. All Unit staff appointments shall be made with the concurrence of the University and USGS.
2. Cooperate in research, education, in-service training, public relations, and demonstration on approved projects.

3. Cooperate through the Unit program in carrying forward approved research projects on fishery and aquatic resources. For furtherance of Unit operations, the Department agrees to provide annually, through University accounts, a minimum of \$30,000. This amount may be supplemented by additional funds or in-kind contributions of services or utilities for the conduct of projects requested by the Department and mutually agreed upon by the Cooperators. The Department and USGS will periodically reexamine the amount of their annual basic contributions and may make such adjustment as deemed appropriate after consideration of current economic conditions, budget, and revenues available.

VII. It is Mutually Agreed That:

1. The Unit shall be administered through a Coordinating Committee, consisting of a designated representative of USGS, the University, and the Department.
2. The Coordinating Committee, consisting of signature parties or their designees to the Cooperative Agreement, will meet annually in General Session or as otherwise mutually agreed. The General Session of the Coordinating Committee will be open to anyone interested in the activities of the Unit. At the General Session the Coordinating Committee will:
  - a. Review and modify as necessary the Statement of Direction for the Unit. The Statement of Direction is a declaration of the research and teaching areas mutually agreed upon as needing primary emphasis and attention in the Unit.
  - b. Examine, and approve or modify, the annual research budget, which shall include new funds each year and any gift or unexpended funds of the previous year not reverting to the contributing agencies. It shall review annual statements of financial expenditures and balances, and other financial reports or

information needed for evaluating the Unit's research program. Budget statements and reports will be prepared by the Unit Leader and provided to each member of the Coordinating Committee in advance of the annual meeting.

- c. Examine, and approve or modify, the Unit plan of activities, including proposed starts for all new projects.
  - d. Integrate, insofar as practicable, the research and training programs of the Unit with the research and training programs of the agencies cooperating in the Unit, and with the general land and water use programs of the State and Nation.
  - e. Exchange information so that Cooperators and interested agencies will be informed of the plans, programs, progress, needs, and probable future trends and patterns of development of the research and training programs of the Unit. Such information exchange will occur frequently and regularly and not be limited to the annual General Session of the Coordinating Committee.
  - f. A closed Executive Session of the Coordinating Committee may be held following the General Session upon request of any Coordinating Committee member for dealing with issues or matters of operational policy that should not be part of the open forum meeting. The Executive Session shall be attended only by official Coordinating Committee members.
3. Participation of the Federal Government in this project is not intended to place it in a position of liability for claims that arise as a result of Unit activities. Each party hereto shall have responsibility for acts of and injury to, or injury and damage caused by its own personnel and its own property occurring incidental to the conduct of the projects permitted hereunder.

4. Participation of the Department in this project is not intended to place it in a position of liability for claims that arise as a result of Unit activities. Each party hereto shall have responsibility for acts of and injury to, or injury and damage caused by its own personnel and its own property occurring incidental to the conduct of the projects permitted hereunder.
5. Participation of the University in this project is not intended to place it in a position of liability for claims that arise as a result of Unit activities. Each party hereto shall have responsibility for acts of and injury to, or injury and damage caused by its own personnel and its own property occurring incidental to the conduct of the projects permitted hereunder.
6. In the case that any Unit employee, staff, student, or volunteer is injured during the conduct of Unit research activities, the immediate supervisor of the affected individual (University, Department, or USGS) will be notified immediately.
7. All equipment contributed to the Unit shall be the property of the contributing Cooperator in the event of dissolution of the Unit. An equipment inventory indicating ownership, costs, and condition of each item under the auspices of the Unit shall be maintained by the Unit Leader and made available annually to the Cooperators. All equipment purchased by or donated to the Unit by persons or entities other than USGS or the Department shall become the property of the University in the event of dissolution.
8. The obligations of USGS are contingent upon the appropriations of Congress; of the University and the Department upon appropriations by the State Legislature. No cooperative funds shall be spent except in furtherance of the programs of the Unit as approved by the cooperating agencies through the Unit Coordinating Committee. Proposals for research to be undertaken by the Unit shall

conform to the project protocol of the University and/or granting agencies.

9. The acquisition of special funds (contracts, grants, gifts, bequest funds, etc.) is encouraged and their use is also subject to Coordinating Committee approval.
10. The parties understand and acknowledge that the Unit must comply with University policies and procedures pertaining to financial accounting, audit, business procedures, student issues and activities and other policies which have general application to the activities undertaken on the MSU campus. The Unit must also comply with applicable State and Federal policies and procedures for actions undertaken by the Unit, both financial and otherwise.

VIII. Publications:

1. The principal investigator designate for a specific project supported by the Unit shall have primary responsibility for the quality of work being submitted for publication, as well as for adherence to the publications guidelines of the cooperating agency supporting the project. The Unit Leader shall be given the opportunity to review, prior to publication, all publications arising from work sponsored or coordinated by the Unit. Time for such reviews will be limited to 30 days. Publication restrictions that may be incorporated into grant or contract research will be observed. The Unit Leader will clear the manuscript through the cooperating agencies as appropriate.
2. Publication may be independent or joint as agreed upon, always giving credit for cooperation of the Unit and of contributing agencies where appropriate, yet recognizing within proper limits the rights of the individual doing the work.
3. In case of failure to agree as to the manner of publication or interpretation of results, each party may publish data after due notice and

submission of the proposed manuscripts to the other parties. In such instances, the party publishing the data will give credit to the cooperators, but will assume full responsibility for any statements on which there is difference of opinion.

IX. Officials Not To Benefit:

As provided in applicable federal and state statutes, no person prohibited from doing so shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom.

X. Nondiscrimination in Employment:

In connection with the performance of work under this agreement, the cooperators agree not to discriminate against any employee or applicant for employment because of sex, race, religion, color, or national origin. This provision shall include, but not be limited to, the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

XI. Certification Regarding Drug-Free Workplace Requirements:

By signing this Cooperative Agreement the signatory certifies that it will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Cooperator's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing a drug-free awareness program to inform employees about -
  - a. The dangers of drug use in the workplace
  - b. The Cooperator's policy of maintaining a drug-free workplace

- c. Any available drug counseling, rehabilitation, and employee assistance programs
- d. The penalties that may be imposed upon employees for drug use violation occurring in the workplace;

3. Making it a requirement that each employee to be engaged in performance of work under this Cooperative Agreement be given a copy of the statement required by paragraph (1);

4. Notifying the employee in the statement required by paragraph (1) that, as a condition of support under this Cooperative Agreement, the employee will -

- a. Abide by the terms of the statement; and
- b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

5. Notifying the USGS/BRD within ten days after receiving notice under subparagraph (4) (b) from an employee otherwise receiving actual notice of such conviction;

6. Taking one of the following actions, within 30 days of receiving notice under subparagraph (4) (b), with respect to any employee who is convicted by -

- a. Taking appropriate personnel action against such an employee, up to and including termination; or
- b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;


7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).

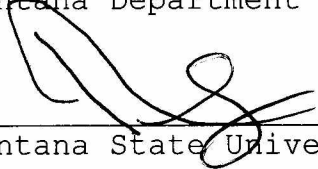
#### XII. Effective Date And Termination:

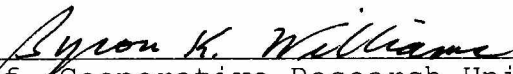
1. This agreement shall become effective on the date of last signature and shall continue in force until modified or terminated through mutual agreement

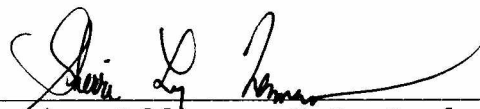
following a written notice to the other cooperators 90 days in advance. The cooperators will review and update this agreement in five years.

Approvals:

  
\_\_\_\_\_  
Montana Department of Fish, Wildlife and Parks      Date 7/12/02

  
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Montana State University      Date 7/11/02

  
\_\_\_\_\_  
Chief, Cooperative Research Units,  
U.S. Geological Survey      Date 8/12/02

  
\_\_\_\_\_  
Contracting Officer, U.S. Geological Survey      Date 01/23/03



"Schmidt, Leslie"  
<lschmidt@montana.edu>

01/16/2003 11:59 AM

To: 'Jim Fleming' <jim\_fleming@usgs.gov>  
cc:  
Subject: RE: MT Cooperative Agreement for the Cooperative Fish Unit

Hi Jim,

Please be advised that I have read through the paragraph below and concur with the language. Thanks for moving this agreement along.

Leslie

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Leslie L. Schmidt  
Assistant Vice President for Research  
Montana State University  
Grants & Contracts Office  
309 Montana Hall  
Bozeman, MT 59717-2460  
PH: (406) 994-2381  
FAX: (406) 994-7951  
lschmidt@montana.edu

-----Original Message-----

From: Jim Fleming [mailto:jim\_fleming@usgs.gov]  
Sent: Thursday, January 16, 2003 9:53 AM  
To: lschmidt@montana.edu  
Subject: MT Cooperative Agreement for the Cooperative Fish Unit

Apologies for my tardiness on pushing this thing through. I had hoped to get this done before the holiday season, but failed. To simplify things, I suggest that my concerns be addressed by inclusion of the following statement to be filed with the current agreement. My intent here is to avoid some of the issues raised in audits previously, regarding what the university is providing through the agreement, and what can be charged as direct cost to incremental work (federal contracts) awarded to the Unit/university.

If you concur with this statement, I print your concurrence along with mine, and we will simply file this statement with the agreement rather than do any adjusting or modifying of the current agreement. I have already notified other signatories that I will hand carry the agreement to them for signature so that no more time is lost.

Note to the Files for Agreement for Establishment and Operation of the Montana Cooperative Fish Unit:

Section V. Contributions made by the university under this section are for the base operations of the Unit, not necessarily for incremental work assigned to the unit as RWOs. RWOs will be assessed a 15% overhead rate (V. 4) by the university. Direct cost allowable for RWOs under this agreement are subject to the Negotiated Rate Agreement in place for federal agencies.