

**Memorandum of Understanding
BETWEEN THE
UNITED STATES DEPARTMENT OF THE
INTERIOR U.S. FISH AND WILDLIFE SERVICE-
Idaho Fish and Wildlife Office, and the
IDAHO GOVERNOR’S OFFICE OF SPECIES
CONSERVATION**

I. Introduction

This Memorandum of Understanding (MOU) is between the United States Fish and Wildlife Service’s Idaho Fish and Wildlife Office (Service; IFWO), and the Idaho Governor’s Office of Species Conservation (OSC), (collectively the “Parties”).

II. Purpose

This MOU outlines coordination between the Parties to assist OSC in providing the opportunity for private and municipal landowners (i.e., private, city and county landowners), to enter into voluntary Conservation Agreements (CA) for slickspot peppergrass (*Lepidium papilliferum*). Conservation Agreements can serve to memorialize existing conservation efforts and outline commitments to maintain suitable habitat for the species on specified lands into the future. These conservation efforts may occur in conjunction with recovery efforts on adjacent lands but are not necessary to meet the recovery goals of the species.

III. Background

The Service listed slickspot peppergrass as a threatened species under the Endangered Species Act (ESA) in December 2009, and initially proposed designation of critical habitat in May 2011. In October 2012, the U.S. District Court for the District of Idaho vacated the Service’s 2009 listing determination and remanded it to the Service for further consideration. The court’s decision effectively suspended designation of critical habitat.

After further consideration of the court’s decision, the Service reinstated slickspot peppergrass as a threatened species in September 2016. In April 2019, slickspot peppergrass was included in the Service’s national notice of intent to make listing decisions and designation of critical habitat for 24 species. In response to the 2019 settlement with the plaintiff, the Service published an updated proposal to designate critical habitat on July 23, 2020. Separate from this critical habitat designation, the Service developed a Species Status Assessment (SSA) for slickspot peppergrass in February 2020. This SSA was reviewed by multiple partners, including OSC.

Approximately 87 percent of slickspot peppergrass Elemental Occurrence (EO) acreage rangewide is located on federal lands (Bureau of Land Management, U.S. Air Force, and Bureau of Reclamation). State and privately owned lands encompass 9 percent and 4 percent respectively of the EO acreage. In 2020, the IFWO and OSC began conversations regarding voluntary partnering

opportunities with willing private and municipal landowners to acknowledge conservation efforts they have been implementing on their lands that have resulted in the maintenance of suitable habitat for slickspot peppergrass. The IFWO and OSC appreciates these good stewardship efforts and as such have developed this MOU to assist OSC in their work with willing private and municipal landowners to document current and ongoing conservation for slickspot peppergrass. The OSC has a long-standing history of partnering across Idaho to further conservation of listed and at-risk species while ensuring the long-term sustainability of predictable levels of land use. The IFWO is confident of OSC's commitment to working with willing landowners who wish to document their conservation efforts for slickspot peppergrass.

IV. Agency Missions

- A. OSC's mission is to plan, coordinate and implement the State's actions to conserve and recover species listed as threatened, endangered or candidate under the ESA. This work is done in coordination with the State's natural resource agencies and with the input of the citizens of Idaho while taking into consideration the economic vitality of the State.
- B. The Service's mission is to work with others to conserve, protect and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people.

V. Authorities

Nothing in this MOU shall alter, add to, diminish, or supersede in any manner the authorities and responsibilities of any of the Parties hereto on any matter within their respective jurisdictions and authorities.

- A. The authorities for the Service and IFWO to enter into this agreement include, but are not limited to, the following:
 - 1. Endangered Species Act of 1973; 16 U.S.C. §§ 1531, *et seq.*
 - 2. Fish and Wildlife Coordination Act of 1934; 16 U.S.C. §§ 661-666c.
- B. The authorities for OSC to enter into this agreement include, but are not limited to, the following:
 - 1. OSC: Idaho Code, Title 67, Chapter 8, Section 67-818, Coordination of Policy and Programs Related to Threatened and Endangered Species in Idaho.

VI. Roles and Responsibilities

A. OSC

1. The OSC will make information available on their website for private and municipal landowners regarding conservation opportunities for slickspot peppergrass and may, at their discretion, employ other methods of outreach to help raise private and municipal landowner's awareness of these opportunities.
2. The OSC will support and provide technical assistance to willing private and municipal landowners in the development of voluntary conservation agreements that outline current and future efforts that will support slickspot peppergrass recovery and address the primary threats (i.e., wildfire and invasive annual grasses) to the species and its habitat.
3. The OSC will work with willing private and municipal landowners to enter into voluntary conservation agreements that include 1) measures or best management practices to support the maintenance of existing slickspot peppergrass suitable habitat, 2) monitoring through surveys and/or photo points to document and report the success of the efforts, and 3) adaptive management measures that ensure current science is incorporated into the measures.
4. The OSC will maintain membership on the slickspot peppergrass Technical Team.

B. Service/IFWO

1. The IFWO will provide technical assistance to OSC and private and municipal landowners as requested, in the development of conservation agreements.
2. The IFWO will assist with monitoring outlined in conservation agreements, as requested by OSC and as staff and funding resources allow.
3. The IFWO will continue close communication with OSC to share management concerns, latest science, funding opportunities, etc.
4. The IFWO will continue to work with OSC, BLM, and others to support recovery efforts for slickspot peppergrass.
5. The IFWO will provide technical assistance to the OSC and willing landowners to explore funding programs to obtain financial assistance in implementing conservation actions where applicable. This may include, but is not limited to, the Fish and Wildlife Service's Partners for Fish and Wildlife Program, Natural Resources Conservation Service Working Lands for Wildlife Program, OSC's Sage-grouse Action's Team annual funding and other funding sources.

VII. Representatives

The principal contacts for this MOU are specified below to ensure coordination during the implementation of this MOU.

OSC- Terrestrial Program Manager & Policy Advisor
304 N. 8th Street Suite 149
Boise, Idaho 83702
208-334-2189

Service/IFWO- Assistant State Supervisor, IFWO-Boise
1387 S. Vinnell Way
Boise, Idaho 83709
208-378-5742

VIII. Funding

- A. This MOU shall not obligate the Service or OSC to expend funds or involve either agency in any contract or other obligations for the payment of money.
- B. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the agencies related to this MOU will be handled in accordance with applicable laws, regulations and procedures including those for Government procurement and printing. This MOU does not establish authority for noncompetitive awards to the cooperator of any contract or other agreement. Any contract or agreement for other services must fully comply with all applicable requirements for competition.
- C. The OSC is an Idaho state government entity and it is understood and agreed that the State's staff efforts herein provided for shall be funded from Idaho State Legislative appropriations. The Legislature is under no legal obligation to make appropriations to fulfill this MOU. This MOU shall in no way or manner be construed so as to bind or obligate the State of Idaho or any of its agencies beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time.

The OSC reserves the right to terminate this MOU in whole or in part (or any order placed under it) if, in their sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State or its agencies to continue implementation of this agreement, or requires any return or "give-back" of funds required for the State or its agencies to continue implementation of this agreement, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available, or if the State discontinues or makes a material alteration of the program under which funds were provided such that the State or its agencies are unable to continue implementation of this agreement. Neither the State nor its agencies shall be required to transfer funds between accounts in the event that funds are reduced or unavailable.

All affected future rights and liabilities of the parties to this MOU shall thereupon cease within ten (10) calendar days after notice to the Service. Further, in the event of non-appropriation, the State and its agencies shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential, or other damages resulting therefrom.

IX. Records

- A. Any records or documents generated as a result of this MOU shall become part of the official record maintained and controlled by the party that originally created the document or that has ownership of the information.
- B. Any requests for release of records associated with the implementation of this MOU to anyone outside of the Parties must be determined based on applicable laws, including the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code, the Federal Freedom of Information Act, and the Federal Privacy Act.

X. Compliance with Applicable Laws and Regulations; Severability Clause

This MOU is subject to all applicable Federal and state laws, regulations and rules, whether now in force or hereafter enacted or promulgated. Nothing in this MOU shall be construed as in any way impairing the general powers of the State of Idaho, OSC or Service under such applicable laws, regulations, and rules. If any term or provision of this MOU is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions. Compliance with the terms of this MOU shall not excuse any failure to comply with all applicable laws and regulations, whether or not these laws and regulations are specifically listed herein.

XI. Term, Amendments, and Termination

A. Term of MOU:

- 1. This MOU becomes effective upon the date last signed and executed by the duly authorized representative of the Parties to this MOU.
- 2. This MOU shall remain in effect indefinitely from the execution date, or until terminated or extended. This MOU shall be reviewed by the Parties at least once every five (5) years, and the Parties shall document such review by a signed addendum.

B. Amendments:

- 1. The Parties may request changes to this MOU, which shall be effective only upon the written agreement of all Parties.
- 2. Any changes, modification, revisions, or amendments to this MOU shall be incorporated by written instrument, executed and signed by all Parties, and will be effective in accordance with the terms and conditions contained herein.

C. Termination:

1. This MOU may be unilaterally terminated at any time by any one of its participants, following at least 60 days written notice to the other participants except as otherwise set forth in Section VIII.C, above.

XII. Signatures

- A. All signatories have the appropriate delegation of authority to sign this MOU.
- B. The Parties hereto have executed this MOU on the dates shown below.

Christopher Swanson
State Supervisor
U.S. Fish and Wildlife Service
Idaho Fish and Wildlife Office

Date

Mike Edmondson
Administrator
Idaho Governor's Office of Species Conservation

Date

Exhibit A: Voluntary Best Management Practices

The following voluntary best management practices (BMPs) may be considered by landowners in the development of voluntary Conservation Agreements with Idaho's Office of Species Conservation (OSC) for slickspot peppergrass (*Lepidium papilliferum*). This list is not exhaustive and landowners are encouraged to develop other voluntary practices as applicable.

Wildfire BMPs

1. Be a member of the local Rangeland Fire Protection Association (RFPA) if available.
2. Develop water sources or fill stations to help RFPAs, state and federal firefighters when fighting wildfire in the area.
3. Work with the Bureau of Land Management (BLM), Fish and Wildlife Service (Service) and the State of Idaho (OSC and Idaho Department of Lands) to maintain existing fuel breaks and incorporate new fuel breaks in strategic locations and across boundaries where applicable.
4. Consider where targeted grazing may be used to reduce fuel loads but not negatively impact slickspot peppergrass.

Habitat Restoration Treatment BMPs

1. Work with the BLM, Service and the State of Idaho to design and find funding sources to develop and implement habitat treatments utilizing appropriate perennial grasses and forb species that improve slickspot peppergrass and pollinator habitat.
2. Treat annual grasses and other noxious weed species that are encroaching into slickspot peppergrass EOs while minimizing treatment related impacts to slickspot peppergrass.
3. Prioritize and utilize locally adapted native plant species in restoration treatments as resources allow.
4. Limit the use of highly competitive nonnative plant species (i.e. crested wheatgrass and forage kochia) in habitat improvement or fuel break projects within slickspot peppergrass habitat.

Rangeland Health BMPs

1. Improve diversity and rangeland health by implementing sagebrush planting and appropriate perennial bunchgrass seeding.
2. Design grazing regimes and other land uses to maintain and improve rangeland health.

Protection of EOs BMPs

1. Maintain existing slickspot peppergrass habitat and do not convert to other uses (crops, buildings, roads, etc.).
2. Seek assistance from state and federal funding programs (e.g., Natural Resources Conservation Service and Fish and Wildlife Service's Partners for Fish and Wildlife Program) to implement habitat improvement projects.

Livestock Grazing BMPs

1. Place salt/supplements at least ½ mile, and preferably ¾ mile, away from known slickspot peppergrass EOs.
2. Place temporary water stock tanks ½ mile, and preferably ¾ mile away from known slickspot peppergrass EOs.

3. Minimize trailing large groups of livestock through known slickspot peppergrass EOs when the soils are saturated.

Vehicle Travel BMPs

1. Strive to operate motorized vehicles on existing roads and two track trails and minimize driving off road.
2. Minimize creation of new roads through slickspot peppergrass habitat

Monitoring BMPs

1. During normal operations, survey lands for slickspot peppergrass plants and provide location and photos to OSC to include in reporting.