

**Memorandum of Understanding
For the Coordinated Implementation of
Chapter 247, Laws of 1998: Watershed Management
(Engrossed Substitute House Bill 2514),
and
Chapter 246, Laws of 1998: Salmon Recovery Planning
(Engrossed Substitute House Bill 2496),
By the Participating Agencies
Of the State of Washington:**

The Department of Agriculture, The Conservation Commission, The Department of Community, Trade, and Economic Development, The Department of Ecology, The Department of Fish and Wildlife, The Department of Health, The Department of Natural Resources, The Department of Transportation, The Interagency Committee for Outdoor Recreation, The Puget Sound Water Quality Action Team, The Salmon Recovery Office, Within the Governor's Office, and The State Parks and Recreation Commission

1. Purpose: The purposes of this agreement are:

- To clarify the roles and responsibilities of participating Washington State agencies in support of watershed planning and salmon recovery at the local level, pursuant to the Watershed Management Act and the Salmon Recovery Planning Act;
- To foster cooperative working relationships among the participating state agencies, local governments, and tribal governments;
- To help coordinate and, where possible, to simplify the implementation procedures articulated in the Watershed Management Act and the Salmon Recovery Planning Act.

2. Authority:

Specific mandates to undertake the watershed planning and habitat restoration activities identified in this Memorandum of Understanding were provided through the Watershed Management Act, Chapter 247, Laws of 1998 (ESHB 2514) and the Salmon Recovery Planning Act, Chapter 246, Laws of 1998 (ESHB 2496). In addition, the participating agencies have authorities to conduct the activities described in this Memorandum through their respective enabling statutes and delegated federal authorities. The Joint Natural Resources Cabinet requested the preparation of this Memorandum of Understanding through its Water/Endangered Species Act Work Group.

3. Scope:

The scope of this agreement encompasses all activities of participating state agencies necessary to implement the Watershed Management Act (ESHB 2514), and to implement in a coordinated way the related portions of the Salmon Recovery Planning Act (ESHB 2496), notably the critical pathways, limiting factors analysis, and habitat restoration efforts described in Sections 7 & 8, and the mitigation criteria development described in Section 16. While this agreement specifies

some key coordinating procedures, it presumes continuing interagency cooperation to implement these efforts.

4. Basic Principles:

- Commitment to the success of watershed-based salmon recovery and watershed planning efforts;
- Good faith sharing of information;
- Timely response to questions from local planning groups and to situations requiring coordinated state agency action. Response to situations requiring coordinated state agency action and to questions or requests for assistance from local planning groups will be subject to each agency's resources constraints. Some agencies may only be able to participate at the statewide leads level.
- Care, clarity, and discipline as one participating state agency represents another, to responsibly inform the local planning process in a timely way about the state's roles, authorities, and intended contributions, while honoring each agency's own responsibilities for explicitly agreeing to any commitments, to ensure that they are realistic and consistent with its available resources and legal authorities.

5. Role of participating state agencies in support of local government planning under the Watershed Management Act and the Salmon Recovery Planning Act:

The participating agencies are committed to cooperation and coordination to honor as effectively as possible the requests from the local planning groups for support of local watershed management and restoration efforts, subject to agencies' resource constraints. This support includes these dimensions:

- Encouragement and support for local governments to coordinate their work under the Watershed Management Act and the Salmon Recovery Planning Act
- Providing technical assistance at the assessment and planning stages, including clarification of state standards and expectations;
- Policy review and approval of watershed management plans;
- Technical and other resource support for plan implementation, including
- Watershed Management Act watershed implementation grants, and
- Salmon recovery project funding under the Salmon Recovery Planning Act.
- Monitoring and evaluation of the results of these efforts, especially
- Watershed management plans,
- Limiting factors identification for salmon recovery planning, and
- Salmon recovery project lists.

6. Coordination of requests from local planning groups for state assistance:

For watershed management planning, Ecology will serve as the clearinghouse for requests to the Governor, as provided in the Watershed Management Act. Receipt of the request will trigger notification of all participating agencies through their designated leads.

For salmon recovery, the Conservation Commission will develop technical guidance for local lead entities to use as a guide in developing project lists.

The Department of Ecology and the Conservation Commission will coordinate to the maximum extent possible the local requests for technical assistance.

7. Overall Management and Statewide Coordination:

Overall management of the state agencies in implementing the Watershed Management Act and the Salmon Recovery Planning Act is vested in the Director, Commissioner, or Secretary of each participating agency. General interagency coordination and leadership is provided at the Director's level through the Joint Natural Resources Cabinet, and at a more detailed level for participating agencies through the statewide leads as described in Section 8, below, and the Governor's Salmon Recovery Office.

The statewide leads for participating agencies, in consultation with the Governor's Salmon Recovery Office, will serve as a statewide interagency caucus for coordinating statewide support for local watershed planning and salmon recovery. When a coordinated multi-agency policy interpretation is required, local state caucuses will be able to elevate, as needed, issues involving policy gaps or interpretation to the statewide leads. Agencies not participating in this memorandum of understanding may be invited through their directors to designate a representative to participate with the statewide leads on multi-agency issues.

The statewide leads will also serve as a resource to the local state caucuses for dispute resolution, as needed.

8. Designation of Statewide Lead for each agency:

The Director, Secretary, or Commissioner of each participating agency will designate a lead point of contact for statewide implementation of the Watershed Management Act and the Salmon Recovery Planning Act. This statewide lead will in turn identify the person to represent the agency at the local state caucus, as well as the appropriate people to work on specific issues, as required.

This statewide lead will be responsible for the overall management and coordination of watershed planning and salmon recovery activities for the agency. Any statewide lead may call a meeting of other affected statewide leads for dispute resolution or coordination on emerging issues as necessary.

9. Designation of the lead state agency for each local planning area:

For watershed management planning:

- It is understood that the local initiating governments under the Watershed Planning Act may determine the number of state agency representatives participating in each local

planning unit. The Watershed Management Act provides that state agencies may organize and agree upon their representation on the planning unit.

- Ecology will identify the local planning areas where it proposes to have the lead staff role for state agencies. This proposed list will be distributed to the Governor's Office, other participating state agencies, initiating local governments and affected tribal governments for comment. The state agencies will be invited to indicate where they want to participate directly, or to play a lead role, where Ecology's resources are constrained. (Ecology estimates it will initially have staff resources to assume a lead role in response to invitations from about twenty local planning areas.)
- Once Ecology has received comments from the other interested state agencies it will identify, with the consensus of the designated statewide leads, which agency will have the state agency lead in each of the local planning areas. Ecology will then report this information to other agencies through their designated statewide leads, the local planning groups through the lead local agency or initiating governments, and the Joint Natural Resources Cabinet.
- The designation of any additional state agency representatives to the local planning unit will be based on the requests from the local initiating governments to seat additional agencies at the local planning table. Ecology will coordinate local requests for state agency participation with the applicable Director, Commissioner, or Secretary, and the designated statewide leads for the affected agencies.

For salmon recovery, the Conservation Commission has the lead for coordinating the work of technical assistance groups (TAGS).

To help coordinate watershed management planning and salmon recovery work at the local level, participating state agencies agree to coordinate their work through the local state caucus and the technical assistance group, and make efficient use of work products and meeting times.

10. Designating the state watershed interagency lead and each state agency's primary watershed contact(s) for each local planning effort:

For watershed management planning:

- Once the state agency with the lead role in a planning area has been designated, that agency will identify the lead state staff person to represent the lead agency to that local planning effort, and will communicate that name to Ecology, if the lead agency is other than Ecology. Ecology will distribute the name to other state agencies, the local planning groups, and the affected tribal governments.
- Participating state agencies will be represented at the local planning unit by the state watershed interagency lead, except that where there are additional state agency representatives designated to serve on the local planning unit, each additional state agency representative will represent his or her own agency. In any case, state agencies will strive for a coordinated and uniform state message.

For salmon recovery, the Conservation Commission will designate the lead point of contact for each technical assistance group (TAG).

For both watershed management planning and salmon recovery:

- When each state agency identifies or changes its representative to each local planning effort, that agency's designated statewide lead will communicate that information to Ecology for distribution to other state agencies, and to the lead local government contact for distribution to the participating local agencies and affected tribal governments. The agency may designate separate people to represent the agency at the local planning effort, and to represent the agency at the local state caucus and the technical assistance group.

11. Areas of coordination: In each area of support for local planning and restoration efforts, participating agencies will keep each other informed of major upcoming developments and progress. These include:

Start-up support;

- Contributions to assessments;
- Specifically sharing GIS data sets and other information, including the limiting factors analysis and background data developed under the Salmon Recovery Planning Act;
- Technical assistance being provided to local entities for watershed planning and salmon recovery;
- Alternative mitigation criteria being developed by the Alternative Mitigation Strategies Work Group; and
- Grant coordination for protection and restoration projects, including contributing information on the pool of potentially available grant sources.

In addition, participating agencies will help integrate the work products and work groups envisioned by the Salmon Recovery Planning Act and the Watershed Management Act, especially related to watershed characterization and limiting factors analysis.

12. Coordination between watershed management planning and salmon recovery:

- The Salmon Recovery Planning Act requires lead entities to use a critical pathways methodology to develop a habitat project plan. The methodology must include a limiting factors analysis (which may have substantial overlap with a watershed management plan), identify local habitat projects' sponsors, determine how projects will be monitored and evaluated, and develop an adaptive management strategy. If a lead entity has completed a limiting factors analysis or a watershed management plan for a planning area, participating state agencies agree to use this analysis or plan as a factor in awarding grants for watershed planning and salmon recovery where possible, subject to statutory constraints.
- If watershed planning groups include a habitat element in their plan, state agencies will encourage lead entities under the Salmon Recovery Planning Act and watershed planning groups under the Watershed Management Act to jointly develop habitat project lists.
- To achieve an efficient and effective use of state dollars, the Interagency Review Team established by the Salmon Recovery Planning Act and the Department of Ecology will coordinate these habitat project grants and watershed planning grants.

13. Key responsibilities of each participating state agency in support of the local planning process ("local state caucus" and technical assistance group expectations):

Good faith participation: Participating agencies accept the responsibility to participate in local state caucus meetings and technical assistance groups in good faith.

For watershed management planning:

- **Local state caucus chair:** The state agency with the lead in each local planning area will designate the local state caucus chair for the area.

The purposes of the local state caucus are:

- To coordinate positions, interests, and potential contributions of participating state agencies to the local planning unit's efforts;
- To communicate and coordinate representation issues; and
- To elevate interagency policy coordination issues for consideration by the statewide leads or other interagency teams identified by the statewide leads.

To be effective, the local state caucus should also:

- Monitor the local planning unit's level of understanding of the state's roles, policies, expectations, potential contributions and constraints, and help clarify misunderstandings early.
- Anticipate emerging issues in the planning process, to start consideration of potential agency obligations and areas where a coordinated state position will have to be developed.

For salmon recovery:

- **TAG leadership:** The Conservation Commission will establish the technical assistance groups' lead positions, and define their roles.
- **TAG purpose:** The essential purpose of the technical assistance groups defined under the Salmon Recovery Planning Act is to conduct the limiting factors identifications.

For alternative mitigation strategies: The Alternative Mitigation Strategies Work Group, co-chaired by Ecology, the Department of Transportation and the Washington Department of Fish and Wildlife, will serve as a working group to develop criteria to be used by participating state agencies and local planning efforts in the development of watershed management and salmon recovery plans.

Informational materials: Each participating state agency will make informational materials available for use by local leads and local planning groups.

- Each participating agency will provide some basic written materials for use by local leads and local planning groups, including lead entities and technical assistance groups under the Salmon Recovery Planning Act, outlining the basic authorities, role, and expectations of the agency, as well as the kinds of contributions the agency expects to make in support of local planning and restoration.
- Participating agencies will also provide updated or supplementary information as the local planning processes unfold, in response to (or in anticipation of) the major questions from the local planning groups or lead entities. Written information is encouraged, but resource and timing constraints are recognized.

Dispute resolution: Any local state caucus member or state TAG member may elevate disputes at the caucus or TAG level to the statewide leads of the agencies involved. The statewide leads will consult with each other and identify the appropriate people to work on resolution.

14. Key responsibilities of state watershed interagency leads for watershed planning:

Communications link: Each state watershed interagency lead will establish regular communications with the other state agencies involved with that local planning effort, to follow-up and prepare for local planning meetings and public hearings focused on that local area. This local lead will try to anticipate upcoming issues and alert other agencies to the anticipated response that will be needed. It is understood that agencies will respond in a timely way to questions posed by the local group.

State caucus of participating agencies at the local level: The local lead will convene and chair an interagency consultation and coordination process ("local state caucus") with the representatives of the participating state agencies identified through each agency's lead. Insofar as possible, these meetings or consultations will use a consensus approach to decision-making, when a group decision is required.

Representing other participating state agencies: The state watershed interagency lead will identify and give early notice to any state agencies that may be "obligated," within the meaning of the Watershed Planning act, by any proposed plan element. The responsibilities of the state watershed interagency lead will include:

- Educating the local planning unit about the "obligations" provisions of the Watershed Planning Act, and how participating state agencies will take an organized approach to responding;
- Clearly conveying the interests and expectations of participating state agencies in watershed planning and management to the local planning unit, including applicable state law, standards and requirements;
- Negotiating local planning unit ground rules to flag potential obligations for early agency consideration;
- Negotiating up front with the local planning unit sufficient review time at key points in the planning process, and especially to review the final draft proposed watershed plan, before a state representative to the planning unit is asked to approve it. The amount of

review time required will vary depending on prior review opportunities and the nature of the obligations in the final proposed plan.

Ensuring consultation with tribal governments: The state watershed interagency lead will ensure consultation with affected tribes, including those with usual and accustomed territory or ceded lands, before committing to obligate the state on any particular instream flow levels or other issues that affect tribal treaty rights and co-management responsibilities.

15. Approval and commitment process for local plans and resulting obligations for statewide agencies under the Watershed Planning Act:

Watershed planning (Chapter 247, Section 9) final plan review provisions: It is understood that state agencies that would incur an obligation under the plan will have the opportunity to concur with the obligation before a proposed watershed plan becomes final. However, once there is consensus among the represented units of government (including the state, where state agencies would be obligated), and once local public hearings and adoptions are conducted, state agencies are directed to support implementation, without an additional review step under Chapter 247.

Obligations to implement recommendations means following established public processes: The Watershed Management Act (Chapter 247, Laws of 1998) requires participating governments to implement recommendations in adopted plans (obligations). For state agencies this means a good faith commitment to propose amended rules, propose amended permit modifications, redirect resources, and other actions. This does not imply that public processes established to review draft rules, permits, or other state actions are superceded by Chapter 247, or that agencies can pre-commit to adopt the proposed rules or issue permits contrary to the requirements of existing legislation, including the Administrative Procedures Act, Shoreline Management Act, Growth Management Act, and other laws which must be followed to implement recommendations of watershed plans. At the request of the local planning unit, state agencies may conduct adoption processes concurrent with the development of the watershed management plan.

Input to local planning: Participating agencies accept the responsibility to stay current with local planning as it unfolds, to provide early input into those plans, to minimize the likelihood or extent of disapproval, and to minimize the length of time necessary to conduct the final review.

Participating agencies agree to review in a timely way all communications and information distributed to them by the state watershed interagency lead, who will, in turn, help agencies focus on the particular issues requiring response.

Participating agencies agree to help explicitly consider any implied obligations in the watershed plan, and to work on these early in the process whenever possible. Participating state agencies understand that they will only be obligated for explicit written commitments to take or defer action, not for implied commitments.

Participating agencies further agree to provide notification and plan element approval/disapproval in a timely manner, and to have lead staff available to meet at the local caucus level or with the local planning unit on concurrence issues and at other key times in the process. Participating agencies understand the importance of working difficult obligation issues early, and helping to develop mutually acceptable alternatives where possible.

Coordinated interagency review of the plan in progress, and the completed proposed watershed plan: The state watershed interagency lead will negotiate with the local planning unit sufficient time for affected participating state agencies to review proposed watershed plan elements as they are developed, and again in a final draft form, before state agencies are asked to concur with obligations in the plan. The amount of review time required will vary depending on prior review opportunities and the nature of the obligations in the final proposed plan.

It is incumbent on each participating agency to alert the state watershed interagency lead in writing when the agency determines that its written concurrence on a plan element will be necessary.

The state watershed interagency lead may not support (i.e. must withhold approval or consensus from) a plan element that does not have the written support of all "obligated" participating agencies.

The result of this review process should include:

- Explicit, written identification of which provisions of the local plan would create obligations upon each agency;
- Explicit written identification of which related agency programs are included in the plan, and which are outside the scope of the plan. This is intended as a final communications check on any expectations to withhold or delay imposing related requirements on participating local entities, until after identified plan obligations are completed.
- Explicit agreement, agreement with conditions, or lack of agreement with those provisions. Any obligations by state agencies for the commitment of existing resources in support of plan implementation will be expressed in writing to the lead local agency, with a copy to Ecology for coordination purposes.
- A written description of the process each agency intends to follow to satisfy any other obligations in support of the approved plan (i.e. subject to rule adoption requirements, or legislative appropriation, or a competitive grant award process, etc.).

Some state agencies may not be participating in this memorandum of understanding, but may be affected by local watershed management planning and salmon recovery planning:

- "Participating agencies" are the state agencies committed through the signatures of their agency heads to participating in watershed management and salmon recovery planning through this memorandum of understanding.
- Local state caucus chairs will clarify for local governments which agencies are participating in a coordinated way through this memorandum of understanding, and which would require separate communication and coordination efforts.

- The expectation is that these other agencies would also want the earliest possible notice of potential obligations, and would also attempt to resolve issues as early in the planning process as possible, subject to their resource constraints. Where they were not able to work on planning issues early, they would expect to represent their own issues at public hearings without prejudice.

16. Amendments and updates: As experience is gained with the implementation of this Memorandum of Understanding at the state and local levels, changes may be needed to respond to emerging issues. This memorandum of understanding can be updated, refined, or amended in writing as needed through the statewide leads, in consultation with the Governor's Salmon Recovery Office, with concurrence by the Joint Natural Resources Cabinet.

17. Severability: State agency severability from this Memorandum of Understanding requires consultation with the Joint Natural Resources Cabinet and formal notification to the Governor.

18. Conclusion: In signing this document, the head of each participating agency reaffirms the importance of coordinated state agency support for local watershed management and restoration as mandated by the Watershed Management Act (Chapter 247, Laws of 1998, ESHB 2514) and the Salmon Recovery Planning Act (Chapter 246, Laws of 1998, ESHB 2496), and commits that agency to support these efforts as outlined above.

Signed:

Jim Jesernig, Director Department of Agriculture

Steve Meyer Executive Director, Conservation Commission

Tom Fitzsimmons Director, Department of Ecology

Larry Peck, Deputy Director Department of Fish and Wildlife

Kris Van Gorkom Deputy Secretary, Department of Health

Tim Douglas Community, Trade and Economic Development

Jennifer Belcher Commissioner of Public Lands

Department of Natural Resources

Sid Morrison, Secretary

Department of Transportation Nancy McKay, Chair

Puget Sound Water Quality Action Team

Curt Smitch, Special Assistant Governor's Salmon Recovery Office

Laura Eckert Johnson Interagency Committee for Outdoor Recreation

Cleve Pinnix State Parks and Recreation Commission

Lee Faulconer Department of Agriculture

Ed Manary Conservation Commission

Joe Williams Department of Ecology

Jim Fox Interagency Committee for Outdoor Recreation

Steve Wells Community, Trade and Economic Development

Erik Fairchild Department of Health

Craig Partridge Department of Natural Resources

Karen Terwilleger Department of Fish and Wildlife

Shari Schaftlein Department of Transportation

John Dohrmann Puget Sound Water Quality Action Team

Phil Miller Governor's Salmon Recovery Office

Bill Jolly State Parks and Recreation Commission