



Idaho Department of Lands
Agency Guidance Document
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Wildlife Policy on State Endowment Trust Lands

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Agency Contact

Division Administrator – Trust Land Management



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POLICY
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Wildlife Policy on State Endowment Trust Lands

Purpose

The purpose of this policy is to promote active and ecologically sound land management practices that are compatible with the endowment land principle and to provide a framework for integrating wildlife needs into the department’s resource management planning process.

Scope

Applies to all land management activities on state endowment trust land.

Revisions and Revocation

Department Policy No. 4 is replaced by this revision.

Document Owner

Division Administrator, Trust Land Management

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I. Background

Idaho Code defines “wildlife” and the responsibility of the Idaho Department of Fish and Game, Governor’s Office of Species Conservation, Department of Environmental Quality and the Idaho Department of Lands (IDL).

“All wildlife, including all wild animals, wild birds, and fish, within the state of Idaho, is hereby declared to be the property of the state of Idaho. It shall be preserved, protected, perpetuated, and managed. It shall be only captured or taken at such times or places, under such conditions, or by such means, or in such manner, as will preserve, protect, and perpetuate such wildlife, and provide for the citizens of this state and, as by law permitted to others, continued supplies of such wildlife for hunting, fishing and trapping.” Idaho Code § 36-103(a).

The Idaho Department of Fish and Game, overseen by the Idaho Fish and Game Commission, is charged with managing all wild animals, birds and fish so that such are “...preserved, protected, perpetuated and managed.” Idaho Code § 36-103. The Commission is authorized to acquire lands

and waters for the protection of game and fish, to provide for public participation in determining the conservation status of fish and wildlife, to conduct investigations and research regarding the requirements for conservation of fish and wildlife, and to “[e]nter into cooperative agreements with state and federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals...” for the protection of fish and wildlife. Idaho Code § 36-104.

The Idaho Office of Species Conservation is authorized to coordinate “...all state departments and divisions with duties and responsibilities affecting endangered species, threatened species, candidate species, species petitioned to be listed, and rare and declining species...” to participate in “...regional efforts to cooperatively address endangered species, threatened species, candidate and petitioned species, and rare and declining species;” and to negotiate “...agreements with federal agencies concerning endangered species, threatened species, candidate species, petitioned species, and rare and declining species including, but not limited to, agreements pursuant to 16 U.S.C. section 1533(d) and 16 U.S.C. section 1539(a), other than those agreements negotiated pursuant to 16 U.S.C. section 1535.” Idaho Code § 67-818(2).

The Idaho Department of Environmental Quality, overseen by the director, is authorized to implement water quality standards. Idaho Code § 39-3601. Water quality standards are defined in Idaho Code § 39-3602(33) as “... the designated uses of a water body and water quality criteria necessary to support those uses... .” “The existing instream beneficial uses of each water body and the level of water quality necessary to protect those uses shall be maintained and protected.” Idaho Code § 39-3603. Beneficial uses, as defined in Idaho’s water quality standards (IDAPA 58.01.02.0.010.06), include “... wildlife habitat... .”

The Idaho Department of Lands, created by Idaho Code § 58-101, is authorized by Idaho Code § 58-105 to fulfill control and disposition duties of public lands of the state under the direction of the Idaho Board of Land Commissioners. The director of IDL administers management operations across all land asset types including forest, agriculture, grazing, recreation, conservation, mineral, and residential and commercial real estate resources on state endowment trust lands, which are managed to “...**secure the maximum long term financial return to the institution to which granted or to the state if not specifically granted;**” Idaho Constitution article IX, § 8.

It is the policy of the state of Idaho to recognize that “... state and private forest lands make a vital contribution to Idaho by ...helping to maintain forest tree species, soil, air, and water resources, and by providing a habitat for wildlife and aquatic life, it is the public policy of the state to encourage forest practices on these lands that maintain and enhance those benefits and resources... .” Idaho Code § 38-1302(1). Accordingly, the Idaho Board of Land Commissioners is vested with “...authority to adopt rules designed to assure the continuous growing and harvesting of forest tree species and to protect and maintain the forest soil, air, water resources, wildlife and aquatic habitat.” Idaho Code § 38-1302(2).

Several non-private land ownership types exist in Idaho. These include:

- Public domain lands—the original holdings of the United States never granted or conveyed to other jurisdictions or reacquired by exchange for other public lands (Dictionary of Forestry, Society of American Foresters, 1998).
- Public lands—All lands owned by the United States. Or, as defined by Congress in a 1979 statute, all federally-owned lands for limited purposes. Also, any land and interest in and owned by the United States that are administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except of (1) lands

located on the Outer Continental Shelf, and (2) land held for the benefit of Indians, Aleuts, and Eskimos. Includes public domain and acquired lands. (Federal Lands Task Force Report, 1998)

- Other state-owned lands managed by Parks and Recreation, Fish and Game, Department of Transportation, etc.
- General Fund—gift and other lands managed by IDL which are not endowment trust lands and are not constitutionally mandated to “...secure the maximum long term financial return to the institution to which granted or to the state if not specifically granted.”
- Public trust lands—land beneath the bed and banks of navigable waters managed by IDL for the benefit of the public.

All of the above are governed under a variety of laws, regulations and policies that promote some form of benefit to the public which may or may not include wildlife and their habitat. These “public” lands are differentiated from state endowment trust lands mandated to “...secure the maximum long term financial return to the institution to which granted or to the state if not specifically granted.” Note there is no such requirement for endowment trust lands to be managed for a public benefit.

II. Policy

Some state endowment trust lands provide diverse habitat for a variety of species. The full diversity of landscapes is not provided solely by IDL managed lands, but by all landowners within an ecosystem.

In some instances, resource management staff may have the ability to improve the habitat for wildlife by altering resource management practices or by mitigating degraded habitat. In many cases, these practices can be accomplished without burdening or violating the intent expressed in the enabling legislation and endowment trust mandate.

- A. Land Management regimes on unimproved lands will attempt to foster a sustainable and resilient landscape that may, as a side benefit, provide a variety of diverse habitats for wildlife indigenous to the area by considering:
 1. Structural Diversity—the retention of overstory vegetation to provide coarse woody debris (CWD), to enhance nutrient cycling, to conserve the soil resources, and to provide a perpetual seed source on harsh (non-plantable) sites to reduce long term risks from disturbances.
 2. Landscape Diversity—the arrangement and shape of vegetative communities across the landscape.
 3. Temporal Diversity—the array of successional stages across the landscape.
 4. Genetic Diversity—the long-term stability of vegetative communities and their ability to adapt to changing environmental conditions.
 5. The implications of cumulative effects from resource management.
 6. The need to manage fuels to minimize fire risk.
 7. Water—water quality, quantity, and fish habitat needs.

- B. IDL land management activities will be designed to provide a diversity of wildlife habitat within the context of the endowment mission. Land management projects and other activities affecting wildlife habitat will consider and incorporate appropriate methods to maintain habitat diversity on the landscape. The supervisory areas shall, in their timber sales, grazing, mining, recreation and other land management plans, consider and address as appropriate, proposed activities and their effects on wildlife that utilize the area. Keep in mind that species may use the habitat in different ways and at different times (i.e., daily/ seasonally/ annually). Habitat requirements of threatened or endangered species should be given the highest priority. Habitat components to consider include food, water, cover, distance (to vegetation, food, water, openings), and migration (routes, seasons of use, corridors). These plans will be reviewed by the IDL Wildlife Biologist and/ or Threatened and Endangered Species Program Manager as appropriate.
- C. Land management practices shall be conducted in such a manner that water quality shall be protected. Streamside vegetation and streambeds shall be retained in as natural a condition as possible to maintain or enhance water quality and aquatic habitat. The IDL will be in the forefront in helping establish realistic and balanced water quality standards through management on endowment lands.
- D. The IDL recognizes the importance of habitat management in the context of wildlife needs and the vital role that riparian areas can play in providing for these needs. Temporary disturbance to the riparian area may occur during land management activities; however, disturbances will be kept to a minimum. Resource managers should consider resolution of chronic problems in riparian habitat as a result of past activities. Solutions can include, but are not limited to, cooperative agreements, habitat improvement projects, etc.
- E. The IDL will meet or exceed the requirements of the Idaho Forest Practices Act.
- F. The IDL will not “take” (except for any permitted incidental take) any federally listed endangered or threatened species. This includes direct forms of harm such as killing an individual and indirect forms of harm such as the destruction of habitat which kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
- G. IDL will, at the Area office level, develop and maintain liaison with the Idaho Department of Fish and Game, other agencies, and the public where appropriate for the purposes of information sharing, cooperation, and coordination.

Area resource management staff will attempt to inform or meet with local Idaho Department of Fish and Game managers on an annual basis to discuss upcoming management activities and wildlife species of concern and their habitat.

- H. After coordinating with appropriate Bureau staff, Area offices may enter into cooperative planning efforts or agreements with other local land managers, Idaho Department of Fish and Game, and private entities to address management opportunities to maintain or improve wildlife habitat. Where identified habitats overlap onto lands administered by other owners, coordinated planning should be considered to lessen cumulative effects and to increase the potential of achieving habitat management objectives.

- I. Endowment Lands Asset Management Plan lists two pertinent Management Objectives relative to wildlife habitat and this policy:
 1. Improve public awareness that state endowment trust lands classified as Conservation Lands must be appropriately compensated for the restricted property rights, including the expenses to manage the encumbrance.
 2. In situations where a permanent encumbrance may be appropriate, such lands should be considered for sale or exchange to an entity capable of long-term protection or preservation.
- J. Public Records Requests and Verbal Requests for Other Information

The only exception to a formal request for public records (email, mail, or written) with respect to wildlife is the identification of endangered species locations. Endangered species locations, provided they are not already known to the general public, are specifically exempted from public records disclosure under Idaho Code §9-340E(1). Note this does not apply to threatened, sensitive, or any other species. As a matter of policy, if someone verbally asks about the location of Endangered species during a conversation, IDL staff will not identify locations.

Occasionally verbal requests are made to IDL staff about where to hunt deer, bear, or capture goshawks for falconry purposes. This is not a public records request, and IDL has no legal obligation to provide any information. The key in responding to similar requests is whether passing information could impact the endowment. For example, a timber sale is proposed and Idaho Fish and Game has commented favorably on the management measures (boundary design, timing restrictions, etc.) planned to minimize goshawk disruption. IDL staff is verbally asked by someone where a nest is so they could take a gosling for falconry purposes. Nest locations are known, but releasing this information has a potential negative impact on the endowment. IDL staff should put the endowment first and not release information in this case. However, if this same request comes in the form of a formal public records request, and written documentation or data (GPS locations) exists, then the request will be granted and processed according to IC §§9-337-339.

III. Definitions

Conservation Lands As defined in Endowment Lands Asset Management Plan are generally lands for which certain real property rights have been removed or otherwise restricted temporarily or permanently to maintain temporary or permanent rights for open space, preservation of habitat, natural areas, parks, or other such purposes.

Habitat The Idaho Comprehensive Wildlife Conservation Strategy (IDFG, 2005) glossary defines this as: “Where a given plant or animal species meets its requirements for food, cover, and water in both space and time; may or may not coincide with a single vegetation type (California Department of Fish and Game 2003.)”

Harm As further defined in 50 C.F.R. section 17.3 “...means an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”

Idaho State Endowment Trust Lands Lands acquired from the federal government under a trust agreement whereby proceeds from the disposal or use of the lands would exclusively benefit certain designated public institutions, primarily public schools (Idaho’s Endowment Lands: A Sacred Trust. Jay O’Laughlin, 1990.) Management of these lands is constitutionally defined (Article IX, Section 8) to be managed, “...in such manner as will secure the maximum long term financial return to the institution to which granted...”

Improved Land Land that has been developed for some use by the construction of improvements; also, land that has been prepared for development by grading, drainage, installing utilities, etc. as distinguished from raw land. (Dictionary of Real Estate Appraisal, Appraisal Institute, 1993)

Riparian The Idaho Comprehensive Wildlife Conservation Strategy (IDFG, 2005) glossary defines this as: “A narrow zone, which may or may not be vegetated, directly associated with streamsides or lake shores, or similar immediately adjacent habitat (Natureserve 2005).”

Take 16 U.S.C. section 1532(19) defines "take" as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

Unimproved Land Vacant land or land that lacks the essential, appurtenant improvements required to make it useful. (Dictionary of Real Estate Appraisal)

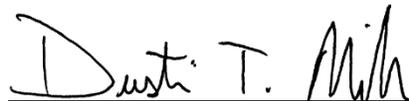
Wildlife Idaho Code § 36-202(g) states “‘Wildlife’ means any form of animal life, native or exotic, generally living in a state of nature provided that domestic cervidae as defined in § 25-3701, Idaho Code, shall not be classified as wildlife.” (This includes any animals except domesticated or farmed deer, elk, or caribou). Idaho Code § 36-103(a) clarifies that fish are also included within the definition of wildlife stating, “All wildlife, including all wild animals, wild birds, and fish... .”

IV. References

- A. IDL Management Charge (Article IX Sec. 8, Idaho Constitution)
- B. IDL Mission Statement
- C. Idaho State Board of Land Commissioners Endowment Lands Asset Management Plan

V. Implementation

This policy is effective immediately and will remain in effect for five years unless amended, replaced, or rescinded prior to expiration.



DUSTIN T. MILLER
Director

6/18/2020

Date