

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

October 11, 2013

Board of Land
and Natural Resources
Honolulu, Hawaii

**Request for Approval for Delegation of Signature Authority to the
DLNR Chairperson for a Memorandum of Agreement between DLNR, NOAA Office of
National Marine Sanctuaries, and Niihau Ranch LLC for the purpose of Coordination to Support
the Possible Inclusion of the Coastal and Nearshore Areas around Niihau as part of the Hawaiian
Islands Humpback Whale National Marine Sanctuary**

Submitted herewith for your consideration and approval is a request to delegate signature authority to the Department of Land and Natural Resources chairperson for Memorandum of Agreement (MOA-2012-065/8584) pursuant to the National Marine Sanctuaries Act (NMSA) 16 U.S.C. 1442(a) between the Department of Land and Natural Resources (DLNR); U.S. Department of Commerce, National Oceanic and Atmospheric (NOAA), National Ocean Service, Office of National Marine Sanctuaries; and Niihau Ranch, LLC for the purpose of Coordination to Support the Possible Inclusion of the Coastal and Nearshore Areas around Niihau as part of the Hawaiian Islands Humpback Whale National Marine Sanctuary (Attachment F-1a).

The purpose of this agreement is to provide a framework for cooperation to aid and promote planning and coordination activities towards the establishment of a national marine sanctuary around the Island of Niihau in a manner that appropriately serves the best interest of the conservation and protection goals of the Robinson Family and the people of Niihau and the missions of NOAA and DLNR.

Per the MOA, the parties agree to work toward the following shared outcomes:

- Consider the nearshore areas around Ni'ihau for possible inclusion into the Hawaiian Islands Humpback Whale National Marine Sanctuary.
- Characterize resources and areas of high value within the nearshore areas around Ni'ihau that are of national significance that may require higher levels of protection and conservation.
- Identify appropriate uses to be allowed, prohibited or managed within the Sanctuary.
- Facilitate customary and traditional uses that perpetuate Ni'ihau cultural traditions and practices.
- Develop proposed boundaries and regulations as part of the preferred management alternative for the national marine sanctuary proposal.

Finally, we want to note that DLNR's signing of the MOA should not be considered any recognition of any special relationship or status of Niihau Ranch LLC and the submerged lands around Niihau.

RECOMMENDATION:

"That the Board approve the delegation of signature authority to the DLNR chairperson for MOA-2012-065/8584 between DLNR, NOAA's Office of National Marine Sanctuaries, and Niihau Ranch LLC for the purpose of Coordination to Support the Possible Inclusion of the Coastal and Nearshore Areas around Niihau as part of the Hawaiian Islands Humpback Whale National Marine Sanctuary."

Respectfully submitted,



Elia Y. K. Herman
State Co-Manager
Hawaiian Islands Humpback Whale National
Marine Sanctuary

APPROVED FOR SUBMITTAL



William J. Aila, Jr.
Chairperson

MEMORANDUM OF AGREEMENT

**PURSUANT TO THE
NATIONAL MARINE SANCTUARIES ACT
16 U.S.C. 1442(a)**

BETWEEN THE

**U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE
OFFICE OF NATIONAL MARINE SANCTUARIES**

AND THE

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

AND THE

NI'HAU RANCH, LLC

FOR THE PURPOSE OF

***Coordination to Support the Inclusion of the Coastal and Nearshore Areas
around Ni'ihau as part of the Hawaiian Islands Humpback Whale
National Marine Sanctuary***

NOS Agreement Code: MOA-2012—065/8584

F-1a

PARTIES AND PURPOSE

- A. This Memorandum of Agreement (Agreement) is entered into by the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service's (NOS), Office National Marine Sanctuaries (ONMS) Hawaiian Islands Humpback Whale National Marine Sanctuary (sanctuary), jointly managed by NOAA and the State of Hawai'i through the Department of Land and Natural Resources and Ni'ihau Ranch, LLC.
- B. The purpose of this Agreement is to provide a framework for cooperation to aid and promote planning and coordination activities towards the establishment of a national marine sanctuary around the Island of Ni'ihau in a manner that appropriately serves the best interest of the conservation and protection goals of the Robinson Family and the people of Ni'ihau and the missions of NOAA and the State of Hawai'i.

BACKGROUND

In 1998, the National Oceanic and Atmospheric Administration (NOAA) and the State of Hawai'i entered into a compact agreement for the coordinated management of the Hawaiian Islands Humpback Whale National Marine Sanctuary (Sanctuary). An Agreement between the ONMS, NOS, NOAA of the United State Department of Commerce, and the Department of Land and Natural Resources (DLNR) of the State of Hawai'i is currently in force to establish the procedures and protocols for the coordinated management of the Sanctuary.

- A. The mission of the ONMS is to:
- Identify and designate areas of the marine environment which are of special national and international significance;
 - Provide comprehensive and coordinated conservation and management of these marine areas, and activities affecting them;
 - Support, promote, and coordinate as appropriate scientific research on, and monitoring of the resources of these marine areas;
 - Enhance public awareness, understanding, appreciation, and wise use of the marine environment;
 - Facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas;
 - Develop and implement coordinated plans for the protection and management of these areas with appropriate partners;
 - Create models of, and incentives for, ways to conserve and manage these areas;
 - Cooperate with global programs encouraging conservation of marine resources; and maintain, restore, and enhance living

resources by providing places for species that depend upon these marine areas to survive and propagate.

- B. The mission of the Department of Land and Natural Resources is to enhance protect, conserve and manage Hawai`i's unique and limited natural, cultural and historic resources held in public trust for current and future generations of visitors and the people of Hawai`i nei in partnership with others from the public and private sectors.
- C. The Purpose and Mission of the Hawaiian Islands Humpback Whale National Marine Sanctuary is as follows:
- The Hawaiian Islands Humpback Whale National Marine Sanctuary, which is jointly managed by the National Oceanic and Atmospheric Administration and the State of Hawai`i through the Department of Land and Natural Resources, lies within the shallow warm waters surrounding the main Hawaiian Islands and constitutes one of the world's most important humpback whale habitats. Through education, research and resource protection activities, the Sanctuary's primary mission is to protect humpback whales and their habitat in Hawai`i. The Island of Ni`ihau is currently not part of the Sanctuary.
 - In 2010, in accordance with section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 et seq.), the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA), in cooperation with the Department of Land and Natural Resources, initiated a review of the Hawaiian Islands Humpback Whale National Marine Sanctuary management plan, to evaluate substantive progress toward implementing the goals for the sanctuary, and to make revisions to its management plan and regulations as necessary to fulfill the purposes and policies of the NMSA and the Hawaiian Islands National Marine Sanctuary Act (HINMSA; Title II, Subtitle C, Pub. L. 102-587) (FR Doc. 2010-17083).
 - The proposed revised management plan may involve changes to existing policies, regulations and boundaries of the Sanctuary, as well as address current and emerging topics, challenges, and opportunities to better protect and manage the Sanctuary's resources and qualities.
- D. The Sanctuary and the Robinson Family share a common goal of protecting sensitive marine ecosystems. Beginning in 1864, the Robinson Family through their restraint and forbearance has established a long record of preserving the 50 miles of coastline and nearshore marine

environment of Ni`ihau. However, new and emerging management challenges, such as invasive species, marine debris, fishery harvest, poaching, monk seal disturbance, enforcement issues, increasing pressure from off-island for natural resource utilization, climate change, and natural and human-induced disasters, have created an urgent need to develop a cooperative Federal-State-private agreement to commit to working together to create a national marine sanctuary around Ni`ihau with the goal of maintaining the long-standing history of protections and conservation of Ni`ihau's marine resources.

E. In recognition of the similar missions and challenges faced by the sanctuary and Ni`ihau Ranch, and to enhance the ability of both parties to protect and conserve Ni`ihau's coastal and nearshore environments, this Agreement was prepared in order to establish a process that considers the inclusion of the coastal and nearshore areas around Ni`ihau as part of the sanctuary. Parties agree to:

- Articulate a formal working relationship to be carried out between the Parties to enhance communication and identify priority management actions to be taken.
- Develop a proposal to include waters around Ni`ihau in the Hawaiian Islands Humpback Whale National Marine Sanctuary that may include boundaries and regulations to address current management challenges while recognizing traditional and customary subsistence rights of Ni`ihau residents and owners.
- Provide a means to share knowledge, and as appropriate and whenever possible, utilize local Ni`ihau knowledge to inform management decisions.
- Develop a budget relating to costs to carry out these initiatives.
- A Statement of Work along with an associated budget may be developed between Parties to identify strategies necessary to achieve shared outcomes.

F. It is understood among the Parties that any proposal developed pursuant to this Agreement will be approved or rejected, as appropriate, in accordance with the NMSA and other applicable law.

AUTHORITIES

A. Pursuant to section 311(a) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1442(a), NOAA may enter into cooperative agreements, contracts, or other agreements with, or make grants to, States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of this title. Pursuant to NMSA section 311(e) (16 U.S.C. 1442 (e)), NOAA may enter into an agreement with a State or Federal agency to use the personnel, services, or facilities

of such agency on a reimbursable or non-reimbursable basis, to assist in carrying out the purposes and policies of the NMSA.

- B. The programmatic authority for the ONMS to enter into this Agreement is the NMSA, 16 U.S.C. 1431 *et seq.*, which provides for the improved conservation, understanding, management, and wise and sustainable use of National Marine Sanctuary resources and allows ONMS to develop and implement coordinated plans for the protection and management of the National Marine Sanctuaries with appropriate local and State governments and public and private interests concerned with the continuing health and resilience of these marine areas.

IV. TERMS AND CONDITIONS

Outcomes and Strategies

The Office of National Marine Sanctuaries and the State of Hawai'i Department of Land and Natural Resources and Ni`ihau Ranch (recognizing agency missions, business responsibilities, and conservation goals) will examine ways to develop a working partnership to achieve a higher level of marine resource protection and conservation than can be achieved by either of the parties working alone. To this end, the parties agree to work toward the following shared outcomes:

- Consider the nearshore areas around Ni`ihau for possible inclusion into the Hawaiian Islands Humpback Whale National Marine Sanctuary.
- Characterize resources and areas of high value within the nearshore areas around Ni`ihau that are of national significance that may require higher levels of protection and conservation.
- Identify appropriate uses to be allowed, prohibited or managed within the Sanctuary.
- Facilitate customary and traditional uses that perpetuate Ni`ihau cultural traditions and practices.
- Develop proposed boundaries and regulations as part of the preferred management alternative for the national marine sanctuary proposal.

V. FUNDING, PROGRAMMING, PAYMENT, AND REIMBURSEMENT ARRANGEMENTS

This Agreement is not a fiscal or funds obligation document. Any activities involving reimbursement or transfer of funds among the Parties to this Agreement will be handled in accordance with applicable laws, regulations, and procedures. Such activities will be documented in a separate legal instrument.

All responsibilities under this Agreement are subject to the availability of appropriated funds.

VI. CONTACTS

- A. The points of contact to this Agreement are:

NOAA/HHWNMS

Dr. Malia Chow
Sanctuary Superintendent
6600 Kalaniana'ole Hwy Ste. 301
Honolulu, HI 96825
Telephone: (808) 397-2651
Fax: (808) 397-2652

Niihau Ranch, LLC

Keith P. Robinson
P.O. BOX 690229
Makaweli, HI 96769
Telephone: (808) 338-1155
Fax: (808) 338-1463

DLNR/HHWNMS

Elia Herman
State Co-Manager
1151 Punchbowl St. #330
Honolulu, HI 96813
Telephone: (808) 587-0106
Fax: 808-587-0115

- B. The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Party in writing of such change.

VII. DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATION

- A. This Agreement will become effective upon signature of the approving officials of the parties entering into this Agreement and will expire five years from date of signature. Thereafter the parties will review this agreement, at least annually, to determine whether it needs to be amended or terminated.
- B. It is the expressed intent of the Parties to revise and make additions to this Agreement to reflect the continuing development of the cooperative relationship of the Parties to protect and manage the marine resources and nearshore environment of Niihau.
- C. Any modifications, revisions, or amendments to this Agreement shall be in writing and executed by the Parties and shall be incorporated into the Agreement and become effective only upon the signature of the Parties.
- D. The provisions of this agreement may be modified by amendment, subject to the written Agreement of both parties. Either party upon 60 days advance notice to the other party may terminate this Agreement.

VIII. OTHER PROVISIONS

- A. Nothing herein is intended to conflict with current NOAA, State of Hawaii directives, or any current rights of private parties. Nothing herein is intended to conflict with or alter any legal rights or ownership or title claimed by any of the Parties. If the terms of this Agreement are inconsistent with existing directives of either of the agencies or private party entering into this Agreement, then those portions of this Agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the Agreement, all necessary changes will be accomplished by either an amendment to this Agreement or by entering into a new Agreement, whichever is deemed expedient to the interest of the Parties.**

- B. Should disagreement arise on the interpretation of the provisions of this Agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within 30 days, the Parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution or else shall give the required 60 day notice of termination of this Agreement.**

IX. APPROVALS

ACCEPTED AND APPROVED FOR THE
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE

ACCEPTED AND APPROVED FOR THE
STATE OF HAWAII

Daniel J. Basta
Director
Office of National Marine Sanctuaries

William Aila
Chairman, Department of Land
and Natural Resources

Date

Date

ACCEPTED AND APPROVED FOR THE
NIIHAU RANCH

ACCEPTED AND APPROVED FOR THE
NIIHAU RANCH

Mr. Keith P. Robinson
Owner
Niihau Ranch

Mr. Bruce B. Robinson
Co-Owner
Niihau Ranch

Date

Date

