

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

March 14, 2014

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

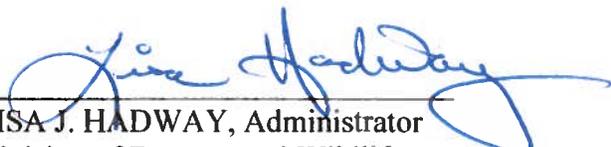
SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE DIVISION OF FORESTRY AND WILDLIFE AND THE UNITED STATES DEPARTMENT OF THE INTERIOR, U.S. FISH AND WILDLIFE SERVICE, BIG ISLAND NATIONAL WILDLIFE REFUGE COMPLEX FOR PROVIDING FIREFIGHTING ASSISTANCE

Attached is a Memorandum of Understanding (MOU) between the Division of Forestry and Wildlife (DOFAW) and the U.S. Dept. of Interior, U.S. Fish and Wildlife Service, Big Island National Wildlife Refuge Complex. The MOU provides the caveat that either the Big Island National Wildlife Refuge Complex or DOFAW can request assistance from the other in wildfire suppression activities without incurring expenses to the responsible agency. The legal branch of the U.S. Fish and Wildlife Service and the State Attorney General's office has reviewed the MOU and have approved of its legal requirements and approval as to form.

RECOMMENDATION:

That the Board approves the Memorandum of Understanding with the U.S. Fish and Wildlife Service, Big Island National Wildlife Refuge Complex and authorizes the Chairperson to sign the attached document.

Respectfully submitted,



LISA J. HADWAY, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson

Attachment

ITEM C-1

**MEMORANDUM OF UNDERSTANDING
FIREFIGHTING ASSISTANCE**

**Between
The United States Department of the Interior
U.S. Fish and Wildlife Service
Big Island National Wildlife Refuge Complex
And
State of Hawaii
Department of Land and Natural Resources
Division of Forestry and Wildlife**

THIS AGREEMENT, entered into this ____ day of _____, 2014, by and between the U.S. Fish and Wildlife Service, Big Island National Wildlife Refuge Complex, an agency of the United States, hereinafter referred to as "USFWS," by its Project Leader, and the STATE OF HAWAII, hereinafter referred to as "State," by its Board of Land and Natural Resources,

WITNESSETH THAT:

WHEREAS, USFWS has fire management responsibilities within the Big Island National Wildlife Refuge Complex on the island of Hawaii and under the authority of *42 U.S.C. Sec. 1856a (1994)* has the authority to enter into mutual aid agreements with other agencies; and

WHEREAS, under Chapter 185 of the Hawaii Revised Statutes, as amended, the Division of Forestry and Wildlife, Department of Land and Natural Resources, State of Hawaii, hereinafter referred to as "DOFAW", has the responsibility to take measures for the prevention, control and extinguishment of wildland fires within forest reserves, public hunting areas, wildlife and plant sanctuaries, and natural area reserves and shall cooperate with established fire control agencies of the counties and the federal government in developing plans and programs and mutual aid agreements for assistance for the prevention, control, and extinguishment of fires on forest, grass, brush, and watershed lands not within the department's fire protection responsibilities; and

WHEREAS, both USFWS and DOFAW have the personnel, equipment, and skills suited for the task of dealing with certain wildfire operations in the County of Hawaii; and

WHEREAS, by pooling the resources of USFWS and DOFAW, the combined strength and efforts of these two agencies would afford the people of the County of Hawaii more extensive and effective protection of their lives, property and natural resources; and

WHEREAS, it is therefore mutually advantageous for the agencies to coordinate their efforts in the prevention, detection, and suppression of wildfires in and adjacent to their areas of responsibility.

NOW, THEREFORE, in the interests of public safety, health, and welfare, USFWS and DOFAW do hereby mutually agree as follows:

(1) When used in this Agreement:

“Agency” means either USFWS of the United States or DOFAW of the Department of Land and Natural Resources, State of Hawaii.

ARTICLE I - BACKGROUND AND OBJECTIVES

The objective of this Agreement is to establish the terms and conditions under which the agencies will provide mutual assistance in preventing, detecting, and suppressing wildfires.

Currently both agencies are responsible for providing fire protection and other fire management activities for their respective jurisdictions. By pooling the resources of both agencies, the combined strength and efforts of these agencies would afford the people of the County of Hawaii more extensive and effective protection of their lives, property and natural resources. It is therefore mutually advantageous for the agencies to coordinate their efforts in the prevention, detection, and suppression of wildfires in and adjacent to their areas of responsibility.

ARTICLE II - AUTHORITY

This Agreement is entered into under the authority of *42 U.S.C. § 1856a (1994)* and *HRS § 185-1.5*.

ARTICLE III - STATEMENT OF WORK

A. Both agencies understand and agree:

- (1) To furnish, when requested, qualified employees to assist in the suppression of wildfires whenever the furnishing of such assistance does not seriously impact the primary responsibilities of the assisting agency. Employees will be deemed to be acting within the scope of their respective agency's employment when responding to calls from the requesting agency. This reciprocal protection will be provided at no cost for the first 24 hours. Any assistance beyond the first 24 hours shall be negotiated on an incident-by- incident basis.
- (2) To assist each other upon request, consistent with conditions at the time of the request, in the suppression of fire in areas which are normally the concern of the other agency.
- (3) To respond in the suppression of the fire, insofar as prerequisites of service will permit, and collaborate with the requesting agency for the purpose of direction and coordination of the efforts of the requesting agency. Such collaboration shall occur using a unified command structure under the incident command system.
- (4) That the assisting agency may be unable to respond in instances when the personnel and/or equipment available to it are, or would thereby be rendered, insufficient to meet the actual or realistically potential needs of the requesting agency.
- (5) That each agency waives all claims against the other agency for compensation for any loss, damage, personal injury or death occurring as a consequence of the performance of this Agreement.
- (6) To provide an annual familiarization tour of the facilities, equipment, and access points to the requesting agency.
- (7) To cooperate in the development and delivery of interagency training programs. Both agencies will cooperate to make maximum use of existing personnel, equipment and facilities for training purposes.
- (8) To share components of their communications systems such as: radio frequencies, dispatching systems, and communication sites. Agencies shall provide each other with a list of frequencies upon request.

B. The agencies further agree as follows:

- (1) Each agency will provide to the other agency a list of points of contact with telephone numbers, to be contacted in case of emergencies. At least once a year, or more often if necessary, each agency will provide the other agency with an updated list of such persons and telephone numbers.
- (2) Each agency will provide to the other agency copies of current fire management plans for their areas of primary responsibility, including maps of areas involved and descriptions of special or extraordinary actions to be taken.
- (3) After notifying the other agency of a fire's discovery, either agency may take immediate action to suppress a fire in the other agency's area of primary responsibility in order to save life or property.
- (4) Nothing in this Agreement will be construed as obligating the USFWS to expend in any one fiscal year any sum in excess of the monies appropriated by Congress and allocated by the NPS for the performance of this Agreement.
- (5) Nothing in this Agreement will be construed as obligating DOFAW to expend monies in excess of those appropriated and deposited in an appropriate fund in accordance with HRS § 185-1.4.

ARTICLE IV - TERMS OF AGREEMENT

This Agreement will be effective on the date of last signature and shall continue until December 31, 2019, unless it is terminated earlier by one of the parties pursuant to Article IX that follows.

ARTICLE V - KEY OFFICIALS

All communications and notices regarding this Agreement will be directed to the following key official(s) for each party:

- A. **For the USFWS:**
Project Leader
Big Island National Wildlife Refuge Complex
60 Nowelo Street, Ste. 100
Hilo, HI 96720

- B. **For DOFAW:**
Chairperson
Department of Land Natural Resources
1151 Punchbowl St.
Honolulu, HI 96813

ARTICLE VI – PRIOR APPROVAL

Not applicable.

ARTICLE VII – REPORTS AND/OR OTHER DELIVERABLES

Upon request and to the full extent permitted by applicable law, the agencies will share with each other final reports of incidents involving both agencies.

ARTICLE VIII – PROPERTY UTILIZATION

Unless otherwise agreed to in writing by the agencies, any property furnished by one agency to the other will remain the property of the furnishing agency. Any property furnished by the USFWS to other agencies during the performance of this Agreement will be used and disposed of as set forth in USFWS Property Management Regulations.

ARTICLE IX – MODIFICATION AND TERMINATION

- A. This Agreement may be modified only by a written instrument executed by the agencies.

- B. Either agency may terminate this Agreement by providing the other agency with sixty days written notice. In the event that one agency provides the other agency with notice of its intention to terminate, the agencies will meet promptly to discuss the reasons of the notice and to try to resolve their differences.

ARTICLE X – STANDARD CLAUSES

A. Civil Rights

During the performance of this Agreement, the participants agree to abide by the terms of U.S. Department of the Interior - Civil Rights Assurance Certification, non-discrimination, and will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

ARTICLE XI - SIGNATURES

IN WITNESS WHEREOF, the agencies hereto have executed this Agreement on the date(s) set forth below.

[Remainder of this page intentionally left blank]

Approved by the Board of Land and Natural Resources at its meeting held on

_____.

U.S. FISH AND WILDLIFE SERVICE

BY _____
James G. Kraus
Project Leader
Big Island National Wildlife Refuge Complex

Date _____

APPROVED AS TO CONTRACT SUFFICIENCY:

BY _____
Franklin Lee
Contracting Officer FWS1-P 571

Date _____

STATE OF HAWAII:

BY _____
William J. Aila Jr.,
Chairperson
Board of Land and Natural Resources

Date _____

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

Date _____