

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

October 24, 2014

Board of Land and Natural Resources
Honolulu, Hawaii

Request for Approval to Enter Into a Memorandum of Agreement
with the University of Hawaii, School of Ocean and Earth Science and Technology,
Hawaii Institute of Marine Biology to Access Confidential Fisheries Data

For your review and approval is a request to enter into a Memorandum of Agreement (Agreement) with the University of Hawaii, School of Ocean and Earth Science and Technology (SOEST), Hawaii Institute of Marine Biology (HIMB) to allow certain HIMB students access to confidential fisheries data for the purposes of scientific research and analysis. A draft of the proposed Agreement, which has received preliminary review from the Office of the Attorney General, is attached as Exhibit "A" with responsible individual HIMB students and faculty to sign the Agreement.

The Division of Aquatic Resources (DAR) licenses commercial fishers under Section 189-2, Hawaii Revised Statutes (HRS) and requires monthly or trip reports under Section 189-3, HRS. With few exceptions, the commercial fishing catch and effort information from these reports are held confidential to protect the fisher's identities and proprietary catch information as required by statute.

The data is an important source of information that the Division of Aquatic Resources and other government agencies use to better manage the commercial fisheries around the Hawaiian Islands. HIMB students could provide us with valuable analysis of this data but would need to have access to the data to conduct their analyses.

HRS section 189-3(b) provides exceptions to access the confidential fisheries data, as by "cooperative agreements with government agencies of the United States for exchange and use of the information specifically to manage marine life." The University of Hawaii is a government entity, being both the state university and a body corporate as provided by the Hawaii Constitution (Art. X, section 5) and under state law (HRS section 26-11 and chapter 304A), and is also a designated land grant and sea grant college.

Aside from limited access to the data on site through the Division of Aquatic Resources, no funds are anticipated to be either budgeted or spent under this Memorandum of Agreement. As the agreement and any resulting analyses are primarily planning documents, no other trigger is anticipated which would require environmental review.

RECOMMENDATION:

That upon the staff's recommendation and the applicable exception noted above, the Board approve and authorize:

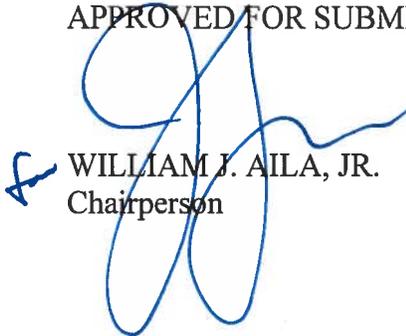
- 1) The Division of Aquatic Resources to, on behalf of the State of Hawaii and upon the stated circumstances described above, enter into the data-sharing Memorandum of Agreement with University of Hawaii, School of Ocean and Earth Science and Technology; Hawaii Institute of Marine Biology (HIMB);
- 2) The DAR Administrator be delegated the authority to amend and sign the Memorandum of Agreement for purposes of cooperative data-sharing on behalf of the State of Hawaii, with faculty and students of the Hawaii Institute of Marine Biology under such terms and conditions to best serve the interest of the State of Hawaii; and
- 3) Subject to review and approval of the Office of the Attorney General.

Respectfully submitted,



FRAZER MCGILVRAY
Administrator

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson

MEMORANDUM OF AGREEMENT

Between the

STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES

and

UNIVERSITY OF HAWAII
HAWAII INSTITUTE OF MARINE BIOLOGY

REGARDING ACCESS TO CONFIDENTIAL FISHERIES DATA

This Memorandum of Agreement (MOA) is entered into and between the State of Hawaii, Department of Land and Natural Resources, Division of Aquatic Resources, hereinafter referred to as "DAR", and certain designated individuals of the University of Hawaii at Manoa, School of Ocean and Earth Science and Technology, Hawaii Institute of Marine Biology, being a governmental agency by virtue of being a part of the state university which is also a body corporate; hereinafter referred to collectively for purposes of this MOA as "HIMB."

The purpose of this MOA is to set guidelines for the access, use, security, dissemination restrictions and the purging of DAR confidential fisheries data regarding the evaluation of coral reef ecosystem management unit species only. Compliance with the terms of this MOA is intended to include and meet all requirements of section 189-3, Hawaii Revised Statutes.

The undersigned designated faculty and students working under the auspices of HIMB agree to the following:

- I. The confidential fisheries data will be provided and accessed for the sole and one-time use of HIMB under this project. HIMB will prepare a review and analysis of the biology and ecology of coral reef species with implications for such commercial fisheries in Hawaii to enhance management assessments by DAR. The analysis may be shared by DAR with the Western Pacific Regional Fishery Management Council (WPRFMC) regarding the evaluation of Coral Reef Ecosystem Management Unit Species, via an improved description of essential fish habitat, geographic analysis of fishery trends, and integrated biophysical-socioeconomic modeling of reef community dynamics.
- II. All undersigned faculty and students working through HIMB agree that confidential fisheries data will only be accessed on site at DAR's Oahu office located at 1151 Punchbowl Street, Room 330, Honolulu, HI 96813 during regular office hours. The designated parties agree that such access will be

limited only to the confidential fisheries database via a designated computer terminal.

- III. DAR's original data, or any aggregated data of less than three (3) licensees summarized at any data strata,* will not be shown or provided to any other person, including WPRFMC staff, nor will copies of this data in any form be allowed to be removed from the work site. All worksheets will remain at the specified work site described in section II above. [* "data strata" is defined as levels or layers of aggregated fisheries data. e.g., data strata existing at four levels may be comprised of fisheries information compiled by year, by area, by method, and by species.]
- IV. The data will be safely secured at all times to prevent unauthorized access.
- V. When fishery data are reported or used in a report for public dissemination, the following will apply:
 - a. Data will be summarized by aggregating no less than three (3) licensees reporting landings or revenues in any area, time period, or for any other data strata, such that data from an individual licensee cannot be identified.
 - b. Aggregated landings or revenue summaries will be reported using data from as many license holders as possible.
 - c. Names on individual licensees, fishing vessels, or any other personal information will not be identified or released.
 - d. Fishing effort and catch will not be reported or plotted for less than three (3) licensees for any area or time period or for any other data strata.
 - e. A draft of the project report must be forwarded to DAR for confidentiality review and approval before it is finalized and approved for public dissemination.
 - f. The use of only pre-approved reported information as provided in (e) above will be used for any/all presentations presented at any public forum.
- VI. HIMB agrees to write a separate confidential report for DAR utilizing the confidential data that was reviewed, to assist DAR in understanding the potential management implications from the data analysis. HIMB will work with DAR to develop the confidential report and its contents.
- VII. HIMB agrees that access through this MOA may be cancelled by DAR at any time. If DAR decides to cancel this MOA and access to the confidential data, HIMB will receive written notice of the cancellation. In the event of such cancellation, Part VIII of this MOA will be implemented.
- VIII. Upon completion of the project, the HIMB shall comply with the following:
 - a. All original fishery data sets, copies of data, or portions of data will remain with DAR.

- b. All copies/portions of data that were reviewed/analyzed will be destroyed; paper files will be shredded. No data, including data in any electronic form, will be removed from the work site (sections II and III above). HIMB will provide DAR with written notice of such compliance within seven (7) consecutive calendar days after the project completion date.
- IX. HIMB shall consult with DAR if/when there are any data reporting issues that may compromise data confidentiality.
- X. HIMB shall be aware of and agrees to obey all state laws protecting the confidentiality of the fishery data and individual privacy. Any violation of these laws may result in criminal penalties as provided by law.

DAR agrees to the following:

- I. DAR will provide a computer for the HIMB personnel to use for accessing and analyzing the data during normal working hours (7:45 a.m. to 4:30 p.m.).
- II. DAR will provide access to original fisheries data principally derived from catch reports submitted under section 189-3, Hawaii Revised Statutes.
- III. Access to original data will be by appointment or prior arrangement to use the work site.
- IV. Authority to sign this agreement on behalf of DAR shall reflect the delegated approval of the Board of Land and Natural Resources to enter into this cooperative agreement with a government agency of the United States for the exchange and use of the information specifically to manage marine life.

Termination. This Agreement shall expire automatically within two years of the effective date unless sooner terminated or if in conflict with any legislation regarding confidential fisheries data with terms contrary to those contained in this Agreement. Either party may terminate involvement in this Agreement for any reason whatsoever, by providing 90 days prior written notice to the other party.

Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document. By signing below, each representative indicates that he/she has the requisite authority and capacity to enter into this Agreement on behalf of the respective party.

[The remainder of this page left intentionally blank.]

IN VIEW OF THE ABOVE, the undersigned parties agree to abide by the terms and conditions of this Agreement. Execution of this Memorandum of Agreement shall reflect the free act and deed of each person in accordance, as evidenced by their signatures, on the dates below, to be effective as of the date of the last signature on this document.

FOR HIMB:

MORGAN WINSTON

Date

MAIA KAPUR

Date

ZACK OYAFUSO

Date

DR. ERIK FRANKLIN
Faculty Advisor, HIMB, University of Hawaii

Date

FOR STATE OF HAWAII:

FRAZER MCGILVRAY
DAR ADMINISTRATOR
DEPARTMENT OF LAND AND
NATURAL RESOURCES

Date