

STATE OF HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Forestry and Wildlife  
Honolulu, Hawai'i 96813

December 12, 2014

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Land Board Members:

**SUBJECT:** RESUBMITTAL: REQUEST FOR AUTHORIZATION FOR THE CHAIRPERSON TO SIGN, EXECUTE, AND AMEND A MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE UNITED STATES DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, WILDLIFE SERVICES REGARDING TECHNOLOGY TRANSFER, PLANNING, COORDINATING, EXCHANGING INFORMATION AND EXPERTISE, AND DEVELOPING MEASURES TO ENHANCE THE BENEFICIAL ASPECTS OF WILDLIFE WHILE MINIMIZING THEIR UNDESIRABLE EFFECTS ON THE HEALTH, WELFARE, NATURAL RESOURCES, OR PROPERTY OF THE CITIZENS OF HAWAII

**SCOPE:** STATEWIDE

**STATUTE:** HAWAI'I REVISED STATUTES CHAPTER 183D

**SUMMARY**

The Division of Forestry and Wildlife ("Division") requests Board of Land and Natural Resources ("Board") approval for the Chairperson to sign, execute, and amend a Memorandum of Understanding (MOU) between the Department of Land and Natural Resources (DLNR) and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (USDA APHIS WS). This MOU would revise and replace a previous MOU between these agencies for a similar purpose, dated August 9, 2006 and expired on March 1, 2011. Both the 2006 MOU and the draft MOU attached to this submittal allow the Board and USDA APHIS-WS to collaborate on effective wildlife damage management programs in the State of Hawaii. These programs would allow for the control of wildlife in order to prevent the spread of animal-borne diseases, controlling bird hazards at airports, minimize damage to private enterprises including animal depredation to agriculture, aquaculture, livestock, and property, control invasive or other animal species, and conduct research to develop and assess tools, methods, and information for achieving these objectives.

## BACKGROUND

The DLNR has a long history of collaborating with USDA APHIS WS on the activities described in this MOU. This MOU makes slight amendments to update the language found in the 2006 MOU between DLNR and USDA APHIS WS. The 2006 MOU was itself a revision of a 1987 MOU between the parties. As described in the MOU, the objectives to the proposed document include:

1. Protect public health and safety by preventing the spread of animal-borne disease and by controlling bird hazards at airports
2. Protect private enterprises by controlling animal depredation to agriculture, aquaculture, livestock, and property
3. Control invasive or other animal species that have negative impacts on natural resources on public lands
4. Conduct research to develop and assess tools, methods and information for achieving the above objectives.

The DLNR and USDA APHIS WS are charged with similar functions with regard to control of harmful or injurious wildlife, and collaboration on these objectives are necessary to the effective fulfillment of the missions of both agencies.

In particular, USDA APHIS WS has statutory authority under the Act of March 2, 1931, as amended (7 USC 426), and the Act of December 22, 1987 (7 USC 426c) to conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary of Agriculture considers necessary in conducting the program. The Secretary of Agriculture is authorized to conduct activities to control nuisance mammals and birds and those mammal and bird species that are reservoirs for zoonotic disease.

Per Chapter 183D, Hawaii Revised Statutes, the Board, through the DLNR, is charged with the management of wildlife resources in the State of Hawaii, the destruction of predators harmful to wildlife, and the authorization of the destruction of nonnative wildlife including birds, mammals, amphibians, and reptiles that may be destructive to crops and /or which constitute a nuisance or health hazard.

## DISCUSSION

The draft MOU included in this submittal is largely the same as the 2006 document it replaces. New language in this version provides the following amendments:

- Amends description of federal authorities under Article 3 to better describe the role of the Secretary of Agriculture in conducting the overall program of wildlife services managed by the agency
- Under Article 4 (“Objectives”), adds item (d): “conduct research to develop and assess tools, methods and information for achieving the above objectives”
- Amends language under Article 6 by adding section b, attesting that the Board has not been convicted of a felony criminal violation in the 24 months preceding the date of

signature on the MOU.

- Amends language under Article 6 by adding section c, attesting that the Board does not have any unpaid Federal tax liability that is not being paid in a timely manner.
- Amends Article 6 and Article 7 to specify appropriate contacts within the DLNR Division of Forestry and Wildlife and the USDA APHIS WS National Research Center Field Station in Hilo as being the authorized representative who shall be responsible for collaboratively administering the research activities conducted under the MOU.
- Amends Article 8 (“Statement of No Financial Obligation”) to include the language “Transfer of funds or items of value are not authorized under this MOU.”
- Moves language regarding non-discrimination from Article 5 (“Mutual Responsibilities”) to its own article, Article 11 (“Non-Discrimination Clause”).

The draft MOU is attached to this submittal was drafted by staff at USDA APHIS WS.

#### LEGAL AUTHORITY

- HRS 183D-2: Relating to powers of the department
- HRS 183D-61: Relating to permits to take wild birds, game birds, and game mammals

#### RECOMMENDATIONS

That the Board authorizes the Chairperson of the DLNR to sign, execute, and amend a Memorandum of Understanding (MOU) between the DLNR and the USDA APHIS WS regarding technology transfer, planning, coordinating, exchanging information and expertise, and developing measures to enhance the beneficial aspects of wildlife while minimizing their undesirable effects on the health, welfare, natural resources, or property of the citizens of Hawaii, substantially in the same form as the draft MOU attached to this submittal.

Respectfully submitted,

  
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LISA J. HADWAY, Administrator  
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



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WILLIAM J. AILA, Chairperson  
Board of Land and Natural Resources

Attachment 1:

Draft Memorandum of Understanding between the DLNR and the USDA APHIS WS regarding technology transfer, planning, coordinating, exchanging information and expertise, and developing measures to enhance the beneficial aspects of wildlife while minimizing their undesirable effects on the health, welfare, natural resources, or property of the citizens of Hawaii.

**MEMORANDUM OF UNDERSTANDING  
BETWEEN**

**STATE OF HAWAII  
by its  
BOARD OF LAND AND  
NATURAL RESOURCES  
DIVISION OF FORESTRY AND  
WILDLIFE**

**AND**

**UNITED STATES  
DEPARTMENT OF  
AGRICULTURE  
ANIMAL AND PLANT HEALTH  
INSPECTION SERVICE  
WILDLIFE SERVICES**

**ARTICLE 1 – PURPOSE**

The purpose of this Memorandum of Understanding (MOU) is to establish a cooperative relationship between the State of Hawaii, by its Board of Land and Natural Resources, Division of Forestry and Wildlife (hereinafter called the "Board") and the United States Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services (hereinafter called "APHIS-WS") to provide more effective procedures for technology transfer, planning, coordinating, exchanging information and expertise, and developing measures to enhance the beneficial aspects of wildlife while minimizing their undesirable effects on the health, welfare, natural resources, or property of citizens in the State of Hawaii.

**ARTICLE 2 – BACKGROUND**

The Board, through the Department of Land and Natural Resources, is charged with the management of wildlife resources in the State of Hawaii, the destruction of predators harmful to wildlife, and the authorization of the destruction of non-native wildlife including birds, mammals, amphibians, and reptiles that which may be destructive to crops, and/or which constitute a nuisance or health hazard (Sections 183D-2(1), 183D-2(10), 183D-61(a)(3, 4), HRS). This revised MOU will supersede the Memorandum of Understanding entered into in 2006 by the parties.

**ARTICLE 3 – AUTHORITIES**

APHIS-WS has statutory authority under the Act of March 2, 1931, as amended (7 USC 426), and the Act of December 22, 1987 (7 USC 426c), the Secretary of Agriculture may conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program. Additionally, the Secretary of Agriculture, except for urban rodent control, is authorized to conduct activities to control nuisance mammals and birds and those mammal and bird species that are reservoirs for zoonotic diseases. In carrying out a program of wildlife services involving injurious and/or nuisance animal species or involving mammal and bird species that are reservoirs for zoonotic diseases, the Secretary is authorized to cooperate with States, local jurisdictions, individuals, public and private agencies, organizations, and institutions.

The Department of Land and Natural Resources is the duly authorized agency within the State of Hawaii with the statutory (HRS Title 12, chapters and sections therein) and constitutional (Article XI) responsibility for the management and conservation of wildlife in the State of Hawaii. The actions by the Department are authorized under HRS Chapter 183D, Wildlife, Section 183D-2, Powers and Duties of Department, Section 183D-61, Permits to Take Wild Birds, Game Birds, and Game Mammals, Chapter 195D, Conservation of Aquatic Life, Wildlife, and Land Plants, Section 195D-1, General Provisions, and Section 195D-5, Conservation Programs.

#### **ARTICLE 4 – OBJECTIVES**

The goals of the programs conducted under this MOU address the need to: (a) protect public health and safety by preventing the spread of animal-borne disease and by controlling bird hazards at airports; (b) protect private enterprises by controlling animal depredation to agriculture, aquaculture, livestock and property; (c) control invasive or other animal species that have negative impacts on natural resources on public lands; and (d) conduct research to develop and assess tools, methods and information for achieving the above objectives. Wildlife damage management programs will be conducted in accordance with the laws and rules of the State of Hawaii, ordinances of the appropriate Counties of the State of Hawaii and with Federal laws and regulations. Field investigations and control activities will be consistent with sound management practices and with due regard for the protection of the public, threatened and endangered species, native resources and watersheds, domestic animals, and the environment.

#### **ARTICLE 5 - MUTUAL RESPONSIBILITIES**

The Board and APHIS-WS mutually agree that:

- a) The Board and APHIS-WS will cooperate with other Federal agencies, local governments, organizations, agencies, and individuals to conduct operational and research activities to minimize undesirable effects of wildlife in the State of Hawaii.
- b) The Board and APHIS-WS will cooperate to issue or obtain permits to develop effective wildlife damage management programs in the State of Hawaii.
- c) The Board and APHIS-WS will cooperate, subject to the availability of funds, personnel, equipment and facilities, to control animal damage.
- d) The Board and APHIS-WS will evaluate wildlife damage management control tools and methods for the purpose of determining effectiveness and preventing unintentional adverse effects on wildlife resources, the environment and indirectly on human health.
- e) Publicity, publications, visual aids and related materials developed for public education and training to augment the purpose of this MOU shall give credit to the appropriate party(ies).

**ARTICLE 6 - BOARD RESPONSIBILITIES**

- a. To designate the Wildlife Program Manager, DLNR Division of Forestry and Wildlife, 1151 Punchbowl Street, Room 325, Honolulu, HI 96813, (808) 587-4187, or designated representative, as the authorized representative of the Board who shall be responsible for collaboratively administering the activities conducted under this MOU.
- b. By entering into this MOU, the Board attests that it has not been convicted of a felony criminal violation under Federal or State Law in the 24 months preceding the date of signature, nor has any officer or agent been convicted of a felony criminal violation under Federal or State law in the 24 months preceding the date of signature.
- c. By entering into this MOU, the Board attests that it does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

**ARTICLE 7 - APHIS-WS RESPONSIBILITIES**

- a. To designate Tim J. Ohashi, APHIS-WS, State Director (acting), 3375 Koapaka Street, Suite H-420, Honolulu, HI 96819, (808) 838-2841, or designated representative, as the authorized representative who shall be responsible for collaboratively administering the operational activities conducted under this MOU.
- b. To designate Aaron Shiels, APHIS-WS National Wildlife Research Center Field Station Leader (acting), P.O. Box 10880, Hilo, HI 96721, or designated representative, as the authorized representative who shall be responsible for collaboratively administering the research activities conducted under this MOU,
- c. The APHIS-WS State Director, or designated representative, shall meet annually with a representative of The Board relative to annual planning and evaluation of wildlife damage management programs in the State of Hawaii.
- d. In conjunction with APHIS-WS, USDA-APHIS National Wildlife Research Center (NWRC) will be responsible for conducting research on the economic, health, safety and nuisance problems involving the control of animal damage.

**ARTICLE 8 - STATEMENT OF NO FINANCIAL OBLIGATION**

Signature of this MOU does not constitute a financial obligation on the part of APHIS-WS. Each signatory party is to use and manage its own funds in carrying out the purpose of this MOU. Transfers of funds or items of value are not authorized under this MOU.

**ARTICLE 9 - COMMITMENT LIMITATIONS**

This MOU and any continuation thereof shall be contingent upon the availability of funds appropriated by the Congress of the United States. It is understood and agreed that any monies allocated for purposes covered by this MOU shall be expended in accordance with its terms and in the manner prescribed by the fiscal regulations and/or administrative policies of the party making the funds available. If fiscal resources are to transfer, a separate agreement must be developed by the parties.

**ARTICLE 10 - CONGRESSIONAL RESTRICTIONS**

Under 41 U.S.C. 22, no member of, or delegate to, Congress shall be admitted to any share or part of this MOU or to any benefit to arise there from.

**ARTICLE 11 – NON-DISCRIMINATION CLAUSE**

The United States Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. Not all prohibited bases apply to all programs.

**ARTICLE 12 - AMENDMENTS**

This MOU may be amended at any time by mutual agreement of the parties in writing.

**ARTICLE 13 – TERMINATION**

This MOU may be terminated at any time by mutual agreement of the parties in writing, or by either party with sixty (60) days' notice in writing to the other party.

**ARTICLE 14 - EFFECTIVE DATE AND DURATION**

This MOU will become effective upon date of final signature and will continue in effect for 5 years.

APPROVED AS TO FORM:

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF FORESTRY AND WILDLIFE  
1151 PUNCHBOWL STREET, ROOM 325  
HONOLULU, HI 96813

\_\_\_\_\_  
Chairperson and Member

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
Date

UNITED STATES DEPARTMENT OF AGRICULTURE  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
WILDLIFE SERVICES

\_\_\_\_\_  
WILLIAM H. CLAY  
DEPUTY ADMINISTRATOR, WILDLIFE SERVICES

\_\_\_\_\_  
Date