

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

December 11, 2015

Board of Land
and Natural Resources
Honolulu, Hawaii

SUBJECT: REQUEST FOR APPROVAL TO ENTER INTO A FEDERALLY FUNDED SOLE SOURCE CONTRACT (NOT TO EXCEED \$199,492.00), BETWEEN THE BOARD OF LAND AND NATURAL RESOURCES AND CASCADIA RESEARCH COLLECTIVE, TO PROVIDE SERVICES TO SUPPORT STATE EFFORTS TO MINIMIZE AND MITIGATE INCIDENTAL TAKE OF FALSE KILLER WHALES AND OTHER ENDANGERED CETACEANS IN HAWAII; DECLARATION OF EXEMPTION FOR CONTRACT ACTIONS UNDER HRS CHAPTER 343 AND HAR CHAPTER 11-200

Submitted herewith for your consideration is a request to enter into a contract between the Board of Land and Natural Resources and Cascadia Research Collective (CRC), a foreign 501(c)3 non-profit corporation, pending sole source approval. The contract, not to exceed \$199,492.00, is to be funded solely with Federal funds from a National Oceanic and Atmospheric Administration Endangered Species Act (ESA) Section 6 grant (award number NA15NMF4720015). The term of the contract is January 1, 2016 (or upon receipt of final signature) through December 31, 2016. This will be Year 1 of an anticipated three-year project.

In 2012, the main Hawaiian Islands insular Distinct Population Segment (DPS) of false killer whales (*Pseudorca crassiden*) was listed as endangered under the Endangered Species Act (ESA). To support recovery of this local species, the Department of Land and Natural Resources submitted and received a Section 6 ESA grant award for cooperative conservation and long-term management of false killer whales and other endangered cetaceans in Hawaii. The CRC contract will enhance State efforts to minimize and mitigate incidental take of false killer whales through fieldwork, research, spatial and temporal analysis of the overlap between fisheries and false killer whales, stranding response support, and targeted outreach efforts. By CRC providing these services, the State will be able to achieve the following required grant objectives:

1. Fill in data gaps in the spatial use patterns of false killer whales around the main Hawaiian Islands, including satellite tagging, obtaining mouth-line photos to assess fisheries-related injuries, photo-identification, and collection of biopsy samples;
2. Assess the spatial and temporal overlap between insular false killer whales and state fisheries effort; and

3. Target outreach and awareness to specific fishers, boaters, and tour operators to effectively mitigate or reduce interactions with false killer whales, identify species to complement research, and increase public reporting of strandings.

The Division of Aquatic Resources (DAR) is providing administrative services for the contracting process and sole source approval under HRS § 103D-306 is pending.

Concurrently, approval to enter the contract is being requested from the Governor and contract documents are being prepared for submission to the Attorney General's Office for preliminary approval as to form. DAR is aware that implementation of the contract is dependent upon receipt of all required approvals, availability of funds, and that funding restrictions may occur at any time.

HRS Chapter 343 - Compliance with Environmental Law:

The Chair, on January 23, 2015, approved Special Activity Permit PMAL 2015-208 for Dr. Robin W. Baird, Cascadia Research Collective, to conduct odontocete research in Hawaiian waters. Activities include photo-identification of individuals to estimate abundance and examine social organization, biopsy sampling to assess toxin loads and examine genetic relatedness of individuals for understanding social organization and population structure, and satellite tagging to assess movements, habitat use, and underwater behavior of humpback whales, false killer whales and sperm whales.

At the same time, the Chair also supported the Department's Chapter 343 analysis and issued a Declaration of Exemption that determined that the activities to be performed under Special Activity Permit PMAL 2015-208 would have minimal or no significant effect on the environment. To exempt the permit from the Environmental Assessment (EA) requirement, the Department's exemption analysis used the general Exemption Class for scientific research as provided by the Hawaii Department of Health, Section 11-200-8(a)(5), Hawaii Administrative Rules, and more specifically used the Department of Land and Natural Resources, Exemption List for the Division of Fish and Game, approved January 19, 1976, which includes "placing recording devices in the field to determine animal movement," as well as "wildlife and game surveys, censuses, inventories, studies..." and "...marine surveys and research activities."

Because the Department has 1) conducted a Chapter 343, HRS, analysis of the activities covered under SAP PMAL 2015-208, 2) has determined that an EA is not required for the activities under this permit, 3) has issued a Declaration of Exemption for the activities covered under SAP PMAL 2015-208, and 4) the activities to be covered under this contract are the same as the activities covered under SAP PMAL 2015-208, therefore, no EA is being required for this contract.

The Department is taking the extraordinary step of preparing a separate Declaration of Exemption for this contract, even though the proposed activities under this contract would be the same as those issued under previously approved SAP PMAL 2015-208 and its accompanying Declaration of Exemption. The reason for this action is primarily because of

the question of could a Declaration of Exemption issued for a permit be used for a contract to conduct the same scope of work. This action would make this question moot. For the Board's information, this same scope of work to be covered under the SAP and this contract is also covered under a federal environmental review pursuant to the ESA Section 6 grant.

The Special Activity Permit for Cascadia Research Collective is valid until January 21, 2016 and is in the process of renewal. Annual State renewal of this permit is based on their current five-year federal permit, NMFS Permit #15240, valid until May 31, 2017.

RECOMMENDATIONS:

Based on the above discussion, the Division of Aquatic Resources recommends the Board approve the following:

1. That the Board declare that the actions which are anticipated to be undertaken under this contract is exempt from the preparation of an environmental assessment.
2. That the Board authorize the Chairperson to negotiate and, subject to necessary approvals, enter into a contract with Cascadia Research Collective to provide services to minimize and mitigate incidental take of false killer whales through fieldwork, spatial and temporal analysis of the overlap between fisheries and false killer whales, stranding response support, and targeted outreach efforts.
3. That review and approval of the Department of the Attorney General be obtained prior to entering into this contract.
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,


for BRUCE S. ANDERSON, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:


SUZANNE D. CASE
DLNR Chairperson

DAVID Y. IGE
GOVERNOR OF HAWAII



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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

December 11, 2015

TO: Division of Aquatic Resources File

THROUGH: Suzanne D. Case, Chairperson

FROM: Bruce Anderson, Administrator
Division of Aquatic Resources

SUBJECT: Declaration of Exemption from the Preparation of an Environmental Assessment under the Authority of Chapter 343, HRS, and Chapter 11-200, HAR, for a Contract with Robin W. Baird, Cascadia Research Collective.

The following activities are found to be exempted from preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR:

Project Title: Contract with Robin W. Baird, Cascadia Research Collective, for research on the long-term study of movements and habitat use of odontocetes in Hawaiian waters.

Contract Number: Endangered Species Act (ESA) Section 6 grant (award number NA15NMF4720015)

Project Description: The research contract, as described below, would allow 2335 approaches of humpback whales, 2335 approaches of sperm whales, 2380 approaches for (range-wide) false killer whales and 1140 approaches for (Hawaiian Insular Stock) false killer whales in State waters for one year from January 1, 2016 or from final signature date, to conduct humpback whale, sperm whale and false killer whale movement and habitat use research. No animals will be captured or taken. Robin Baird currently has a National Marine Fisheries Service Permit to conduct this kind of work on cetaceans in Hawaii (NMFS Permit #s 15330 and 15240).

Because this contract involves marine mammals in Hawaiian waters, our ability to issue this contract is derived from federal permission when awarded the federal grant to conduct this work. The proposed contractee is responsible for obtaining all federal permits, including permission under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA) prior to conducting this work.

Research includes photo-identification of individuals to estimate abundance and examine social organization, biopsy sampling to assess toxin loads and examine genetic relatedness of individuals for understanding social organization and population structure, and satellite tagging

to assess movements, habitat use, and underwater behavior of humpback whales, false killer whales and sperm whales.

Observations will typically be undertaken from a small vessel ranging from 6-9 m in length (Baird et al. 2013). Biopsy samples will be collected using a crossbow or pneumatic projector, with biopsy tips of up to 40 mm in length (8 mm diameter). Satellite tags will be deployed using a pneumatic projector (Dan-Inject JM Special 25). Two types of satellite tags will be used, a location-only Wildlife Computers SPOT5 or a location-dive MK10-A, both in the LIMPET configuration (details on satellite tags in Baird et al. 2010, 2011, 2012).

Biopsy samples will be sent to Hawaii Pacific University for hormone chemistry, the Southwest Fisheries Science Center for genetic analyses, or the Northwest Fisheries Science Center for toxicology analyses.

Consulted Parties: National Marine Fisheries Service, Permits & Conservation Division, Office of Protected Species Division; Dr. Robin Baird, Cascadia Research Collective; Dr. Kristi West, Hawaii Pacific University

Exemption Determination: After reviewing HAR § 11-200-8, including the criteria used to determine significance under HAR § 11-200-12, DLNR has concluded that the activities under this contract would have minimal or no significant effect on the environment, and that issuance of the contract is categorically exempt from the requirement to prepare an environmental assessment based on the following analysis:

1. All activities associated with this contract have been evaluated as a single action.

Since this contract involves the same study methodology used throughout the contract period, the categorical exemption determination here will treat all planned activities as a single action under §11-200-7, HAR.

2. The Exemption Class for Scientific Research with no Serious or Major Environmental Disturbance Appears to Apply. HAR § 11-200-8(a)(5) exempts the class of actions which involve "basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource." This exemption class has been interpreted to include activities such as the actions being proposed.

3. Cumulative Impacts of Actions in the Same Place and Impacts with Respect to the Potentially Particularly Sensitive Environment Will Not be Significant. Even where a categorical exemption appears to include a proposed action, the action cannot be declared exempt if "the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment." HAR § 11-200-8(b) To gauge whether a significant impact or effect is probable, an exempting agency must consider every phase of a proposed action, any expected primary and secondary consequences, the long-term and short-term effects of the action, the overall and cumulative effect of the action, and the sum effects of an action on the quality of the environment. HAR § 11-200-12.

Significant cumulative impacts are not anticipated as a result of this activity, and numerous safeguards further ensure that the potentially sensitive environment of the project area will not be significantly affected. All activities will be conducted in a manner that does not diminish marine resources, qualities, and ecological integrity, or have any indirect, secondary, cultural, or cumulative effects.

Since no significant cumulative impacts or significant impacts with respect to any particularly sensitive aspect of the project area are anticipated, the categorical exemptions identified above should remain applicable.

4. Overall Impacts will Probably have a Minimal or No Significant Effect on the Environment. Any foreseeable impacts from the proposed activity will probably be minimal, and further mitigated by general and specific conditions attached to the contract. Specifically, all research activities covered by this contract will be carried out with strict safeguards for the natural, historic, and cultural resources, other applicable law and agency policies and standard operating procedures.

Conclusion. Upon consideration of the contract to be approved by the Chairperson, being delegated signatory authority on behalf of the Board of Land and Natural Resources at its meeting of December 11, 2015, the potential effects of the above listed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, have been determined to be of probable minimal or no significant effect on the environment and exempt from the preparation of an environmental assessment.

Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Date