

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

March 22, 2013

Board of Land
and Natural Resources
Honolulu, Hawaii

SUBJECT: REQUEST FOR APPROVAL TO ADD FEDERAL FUNDING (\$339,000) AND EXTEND THROUGH FY14 THE DEPARTMENT OF LAND AND NATURAL RESOURCES (DLNR)/UNIVERSITY OF HAWAII (UH) CONTRACT NO. 60394 (SUPPLEMENTAL CONTRACT NO. 2) FOR A PROJECT TITLED "EVALUATING THE EFFECTIVENESS OF RESTRICTED FISHING AREAS FOR IMPROVING THE BOTTOMFISH FISHERY"

Submitted herewith for your consideration is a request to amend and extend Contract No. 60394 between DLNR and the UH. Supplemental Contract No. 2 will provide additional Federal funding and allow continuation of the on-going fisheries project titled "Evaluating the Effectiveness of Restricted Fishing Areas for Improving the Bottomfish Fishery." The bottomfish project is under the direction of Dr. Jeff Drazen of the UH's Department of Oceanography. Supplemental Contract No. 2 extends the project from July 1, 2013 through June 30, 2014, and provides \$ 339,000 in Federal funds from a U.S. Fish and Wildlife Service Sport Fish Restoration grant. No State General Funds are included in the contract. The UH will provide the required State match component (\$113,000) for the grant.

In FY14, the scope of services focuses on analysis of all collected and prior study data, i.e., data collected under Contracts No. 55137 and 60394. The objectives include 1) analysis of data including species identification, counts and size/lengths to assess relative abundance and size frequencies of harvested bottomfish species; 2) analysis of data for refinement of bottomfish essential fish habitat definitions in collaboration with the Division of Aquatic Resources (DAR), UH's Hawaii Undersea Research Laboratory and the National Oceanic and Atmospheric Administration's Pacific Islands Regional Office (NOAA-PIRO); and 3) presentation to DLNR/DAR of a complete and detailed summary of all project findings.

Supplemental Contract No. 2 to Contract No. 60394 is currently being reviewed by the UH, and thereafter, will be submitted to the State's Department of the Attorney General for final approval as to form.

Chapter 343 – Compliance with Environmental Law:

Contract No. 60394 involves the use of state lands (submerged lands zoned in the Conservation District, Resource subzone) and use of state funds. The Department has determined that the actions undertaken by this ongoing project will have little or no significant effect on the

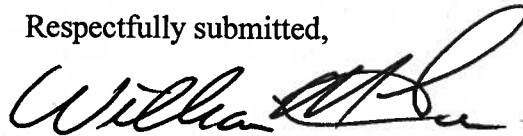
environment and are exempt from the preparation of an environmental assessment. See Agency's Determination of Exemption (attached) from preparation of an environmental assessment.

RECOMMENDATION:

Based on the attached proposed declaration of exemption prepared by the department after consultation with and advice of those having jurisdiction and expertise for the proposed actions under the contract:

1. That the Board declare that the actions which are anticipated to be undertaken under this contract will have little or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Upon the finding and adoption of the department's analysis by the Board, that the Board delegate and authorize the Chairperson to sign the declaration of exemption for purposes of recordkeeping requirements of chapter 343, HRS, and chapter 11-200, HAR.
3. That the Board authorize the Chairperson to negotiate and, subject to necessary approvals, amend and extend Contract No. 60394 (Supplemental Contract No. 2) with the University of Hawaii for a project titled "Evaluating the Effectiveness of Restricted Fishing Areas for Improving the Bottomfish Fishery."

Respectfully submitted,



WILLIAM M. TAM
Acting Administrator

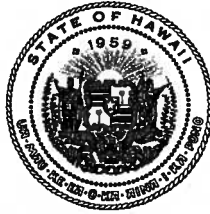
APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson

Attachment

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES
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WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

March 22, 2013

TO: Division of Aquatic Resources File

THROUGH: William J. Aila, Jr., Chairperson

FROM: Robert Nishimoto, Environmental Program Manager
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 Request for Approval to Add Federal Funding (\$339,000) and Extend through FY14 the Department of Land and Natural Resources (DLNR)/University of Hawaii (UH) Contract No. 60394 (Supplemental Contract No. 2) for a Project Titled "Evaluating the Effectiveness of Restricted Fishing Areas for Improving the Bottomfish Fishery"

The following contract activities are found to be exempted from preparation of an environmental assessment under the authority of Chapter 343, Hawaii Revised Statutes (HRS) and Chapter 11-200, Hawaii Administrative Rules (HAR):

Project Title: Evaluating the Effectiveness of Restricted Fishing Areas for Improving the Bottomfish Fishery

Request for Approval to Add Federal Funding (\$339,000) and Extend through FY14 the Department of Land and Natural Resources (DLNR)/University of Hawaii (UH) Contract No. 60394 (Supplemental Contract No. 2) for a Project Titled "Evaluating the Effectiveness of Restricted Fishing Areas for Improving the Bottomfish Fishery."

Project Description: The project involves 1) assessment and monitoring of bottomfish populations inside and outside State Bottomfish Restricted Fishing Areas (BRFAs), using BOTCAM baited drop camera systems; 2) analysis of collected and prior study data, including species identification, counts, and length data to assess relative abundance and size frequencies of harvested bottomfish species; 3) analysis of collected and prior study data for refinement of bottomfish essential fish habitat definitions in collaboration with the Division of Aquatic Resources (DAR), UH's Hawaii Undersea Research Laboratory and the National Oceanic and Atmospheric Administration's Pacific Islands Regional Office (NOAA-PIRO); and 4) analysis of

collected and prior study data to evaluate statistical power and to re-evaluate the sampling design for the BRFA monitoring. No new marine life samples will be taken during the contract period.

Exemption Determination: After reviewing §11-200-8, HAR, including the criteria used to determine significance under §11-200-1 and 5, HAR, DLNR has concluded that the activities under this contract would have minimal or no significant effect on the environment and that approval of the contract extension 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 activities that are precedent to a later planned activity, i.e., maintenance of bottomfish restricted fishing areas, collection of data and research, the categorical exemption determination here will treat all planned activities as a single action under § 11-200-8, HAR.
2. The Exemption Class #1 for Operation and Maintenance of Facilities Involving Little or No Expansion Beyond Previously Existing, Appears to Apply. §11-200-8(a)(1), HAR, exempts the class of actions which involve "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing;" This exemption class has been interpreted to include the maintenance of bottomfish restricted fishing areas, such as that being proposed.

The proposed maintenance of bottomfish restricted fishing areas appears to fall under the exemption class identified under §11-200-8 (a)(1), HAR, and as described under Exemption Class #1 in the Division of Fish and Game 1976 exemption list.

The Exemption Class #5 or Scientific Research with no Serious or Major Environmental Disturbance Appears to Apply. §11-200-8(a)(5), HAR, exempts the class of actions that 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 the study of bottomfish movement inside and outside of the restricted fishing areas, such as those being proposed.

In addition, the activities under consideration are exempt under Exemption Class #5, Exempt Items #3, #4, and #5, respectively, which include "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...." Department of Land and Natural Resources, the Division of Fish and Game 1976 Exemption List.

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." §11-200-8(b), HAR. 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. §11-200-12, HAR.

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 March 22, 2013, 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.

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

Date