

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

April 25, 2014

Board of Land and Natural Resources  
Honolulu, Hawaii

Request for Authorization and Approval to Amend the Existing Cooperative Agreement between DLNR and NOAA's National Marine Fisheries Service to Include the Main Hawaiian Island Insular False Killer Whale and the Sperm Whale Pursuant to Section 6 of the Endangered Species Act for the Conservation of Threatened and Endangered Species.

Submitted herewith for your authorization and approval is a request to amend the existing Cooperative Agreement between DLNR and NOAA's National Marine Fisheries Service for the Conservation of Threatened and Endangered Species. This cooperative agreement is entered into pursuant to Section 6(c)(1) of the Endangered Species Act of 1973, as amended, and Hawaii Revised Statutes chapter 195D, between the United States Department of Commerce National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and the State of Hawai'i, Department of Land and Natural Resources acting by and through its Board of Land and Natural Resources.

The purpose of this agreement is to cooperate for the common purpose of planning, developing, and conducting programs to protect, manage, and enhance populations of all resident endangered and threatened species within the State of Hawai'i. This may involve law enforcement, research, management, and public information and education activities. Currently the agreement includes the following threatened and endangered species:

- Hawaiian monk seal (*Monachus schauinslandi*)
- Humpback whale (*Megaptera novaeangliae*)
- Hawksbill sea turtle (*Eretmochelys imbricata*)
- Green sea turtle (*Chelonia mydas*)

The amendment to the Cooperative Agreement would include the addition of the two following endangered species:

- Main Hawaiian Island insular false killer whale (*Pseudorca crassidens*)
- Sperm whale (*Physeter macrocephalus*)

With the addition of these species to the agreement, Hawai'i will be eligible to receive Federal grant funding through the Species Recovery Grant Program.

RECOMMENDATION:

“That the Board approve amending the existing Cooperative Agreement between DLNR and NOAA’s National Marine Fisheries Service to Include the Main Hawaiian Island Insular False Killer Whale (*Pseudorca crassidens*) and the Sperm Whale (*Physeter macrocephalus*).”

Respectfully submitted,



Frazer McGilvray  
Administrator  
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



William J. Aila, Jr.  
Chairperson



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
1315 East-West Highway  
Silver Spring, Maryland 20910  
THE DIRECTOR

FEB 26 2014

William J. Aila, Jr.  
Chairperson  
Department of Land and natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

Dear ~~Chairperson~~ <sup>William</sup> Aila:

Thank you for the letter to Michael Tosatto, Pacific Islands Administrator for NOAA's National Marine Fisheries Service (NMFS), expressing the desire for Hawaii's Department of Land and natural Resources (DLNR) to amend the existing cooperative agreement with NMFS pursuant to section 6 of the Endangered Species Act (ESA) to include the Main Hawaiian Island insular false killer whale (*Pseudorca crassidens*) and the sperm whale (*Physeter catodon*). The letter also included supporting materials necessary for NMFS to make the required legal findings in support of the amendment.

I am pleased to send you the two enclosed copies of the amended cooperative agreement between NMFS and DLNR for the conservation of threatened and endangered species, pursuant to section 6(c)(1) of the ESA. I have signed the agreement on behalf of NMFS. Please countersign both copies and return one of them to me (care of: Lisa Manning, Office of Protected Species) to effectuate the agreement.

With the addition of these species to the agreement, Hawaii will be eligible to receive Federal grant funding through the Species Recovery Grant Program to support management, research and outreach efforts for these species. We believe that supporting such projects is a key to advancing our shared goals of endangered and threatened species recovery.

If you have questions concerning the cooperative agreement, please contact David Nichols, NMFS Pacific Islands Region Protected Resources Division, at 808-944-2243 or David.Nichols@noaa.gov.

Sincerely,

Eileen Sobeck  
Assistant Administrator for Fisheries

Enclosures



Cooperative Agreement Between the  
 United States Department of Commerce  
 National Oceanic and Atmospheric Administration  
 National Marine Fisheries Service  
 and the Hawaii Department of Land and Natural Resources for  
 the  
 Conservation of Threatened and Endangered Species

This cooperative agreement is entered into pursuant to section 6(c)(1) of the Endangered Species Act of 1973, as amended (hereinafter referred to as "the Act"), and Hawaii Revised Statutes chapter 195D, between the United State Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and the State of Hawaii, Department of Land and Natural Resources, acting by and through its Board of Land and Natural Resources. Hereinafter, the parties shall be referred to as NMFS and DLNR respectively. All terms contained herein shall be given the same meaning as defined at 50 C.F.R. section 222.102.

Whereas, the Act authorizes the Secretary of Commerce (hereinafter referred to as "the Secretary") to enter into cooperative agreements in accordance with section 6 with states that establish and maintain adequate and active programs for the conservation of endangered and threatened species;

Whereas, Hawaii Revised Statutes chapter 195D authorizes the DLNR to carry out programs authorized by the statute with respect to aquatic life, wildlife, and land plants;

Whereas the State of Hawaii has established conservation programs consistent with the purposes and policies of the Act for the following species of fish and wildlife occurring in the state which have been deemed by the Secretary to be endangered or threatened and under the jurisdiction of NMFS:

Endangered Species

Hawaiian monk seal, *Monachus schauinslandi*

Humpback whale, *Megaptera novaeangliae*

Hawksbill sea turtle, *Eretmochelys imbricata*

False killer whale, *Pseudorca crassidens*, Main Hawaiian Islands insular distinct population segment

Sperm whale, *Physeter macrocephalus*

Threatened Species

Green sea turtle, *Chelonia mydas*

Whereas, the purposes of the Act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, to provide a

program for the conservation of such endangered and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection 2(a) of the Act;

Whereas, the Secretary has delegated to the Assistant Administrator for Fisheries of NMFS the authority to enter into cooperative agreements with states for the purpose of supporting programs for endangered and threatened species conservation;

Whereas, the Act requires the Secretary to determine that: (1) the state agency is authorized to establish conservation programs, including the acquisition of land or aquatic habitat, or interests therein, for all resident species of fish and wildlife listed in this agreement; (2) the state agency is authorized to conduct investigations to determine the status and requirements of survival of resident species of fish and wildlife; (3) the state agency has made provision for public participation in designating resident species of fish and wildlife as endangered or threatened; and (4) the species listed in this agreement will be given immediate attention, as NMFS and DLNR agree that those species are most urgently in need of conservation programs;

Whereas, NMFS hereby determines that DLNR satisfies the Act's legal requirements for such cooperative agreements as specified in the immediately preceding paragraph;

Whereas, the parties to this agreement are in accord that the programs administered in Hawaii are designed to conserve resident endangered and threatened species, and that it is the mutual desire of DLNR and NMFS to cooperate for the common purpose of planning, developing, and conducting programs to protect, manage, and enhance populations of all resident endangered and threatened species covered by this agreement within the State of Hawaii;

Whereas, the Assistant Administrator for Fisheries of NMFS has the administrative authority to establish programs for the conservation of endangered and threatened species; to provide periodic review of the state program at no greater than annual intervals; to provide funding for the development of endangered and threatened species conservation programs or to assist in monitoring candidate and recovered species as such funding is available and in accordance with the terms of the Act; to provide coordination among the programs of various states; and to exchange with states such biological data or other information that may result in the continued conservation of endangered or threatened species;

Whereas, the Assistant Administrator for Fisheries of NMFS authorizes the Pacific Islands Regional Administrator of NMFS to monitor the implementation of this cooperative agreement;

Therefore the parties agree as follows:

1. Consistent with section 6(d) of the Act, NMFS may provide financial assistance to DLNR to assist in the development of endangered and threatened species conservation programs or to assist in monitoring candidate and recovered species. Such projects shall be approved by NMFS in accordance with the Act.

2. NMFS and DLNR shall carry out the cooperative program for the conservation of endangered and threatened species, which may involve law enforcement, research, management, and public information and education activities conducted for the benefit of resident endangered and threatened species in the State of Hawaii.

3. Pursuant to section 6(c)(1)(E)(ii) of the Act, entry into this agreement shall in no way affect the applicability of the prohibitions set forth in or authorized pursuant to section 4(d) and section 9 of the Act with respect to the taking of any resident endangered or threatened species of fish or wildlife.

4. Effective Date and Renewal

(a) This agreement shall become effective when signed by the Assistant Administrator for Fisheries of NMFS and the Chairperson of the Board of Land and Natural Resources, and may be renewed in the following manner: Not later than June 30 each year, DLNR shall submit to the Assistant Administrator for Fisheries of NMFS the following: (1) the current list of the state listed resident endangered and threatened fish and wildlife within the jurisdiction of NMFS and a description of all changes to such list



or the listing processes since the date of the previous submission of the list to NMFS; (2) a certification of any amendments in DLNR's legal authority or regulatory programs for endangered and threatened fish and wildlife that were made since the date of the previous submission of the program to NMFS; (3) a list of all changes in the endangered and threatened species conservation programs since the date of the previous submission of the program to NMFS; (4) a report on the status of all projects funded pursuant to paragraph of this agreement; and (5) any additional information requested by the Assistant Administrator for Fisheries of NMFS that pertains to DLNR's program for conservation of endangered and threatened fish and wildlife;

(b) The Assistant Administrator for Fisheries of NMFS will, on or before October 1 of each year, notify DLNR in writing whether the cooperative agreement is renewed effective October 1 of that year, or that the state's program or authorities are no longer in compliance with the criteria of section 6(c) of the Act, and unless appropriate changes are made by June 30 of the following year, this agreement shall be terminated. If DLNR has not received notification concerning renewal of this agreement by October 1 of each year, the agreement shall continue in force and effect as if it had been renewed.

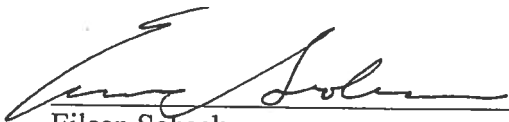
#### 5. Amendment

This agreement may be amended at any time with the written concurrence of the signatories.

#### 6. Termination

This agreement may be terminated: (a) by mutual agreement; (b) by DLNR upon 60 days

written notice to the Assistant Administrator for Fisheries of NMFS; or (c) notwithstanding the renewal provisions in section 4(b) of this cooperative agreement, by NMFS upon 60 days notice to DLNR from the Assistant Administrator for Fisheries of NMFS, stating reasons why the state's conservation program for endangered and threatened species is no longer in compliance with the criteria in section 6(c) of the Act, or that the state has otherwise violated provisions of this agreement. DLNR may submit a written request for review to the Secretary within 30 days of the receipt of the termination notice. The Secretary shall consider all evidence submitted by DLNR in its request for review and either reaffirm the termination of the agreement at the end of the 60 day notification period, or reverse the determination of the Assistant Administrator for Fisheries of NMFS and revoke the notice of termination. Any Federal funds that have been awarded pursuant to this agreement to DLNR, but not expended by DLNR, as of the date of termination of this agreement or final reaffirmation thereof shall be returned to NMFS for reallocation pursuant to section 6(d).



Eileen Sobeck  
Assistant Administrator for Fisheries  
National Marine Fisheries Service/NOAA

2/24/2014  
Date



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

3/6/14  
Date

Approved by the  
Board of land and Natural Resources:

\_\_\_\_\_  
Date

Approved as to Form:

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

\_\_\_\_\_  
Date