

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

April 10, 2015

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:


SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE DIVISION OF FORESTRY AND WILDLIFE AND THE UNITED STATE DEPARTMENT OF INTERIOR, U.S. FISH AND WILDLIFE SERVICE, FOR PROVIDING FIREFIGHTING ASSISTANCE

Attached is a Memorandum of Understanding (MOU) between the Division of Forestry and Wildlife (DOFAW) and the U.S. Dept. of Interior, U.S. Fish and Wildlife Service. The MOU provides a mechanism for the U.S. Fish and Wildlife to compensate the State for expenses incurred fighting fire on USFSW lands statewide. The legal branch of the U.S. Fish and Wildlife Service and the State Attorney General's office have reviewed the MOU and approved its legal requirements as to form.

RECOMMENDATION:


That the Board approves the Memorandum of Understanding with the U.S. Fish and Wildlife Service and authorizes the DOFAW administrator to sign the attached document.

Respectfully submitted,



LISA J. HADWAY, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



CARTY S. CHANG, Chairperson
Board of Land and Natural Resources

ITEM C-1



Memorandum of Understanding

Between the

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

And

U.S. FISH AND WILDLIFE SERVICE

I. INTRODUCTION

Wildland fire suppression in the Hawaiian Islands requires cooperation between various departments and agencies to be successful. The U.S. Fish and Wildlife Service (USFWS) and the State of Hawaii, Department of Land and Natural Resources, Division of Forestry and Wildlife (DOFAW) have shared interests in the protection of values from damage by wildland fire. USFWS does not have the necessary resources to manage all incidents in the state and desires to call upon DOFAW as needed.

This agreement is retroactive due to a fire that occurred on the island of Oahu on January 22nd 2015. This Kipapa fire started in an area where there was no previous fire occurrence and emergency response by the participating parties to this agreement was necessary to prevent significant damage.

This agreement does not obligate funds. Funds will be obligated under separate agreements.

II. AUTHORITY

The USFWS has entered into this MOU under the following authorities;

- Reciprocal Fire Protection Act of May 27th, 1955 (69 Stat. 66, 42 U.S.C 1856a-d)
- Economy Act of June 30, 1932, (31 U.S.C. 1535 as amended)
- Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Public Law 93-288, as amended, 42 U.S.C. 5121-5207)

DOFAW has entered into this MOU under:

- Hawaii Revised Statutes, Chapter 185, specifically sections 185-3, 185-4

III. SCOPE AND DURATION

The description of this project is to provide support for Wildland Fire management within the State of Hawaii on US Fish and Wildlife Service lands, by Division of Forestry and Wildlife.

It is anticipated that this project will begin January 1st 2015 (retroactively) and will end after 5 years on January 1st 2020.

IV. PRINCIPAL CONTACTS

Principal contacts for each agency for the administration of the project are:

Lisa Hadway, Administrator
State of Hawaii, Division of Forestry and Wildlife
1151 Punchbowl St. Room 325
Honolulu, HI 96813
Ph: (808) 587-0166

Barry W. Stieglitz, Refuge and Monument
Supervisor
Pacific Islands Refuges and Monument Office
300 Ala Moana Boulevard,
Room 5-231
Honolulu, HI 96850
(808)792.9540

Robert Hauff, Acting Fire Management Officer
State of Hawaii, Division of Forestry and Wildlife
1151 Punchbowl St. Room 325
Honolulu, HI 96813
Ph: (808) 295-5853

Andy Kikuta, Fire Management Specialist
U.S. Fish and Wildlife, Pacific Islands Refuges and
Monument Office
60 Nowelo St. Suite 100
Hilo, HI 96720
(808) 443-2300

V. DETAILED PROJECT DESCRIPTION

The agencies agree to cooperate in the full spectrum of fire suppression activities and as authorized in non-fire emergencies to achieve participating agency goals. Cooperative efforts shall be provided to facilitate efficient use of personnel, supplies, equipment, aviation services and other resources.

- Prevention of human-caused fires;
- Training of personnel to common standards;
- Pre-suppression activities;
- Suppression of fires;
- Rehabilitation of areas burned by wildfire;
- Exchange of technology and database;

Each agency will follow policy direction for the agency with jurisdiction. In the case of multiple jurisdiction, the agencies will follow the agency's policy that provides the most direction. It is the responsibility of the Incident Commander and agency representative to determine and document the appropriate level in any given situation.

- a. Only costs for direct wildland fire suppression will be reimbursed by the USFWS. These costs include:
 1. Salary and overtime for fire resources directly involved with fire suppression and the logistical support (Fuel, meals, etc.) for these fire fighters.
 2. Dispatching and Agency Overhead salary overtime.
 3. Aircraft use costs and associated logistical support for operation (water tender etc.).
 4. Reimbursement for "back-fill" of resources is not appropriate and must be paid for with DOFAW suppression funds, unless pre-approved in writing by USFWS officials.
- b. Contracted fire equipment use reports submitted for reimbursement must be signed by the Incident Commander.
- c. Aircraft billing rates and hours billed must be reviewed by an agency representative prior to submission.
- d. Miscellaneous logistical support reimbursement requests must include a reference to the incident that the items were used in support of and the name of the Incident Commander and Agency Representative.
- e. Repair and replacement of equipment must be approved by the agency representative prior to submission.

VI. SUPERVISION AND TECHNICAL OVERSIGHT

- a. This Memorandum of Understanding is administered by the Principal Representative identified for the participating parties.
- b. Either Party, through their authorized representatives, and after providing reasonable notice to the other party, shall have the right to obtain access to and examine all books, papers or documents related to this MOU.
- c. Modification of this MOU shall be made by mutual consent of both parties through the issuance of a written modification that is signed and dated by both parties prior to any changes being performed or taking effect.
- d. Either party may terminate this MOU by providing 60 days written notice to the other.
- e. Unless terminated by written notice, this MOU shall remain in effect for five years from the retroactive initiation date of January 1, 2015.
- f. Both the USFWS and DOFAW shall:
 1. The parties will exchange principal contact information prior to the start of fire season. The information will include protection area maps.
 2. Waive all claims between and against each other which may arise from the performance of work under this MOU, including compensation for loss or damage to each party's property and personal injury, including death of employees, agents and contractors of each party. This waiver shall not apply to intentional torts or acts of violence against persons or property. Furthermore, the requesting party agrees to save and hold harmless the responding party from and be responsible to the responding party against any and all third party liability for or on account of any death or injury to a person, or damage to property arising out of any action by the personnel of the responding party excluding gross negligence or intentional tort.
 3. Agrees that the officer in charge who arrives first at a wildfire burning on or near lands of both parties will act as Incident Commander (IC). When representatives of both parties have arrived at a fire, the officers in charge for each party will mutually agree to designate an IC, provided that nothing will prevent a party to whom a request is made from refusing to respond when the sole determination of that party's commanding officer is that responding to the incident would create an unreasonable risk to that party's employees, equipment or a third party.
 4. Shall be responsible for the training and welfare of personnel they dispatch, including the treatment of any personal injuries which may result from any fire or en route to or from any fire as provided by the laws or regulations under which each party operates.
 5. Each party is responsible for operating, servicing, repairing and replacing their own equipment, except as agreed upon by both parties in writing.
 6. Regardless of the incident's location, employees of DOFAW and the USFWS will be subject only to the laws, regulations and rules governing their respective employers. No employee shall be entitled to compensation and/or benefits under this MOU except as specifically provided for under the terms of his/her employment with respective employer.

VII. GENERAL PROVISIONS

- a. Neither party shall be required to incur expenses under the terms of this MOU, except as necessary to implement this MOU. Additional expenditures and/or rates for equipment, overhead (OVHD), and/or personnel not specified in the HI state rates shall be subject to reimbursement as agreed to by the parties hereto and approved by appropriate USFWS fire management staff prior to submission for payment. If no other standard equipment or personnel rates are available, the National Wildfire Coordinating Group publication in incident business standard and associated rates should be followed

(PMS 902, Interagency Incident Business Management Handbook, (http://nwcg.gov/pms/pubs/iibmh2/pms902_201208.pdf).

- b. Reimbursement will begin at the time resources are called to respond to a USFWS fire and end when resources return to their respective fire station.
- c. Only costs for direct wildland fire suppression will be reimbursed by the USFWS. These costs include: salary and overtime for fire resources (including OVHD support) directly involved in fire suppression and logistical support (fuel, meals, etc.) for these firefighters and OVHD. Reimbursement for "back fill" of DOFAW resources is not appropriate, unless pre-approved in writing by USFWS officials.
- d. When necessary, a cost share agreement may be developed between parties involved.
- e. Parties shall provide upon request any maps, documents, instructions and law enforcement reports which either party considers necessary to conduct work associated with this MOU.
- f. Both parties shall comply with Federal statutes relating to nondiscrimination and all applicable requirements of other Federal laws, executive orders, regulations and policies, including but not limited to:
 - a. Title VI of the Civil Rights Act of 1964 (42 USC 2000d ed seq.) which prohibits discrimination on the basis of race, color, handicap or national origin;
 - b. Title IX of the Education amendments of 1972, as amended (20 USC 1681-1683) which prohibits discrimination on the basis of sex.

VIII. ACCOUNTING, BILLING and REIMBURSEMENT

- a. Bills for reimbursement must include a detailed account of individual personnel start and end time for the incident. The OF-288 form (emergency firefighter Time Report) is the desired format. Itemized spreadsheet of items billed may also be acceptable.
- b. Submit USFWS reimbursement request documents to:
 - USFWS Pacific Region
 - 911 NE 11th Ave
 - Portland, Or. 97232
 - Attention - Fire Management

USFWS Pacific Region DUNS: 151157950

IX. FINANCIAL PLAN

A standardized cost schedule for personnel and equipment will be developed and appended to this MOU. Other costs (eg. Helicopter) will be reimbursed on an actual basis.

X. SIGNATURES

Lisa J. Hadway
Administrator
State of Hawaii, Division of Forestry and Wildlife

Date

Barry Stieglitz
Supervisor
U.S. Fish and Wildlife Service
Pacific Islands Refuges and Monument Office

Date