

**COMPACT AGREEMENT
FOR THE COORDINATED MANAGEMENT OF
THE HAWAIIAN ISLANDS HUMPBACK WHALE
NATIONAL MARINE SANCTUARY**

This Intergovernmental Compact Agreement (hereinafter "Compact") is made between the State of Hawaii and the National Oceanic and Atmospheric Administration (NOAA) of the United States Department of Commerce (hereinafter collectively referred to as "Parties") for the purpose of clarifying the relative jurisdiction, authority, and conditions of the NOAA-State partnership for managing the Sanctuary. It clarifies the State's continuing authority and jurisdiction over its State waters, submerged lands, and other resources within the Sanctuary. The Compact further establishes provisions with respect to NOAA's collaboration with the State of Hawaii on Sanctuary management issues.

I. RECITALS

Whereas, Hawaii is an Ocean State with over 750 miles of coastline, estuaries, harbors, and embayments adjoining an 829,122 square-mile Exclusive Economic Zone;

Whereas, the marine environment of the Hawaiian Archipelago supports abundant and biologically diverse aquatic communities with extensive conservation, recreational, commercial, ecological, historical, research, educational, economic, and aesthetic values paramount to the Nation, the State, and the people of Hawaii;

Whereas, the waters of the Hawaiian Islands provide essential habitat for breeding, calving, and nursing activities of the endangered North Pacific Humpback Whale;

Whereas, the humpback whales' habitat in Hawaiian waters is dependent upon a healthy marine environment;

Whereas, the economy of the State is also dependent upon a healthy marine environment and the quality of its marine resources to support its commercial and recreational fisheries and water-related visitor industry;

Whereas, the State has taken steps to protect unique marine communities found in its waters to include the establishment of Marine Life Conservation Districts, Natural Area Reserves, Fishery Management Areas, and Subsistence Fishing Zones;

Whereas, Congress, by passage of the Hawaiian Islands National Marine Sanctuary Act in Hawaiian waters, Subtitle C, Title III of Public Law 102-587 (Act), designated the Hawaiian Islands Humpback Whale National Marine Sanctuary (Sanctuary) in Hawaiian waters;

Whereas, the Act required that NOAA develop a comprehensive management plan with implementing regulations, in concert with the State, local, and other federal interests, and a means for integrating existing authorities to govern the management of the Sanctuary.

Whereas, the Sanctuary covers approximately 1,420 square miles of Federal and State waters within the Main Hawaiian Islands.

Whereas, the primary purposes of the Sanctuary's Designation Document, implementing regulations, and management plan are to: (1) protect humpback whales and their habitat in Hawaiian waters; (2) educate and interpret for the public the relationship of species to their wintering habitat in the Hawaiian Islands; (3) coordinate the management of uses of the Sanctuary's resources consistent with the Act and other existing State and Federal laws, including all public and private uses, uses customarily and historically practiced by indigenous Hawaiians for subsistence, cultural, and religious purposes; (4) identify research needs and establish a long-term monitoring program with respect to the whales and their habitat; (5) ensure coordination and cooperation between Sanctuary managers and other relevant State, Federal, and local authorities; and (6) sensitize users of the Sanctuary's resources and the general public to the needs for protecting marine ecosystems and the principles of sustainable use;

Whereas, the Act was amended in 1996 to, inter alia, provide that the Secretary of Commerce shall not institute any user fee under the Act for any activity within the Sanctuary or any use of the Sanctuary or its resources;

Whereas, the Sanctuary's management plan sets forth a process for cooperative Federal-State management and protection of the humpback whale and its habitat;

Whereas, this Compact will form the foundation for subsequent interagency and intergovernmental cooperative agreements and other less formal interagency and institutional work efforts.

II. DEFINITIONS

Civil Action--means actions arising under the National Marine Sanctuaries Act or under authorities supporting state claims within the Sanctuary, including civil penalties recovered under section 307, and amounts recovered under section 312.

Emergency Regulations--means any temporary regulation, including prohibitions necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource.

Governor--means the Governor of the State of Hawaii, or designee.

Management Plan--means the final management plan and regulations for the Hawaiian Islands Humpback Whale National Marine Sanctuary.

NOAA--means the National Oceanic and Atmospheric Administration.

Regulations--means the final Sanctuary regulations implementing the Management Plan.

Sanctuary--means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

Sanctuary Resource--means any humpback whale, or the humpback whale's habitat within the Sanctuary, defined as those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing.

State--means the State of Hawaii.

III. AUTHORITIES

Under the Hawaiian Islands National Marine Sanctuary Act, as amended (subtitle C, title II, P.L. 102-587, Nov. 4, 1992) and the National Marine Sanctuaries Act, as amended (16 U.S.C. § 1431 *et seq.*; also known as title III of the Marine Protection, Research, and Sanctuaries Act), the Secretary of Commerce, through NOAA, has been vested with the jurisdiction and authority to protect and manage the resources of this Sanctuary in trust for the People of the United States and is specifically charged with implementation of the policy of the United States.

The executive power of the State of Hawaii is vested in the Governor under Section 1, Article V of the State Constitution and other applicable provisions of law. The Governor is entrusted by

the People of Hawaii to hold in trust the land and water resources of the State, including submerged lands, the uses of which benefit the public. In recognition of these obligations to uphold the Public Trust and acting as the State's chief steward for the environment, the Governor enters into this Intergovernmental Compact Agreement.

IV. NOW, THEREFORE, BE IT RESOLVED BY THE UNDERSIGNED THAT:

A. The Parties recognize the Federal-State cooperative arrangement for management of the Sanctuary and its resources and that no Federal, State, or local title or authority to manage and regulate submerged lands, resources, or activities has been limited, conveyed or relinquished through this Compact.

B. The Governor of Hawaii has not conveyed title to nor relinquished authority over any State-owned submerged lands and waters or other State-owned resources by agreeing to include State-owned resources within the Sanctuary boundary.

C. The Sanctuary Management Plan will apply throughout the Sanctuary, including the portion of the Sanctuary within the seaward boundary of the State.

D. NOAA and the State will collaborate in the management of the Sanctuary and its resources consistent with the Act, NMSA, Sanctuary Management Plan, and Memoranda of Agreements and Protocols developed thereunder, including but not limited to the following:

1. Memorandum of Understanding between NOAA and the State Department of Health and State Department of Land and Natural Resources, establishing mutually agreeable procedures and mechanisms for coordinating the review of State permits for activities that might impact humpback whales or their habitat; and

2. Cooperative Enforcement Agreement, to be negotiated, establishing procedures and mechanisms for coordinating State and Federal enforcement activities within the Sanctuary. To the extent permitted by law, there shall be mutual agreement regarding enforcement policies and priorities.

E. No State or local funding is required to implement the Sanctuary Management Plan, its implementing regulations, or any of the provisions of this Compact.

F. Any proposed change to the Sanctuary Management Plan shall be reviewed in consultation with the State. Where such change includes any new Sanctuary regulation or substantive amendment (as opposed to editorial or technical changes), it shall not take effect in State waters without first obtaining the approval of the Governor.

G. The imposition, extension, or renewal of Federal Sanctuary emergency regulations in State waters shall not be authorized without the Governor's approval.

H. The Governor reserves the right to propose changes to the Sanctuary Management Plan and, if necessary, NOAA shall initiate the Federal rule promulgation process required to make revisions requested by the Governor to the regulations implementing the management plan.

I. Civil penalties recovered under section 307 of the National Marine Sanctuaries Act shall be used by NOAA consistent with the requirements and priorities of the Sanctuary Management Plan. Amounts recovered under section 307 with respect to incidents within areas subject to State jurisdiction shall be used in consultation and agreement with the State consistent with the Plan. Similarly, to the maximum extent consistent with section 312(d) of the referenced Federal statute, any monetary recovery that may result from any civil action shall be used for the exclusive benefit of the Sanctuary.

J. The Sanctuary's Management Plan, Designation Document and its implementing regulations do not list commercial or recreational fishing as activities subject to regulation. No Sanctuary fishing regulation in the Hawaiian Islands Humpback Whale National Marine Sanctuary shall take effect in State waters until established by the Board of Land and Natural Resources.

K. Section 304(e) of the National Marine Sanctuaries Act requires the Secretary of Commerce to review the Sanctuary's Management Plan and implementing regulations every five years to evaluate the substantive progress toward implementing the management plan and goals for the Sanctuary, especially the effectiveness of site-specific management techniques, and revise the management plan as necessary to fulfill the purposes and policies of the Act. When the Management Plan and implementing regulations for the Sanctuary are re-evaluated, the Secretary of Commerce will re-propose the management plan and regulations in their entirety and the State of Hawaii will have the opportunity to review the Management Plan and regulations, in their entirety, and indicate if any or all of the terms are unacceptable, in which case the unacceptable terms shall not take effect in State waters.

L. The Governor shall designate a State employee as his representative to work in consultation with the Sanctuary manager as an equal partner in the oversight of Sanctuary operations. The State of Hawaii and NOAA shall manage the Sanctuary through a cooperative partnership and consult on all management activities throughout the Sanctuary. The intent of this partnership is that the final resolution of any management issues resulting in policy conflicts between the State and NOAA shall be decided by the managing partners consistent with State and federal laws.

M. The goals and objectives of the Sanctuary management plan were developed to complement and coordinate existing management efforts, and, in part, to address some of the objectives and policies contained in the National Marine Fisheries Service Final Recovery Plan (Recovery Plan) for the Humpback Whale. Throughout the implementation of the management plan, therefore, Sanctuaries & Reserves Division in coordination with the State, will consult with NMFS to evaluate the effectiveness of existing management efforts in achieving those objectives and policies, including whether additional measures (e.g., regulations or critical habitat) to protect the humpback whale and its habitat are needed. Prior to making a final decision on whether to designate critical habitat for humpback whales in Hawaii state waters under the Endangered Species Act, NOAA will fully involve and consult with the State.

N. The boundaries of the Sanctuary within State waters shall encompass approximately 1,420 square miles of Federal and State waters from the highwater mark seaward to the 100-fathom depth contour around portions of Kauai, Oahu, Molokai, Lanai, Maui, Hawaii, the Pailolo Channel, and the area known as Penguin Bank.

O. The designation of the Sanctuary does not limit or restrict in any way State or federal government actions to respond to oil or hazardous material spills. The Sanctuary will work within established procedures of the Oceania Regional Response Team for oil or hazardous material spill response and planning.

V. SPENDING AUTHORITY

The Secretary, may apply Federal Sanctuary funds to support any activity in the State regardless of location with respect to the Sanctuary's boundary, provided that such activity is consistent with the terms of the designation and Sanctuary Management Plan.

VI. RESERVATION OF RIGHTS

The Parties each retain full authority and reserve all rights to take whatever actions deemed necessary to pursue, preserve, and protect any legal right, interest, or remedy. Nothing in this Compact is intended nor shall be construed to waive or foreclose any such authority, right, interest, or remedy.

VII. MODIFICATION PROVISIONS

It is the expressed intent of the Parties to revise and make additions to this Compact to reflect the continuing development of the cooperative relationship of the Parties in the protection and management of Sanctuary resources through the implementation of the Sanctuary Management Plan. Any modifications, revisions, or amendments to this Compact shall be in writing and executed by the Parties and shall be incorporated into the Compact and become effective only upon the signature of the Parties.

VIII. PERIOD

This Compact will become effective on the date of the last signature of the approving official of either of the Parties and shall continue in force unless and until terminated in conjunction with the five-year review of the Sanctuary Management Plan.

IX. SAVINGS CLAUSE

A. Nothing herein is intended to conflict with current State or Federal laws, policies, regulations, or directives. If any of the terms of this Compact are inconsistent with existing Federal or State laws, policies, regulations, or directives, then those portions of this Compact which are determined to be inconsistent shall be invalid. The remaining terms of this Compact not affected by the inconsistency shall remain in full force and effect.

B. At the first opportunity for review of the Compact, all necessary changes will be accomplished by either an amendment to this Compact or by entering into a new Compact or other agreement.

C. Should disagreement arise on the interpretation or implementation of the provisions of this Compact or amendments and/or revisions thereto that cannot be resolved at the program operations level, the matter shall be forwarded to higher authority for resolution.

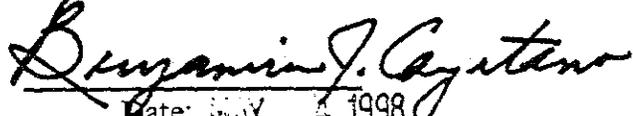
D. All requirements of this Compact are subject to the availability of the funds of the parties.

X. SIGNATURES

D. James Baker
Under Secretary for Oceans and Atmosphere
National Oceanic and Atmospheric
Administration

Benjamin J. Cayetano
Governor
State of Hawaii


Date: FEB 12 1998


Date: MAY 4 1998