

MEMORANDUM OF AGREEMENT

**PURSUANT TO THE
NATIONAL MARINE SANCTUARIES ACT
16 U.S.C. 1442(e)**

BETWEEN THE

**U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE
OFFICE OF NATIONAL MARINE SANCTUARIES**

AND THE

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

**FOR THE PURPOSE OF
COORDINATING MANAGEMENT OF THE HAWAIIAN ISLANDS
HUMPBACK WHALE NATIONAL MARINE SANCTUARY**

NOS Agreement Code: MOA-2010-044 / 8148

I. PARTIES AND PURPOSE

- A. This Memorandum of Agreement (MOA) is between the Office of National Marine Sanctuaries (ONMS), National Ocean Service, National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the Department of Land and Natural Resources (DLNR) of the State of Hawai'i (hereafter jointly referred to as "the Parties").
- B. This MOA establishes procedures and protocols for the coordinated management of the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) between the ONMS and DLNR. Both entities share the commitment to protect the endangered humpback whale (*Megaptera novaeangliae*) and its habitat as specified in the Sanctuary Management Plan and the Compact Agreement for the Coordinated Management of the Hawaiian Islands Humpback Whale National Marine Sanctuary (Compact Agreement).
- C. Section IV.L. of the Compact Agreement states that "the State of Hawai'i and NOAA shall manage the Sanctuary through a cooperative partnership and consult on all management activities throughout the Sanctuary." The Compact Agreement also states that the Governor's representative will "work in consultation with the Sanctuary Superintendent as an equal partner in the oversight of Sanctuary operations."
- D. The main purpose of this MOA is to specify the various means by which the Compact Agreement and Sanctuary Management Plan will be implemented at the level of program operations and interactions between ONMS and DLNR personnel.

II. BACKGROUND

- A. NOAA's HIHWNMS was established under the Hawaiian Islands National Marine Sanctuary Act, P.L. 102-587, amended by P.L. 104-283. The Hawaiian Islands National Marine Sanctuary Act enables the comprehensive and coordinated conservation and management of humpback whales and their habitats. The marine areas surrounding the Hawaiian Islands that constitute the HIHWNMS are essential to the breeding, calving and nursing of the endangered humpback whale. The mission of the HIHWNMS is to protect humpback whales and their habitat through a wide range of activities in conservation, research, education, and outreach efforts to enhance public awareness, understanding, and appreciation of humpback whales and the Hawaiian Islands marine environment. To date, the HIHWNMS consists of and requires support for five offices; a sanctuary advisory council; and various research, educational, and outreach programs.

III. AUTHORITIES

- A. The legal authority for the HIHWNMS to enter into this Agreement is the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1442(e), which allows the Secretary of Commerce, whenever appropriate, to enter into an agreement with a State or other Federal agency to use the personnel, services, or facilities of such agency on a reimbursable or nonreimbursable basis, to assist in carrying out the purposes and policies of the NMSA.
- B. The programmatic authority for the HIHWNMS to enter into this Agreement is the NMSA, 16 U.S.C. 1431 *et seq.*, which includes among its Purposes and Policies: 16 U.S.C. 1431(b)(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities; and 16 U.S.C. 1431(b)(5) to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas.
- C. Chapter 171, Section 3 of the Hawai'i Revised Statutes authorizes the DLNR to manage, administer, and exercise control over Hawai'i's aquatic resources and ocean waters.
- D. The Governor of Hawai'i has designated DLNR as the lead State agency for coordinated management of the Sanctuary, and has appointed the Sanctuary co-manager of DLNR as the Governor's representative referred to in Section IV.L of the Compact agreement.
- E. Section 195D-5, Chapter 195D of the Hawai'i Revised Statutes authorizes DLNR to enter into MOA's with agencies of the Federal government for administration and management of any area established for the protection of indigenous aquatic life.

IV. TERMS AND CONDITIONS

- A. The Parties recognize the following considerations underlying this MOA:
 1. Both Parties have public trust responsibility and statutory authority to protect humpback whales and their habitat in Hawaiian waters.
 2. Both Parties wish to maximize, and benefit from, each other's strengths, and eliminate duplication of effort to ensure the wisest use and expenditure of public resources.
 3. Both Parties are accountable to stakeholders and communities who have a right to expect timeliness, efficiency, professionalism, and progress toward achieving the goals of the Sanctuary.

4. Both Parties wish to elicit and incorporate private and civic sector input, expressed locally and nationally, into Sanctuary priority-setting, planning and ongoing management.
5. Both Parties wish to continuously improve the products and services they provide.
6. Both Parties require flexibility, as allowed by law and best management practices, in developing and implementing Sanctuary management activities and related marine resources management activities to meet local needs and expectations regarding the Sanctuary.
7. ONMS retains its authority and responsibility to ensure consistent and effective implementation of national laws and policies related to the Sanctuary.
8. This MOA or any amended or revised version thereof shall be incorporated as part of any revised version of the Sanctuary Management Plan

B. Shared Responsibilities of the Parties should be to the extent permitted by law.

1. Resource Protection

The parties will form a working partnership to achieve a higher level of protection for humpback whales and their habitat than can be achieved by either of the parties working alone. Both Parties will:

- a. Participate cooperatively in the development and implementation of any management program or plan to achieve the purposes of the Sanctuary.
- b. Notify the other Party immediately of emergencies and provide an opportunity to participate in any response.
- c. Participate in the protection role of each Party as identified by the management plan, as revised.

2. Communication and Coordination

To facilitate the cooperative partnership and shared oversight stipulated in the Compact Agreement, the Parties agree to promote effective communication and coordination between their respective agencies. To this end, the Parties agree to adhere to the following set of mutual expectations or provisions regarding Sanctuary operations and staff interactions. Both Parties will be given an opportunity to:

- a. Review and comment on all public documents, press releases, educational and other outreach materials produced by either Party in all cases where the theme of the document, press release, educational and other material is directly related to the Sanctuary.

- b. Review and comment on agenda, programs and other plans for any public meeting or event produced and/or sponsored by either Party, within a reasonable period of time, prior to the meeting or event in all cases where the theme of the meeting or event is directly related to the Sanctuary.
- c. Participate cooperatively in national and local meetings hosted by either Party where the Sanctuary is the primary topic of the meeting.
- d. Freely meet with any other agency when developing Party-specific positions on Sanctuary related issues.
- e. Ensure that all communication with the public, e.g., public presentations, documents for public use, and communications with media, will acknowledge the cooperative management arrangement described herein and in the Compact Agreement. In general, this acknowledgment will entail a brief description of the cooperative management arrangement, and of the respective responsibilities and authorities of each Party. In the case of written materials, this acknowledgment may be expressed via the following statement, "NOAA and the State of Hawai'i, a partnership for protection." While the logos of both Parties will be prominently displayed on all Sanctuary documents, each Party retains the right to exclude the use of its logo should it deem necessary. In addition, with regard to use of the NOAA logo, it is subject to review and clearance consistent with Department of Commerce requirements.

3. Research and Monitoring

Both Parties will be given an opportunity to:

- a. Review and comment on all proposed scientific research activities supported by either Party in all cases where the research is directly related to the Sanctuary.
- b. Participate in the research role of each Party to be identified by the management plan, as revised.

4. Education and Outreach

Both Parties will be given an opportunity to:

- a. Review and comment on all proposed education and outreach activities supported by either Party in all cases where the activity is directly related to the Sanctuary.
- b. Participate in the education role of each Party to be identified by the management plan, as revised.

5. Operations

Both Parties will be given an opportunity to:

- a. Be advised of and comment on any Sanctuary personnel management changes proposed by either Party prior to finalization of the change. Sanctuary personnel changes include hiring, dismissal, and changes in general duties or responsibilities of any paid State or Federal employee or contractor whose primary duties are directly related to the Sanctuary. Both Parties recognize and understand the final hiring authority for State and Federal positions lies with DLNR and NOAA respectively.
- b. Be advised of and comment on annual Sanctuary budget allocations development and subsequent annual operating plan changes.
- c. Meet to develop annual operating plans, modifications to such plans, and long term planning sessions and to identify the roles and responsibilities of each Party in implementing such plans, activities and operations.
- d. Participate in performance evaluation as defined by the management plan, as revised.
- e. Participate in the operational role of each Party to be identified by the management plan and annual statement of work (SOW).

6. Performance Evaluation

The Parties agree to jointly develop a process by which each Party's performance in adhering to the provisions of this MOA is fairly and accurately evaluated on a regular basis.

V. **FUNDING, PROGRAMMING, PAYMENT, AND REIMBURSEMENT ARRANGEMENTS**

- A. Activities that are funded under this MOA will be carried out pursuant to an annual statement of work (SOW) and budget to be agreed upon by the Parties each fiscal year (FY). The FY2010 SOW and Budget are attached in this MOA.
- B. ONMS will:
 1. Provide funds for activities accomplished under each annual statement of work (SOW);
 2. Identify the Sanctuary Superintendent as the Responsible Official for activities authorized by this MOA, whose duties include;
 3. Assure prompt reimbursement upon receipt of invoices from DLNR;

4. Develop an annual budget for activities authorized by this MOA, as it may be amended;
5. Approve each annual SOW; and
6. Fulfill all ONMS obligations in agreed upon SOW.

C. DLNR will:

1. Provide a Sanctuary Co-Manager, as the Responsible Official for activities authorized under this MOA, whose duties include:
 - a. Exercise supervisory authority over its employees conducting activities under this MOA;
 - b. Oversee and carry out the budget and expenditure process of the MOA to ensure that the costs associated with services provided are within budget and meet all related federal policies and procedures; and
 - c. Exercise authority for all business and financial matters related to the activities conducted by its employees for the Agreement.
2. Submit annual SOW, based in part on information from the Sanctuary Management Plan and Annual Operating Plan, by February 1 of each year. SOWs will include costs of personnel, detailed accounting of operating expenses and other costs, activities to be undertaken, etc;
3. Provide quarterly reports due on the 15th of January, April, July, and October summarizing activities in each SOW;
4. Submit detailed invoices quarterly to the Sanctuary at 6600 Kalaniana'ole Highway, Suite 301, Honolulu, HI, 96825;
5. Provide qualified individuals to carry out project duties in each annual SOW; and
6. Fulfill all DLNR obligations in agreed upon SOWs.

D. The ONMS will reimburse DLNR upon receipt of quarterly invoices.

E. FY 2010 Fiscal and Accounting Information

1. DLNR
EIN¹: 99-0266119
DUNS²: 82-4671200

¹ Employer Identification Number (Tax ID Number)

2. NOAA
 EIN: 52-0821608
 DUNS: 78-4769085
 OMB MAX: 006-48
 ALC: 13-14-0001
 Appropriation Code: 1310/111450
 Type of Funds/Expiration: Two-year/September 30, 2011
 CBS³/ACCS: 14/2010/ H8K5B62/P00
 10-14-0007-01-00-00-00/252700
 Amount: \$267,000

3. Both Parties will approve each annual SOW and Budget in writing by formal amendment to this MOA, pursuant to Section VII. Each amendment will include updated Fiscal and Accounting Information for the applicable fiscal year,

4. All activities authorized by this MOA will be completed subject to the availability of appropriated funds.

5. Funds shall be used for services until they expire as specified in V.E.2. Future transfers or use of funds will be by amendment to the agreement (which will include the applicable accounting data).

VI. CONTACTS

- A. The ONMS Sanctuary Superintendent and DLNR Co-manager are the principal points-of-contact (see addresses below) for official communications between ONMS and DLNR respectively, regarding the Sanctuary. Copies of all written communications regarding the Sanctuary that are sent from ONMS to any State agency shall be furnished in a timely manner to the Sanctuary co-manager. Copies of all written communications regarding the Sanctuary that are sent from DLNR to any Federal agency shall be furnished in a timely manner to the Sanctuary Superintendent.

HIHWNMS
 ONMS Sanctuary Superintendent
 Allen Tom (acting)
 6600 Kalaniana'ole Highway
 Suite 301
 Honolulu, HI 96825
 (808) 397-2651
 (808) 397-2650 fax
 Allen.Tom@noaa.gov

DLNR
 DLNR Co-manager
 David S. Nichols
 1151 Punchbowl Street
 Room 330
 Honolulu, HI 96813
 (808) 587-0437
 (808) 587-0115 fax
 David.S.Nichols@hawaii.gov

² Dunn and Bradstreet's Data Universal Numbering System
³ Commerce Business System

- B. The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Party in writing of such change.

VII. DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATIONS

It is the expressed intent of the Parties to revise and make additions to this MOA to reflect continuing development of the cooperative relationship of the Parties in managing the Sanctuary.

- A. This MOA will become effective on the date of the final signature of the Parties and will remain in effect for five years from that date.
- B. The Parties will review this Agreement every year to determine whether it should be renewed or terminated.
- C. This Agreement may be amended within its scope or renewed prior to the expiration date, through the written mutual consent of the Parties.
- D. The Agreement may be terminated by (1) written mutual consent; (2) one Party's written notice six months in advance; or (3) completion of the Terms and Conditions of the Agreement.

VIII. OTHER PROVISIONS

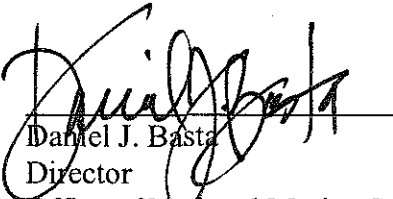
- A. Nothing in this Agreement is intended to conflict with current applicable laws or Department of Commerce, NOAA, NOS, or DLNR directives or applicable laws. Any such conflicting term shall be invalid, but the remainder of the MOA shall remain in effect. If a term is deemed invalid, the Parties shall immediately review the MOA to decide what they should do in light of the invalid term, e.g. amend or terminate the MOA.
- B. At the first opportunity for review of this MOA, all necessary changes will be accomplished by either an amendment to this MOA, or by entering into a new MOA or other agreement.
- C. If the Parties disagree over how to interpret this MOA, they shall present their differences to each other in writing, and they shall discuss them. If the Parties fail to resolve their differences within thirty (30) days, they may refer the matter to higher level of authority within their respective organizations.
- D. All requirements of this MOA are subject to the availability of the funds of the Parties.


IX. APPROVALS

This agreement will become effective after it is signed by both Parties.

ACCEPTED AND APPROVED FOR THE
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE

ACCEPTED AND APPROVED FOR THE
STATE OF HAWAII
DEPARTMENT OF LAND AND
NATURAL RESOURCES

BY: 
Daniel J. Basta
Director
Office of National Marine Sanctuaries
Department of Commerce

BY: 
Laura ~~Thiel~~ Thiel
Director
Department of Land and Natural
Resources
State of Hawai'i

Date: 8/4/2010

Date: 9/8/10

Statement of Work (SOW)

NOAA's Office of National Marine Sanctuaries and the
State of Hawaii Department of Land and Natural Resources

September 1, 2010 through August 31, 2011

- A. NOAA's Office of National Marine Sanctuaries and the State of Hawaii Department of Land and Natural Resources entered into a Memorandum of Agreement ("MOA") to support co-management and operations of the Hawaiian Islands Humpback Whale National Marine Sanctuary (Sanctuary). This Statement of Work (SOW) outlines the responsibilities of each party from September 1, 2010 through August 31, 2011 as they pertain to the MOA.
- B. DLNR will oversee all aspects of State Co-management and work with the Office of National Marine Sanctuaries to manage the Sanctuary.
 1. Support the Sanctuary by providing key staff persons who will be responsible for providing the program services as outlined below to implement Co-management of the Sanctuary. This staff shall include a State Sanctuary Co-manager, Marine Conservation Specialist, West Hawaii Marine Conservation Coordinator, and other staff as mutually agreed upon.
 2. Co-Management of the Sanctuary shall provide for accomplishing the following tasks and responsibilities:
 - a. Work cooperatively with the Sanctuary Superintendent to facilitate the implementation of the Sanctuary Management Plan as approved by the Governor of Hawaii in June 1997 and in 2002;
 - b. Establish and maintain cooperative, consultative and coordinated relationships with various agencies (state, county and federal) involved with managing designated sanctuary resources;
 - c. Attend Sanctuary Advisory Council and other council and advisory meetings held by the Sanctuary program;
 - d. Represent the State of Hawaii at Sanctuary events;
 - e. Assist on-site Sanctuary staff and contractors on Oahu, Maui, Hawaii and Kauai in the development of sanctuary program efforts throughout the Hawaiian Islands;
 - f. Work with the Sanctuary staff to determine and identify other resources of significance for possible future inclusion during the review of the Sanctuary Management Plan; and

- g. Work with the Sanctuary staff to develop the annual operating plan between federal and state, including priority actions, budget and resources allocation and provide state administrative oversight for contracts and expenditures.
3. DLNR shall provide support for the Sanctuary programs including the following tasks and responsibilities:
- a. Produce public outreach and education materials for widespread distribution, including public service announcements, videos, web sites, posters, brochures, newsletters, display materials, and interpretive materials. Answer inquiries and respond to public questions and concerns via phone, email and written correspondence;
 - b. Develop and maintain effective working relationships with local, national and international news media to promote frequent and widespread coverage of sanctuary issues, events and activities. Develop press releases, fact sheets and other information to facilitate news media coverage;
 - c. Provide logistical and operational support for research that supports the Sanctuary. Interpret and present results of sanctuary-related scientific research for the news media, community organizations and general public;
 - d. Assess statewide Sanctuary administration, resource protection including enforcement, research and monitoring, cultural enhancement, public outreach and education activities, needs, opportunities, constraints, budgets, and priorities relative to successful implementation of the Sanctuary Management Plan;
 - e. Assist State and NOAA staff in planning and conducting special events related to managing the sanctuary, such as conferences and workshops;
 - f. Provide logistical and operational support for Sanctuary vessels including but not limited to the R/V Seacat and Hihimanu in performing research, resource protection and other management activities. All activities must be in accordance with the Vessel Use and Operations Policy for each vessel;
 - g. Provide logistical and operational support for Sanctuary facilities including moorings, pier space, and storage for Sanctuary vessels;
 - h. Coordinate with the Sanctuary and NOAA to manage marine wildlife and human interactions. Support emergencies as related to humpback whales, other cetaceans, monk seals, and sea turtles including strandings and entanglements; and
 - i. Coordinate and collaborate with other Sanctuary staff, state government departments, other government agencies, the Sanctuary Advisory Council

(SAC), research institutions, community groups and non-government organizations in carrying out all duties and responsibilities listed above.

4. DLNR shall provide support for Hawaiian monk seal recovery including the following tasks and responsibilities:
 - a. Provide support (e.g., staff support, vehicles, vessels, logistical support, technical assistance, equipment, and supplies) as available to NOAA agencies and contractors in responding to Hawaiian monk seal strandings, injuries, entanglements, haul outs, births and other incidents in the main Hawaiian Islands. Also provide similar support to NOAA agencies and contractors for incident response capacity building efforts (e.g., trainings, meetings, and workshops) throughout the main Hawaiian Islands.
 - b. Provide staff and material support to NOAA in developing and implementing education and outreach activities designed to raise public awareness regarding Hawaiian monk seal natural history and to promote appropriate human behavior around monk seals in the wild and during Hawaiian monk seal incident response and other wildlife viewing situations.
 - c. Conduct work in accordance with the Sanctuary Management Plan (NOAA 2002) as subsequently revised, the above referenced Agreement, and the HIHWNMS Annual Operating Plan (AOP) for FY 2010 and 2011.

B. The ONMS will:

1. Provide funds to support the State Sanctuary Co-manager, Marine Conservation Specialist, West Hawaii Marine Conservation Coordinator, and other staff as mutually agreed upon. This should include the amount for salaries, benefits, travel, operating costs and miscellaneous costs (see attached budget sheet) to support State co-management of the Sanctuary;
2. Participate in hiring/changes of personnel, as appropriate;
3. Provide guidance to the State for performing the program services;
4. Provide, by February 28 to the State a SOW and budget for the performance period for the next year.

FY 2010 Budget

NOAA's Office of National Marine Sanctuaries
and the
State of Hawaii Department of Land and Natural Resources

September 1, 2010 through August 31, 2011

<u>Item</u>	<u>Cost</u>
Personnel:	
State Co-manager	\$71,680
Marine Conservation Specialist	\$50,370
West Hawaii Marine Conservation Coordinator	\$48,400
Travel:	\$ 4,550
Miscellaneous Office expenses (IT, computer, vehicles, supplies)	\$10,000
Sanctuary Programs:	\$ 7,000
Marine Mammal Strandings:	<u>\$75,000</u>
Total:	\$267,000

(Dependent on FY2010 Appropriations)