

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
PACIFIC ISLANDS REGION**

AND THE

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

**FOR THE PURPOSE OF COORDINATING AND SUPPORTING MANAGEMENT OF
THE
HAWAIIAN ISLANDS HUMPBACK WHALE
NATIONAL MARINE SANCTUARY
AND THE
PAPAHĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT**

NOS Agreement Code: MOA-2021-139/12280

I. PARTIES AND PURPOSE

- A. This Memorandum of Agreement (Agreement) is between the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Ocean Service, Office of National Marine Sanctuaries, Pacific Islands Region (ONMS PIR) and the State of Hawai‘i Department of Land and Natural Resources (DLNR) (hereafter jointly referred to as “the Parties”).
- B. The purpose of this Agreement is to establish the roles and responsibilities of the Parties in the continued, coordinated management of the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) and Papahānaumokuākea Marine National Monument (PMNM).

II. BACKGROUND

- A. NOAA’s National Marine Sanctuary System was created by Congress in 1972 to protect and preserve underwater environments and maritime heritage artifacts of national and international significance. Two of ONMS’s 14 sites, HIHWNMS and PMNM, are located within the State of Hawai‘i and are part of the ONMS Pacific Islands Region (PIR). The PIR provides assistance and oversight to the sites in Hawai‘i. There are offices on O‘ahu, Kaua‘i, Maui, and Hawai‘i Island, with visitor centers on Maui and Kaua‘i. The PIR seeks to develop and foster new and expanding partnerships with existing agencies or organizations that have similar missions.
- B. The HIHWNMS was established under the Hawaiian Islands National Marine Sanctuary Act (HINMSA), P.L. 102-587, amended by P.L. 104-283. The HINMSA authorizes the comprehensive and coordinated conservation and management of humpback whales and their habitats. HIHWNMS comprises marine areas that are essential to the breeding, calving and nursing of the humpback whale. The HINMSA expressly states that the purpose of HIHWNMS is to (1) protect and preserve humpback whales within the Hawaiian Islands marine environment; (2) educate and interpret for the public the relationship of humpback whales to the marine environment; (3) manage human uses of the sanctuary and (4) provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the sanctuary. In 1998, the Compact Agreement for the Coordinated Management of the HIHWNMS (“Compact”) was executed between the State of Hawai‘i and NOAA to identify the jurisdiction, authority, and conditions of the NOAA-State partnership managing the HIHWNMS. It clarified the State’s continuing authority

and jurisdiction over its State waters, submerged lands, and other resources within HIHWNMS. The Compact further established provisions with respect to NOAA's collaboration with the State of Hawai'i on HIHWNMS management issues.

- C. PMNM was established by Presidential Proclamation 8031 on June 15, 2006, as amended by Presidential Proclamation 8112 on February 28, 2007, and expanded via Presidential Proclamation 9478 on August 25, 2016. PMNM has a unique co-management structure, with four Co-Trustees: the Department of Commerce through NOAA, the Department of the Interior through the U.S. Fish and Wildlife Service, the State of Hawai'i through the Department of Land and Natural Resources, and the Office of Hawaiian Affairs (OHA). The area subject to this coordinated management comprises all islands, atolls, reefs, shoals, banks, and seamounts and includes the waters and submerged lands to the extent of the seaward limit of the United States Exclusive Economic Zone (U.S. EEZ) west of 163° West Longitude, and extending from shoreline to 200 miles offshore. Pursuant to the National Marine Sanctuaries Amendments Act of 2000 (NMSAA), P.L. 106-513, and the National Marine Sanctuary Act (NMSA), ONMS also manages the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (NWHICRER), which lies within the PMNM. The mission of the PMNM is to carry out seamless integrated management to ensure ecological integrity and achieve strong, long-term protection and perpetuation of Northwestern Hawaiian Islands ecosystems, Native Hawaiian culture, and heritage resources for current and future generations.
- D. The DLNR, headed by the Board of Land and Natural Resources, is responsible for managing, administering, and exercising control over public lands, water resources, ocean waters, navigable streams, coastal areas (except commercial harbors), minerals, and all interests therein for the State of Hawai'i. The Department's jurisdiction encompasses nearly 1.3 million acres of State lands, beaches, and coastal waters as well as 750 miles of coastline (the fourth longest in the country). It includes state parks, historical sites, forests and forest reserves, aquatic life and its sanctuaries, public fishing areas, boating, ocean recreation, and coastal programs, wildlife and its sanctuaries, game management areas, public hunting areas, and natural area reserves and the coastal waters in both the main and Northwestern Hawaiian Islands, with the exception of Midway Atoll.

III. AUTHORITIES

- A. The legal authority for both parties to enter into this Agreement is the 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 non-reimbursable basis, to assist in carrying out the purposes and policies of the NMSA.

B. The programmatic authority for the ONMS to enter into this Agreement is the NMSA, 16 U.S.C. §§ 1431 *et seq.*, and the NMSAA, including:

1. Section 1431(b)(2), providing authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;
2. Section 1431(b)(4), stating in part as one of the NMSA's Purposes and Policies, the enhancement of public awareness, understanding, appreciation, and wise and sustainable use of the marine environment;
3. Section 1431(b)(5), supporting, promoting, and coordinating scientific research on, and long-term monitoring of, the resources of these marine areas;
4. Section 1431(b)(7), stating as one of the NMSA's Purposes and Policies of the NMSA, to develop and implement coordinated plans for the protection and management of national marine sanctuaries with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;
5. Section 1440, directing the Secretary of Commerce to conduct research and education programs to carry out the policies of the NMSA, and to promote and coordinate the use of National Marine Sanctuaries for research and education;
6. Section 6(g)(2)(c) of the NMSAA, directing the Secretary of Commerce to manage the NWHICRER in a manner consistent with the purposes and policies of the NMSA.

C. DLNR has authority to enter into this Agreement is Section 195D-5, Chapter 195D of the Hawai'i Revised Statutes, which authorizes DLNR to enter into

Agreements with agencies of the Federal government for administration and management of any area established for the protection of indigenous aquatic life.

- D. The programmatic authority for DLNR to enter in this Agreement includes:
1. Chapter 171, Section 3 of the Hawai‘i Revised Statutes which authorizes the DLNR to manage, administer, and exercise control over Hawai‘i’s aquatic resources and ocean waters;
 2. Section 195D-5, Chapter 195D of the Hawai‘i Revised Statutes which 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; and,
 3. Section IV, of the Compact which 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.”

IV. TERMS AND CONDITIONS

- A. The Parties recognize the following considerations underlying this Agreement:
1. The Parties have a public trust responsibility and statutory authority to protect the natural and cultural resources within the boundaries of both the HIHWNMS and PMNM;
 2. The 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. The Parties are accountable to stakeholders and communities who have a right to expect timeliness, efficiency, professionalism, and progress toward achieving the goals of the HIHWNMS and PMNM;
 4. The Parties wish to elicit and incorporate private and civic sector input, expressed locally and nationally, into program priority-setting, planning and ongoing management;

5. The Parties wish to continuously improve the products and services they provide;
6. The Parties retain their respective authorities and responsibilities to ensure consistent and effective implementation of laws and policies related to the HIIWNMS and PMNM;
7. This Agreement shall be modified to reflect any future revisions of either the HIIWNMS Management Plan or the PMNM Management Plan; and,
8. This Agreement will supersede MOA-2016-042, which will expire on September 30, 2021.

B. The ONMS will:

1. Through the ONMS PIR Director:
 - i. In consultation with the State, develop an annual Statement of Work (SOW) with deliverables that support DLNR and ONMS's shared goals for the management of the HIIWNMS and PMNM;
 - ii. Provide resources that the Parties both agree are appropriate and will assist the State in meeting the deliverables; and
 - iii. Review and certify invoices submitted by DLNR, based on the activities completed for each annual SOW, and if applicable and funds are available, assure prompt payment of certified invoices.
2. Provide support for additional in-house staff training to the Department of Aquatic Resources (DAR) and the Division of Forestry and Wildlife (DOFAW) as determined necessary by NOAA and DLNR.
3. Facilitate compliance with all base and facility entry/access requirements to the Inouye Regional Center (IRC) on Ford Island to allow full State attendance at meetings and/or performance of work related activities as needed.
4. Fulfill all ONMS obligations in the agreed-upon SOWs.

C. The DLNR will:

1. Provide the Chairperson, Board of Land and Natural Resources, or the Chairperson's designated representative, as the Responsible Official for activities authorized under this Agreement, who will:
 - i. Oversee services, and ensure expenditures related to the SOWs are within budget, provided in a timely manner, and are expended in accordance with all federal policies and procedures; and
 - ii. Exercise authority for all business and financial matters related to the activities conducted by its employees under the Agreement.
2. Provide to the PIR Director, within 30 days of the MOA period start date, a work plan, based on the SOW, for how the State intends to carry out its responsibilities under the MOA.
3. Notify the PIR Director and respective site superintendents in advance if conducting activities or tasks not listed in this MOA.
4. Submit monthly invoices, with comprehensive documentation of activities and work product referencing the SOW tasks, to the ONMS Pacific Islands Regional Director.
5. Fulfill all DLNR obligations in agreed upon SOWs.
6. Should there be a need to change the SOW or change the use of funds designated for one site (PMNM or HIIHWNMS), all parties will agree to a new work plan for that site.
7. Provide to ONMS at the end of the federal fiscal year a summary report of how the funds were utilized for each site.

D. Collaborative Efforts

The PIR and DLNR will collaborate to develop and distribute social media postings supportive of NOAA's mission and mandates and related to partnership activities. All joint postings and outreach efforts will be approved by NOAA. DLNR will abide by ONMS's social media policy and best practices for partners (see Attachment A), and any violation may be grounds for termination of this agreement

V. FUNDING, PROGRAMMING, PAYMENT, AND REIMBURSEMENTS ARRANGEMENTS

- A. Activities that are funded under this Agreement will be carried out pursuant to an annual SOW and budget to be agreed upon by the Parties each federal fiscal year (FY). The FY2021 SOWs and Budgets for each site are attached.
- B. The ONMS will reimburse DLNR for support up to \$235,000 upon receipt of invoices for any previously agreed-upon work and any report(s) as outlined in the annual statement of work. In the event the ONMS wants to dispute an invoice amount, the ONMS will contact the DLNR point of contact within 30 days of the invoice date to discuss the dispute.
- C. This Agreement authorizes Fiscal Year 2021 funding, in the amount of \$235,000 as follows:
 1. NOAA Fiscal Information

EIN ¹ :	52-0821608
DUNS ² :	78-4769085
 2. \$100,000 (See HIHWNMS Attachments A1 and A2)

Appropriation Code:	13 21/22 1450
Type of Funds/Expiration:	Two-year/September 30, 2022
CBS ³ /ACCS ⁴ :	14/2021/10-14-0007-01-00-00-00/V8KMX62/P00/252700
 3. \$135,000 (See PMNM Attachments B1 and B2)

Appropriation Code:	13 21/22 1450
Type of Funds/Expiration:	Two-year/September 30, 2022
CBS/ACCS:	14/2021/10-14-0007-03-00-00-00/ V8KMXPMP00/252700
 4. DLNR Fiscal Information

EIN:	99-0266119
DUNS:	82-4671200

¹ Employer Identification Number (Tax ID Number)

² Dunn and Bradstreet's Data Universal Numbering System

³ Commerce Business System

⁴ Accounting Classification Code Structure

- D. The Parties will approve each annual SOW and Budget in writing by formal amendment to this Agreement, pursuant to Section VII.C below. Each amendment will include updated fiscal and accounting information, if relevant, for the applicable fiscal year.
- E. All activities authorized by this Agreement will be completed subject to the availability of appropriated funds.
- F. If, for some reason, the state is unable, or anticipates that it will be unable, to expend all of the funds in a fiscal year, the DLNR shall notify the ONMS as soon as possible. ONMS, in coordination with DLNR, may pursue a reasonable strategy, following all applicable laws and procedures, to ensure that all funds for that period of performance are expended.

VI. CONTACTS

- A. The points of contact for this Agreement are:

ONMS

Kristina Kekuewa
Pacific Islands Region Director
NOAA
Office of National Marine
Sanctuaries
1814 Wasp Blvd., Bldg 176
Honolulu, HI 96821
(808) 725-5252
kristina.kekuewa@noaa.gov

DLNR

Brian J. Neilson
Division of Aquatic Resources
Administrator
State of Hawai'i
Department of Land and Natural Resources
1151 Punchbowl Street, Room 330
Honolulu, HI 96813
(808) 587-0100
brian.j.neilson@hawaii.gov

- 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. Changes to this section will not require an amendment.

VII. Duration of Agreement, Amendments, or Terminations

- A. This Agreement will become effective October 1, 2021, after the final signature of the Parties and will expire September 30, 2026.
- B. The Parties will review this Agreement every year to determine whether it should be amended 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 60 days 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 Agreement shall remain in effect. If a term is deemed invalid, the Parties shall immediately review the Agreement to decide what they should do in light of the invalid term (e.g., amend or terminate the Agreement).
- B. If the Parties disagree over how to interpret and implement this Agreement, they shall present their differences to each other in writing, and they shall discuss them as necessary. If the Parties fail to resolve their differences within thirty (30) days, they may refer the matter to a higher level of authority within their respective organizations.

IX. APPROVALS

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

BY: HOLYOKE.REBECCA Digitally signed by
HOLYOKE.REBECCA.RAE.13874
93278
Date: 2021.09.08 18:29:58
-04'00'
8
John Armor
Director
Office of National Marine Sanctuaries

Date: _____

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

BY: Suzanne Q. Case
Suzanne Case
Chairperson
Board of Land and Natural
Resources

Date: Sep 15, 2021

Attachment A

ONMS Social Media Policy and Best Practices for Partners

A joint social media post is a collaborative effort between ONMS and a partner to develop and disseminate shared content through the social media channels of each organization. Posts are typically drafted together or by one party in collaboration with the other, where both parties intend to share the post using their respective social media channels, including Twitter, Facebook, Instagram, and YouTube.

Focus Social Media on the Purpose of the Agreement

- The content for joint social media posts should focus on topics described in the Purpose section of the agreement (i.e., the MOU, MOA, or LOI).
- Prior to the publication of any joint social media posts, ONMS will review the communication and determine if sharing it is consistent with the stated purpose of the agreement.
- Prior to publication, ONMS will ensure that joint social media posts comply with the legal requirements/restrictions provided in the Department of Commerce *Policy on the Approval and Use of Social Media and Web 2.0* available at: <https://www.commerce.gov/about/policies/social-media>.

Social Media Guidelines: ONMS's social media posts are subject to numerous legal and policy requirements and restrictions. These same requirements and restrictions apply when ONMS publishes social media posts that are crafted and/or posted jointly with non-Federal partners:

- Joint social media posts shall not collect information from individuals through polls, surveys, or questionnaires without fully complying with the requirements of the Paperwork Reduction Act, the Privacy Act, and the Children's Online Privacy Protection Act.
- Joint social media posts shall not endorse a product, company, or organization.
- Joint social media posts shall not ask for donations or link to fundraising campaigns.
- Joint social media posts shall not ask the public to contact local, state, or Federal lawmakers.
- Joint social media posts should be as accessible as possible to the general public, including people with disabilities. Accessibility in social media is governed by [Section 508](#) of the Rehabilitation Act.

Accessibility Best Practices

- Use plain language—direct language with minimal jargon and acronyms; short sentences and paragraphs.

- Use alternative text, or “alt text,” which is a brief description of what is shown, for images, gifs, and videos. Alt text can either be a short caption describing what’s in the photo after the main text of the post or can be embedded using tools available within the app.
- When possible, add closed captions to videos. This is possible on [Facebook](#); however, as of March 2021, Twitter and Instagram do not have this capability. When posting videos to Twitter or Instagram, include a link to the video location on YouTube or the ONMS website where people can watch with captions as needed.

Credit/Copyrights for Images, Videos, and Graphics

- Joint social media posts must abide by copyright and fair-use laws, and credit the appropriate artist, photographer, and/or videographer. Images, videos, or audio recordings that include identifiable people need to have permission in writing, from those people, or if a minor, their legal guardian.

Revised: 5/4/21

ATTACHMENT A-1

**Statement of Work
For Programs and Activities Directly Related to the
Hawaiian Islands Humpback Whale National Marine Sanctuary
October 1, 2021 to September 30, 2022**

I. INTRODUCTION

The services supported by this Statement of Work (SOW) involve support for programs and activities that relate directly to the management of Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS).

II. RESPONSIBILITIES

A. The ONMS/HIHWNMS will:

1. Provide funds to DLNR to execute the tasks and responsibilities described herein.
2. Coordinate with DLNR to ensure successful completion of tasks and responsibilities.
3. Provide office space for a DLNR employee assuming (1) there is sufficient space within the ONMS/HIHWNMS facility and (2) the DLNR employee is able to satisfy all security and other requirements for those entering a Federal facility

B. DLNR will:

1. Facilitate cooperative management services and coordinate with the ONMS to effectively manage the HIHWNMS.
2. Engage with the Sanctuary Advisory Council (SAC), including attendance at SAC meetings, subcommittee meetings and working group meetings; and provide updates on State activities related to the HIHWNMS.

3. Promote ocean etiquette and best management practices among ocean user groups as it relates to humpback whales and other marine protected species.
4. Support research projects on humpback whales, their habitat, and the marine environment of the HIIHWNMS, including climate change.
5. Support statewide education and outreach on humpback whales, their habitat, and the marine environment of the HIIHWNMS, including HIIHWNMS volunteers and interns, and including cultural education initiatives.
6. Support HIIHWNMS facilities and vessels, and provide equipment that supports the education, research and management goals of the HIIHWNMS, as appropriate and approved by the sanctuary superintendent.
7. Coordinate the review of permits for activities that might impact humpback whales and their habitat.
8. Work with HIIHWNMS superintendent to develop new initiatives, partnerships and other cost-sharing ideas such as shared staff and programs.

ATTACHMENT A-2

**Budget
Hawaiian Islands Humpback Whale
National Marine Sanctuary
and the
State of Hawai'i Department of Land and Natural Resources
October 1, 2021 to September 30, 2022**

Item	Cost
State coordination and management of the Hawaiian Islands Humpback Whale National Marine Sanctuary (to include labor, travel, contractual services, equipment, materials and supplies).	\$100,000
Total:	\$100,000

ATTACHMENT B-1

Statement of Work For Programs and Activities Directly Related to the Papahānaumokuākea Marine National Monument October 1, 2021 to September 30, 2022

I. INTRODUCTION

The services supported by this Statement of Work (SOW) involve support for programs and activities that relate directly to the management of the Papahānaumokuākea Marine National Monument (PMNM).

II. RESPONSIBILITIES

A. The ONMS/PMNM will:

1. Provide funds to DLNR to execute the tasks and responsibilities described herein.
2. Coordinate with DLNR to ensure successful completion of tasks and responsibilities.
3. Facilitate transportation of State staff to Kure Atoll.

B. DLNR will:

1. Facilitate State co-management with the ONMS to effectively manage the PMNM, particularly as it relates to coordination of DLNR representation.
2. Assist Monument Management Board (MMB) representatives in monument management planning, including but not limited to, providing State input for development of the management plan and sanctuary designation, drafting the management plan, participation in public scoping meetings, education, and outreach events, and determining and coordinating State legal compliance.
3. Work with Co-Trustee representatives to review and assess all permit applications for collaborative permit issuance, tracking and data gathering.

4. Facilitate State review on all PMNM permit applications and compile review comments by the deadlines.
5. For all actions proposed for State lands and waters within PMNM, facilitate preparation of documents necessary for PMNM permit processing and issuance under State law, including but not limited to Board of Land and Natural Resources submittals, review of compliance documents with regard to related applicable state law (e.g., land uses in the state conservation district, state historic preservation regulations), and facilitation of state environmental review and updates regarding requirements and applicable exemptions under HRS Chapter 343 and HAR Chapter 11-200.
6. Have representation at PMNM related meetings, particularly the MMB meetings, Permits Working Group meetings, and others where policy and decision-making are needed.
7. Provide aquatic biologists to conduct research and monitoring in the PMNM, and to assist in emergency response including related follow up activities, as appropriate.
8. Provide updates to the NWHI Coral Reef Ecosystem Reserve Advisory Council meetings as appropriate. Provide ONMS and the MMB updates on any State efforts and actions related to PMNM.
9. Support outreach efforts within the Monument Communications Team as they relate to State activities.
10. Support alien species mitigation efforts in both the main Hawaiian Islands and PMNM to limit the spread of invasives across the archipelago.
11. Coordinate with State Enforcement (DLNR Division of Conservation and Resource Enforcement) relating to NWHI and PMNM enforcement planning, training and investigations, as appropriate.
12. Support community engagement in Sanctuary designation and coordination with communities engaged in the State's 30x30 initiative.

13. Work with ONMS, the Office of Hawaiian Affairs, and our partners to develop a youth mentorship program that supports conservation and management activities linked between the main Hawaiian Islands and PMNM.

ATTACHMENT B-2

**Budget
Papahānaumokuākea Marine National Monument
and the
State of Hawai'i, Dept. of Land and Natural Resources
October 1, 2021 to September 30, 2022**

Item	Cost
State coordination, administration and management of the Papahānaumokuākea Marine National Monument (to include labor, travel, contractual services, equipment, materials and supplies)	\$135,000
Total:	\$135,000