

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, HI, 96813

May 13, 2016

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

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES FISH AND WILDLIFE SERVICE (DEPARTMENT OF THE INTERIOR), THE DEPARTMENT OF LAND AND NATURAL RESOURCES (STATE OF HAWAII), AND NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (UNITED STATES DEPARTMENT OF COMMERCE) REGARDING THE PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT FOR THE CONTROL AND ERADICATION OF INVASIVE RODENTS AND MONGOOSE IN HAWAII USING AN INTEGRATED PEST MANAGEMENT APPROACH (IPM)

SUMMARY:

Submitted for your approval is a memorandum of understanding (MOU) between the U.S. Fish and Wildlife Service (USFWS), the Hawaii Department of Land and Natural Resources (DLNR), and the National Oceanic and Atmospheric Administration (NOAA) regarding the development of a programmatic environmental impact statement (PEIS) for the control and eradication of invasive rodents and mongoose in Hawai'i. The PEIS developed under this MOU would be a broad informational document regarding the environmental impacts of rodenticide use in control and eradication efforts in Hawaii. Future eradication and control projects would be able to use this information as part of the assessment of the impacts of a given project, in compliance with the requirements of the National Environmental Policy Act (NEPA) and Chapter 343 of the Hawaii Revised Statutes (HRS), "Environmental Impact Statements."

BACKGROUND:

In 2012, the USFWS and the DLNR as PEIS lead agencies entered into an MOU that proposed to evaluate for eventual implementation a program to control and eradicate, as appropriate, invasive rodents and small Indian mongoose on approved federal, state, county and private lands, using rodenticides that have shown to be effective and protective of the environment and human health when used as labeled within an IPM program. This MOU proposes to add NOAA as a cooperating agency for the PEIS. The primary objectives of the PEIS are rodent and mongoose control and

eradication for the protection of threatened and endangered species and restoration of Hawaii's native habitats. The program proposes to continue the use of trapping and the current bait station use pattern using the anticoagulant rodenticide diphacinone, and expand the program to include other rodenticides (including brodifacoum and chlorophacinone) and a variety of application methods, including burrow and canopy placement, ground-based and aerial broadcast. This program would be available for use on lands under the jurisdiction of federal, state, and county agencies, private landowners, and nongovernmental organizations.

The development of the PEIS will decrease the time and cost associated with preparing compliance documents for future projects that utilize rodenticides. The creation of the PEIS does not in and of itself classify as an action requiring compliance with NEPA or Chapter 343, HRS. Rather, the PEIS would be created as an informational document only, which would then be available for use by future control and eradication projects as a tool to describe the impacts of the given project that fall within the scope of the PEIS.

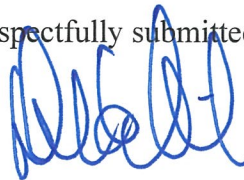
The MOU presented for approval describes the process by which these agencies will jointly prepare an assessment document describing the impacts of such a control or eradication program utilizing rodenticides. The MOU dictates that the USFWS and the DLNR, as lead agencies, and NOAA as a Cooperating Agency will provide the necessary personnel and authority to attend meetings and provide timely review and approval of documents. As described in the MOU, each agency would commit staff as points-of-contact, with appropriate alternates designated, to collaborate on this project at the expense of each staff member's respective agency. During the development of the PEIS document, the USFWS would be responsible for ensuring compliance with NEPA requirements, and the DLNR would be responsible for ensuring compliance with Chapter 343, HRS. NOAA as a cooperating agency would be responsible for consulting with the lead agencies on the PEIS during the drafting process. The MOU also provides a conflict resolution process in the event of disputes during the process of preparing the PEIS document.

RECOMMENDATION:

The Department recommends that the Board:

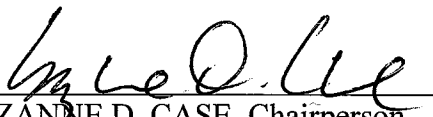
1. Authorize the Chairperson to approve and sign the Memorandum of Understanding, in substantially the form attached, subject to review and edits by the Department of the Attorney General, allowing agency staff to move forward with the continued development of the PEIS as described in the memorandum.

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:


SUZANNE D. CASE, Chairperson
Board of Land and Natural Resources

Attachment: USFWS-DLNR-NOAA MOU

Attachment: USFWS-DLNR MOU from 2012

MEMORANDUM OF UNDERSTANDING

Between the

**UNITED STATES DEPARTMENT OF INTERIOR
FISH AND WILDLIFE SERVICE**

And

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

With the

**UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

Regarding the

PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT

For the

**CONTROL AND ERADICATION OF INVASIVE RODENTS AND MONGOOSE
IN HAWAII**

USING AN INTEGRATED PEST MANAGEMENT APPROACH (IPM)

ARTICLE 1 – PURPOSE

The U.S. Fish and Wildlife Service (Service) and the State of Hawaii Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (collectively referred to as Lead Agencies) along with the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) and National Ocean Service's (NOS) Office of National Marine Sanctuaries (ONMS), collectively referred to as the NOAA Cooperating Agencies, agree to work collaboratively to prepare a Programmatic Environmental Impact Statement (PEIS) in compliance with both the National Environmental Policy Act (NEPA) and Hawai'i Revised Statutes (HRS) Chapter 343. The document will include an evaluation of the reasonable alternatives and potential impacts of an Integrated Pest Management (IPM) approach to the control and eradication of invasive rodents and mongoose for conservation purposes in Hawai'i that includes broad-scale use of rodenticides. The Lead Agencies along with the NOAA Cooperating Agencies agree to enter into this Memorandum of Understanding (MOU) to fulfill the purposes as set forth above.

ARTICLE 2 – BACKGROUND

The Lead Agencies propose to evaluate, with the assistance of and in consultation with the NOAA Cooperating Agencies, for eventual implementation a program to control and eradicate, as appropriate, invasive rodents and small Indian mongoose on approved federal, state, county and private lands, using rodenticides that have shown to be effective and protective of the environment and human health when used as labeled within an IPM program. The primary objectives of rodent and mongoose control and eradication are the protection of threatened and endangered species and restoration of Hawaii's native

habitats. The program proposes to continue the use of trapping and the current bait station use pattern using the anticoagulant rodenticide diphacinone, and expand the program to include other rodenticides (including brodifacoum and chlorophacinone) and a variety of application methods, including burrow and canopy placement, ground-based and aerial broadcast. This program would be available for use on lands under the jurisdiction of federal, state, and county agencies, private landowners, and nongovernmental organizations.

ARTICLE 3 – AUTHORITIES

The mission of the Service is to work with others to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The Service has the responsibility for conserving, protecting and enhancing fish, wildlife, plants and their habitats. The primary statutory authorities for the Service mission are: the ESA, 16 U.S.C. § 1531 et seq.; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712; and the FWCA, 16 U.S.C. § 661.

Pursuant to Article V and Article XI of the Hawai'i Constitution and Hawai'i Revised Statutes (HRS) Chapter 26-15, the Department of Land and Natural Resources (DLNR) shall manage and administer the public lands of the State and minerals thereon and all water and coastal areas of the State except the commercial harbor areas of the State, including the soil conservation function, the forests and forest reserves, aquatic life, wildlife resources, state parks, including historic sites, and all activities thereon and therein including, but not limited to, boating, ocean recreation, and coastal areas programs. Pursuant to HRS 183D, with respect to wildlife, DLNR shall manage and administer the wildlife and wildlife resources of the State and enforce all laws relating to the protecting, taking, hunting, killing, propagating, or increasing the wildlife within the State and the waters subject to its jurisdiction.

NOAA's mission is one of Service, Science, and Stewardship. NOAA works to understand and predict changes in weather, climate, oceans and coasts; to share that knowledge with others; and to conserve and manage coastal and marine ecosystems and resources. NMFS is primarily responsible for the stewardship of the nation's living marine resources and their habitats. NOS provides science-based solutions through collaborative partnerships to address evolving economic, environmental, and social pressures on our ocean and coasts. ONMS, a line office within the National Ocean Service, serves as the trustee for a network of 14 marine protected areas encompassing 170,000 square miles of marine and Great Lakes waters throughout the United States and its Territories. The primary statutory authorities for NMFS and ONMS are: the ESA, 16 U.S.C. § 1531 et seq.; the Marine Mammal Protection Act, 16 U.S.C. § 1361 et seq.; the Magnuson-Stevens Fisheries Conservation and Management Act, 16 U.S.C. § 1801 et seq.; the FWCA, 16 U.S.C. § 661 et seq.; and the National Marine Sanctuaries Act, 16 U.S.C. § 1431 et seq.

ARTICLE 4 – OBJECTIVES

The goal of this MOU is to implement processes that effectively and systematically develop a single environmental document that complies with both NEPA and HRS 343 in the most efficient and effective use of agency time and resources while satisfying each agency's authorities and legal requirements.

This MOU defines the roles and responsibilities for the Lead Agencies and the NOAA Cooperating Agencies to collaborate in the timely preparation, review, and approval of this NEPA PEIS/HRS 343 environmental document. The Lead Agencies and the NOAA Cooperating Agencies commit to work cooperatively toward implementing this process and reaching consensus on critical decisions related to this document. The Lead Agencies and the NOAA Cooperating Agencies further commit to coordinate agency concerns and needs, distribute information, and review and comment on draft documents in a timely manner.

ARTICLE 5 - MUTUAL AGREEMENT

The Lead Agencies and the NOAA mutually agree to:

1. Subject to the availability of appropriations, personnel, and resources, commit the technical and managerial Points of Contact (POCs) to fulfill their respective responsibilities as set forth in Articles 6, 7, and 8 to provide information, attend meetings, make appropriate decisions, conduct timely review of documents, and promptly notify each other of any changes to the designated POCs in a timely manner.
2. Provide at least two week advance notice regarding all meetings and requests for information and document review.
3. Provide all document revisions, and comments within an agreed-upon schedule.
4. Have the Service provide meeting minutes for review and correction within two weeks of each meeting or other mutually agreed-upon schedule.
5. Participate at their own expense (see Article 11 and 12), subject to the availability of funds.
6. Jointly make decisions regarding the selected alternative, including mitigation.

NOAA responsibilities and participation as a Cooperating Agency are case dependent and subject to the condition of 40 CFR 1501.6(c), "A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact...reply that other program commitments preclude any involvement or the degree of involvement requests in the action that is the subject of the environmental impact statement." This applies to any financial obligation, as well, as detailed in Articles 11 and 12.

ARTICLE 6 – SERVICE RESPONSIBILITIES

The Service is responsible for compliance with the NEPA and managing the PEIS/HRS

343 process together with DLNR (see Article 7). Specific responsibilities include analysis, interagency coordination, preparation and review of one document compliant with both federal and state requirements, public outreach and involvement; participation in the Agency Coordination Team (ACT) and meeting and process facilitation; general technical assistance, responding to public comments, and managing the contractual process and contractor actions.

Through consultation with the NOAA Cooperating Agencies, the Service is responsible for ensuring that its project to control and eradicate invasive rodents and mongoose does not jeopardize listed marine species or destroy or adversely modify their critical habitat, avoid and minimize where appropriate adverse effects to essential fish habitat, and avoid injury to Monument and sanctuary resources.

To facilitate the NEPA and consultation processes, the Service will provide the NOAA Cooperating Agencies with notice of any meetings, any EIS deliverables, timely technical analysis and information for which review and comments are requested, and the opportunities to identify measures to avoid or mitigate adverse impacts.

ARTICLE 7 – DLNR RESPONSIBILITIES

DLNR is responsible for compliance with HRS 343 together with the SERVICE compliance with NEPA. Specific responsibilities include analysis, review and submission of the Environmental Impact Statement Preparation Notice (EISPN) to the State of Hawai'i Office of Environmental Quality Control (OEQC) for publication and public review, coordination with the State of Hawai'i Office of State Planning for compliance with the Coastal Zone Management Act, public outreach and involvement, participation in the ACT, general technical assistance, and responding to public comments. DLNR shall coordinate the selection of the final alternative per HRS 343 with the Service and acceptance of the final PEIS by the Governor.

ARTICLE 8 –NOAA RESPONSIBILITIES

In addition to the mutual responsibilities in Article 5, NMFS and ONMS are independently responsible for appointing one or more POCs, providing comments from these POCs when requested, and obtaining necessary signatures for the final document(s). In addition, NMFS and ONMS will independently provide review and comments on preliminary EIS deliverables, technical assistance and expertise related to its statutory authorities, review comments on draft EIS and assist with responses to comments, and provide review of the portions of the final EIS that address subjects within the scope of its expertise.

ARTICLE 9 - CONFLICT RESOLUTION PROCESS

The Lead Agencies and the NOAA Cooperating Agencies agree to work cooperatively towards the common goals as set forth in this MOU and to raise concerns for discussion and amicable resolution in a timely manner.

If a dispute should arise among the Lead Agencies and the NOAA Cooperating Agencies regarding any matter associated with this MOU, the Lead Agencies and the NOAA Cooperating Agencies agree to the following dispute resolution process:

- (1) The agency initiating the concern will timely communicate its concern and a recommended solution to the other agency by email. This will provide written documentation that the matter has been initiated.
- (2) If the agencies cannot resolve the matter informally through the email, the initiating agency will timely schedule a meeting with the Lead Agencies and the NOAA Cooperating Agencies to seek a resolution.
- (3) If the agencies still cannot resolve the matter, the issue shall then be elevated to their respective administrative decision-makers for timely resolution.
- (4) All resolutions shall consider impacts to culturally significant practices of the community, to the extent consistent with applicable Federal and State laws.
- (5) Nothing in this MOU is intended to limit, restrict, or modify NOAA' exercise of its authorities with respect to the action proposed.

ARTICLE 10 – NO ENFORCEMENT AUTHORITY

Signature of this MOU does not confer any additional authority.

ARTICLE 11 – LIABILITY

Nothing in this Agreement is intended to create any right, claim, or cause of action to any person not a Party to this Agreement, or to create any liability, recourse, or remedies except to the extent already provided by applicable Federal or State law.

ARTICLE 12 – STATEMENT OF NO FINANCIAL OBLIGATION

Signature on this MOU does not constitute a financial obligation. Each signatory party is to use and manage its own funds in carrying out the purpose of this MOU, except as defined by 40 CFR 1501.6(b)(5), "The lead agency, shall to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies."

ARTICLE 13 – COMMITMENT LIMITATIONS

This MOU shall be contingent upon the availability of funds. Implementation of the MOU by the Federal agencies is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this MOU will be construed by the parties to require the obligation, appropriation or expenditure of any money from the U.S. Treasury. The parties acknowledge that the Federal agencies will not be required under this MOU to expend any appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing. It is understood and agreed that any monies allocated for purposes covered by this MOU shall be expended in accordance with its terms and in the manner prescribed by the fiscal regulations and/or administrative policies of the party making the funds available. If

fiscal resources are to transfer, a separate agreement must be developed by the parties.

ARTICLE 14 – CONGRESSIONAL RESTRICTIONS

Pursuant to Section 22, Title 41, United States Code, no member of or delegate to Congress shall be admitted to any share or part of this MOU or to any benefit to arise there from.

ARTICLE 15 – AMENDMENTS/TERMINATION

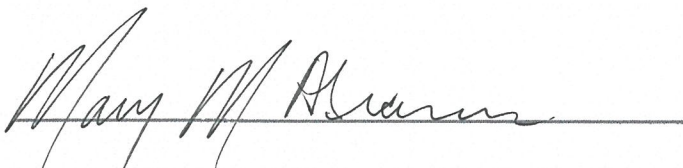
This MOU may be amended at any time by mutual agreement of the parties in writing. It also may be terminated by either party upon sixty (60) days written notice to the other parties.

ARTICLE 16 – EFFECTIVE DATE AND DURATION

This MOU will be in effect upon date of final signature and will continue until the NEPA Record of Decision (ROD) is signed and the state environmental impact statement is accepted, except that this MOU will automatically expire within five years of the date of signature, unless the parties mutually agree in writing to extend the period of effectiveness. Any party may terminate this agreement by providing 60 days written notice to the other party. Each agency shall take reasonable steps to safeguard documents acquired to the extent permitted by law. Requests for documents under the Freedom of Information Act shall, to the extent practicable and authorized by law, be referred to the originating agency for a response.

RECOMMEND APPROVAL:

UNITED STATES DEPARTMENT OF INTERIOR
FISH AND WILDLIFE SERVICE

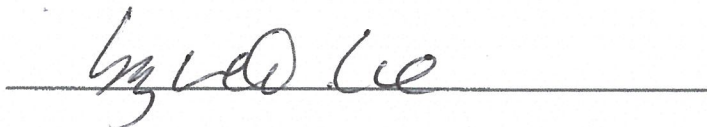


Field Supervisor, Pacific Islands Fish and Wildlife Office

11 April 2016

Date

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES



Chairperson, Department of Land and Natural Resources

4/26/16

Date

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION NATIONAL MARINE FISHERIES
SERVICE

MICHAEL D. TOSATTO
Regional Administrator
NOAA Fisheries Pacific Islands Regional Office

Date

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION OFFICE OF NATIONAL MARINE SANCTUARIES
PAPAHANAUMOKUAKEA MARINE NATIONAL MONUMENT

ALLEN TOM
Regional Director
ONMS, Pacific Islands Region

Date

MEMORANDUM OF UNDERSTANDING

Between the

**UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE**

And

STATE OF HAWAII

By its

DEPARTMENT OF LAND AND NATURAL RESOURCES

Regarding the

PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT

For the

**CONTROL AND ERADICATION OF INVASIVE RODENTS AND MONGOOSE
IN HAWAII**

USING AN INTEGRATED PEST MANAGEMENT APPROACH (IPM)

ARTICLE 1 – PURPOSE

The U.S. Department of the Interior, U.S. Fish and Wildlife Service (USFWS) and the State of Hawaii, by its Board of Land and Natural Resources, and through the Department of Land and Natural Resources (DLNR), Division of Forestry and Wildlife (collectively referred to as Lead Agencies) agree to jointly prepare a programmatic environmental impact statement (PEIS) in compliance with both the National Environmental Policy Act (NEPA) and Hawaii Revised Statutes (HRS) Chapter 343. The document will include an evaluation of the reasonable alternatives and potential impacts of an Integrated Pest Management (IPM) approach to the control and eradication of invasive rodents and mongoose for conservation purposes in Hawaii that includes broad-scale use of rodenticides. The Lead Agencies agree to enter into this Memorandum of Understanding (MOU) to fulfill the purposes as set forth above.

ARTICLE 2 – BACKGROUND

The Lead Agencies propose to evaluate for eventual implementation a program to control and eradicate, as appropriate, invasive rodents and small Indian mongoose on approved federal, state, county and private lands, using rodenticides that have shown to be effective and protective of the environment and human health when used as labeled within an IPM program. The primary objectives of rodent and mongoose control and eradication are the protection of threatened and endangered species and restoration of Hawaii's native habitats. The program proposes to continue the use of trapping and the current bait station use pattern using the anticoagulant rodenticide diphacinone, and expand the program to include other rodenticides (including brodifacoum and chlorophacinone) and a variety of application methods, including burrow and canopy placement, ground-based and aerial broadcast. This program would be available for use on lands under the

jurisdiction of federal, state, and county agencies, private landowners, and nongovernmental organizations.

ARTICLE 3 – AUTHORITIES

The mission of the USFWS is to work with others to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The USFWS has the responsibility for conserving, protecting and enhancing fish, wildlife, plants and their habitats. The primary statutory authorities for the USFWS mission are: 16 United States Code (U.S.C.) 1531 *et seq.*, Endangered Species Act (ESA) of 1973, as amended; 16 U.S.C. 703-712, and the Migratory Bird Treaty Act (MBTA) of 1918, as amended.

Pursuant to Article XI of the Hawaii Constitution and Hawaii Revised Statutes (HRS) Section 26-15, the Department of Land and Natural Resources (DLNR) shall manage and administer the public lands of the State and minerals thereon and all water and coastal areas of the State except the commercial harbor areas of the State, including the soil conservation function, the forests and forest reserves, aquatic life, wildlife resources, state parks, including historic sites, and all activities thereon and therein including, but not limited to, boating, ocean recreation, and coastal areas programs. Pursuant to HRS Chapter 183D, with respect to wildlife, DLNR shall manage and administer the wildlife and wildlife resources of the State and enforce all laws relating to the protecting, taking, hunting, killing, propagating, or increasing the wildlife within the State and the waters subject to its jurisdiction.

ARTICLE 4 – OBJECTIVES

The goal of this MOU is to implement processes that effectively and systematically develop a single environmental document that complies with both NEPA and HRS Chapter 343 (including Hawaii Administrative Rules Chapter 11-200 which implements HRS Chapter 343) in the most efficient and effective use of agency time and resources while satisfying each agency's authorities and legal requirements.

This MOU provides the framework for the Lead Agencies to collaborate in the timely preparation, review, and approval of this NEPA PEIS/HRS Chapter 343 environmental compliance document. The Lead Agencies commit to work cooperatively toward implementing this process and reaching consensus on critical decisions related to this document. The Lead Agencies further commit to coordinate agency concerns and needs, distribute information, and review and comment on draft documents in a timely manner. The Lead Agencies will provide necessary personnel of appropriate technical skill and decision-making authority to attend meetings, provide prompt assistance, and timely review and approve documents (see Articles 6, 7, and 8).

ARTICLE 5 - MUTUAL AGREEMENT

The Lead Agencies mutually agree to endeavor to:

1. Commit the technical and managerial Points of Contact (POCs) to fulfill their respective responsibilities as set forth in Articles 6, 7, and 8 to provide information, attend meetings, make appropriate decisions, conduct timely review of documents, and to actively participate in the environmental review process, and promptly notify each other of any changes to the designated POCs in a timely manner.
2. Provide an informed and prepared designated alternate to attend any meeting for which the POC cannot attend and to provide any information or action needed.
3. Provide at least two week advance notice regarding all meetings and requests for information and document review.
4. Provide all information, analyses, document revisions, and comments within an agreed-upon schedule.
5. Have the USFWS provide meeting minutes for review and correction within two weeks of each meeting or other mutually agreed-upon schedule.
6. Participate fully and affirmatively throughout the NEPA/HRS Chapter 343 planning and documentation process, including developing and implementing effective public involvement strategies.
7. Participate at their own expense (see Article 11).
8. Implement processes in compliance with NEPA and HRS Chapter 343 for legally coordinating, preparing, documenting, and publicly distributing relevant documents and information.
9. Jointly make decisions regarding the selected alternative, including mitigation.

ARTICLE 6 – USFWS RESPONSIBILITIES

USFWS is responsible for compliance with the NEPA and managing the PEIS/HRS Chapter 343 process together with DLNR (see Article 7). Specific responsibilities include analysis, interagency coordination, preparation and review of one document compliant with both federal and state requirements, public outreach and involvement, participation in the Agency Coordination Team (ACT) and meeting and process facilitation, general technical assistance, responding to public comments, and managing the contractual process and contractor actions.

ARTICLE 7 – DLNR RESPONSIBILITIES

DLNR is responsible for compliance with HRS Chapter 343 and Hawaii Administrative Rules (HAR) Chapter 11-200, together with FWS compliance with NEPA. Specific responsibilities include analysis, review and submission of the Environmental Impact Statement Preparation Notice (EISPN) to the State of Hawaii Office of Environmental Quality Control (OEQC) for publication and public review, coordination with the State of Hawaii Office of State Planning for compliance with the Coastal Zone Management Act,

public outreach and involvement, participation in the ACT, general technical assistance, and responding to public comments. DLNR shall coordinate the selection of the final alternative per HRS Chapter 343 and HAR Chapter 11-200 with the USFWS and acceptance of the final PEIS by the Governor or an authorized representative of the Governor.

ARTICLE 8 - CONFLICT RESOLUTION PROCESS

The Lead Agencies agree to work cooperatively towards the common goals as set forth in this MOU and to raise concerns for discussion and amicable resolution in a timely manner. The Lead Agencies shall seek resolutions that are in the best interests of the agencies, community, Native Hawaiians, and the public.

If a dispute should arise among the Lead Agencies regarding any matter associated with this MOU, the Lead Agencies agree to the following dispute resolution process:

- (1) The agency initiating the concern will timely communicate its concern and a recommended solution to the other agency by email. This will provide written documentation that the matter has been initiated.
- (2) If the agencies cannot resolve the matter informally through the email, the initiating agency will timely schedule a meeting with the Lead Agencies to seek a resolution.
- (3) If the agencies still cannot resolve the matter, the issue shall then be elevated to their respective administrative decision-makers for timely resolution.
- (4) All resolutions shall be consistent with the applicable Federal and State laws. The resolutions shall also take into consideration native Hawaiian values and practices.

ARTICLE 9 – NO ENFORCEMENT AUTHORITY

Signature of this MOU does not confer any additional authority.

ARTICLE 10 – LIABILITY

USFWS assumes no liability for any actions or activities conducted under this MOU except to the extent the recourse or remedies are provided by Congress under the Federal Tort Claims Act (28 USC 1346(b), 2401(b), 2671-2680).

DLNR assumes no liability for any actions or activities conducted under this MOU except to the extent that recourse or remedies are provided under HRS chapters 343 and 662.

ARTICLE 11 – STATEMENT OF NO FINANCIAL OBLIGATION

Signature of this MOU does not constitute a financial obligation. Each signatory party is to use and manage its own funds in carrying out the purpose of this MOU.

ARTICLE 12 – COMMITMENT LIMITATIONS

This MOU shall be contingent upon the availability of funds. It is understood and agreed

that any monies allocated for purposes covered by this MOU shall be expended in accordance with its terms and in the manner prescribed by the fiscal regulations and/or administrative policies of the party making the funds available. If fiscal resources are to transfer, a separate agreement must be developed by the parties.

ARTICLE 13 – CONGRESSIONAL RESTRICTIONS

Pursuant to Section 22, Title 41, United States Code, no member of or delegate to Congress shall be admitted to any share or part of this MOU or to any benefit to arise there from.

ARTICLE 14 – AMENDMENTS/TERMINATION

This MOU may be amended at any time by mutual agreement of the parties in writing. It also may be terminated by either party upon sixty (60) days written notice to the other party.

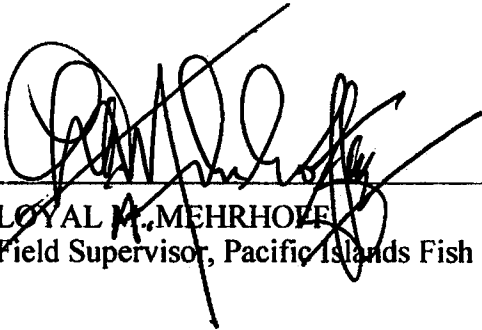
ARTICLE 15 – EFFECTIVE DATE AND DURATION

This MOU will be in effect upon date of final signature and will continue until the NEPA Record of Decision (ROD) is signed and the state environmental impact statement is accepted.

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RECOMMEND APPROVAL:

**UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE**

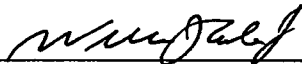


LOYAL M. MEHRHOFF
Field Supervisor, Pacific Islands Fish and Wildlife Office

4/24/2012
Date

Approved by the Board
of Land and Natural Resources
at its meeting on:
February 24, 2012 .

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



WILLIAM J. AILA, Jr.
Chairperson, Board of Land and Natural Resources

4/18/12
Date