

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

January 13, 2017

Board of Land
and Natural Resources
Honolulu, Hawaii

SUBJECT: REQUEST FOR APPROVAL TO ENTER INTO A FEDERALLY FUNDED SOLE SOURCE CONTRACT (NOT TO EXCEED \$386,261.00), BETWEEN THE BOARD OF LAND AND NATURAL RESOURCES AND CASCADIA RESEARCH COLLECTIVE, TO PROVIDE SERVICES TO SUPPORT STATE EFFORTS TO MINIMIZE AND MITIGATE INCIDENTAL TAKE OF FALSE KILLER WHALES AND OTHER ENDANGERED CETACEANS IN HAWAII; DECLARATION OF EXEMPTION FOR CONTRACT ACTIONS UNDER HRS CHAPTER 343 AND HAR CHAPTER 11-200

Submitted herewith for your consideration is a request to enter into a contract between the Board of Land and Natural Resources and Cascadia Research Collective (CRC), a foreign 501(c)3 non-profit corporation, pending sole source approval. The contract, not to exceed \$386,261.00, is to be funded solely with Federal funds from a National Oceanic and Atmospheric Administration Endangered Species Act (ESA) Section 6 grant (award number NA15NMF4720015). The term of the contract is January 1, 2017 (or upon receipt of final signature) for a term of one year. This request is to approve entering into a contract for Year 2 of this anticipated three-year project. Year 1 of this project was approved by the BLNR on December 11, 2015, We are requesting that the Board delegate to the chairperson, the authority to enter into year 3 of this project, should the Department deem it beneficial to do so.

In 2012, the main Hawaiian Islands insular Distinct Population Segment (DPS) of false killer whales (*Pseudorca crassiden*) was listed as endangered under the Endangered Species Act (ESA). To support recovery of this local species, the Department of Land and Natural Resources submitted and received a Section 6 ESA grant award for cooperative conservation and long-term management of false killer whales and other endangered cetaceans in Hawaii. The CRC contract will enhance State efforts to minimize and mitigate incidental take of false killer whales through fieldwork, research, spatial and temporal analysis of the overlap between fisheries and false killer whales, stranding response support, and targeted outreach efforts. By CRC providing these services, the State will be able to achieve the following required grant objectives:

1. Fill in data gaps in the spatial use patterns of false killer whales around the main Hawaiian Islands, including satellite tagging, obtaining mouth-line photos to assess fisheries-related injuries, photo-identification, and collection of biopsy samples;

2. Assess the spatial and temporal overlap between insular false killer whales and state fisheries effort; and
3. Target outreach and awareness to specific fishers, boaters, and tour operators to effectively mitigate or reduce interactions with false killer whales, identify species to complement research, and increase public reporting of strandings.

The Division of Aquatic Resources (DAR) is providing administrative services for the contracting process and sole source approval under HRS § 103D-306 is pending.

Concurrently, approval to enter the contract is being requested from the Governor and contract documents are being prepared for submission to the Attorney General's Office for preliminary approval as to form. DAR is aware that implementation of the contract is dependent upon receipt of all required approvals, availability of funds, and that funding restrictions may occur at any time.

HRS Chapter 343 - Compliance with Environmental Law:

The Chair approved Special Activity Permit PMAL 2017-204 for Dr. Robin W. Baird, Cascadia Research Collective, to conduct odontocete research in Hawaiian waters. Activities include photo-identification of individuals to estimate abundance and examine social organization, biopsy sampling to assess toxin loads and examine genetic relatedness of individuals for understanding social organization and population structure, and satellite tagging to assess movements, habitat use, and underwater behavior of humpback whales, false killer whales and sperm whales.

At the same time, the Chair also supported the Department's Chapter 343 analysis and issued a Declaration of Exemption that determined that the activities to be performed under Special Activity Permit PMAL 2017-204 would have minimal or no significant effect on the environment. To exempt the permit from the Environmental Assessment (EA) requirement, the Department's exemption analysis used the general Exemption Class for scientific research as provided by the Hawaii Department of Health, Section 11-200-8(a)(5), Hawaii Administrative Rules, and more specifically used the Department of Land and Natural Resources, Exemption List approved June 5, 2015, which includes "placing recording devices in the field to determine animal movement," as well as "wildlife and game surveys, censuses, inventories, studies..." and "...marine surveys and research activities."

Because the Department has 1) conducted a Chapter 343, HRS, analysis of the activities covered under SAP PMAL 2017-204, 2) has determined that an EA is not required for the activities under this permit, 3) has issued a Declaration of Exemption for the activities covered under SAP PMAL 2017-204, and 4) the activities to be covered under this contract are the same as the activities covered under the previously approved SAP PMAL 2015-208, therefore, no EA is being required for this contract.

The Department is taking the extraordinary step of preparing a separate Declaration of Exemption for this contract, even though the proposed activities under this contract would be the same as those issued under previously approved SAP PMAL 2015-208 and its

accompanying Declaration of Exemption. The reason for this action is primarily because of the question of could a Declaration of Exemption issued for a permit be used for a contract to conduct the same scope of work. This action would make this question moot. For the Board's information, this same scope of work to be covered under the SAP and this contract is also covered under a federal environmental review pursuant to the ESA Section 6 grant.

The Special Activity Permit for Cascadia Research Collective is valid until February 3, 2017 and is in the process of renewal. Annual State renewal of this permit is based on their federal authorization, NMFS Permit # 15330, 15240 and 14097.

RECOMMENDATIONS:

Based on the above discussion, the Division of Aquatic Resources recommends the Board approve the following:

1. That the Board declare that the actions which are anticipated to be undertaken under this contract is exempt from the preparation of an environmental assessment.
2. That the Board authorize the Chairperson to negotiate and, subject to necessary approvals, enter into a contract with Cascadia Research Collective to provide services to minimize and mitigate incidental take of false killer whales through fieldwork, spatial and temporal analysis of the overlap between fisheries and false killer whales, stranding response support, and targeted outreach efforts.
3. That review and approval of the Department of the Attorney General be obtained prior to entering into this contract.
4. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully submitted,



BRUCE S. ANDERSON, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
DLNR Chairperson

