

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

October 12, 2018

Board of Land
and Natural Resources
Honolulu, Hawaii

SUBJECT: REQUEST FOR APPROVAL TO ENTER INTO A FEDERALLY FUNDED SOLE SOURCE CONTRACT FOR YEAR THREE (3), FINAL PHASE OF THE GRANT, NOT TO EXCEED \$123,065.00, 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 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. The contract will be in the amount of \$123,065.00, and is funded solely from the federal grant from National Oceanic and Atmospheric Administration Endangered Species Act (ESA) Section 6, Grant No. NA15NMF4720015. The term of the contract will begin upon the receipt of the final signature on the contract to September 30, 2019. This represents year three (3), the final phase of the grant. This will be a Sole Source contract that have been approved by the State Procurement Office, Sole Source No. SS19-007C.

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 efforts and
3. Target outreach and awareness to specific fishers, boaters and tour operations to effectively mitigate or reduce interactions with false killer whales, identify species to complement research and increase public reporting of stranding.

The Division of Aquatic Resources (DAR) is providing administrative services for the contracting process. The State Procurement Office have approved the Sole Source procurement, No.SS19-007C in file at DAR.

Approval to enter the contact is being prepared for submission to the Attorney General's office for approval as to form. DAR is aware that implementation of the contract is dependent upon receipt of all required approvals.

HRS Chapter 343 Compliance with Environmental Law

The Chair have reviewed and approved Dr. Robin W. Baird, Cascadia Research Collective, to conduct odontocete research in Hawaiian waters by Federal Permit No. 20605, termination date of August 1, 2022, see attached title page.

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 Federal Permit No. 60605 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."

RECOMMENDATIONS:

Based on the above discussions, 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,



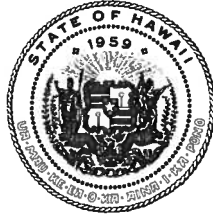
 Brian J. Neilson, Acting Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
DLNR CHAIRPERSON

DAVID Y. IGE
GOVERNOR OF HAWAII



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

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SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

October 12, 2018

TO: Division of Aquatic Resources File

THROUGH: Suzanne D. Case, Chairperson

FROM: Brian J. Neilson, Acting Administrator
Division of Aquatic Resources

A handwritten signature in black ink, appearing to read "Brian J. Neilson".

SUBJECT: Declaration of Exemption from the Preparation of an Environmental Assessment under the Authority of Chapter 343, HRS, and Chapter 11-200, HAR, for a Contract with Robin W. Baird, Cascadia Research Collective.

The following activities are found to be exempted from preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR:

Project Title: Contract with Robin W. Baird, Cascadia Research Collective, for research on the long-term study of movements and habitat use of odontocetes in Hawaiian waters.

Contract Number: Endangered Species Act (ESA) Section 6 grant (award number NA15NMF4720015)

Project Description: The research contract, as described below, would allow 1630 approaches of humpback whales, 1100 approaches of sperm whales, 2090 approaches for (range-wide) false killer whales and 3095 approaches for (Hawaiian Insular Stock) false killer whales in State waters for one year from October 12, 2018 or from final signature date, to conduct humpback whale, sperm whale and false killer whale movement and habitat use research. No animals will be captured or taken. Robin Baird currently has a National Marine Fisheries Service Permit to conduct this kind of work on cetaceans in Hawaii (NMFS Permit # 20605).

Because this contract involves marine mammals in Hawaiian waters, our ability to issue this contract is derived from federal permission when awarded the federal grant to conduct this work. The proposed contractee is responsible for obtaining all federal permits, including permission under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA) prior to conducting this work. Research includes 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.

Observations will typically be undertaken from a small vessel ranging from 6-9 m in length (Baird et al. 2013). Biopsy samples will be collected using a crossbow or pneumatic projector, with biopsy tips of up to 40 mm in length (8 mm diameter). Satellite tags will be deployed using a pneumatic projector (Dan-Inject JM Special 25). Two types of satellite tags will be used, a location-only Wildlife Computers SPOT5 or a location-dive MK10-A, both in the LIMPET configuration (details on satellite tags in Baird et al. 2010, 2011, 2012).

Biopsy samples will be sent to Hawaii Pacific University for hormone chemistry, the Southwest Fisheries Science Center for genetic analyses, or the Northwest Fisheries Science Center for toxicology analyses.

Consulted Parties: National Marine Fisheries Service (NMFS), Permits & Conservation Division, Office of Protected Species Division; Dr. Robin Baird, Cascadia Research Collective; Dr. Kristi West, Hawaii Pacific University

Exemption Determination: After reviewing §11-200-8, HAR, including the criteria used to determine significance under §11-200-12, HAR, DLNR has concluded that the activities under this contract would have minimal or no significant effect on the environment and that issuance of the contract is categorically exempt from the requirement to prepare an environmental assessment based on the following analysis:

1. All activities associated with this contract have been evaluated as a single action. Since this contract involves the same study methodology used throughout the contract period, the categorical exemption determination here will treat all planned activities as a single action under §11-200-7, HAR.
2. The Exemption Class #5 for Scientific Research with no Serious or Major Environmental Disturbance, Appears to Apply. § 11-200-8(a)(5), HAR, exempts the class of actions that involve “basic data collection, research, experimental management, and resource evaluation activities which do not result in a serious or major disturbance to an environmental resource.” This exemption class has been interpreted to include removal of live samples, such as those being proposed.

The proposed activities here appear to fall squarely under the exemption class identified under HAR §11-200-8(a)(5), and as described under the 2015 DLNR under exemption class #5, exempt items #13 and #15, which include respectively, “research or experimental management actions that the Department declares are designed specifically to monitor, conserve, or enhance native species or native species’ habitat” and the conducting of “...aquatic life surveys, inventory studies, new transect lines, photographing, recording, sampling, collection...”.

As discussed below, no significant disturbance to any environmental resource is anticipated. Thus, so long as the below considerations are met, an exemption class should include the action now contemplated.

3. Cumulative Impacts of Actions in the Same Place and Impacts with Respect to the Potentially Particularly Sensitive Environment Will Not be Significant. Even where a categorical exemption appears to include a proposed action, the action cannot be declared exempt if “the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.” §11-200-8(b), HAR. To gauge whether a significant impact or effect is probable, an exempting agency must consider every phase of a proposed action, any expected primary and secondary consequences, the long-term and short-term effects of the action, the overall and cumulative effect of the action, and the sum effects of an action on the quality of the environment. §11-200-12, HAR.

Significant cumulative impacts are not anticipated as a result of this activity, and numerous safeguards further ensure that the potentially sensitive environment of the project area will not be significantly affected. All activities will be conducted in a manner that does not diminish marine resources, qualities, and ecological integrity, or have any indirect, secondary, cultural, or cumulative effects.

Since no significant cumulative impacts or significant impacts with respect to any particularly sensitive aspect of the project area are anticipated, the categorical exemptions identified above should remain applicable.

4. Overall Impacts will Probably have a Minimal or No Significant Effect on the Environment. Any foreseeable impacts from the proposed activity will probably be minimal, and further mitigated by general and specific conditions attached to the contract. Specifically, all research activities covered by this contract will be carried out with strict safeguards for the natural, historic, and cultural resources, other applicable law and agency policies and standard operating procedures.

Conclusion. Upon consideration of the contract to be approved by the Chairperson, being delegated signatory authority on behalf of the Board of Land and Natural Resources at its meeting of October 24, 2008, the potential effects of the above listed project as provided by Chapter 343, HRS, and Chapter 11-200, HAR, have been determined to be of probable minimal or no significant effect on the environment and exempt from the preparation of an environmental assessment.



JUL 28 2017

Permit No. 20605
Expiration Date: August 1, 2022
Reports Due: November 1, annually

PERMIT TO TAKE PROTECTED SPECIES¹ FOR SCIENTIFIC PURPOSES

I. Authorization

This permit is issued to Robin Baird, Ph.D., Cascadia Research Collective, 218 ½ West Fourth Ave., Olympia, WA 98501 (hereinafter "Permit Holder"), pursuant to the provisions of the Marine Mammal Protection Act of 1972 as amended (MMPA; 16 U.S.C. 1361 *et seq.*); the regulations governing the taking and importing of marine mammals (50 CFR Part 216); the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*); and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR Parts 222-226).

II. Abstract

The objective of the permitted activity, as described in the application, is to continue a long-term assessment of the biology and ecology of multiple species of cetaceans to obtain information relevant to the management and conservation of populations and species and assess responses to anthropogenic activities. Questions being addressed include the size of populations, habitat use, population structure, social organization, range, movement patterns, movement rates, diving behavior, diet, ecology, disease monitoring, and behavior.

III. Terms and Conditions

The activities authorized herein must occur by the means, in the areas, and for the purposes set forth in the permit application, and as limited by the Terms and Conditions specified in this permit, including attachments and appendices. Permit noncompliance constitutes a violation and is grounds for permit modification, suspension, or revocation, and for enforcement action.

A. Duration of Permit

1. Personnel listed in Condition C.1 of this permit (hereinafter "Researchers") may conduct activities authorized by this permit through August 1, 2022. This permit expires on the date indicated and is non-renewable. This permit may be extended by the Director, NMFS Office of Protected Resources, pursuant to applicable regulations and the requirements of the MMPA and ESA.

¹ "Protected species" include species listed as threatened or endangered under the ESA, and marine mammals.
NMFS Permit No. 20605
Expiration Date: August 1, 2022

