

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

March 13, 2020

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

Land Board Members:

SUBJECT: REQUEST APPROVAL TO AUTHORIZE THE CHAIRPERSON TO ENTER INTO A MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF FORESTRY AND WIDLIFE AND THE UNITED STATE DEPARTMENT OF INTERIOR, U.S. FISH AND WILDLIFE SERVICE, FOR PROVIDING FIREFIGHTING ASSISTANCE.

SUMMARY

Attached is a Memorandum of Understanding (MOU) (EXHIBIT 1) between the Department of Land and Natural Resources Division of Forestry and Wildlife (DOFAW) and the U.S. Dept. of Interior, U.S. Fish and Wildlife Service. The MOU provides a mechanism for the U.S. Fish and Wildlife Service to compensate the State for expenses incurred fighting fire on USFSW lands statewide. The legal branch of the U.S. Fish and Wildlife Service and the State Attorney General's office have reviewed the MOU and approved its legal requirements as to form.

CHAPTER 343 ENVIRONMENTAL REVIEW

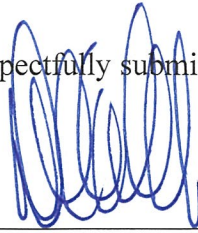
In accordance with the requirements of chapter 343, HRS, an environmental assessment is not required as this request does not include approval of an action, pursuant to §§343-2 and 343-5(a).

RECOMMENDATIONS

That the Board:

- 1) Approve that the Department enter into a Memorandum of Understanding with the U.S. Fish and Wildlife Service to provide firefighting assistance.
- 2) Authorize the Chairperson to negotiate, amend to include any terms as may be appropriate, finalize, and execute the draft Memorandum of Understanding (EXHIBIT 1), subject to approval as to form by the Department of the Attorney General.

Respectfully submitted,



David G. Smith, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

EXHIBIT 1:

Draft MOU between the Department of Land and Natural Resources and Hika`alani



MEMORANDUM OF UNDERSTANDING

BETWEEN
THE UNITED STATES FISH AND WILDLIFE SERVICE
AND
DEPARTMENT OF LANDS AND NATURAL RESOURCES DIVISION OF FORESTRY
AND WILDLIFE
FOR
PACIFIC ISLANDS REFUGES AND MONUMENTS

This Memorandum of Understanding (MOU) is made and entered into and between the U.S. Fish and Wildlife Service, Pacific Islands Refuges and Monuments, herein referred to as (SERVICE) and The State of Hawaii Department of Land and Natural Resources Division of Forestry and Wildlife, herein referred to as (DOFAW), and is effective upon signature by all parties and will remain in effect for five (5) years unless terminated by one or more of the parties.

I. AUTHORITIES

The SERVICE has entered into this MOU under the following authorities;

- Reciprocal Fire Protection Act of May 27th, 1955 (69 Stat. 66, 42 U.S.C 1856a-d)
- Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Public Law 93-288, as amended, 42 U.S.C. 5121-5207)
- Federal Fire Prevention and Control Act of October 29, 1974 et seq. (88 Stat. 1535; 15 U.S.C. 2201)
- Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c,
- Department of the Interior and Related Agencies Appropriations Act, 1999 as included in Public law 105-277, Div. A, Section 101(e)

DOFAW has entered into this MOU under:

- Hawaii Revised Statutes, Chapter 185, specifically sections 185-3, 185-4

II. PURPOSE

The purpose of this agreement is to coordinate and provide cooperative fire protection between the SERVICE and DOFAW, in order to more efficiently and effectively suppress wildland fires from damaging natural resource values managed by the SERVICE. Both Parties have shared interests in the protection of values from damage by wildland fire and wish to document the commitment in improving efficiency by facilitating the coordination and exchange of personnel, equipment, supplies, services, and funds among the Agencies as too will this Agreement. Furthermore, this Agreement describes the working relationship, financial arrangements, and joint activities between

the SERVICE and DOFAW not otherwise specified under the terms of any other fire protection agreement. Nothing herein shall be considered as obligating either party to expend or as involving either party in any contract or other obligation other than reimbursement for wildland fire suppression support.

III. RECITALS

Whereas, both parties have wildland fire protection responsibilities upon lands of their respective jurisdiction and limited fire protection resources;

Whereas, the SERVICE is the jurisdictional agency responsible for fire management on SERVICE lands;

Whereas, the SERVICE has limited specialized equipment and qualified personnel required to manage wildland fires;

Whereas, DOFAW can provide wildland fire initial attack capability to support and supplement the SERVICE's and other fire protection cooperator's resources;

Whereas, the SERVICE can reimburse DOFAW its cost for wildland fire suppression on SERVICE lands;

Whereas, if initial attack suppression actions on SERVICE lands are unsuccessful and the fire will not be contained within the first burning period, dispatching and continued incident support services will be transferred to Pacific Area Communication Center (PACC) 808-985-6170. Pacific Area Communication Center will provide extended attack support.

Therefore, for the mutual consideration herein stated, the parties hereby enter into this MOU.

IV. STATEMENT OF MUTUAL BENEFITS AND INTERESTS

The SERVICE shall:

- A. Reimbursement to DOFAW for direct costs for wildland fire suppression resource ordered including: overhead costs, equipment use cost and logistical support for wildland fire suppression that occur on SERVICE lands. Reimbursement rates are based on actual costs, 42 U.S. Code, 1856e – Reimbursement of Fire Funds.
- B. Reimburse DOFAW under the provisions within this MOU no less frequently than every 30 days. Reimbursement shall be at the rates provided under the current rate schedule. Reimbursement for costs not specified in the in the current rate schedule must be pre-approved by appropriate SERVICE fire management staff prior to submission for reimbursement.

The DOFAW shall:

- A. Conduct reciprocal initial attack (initial wildland fire suppression, wildland fire control and mop-up) **as requested** by SERVICE personnel on wildland fires occurring on SERVICE lands.

- B. Provide fire management resources to support SERVICE managed lands as conditions permit. Assistance will only be provided when DOFAW determines, in its sole discretion that the resources are available and can be committed without jeopardizing DOFAW's ability to protect its own jurisdiction.
- C. Follow all wildland fire suppression tactics addressed in the SERVICE's Wildland Fire Management Plan specific to the location of the fire.
- D. Report wildland fires promptly to the Principal Contacts (Exhibit A) for the SERVICE upon discovering or receiving reports of wildland fire on SERVICE lands.
- E. Forward the necessary wildland fire report data to the responsible SERVICE representative identified in the Principal Contact list (Exhibit A) when DOFAW suppresses wildland fires burning wholly or in part on SERVICE lands.
- F. Dispatch only personnel who meet or exceed the minimum National Wildfire Coordinating Group (NWCG) training requirements when responding pursuant to this MOU.

Both the SERVICE and DOFAW shall:

- A. Provide annually a principal contact information prior to the initiation of fire season. The information will include protection area maps for any new lands acquired by the SERVICE.
- B. Acknowledge 42 U.S. Code, 1856a – Authority to enter into reciprocal agreement; Waiver of Claims; reimbursement; ratification of prior agreements. Each agency head charged with the duty of providing fire protection for any property of the United States is authorized to enter into a reciprocal agreement, with any fire organization maintaining fire protection facilities in the vicinity of such property, for mutual aid in furnishing fire protection for such property and for other property for which such organization normally provides fire protection. Each such agreement shall include a waiver by each party of all claims against every other party for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of such agreement. Any such agreement may provide for the reimbursement of any party for all or any part of the cost incurred by such party in furnishing fire protection for or on behalf of any other party.
- C. Comply with the U.S. Fish and Wildlife Service Fire Management Policies. Policies includes, but not limited to; implementing fire management plans, promoting human safety as well as reducing hazardous conditions, conserving wildlife and its habitat, minimizing air and water quality impacts and meeting other desirable goals.
- D. Agree that the officer-in-charge who arrives first at a wildfire burning on or near lands of both parties will act as Incident Commander (IC). When representatives of both parties have arrived at a fire, the officers-in-charge for each party will mutually

agree to designate an IC, provided that nothing shall prevent a party to whom a request is made from refusing to respond when the sole determination of that party's commanding officer is that responding to the incident would create an unreasonable risk of danger to that party's employees, equipment or a third party.

- E. Be responsible for the training, equipment and welfare of personnel they dispatch, including the treatment of any personal injuries, which may result during any fire or in route to or from any fire as provided by the laws and regulations under which each party operates.
- F. Recognize that the other's training standards are reasonable, prudent, and acceptable for wildland fire response as well as fire support on lands under the jurisdiction of the parties to this MOU.
- G. Be responsible for operating, servicing, repairing and replacing their own equipment, except as agreed upon in writing by both parties in advance.
- H. Know that regardless of an incident's location, employees of DOFAW and the SERVICE will be subject only to the laws, regulations and rules governing their respective employers. No employee shall be entitled to compensation and/or benefits under this MOU except as specifically provided for under the terms of his or her employment with respective employer.

V. GENERAL PROVISIONS

- A. Neither party shall be required to incur expenses under the terms of this MOU, except as necessary to effectively implement this MOU. Additional expenditures and/or rates for resource ordered equipment and/or personnel not specified in the current rate schedule shall be subject to reimbursement as agreed by the parties hereto and approved by appropriate SERVICE fire management staff prior to submission for payment.
- B. Reimbursement will begin at the time ordered resources (on a resource order) leave their respective fire stations to respond to a SERVICE wildland fire and end when resources return to their respective fire station.
- C. Only costs for direct wildland fire suppression will be reimbursed by the SERVICE. These costs include: salary and overtime for wildland fire resources directly involved with wildland fire suppression and the logistical support (Fuel, meals, etc.) for these firefighters. The cost of "backfilling" local fire service employees into home unit positions for shift personnel that have been mobilized to incidents is accepted with the intent to make the local fire district whole. The reimbursed hours will be for base hours only, no overtime. All backfill hours should be documented and signed.

- D. Parties shall provide (upon request) any maps, documents, instructions and law enforcement reports which either party considers necessary to conduct work associated with this MOU.
- E. All aircraft and pilots used to transport SERVICE personnel or that are directly controlled by the SERVICE shall be certified by qualified SERVICE or United States Department of Interior National Business Center-Aviation Management inspector prior to SERVICE work.
- F. Both parties shall comply with all Federal statutes relating to nondiscrimination and all applicable requirements of other Federal laws, executive orders, regulations and policies, including but not limited to;
 - i. Title VI of the Civil Rights Act of 1964 (USC 2000d) which prohibits discrimination on the basis of race, color, handicap or national origin;
 - ii. Title IX of the Education amendments of 1972, as amended (USC 1681-1683) which prohibits the discrimination on the basis of sex.
- G. Either Party shall have the right to obtain access to examine all documents related to this MOU. Reasonable notice must be given to the other party through their authorized representatives.
- H. Modification of this MOU shall be made by mutual consent of both parties through the issuance of a written modification that is signed and dated by both parties prior to any changes being performed or taking effect.
- I. Either party may terminate this MOU by providing 60 days written notice to the other. Unless terminated by written notice, this MOU shall remain in effect for five years from the date of the last signature.
- J. The parties certify that the person executing this MOU on behalf of its respective entity has the legal authority to enter into this MOU.

VI. REIMBURSEMENT AUTHORITY

15 U.S. § 2210 - Reimbursement for costs of firefighting on Federal property

(a) Filing of reimbursement claims

Each fire service that engages in fire suppression on property which is under the jurisdiction of the United States may file a reimbursement claim with the Administrator for the amount of direct expenses or direct losses incurred by such fire service as a result of fighting such fire. The claim shall include such supporting information as the Administrator may prescribe.

(b) Determination

Upon receipt of a claim filed under subsection (a) of this section, the Administrator shall determine (1) what payments, if any, to the fire service or its parent jurisdiction, including taxes or payments in lieu of taxes, the United States has made for the support of fire services on the property in question; (2) the extent to which the fire service incurred additional firefighting costs, over and above its normal operating costs, in connection with the fire which is the subject of the claim; and (3) the amount, if any, of the additional costs referred to in paragraph (2) of this subsection which were not adequately covered by the payments referred to in paragraph (1) of this subsection.

(c) Payment

The Administrator of FEMA shall forward the claim and a copy of the Administrator's determination under subsection (b)(3) of this section to the Secretary of the Treasury. The Secretary of the Treasury shall, upon receipt of the claim and determination, pay such fire service or its parent jurisdiction, from any moneys in the Treasury not otherwise appropriated but subject to reimbursement (from any appropriations which may be available or which may be made available for the purpose) by the Federal department or agency under whose jurisdiction the fire occurred, a sum no greater than the amount determined with respect to the claim under subsection (b)(3) of this section.

(d) Adjudication

In the case of a dispute arising in connection with a claim under this section, the United States Court of Federal Claims shall have jurisdiction to adjudicate the claim and enter judgment accordingly.

VII. REIMBURSEMENT PACKAGE REQUIREMENTS

- A. DOFAW will bill the SERVICE for actual costs incurred for assistance provided and identified as reimbursable. Reimbursable costs include all costs associated with the direct fire operations and incident support ordered by or for the incident (except as otherwise described in reciprocal initial attack and independent action situations or cost share agreements). All billing packages will include documentation showing the order was processed through and tracked by the protecting agency. Bills for reimbursement must include resource orders for all resources. For reimbursement under the terms of this agreement all resource orders beyond initial attack must be mobilized and processed by an interagency dispatch center.
- B. All resource ordered personnel must include a detailed account of individual personnel start and end time for the wildland fire, signed by the employee and Time Unit Leader. The OF-288 form (Emergency Firefighter Time Report) is the desired format.
- C. Provide all fire equipment use reports (shift tickets), signed by the incident supervisor and an equipment invoice. The OF-286 form (Emergency Equipment Use Invoice) is the desired format.
- D. Miscellaneous logistical support reimbursement requests must include a resource order (or equivalent) to ensure that items were used in support of the wildland fire.

E. On fires where costs are incurred pursuant to the terms of this agreement, DOFAW shall submit a bill or estimate for reimbursement as soon as possible, but no later than 120 days after the fire is declared out. Payment shall be made to DOFAW within 90 days after receipt of the billing invoice.

F. Submit Service reimbursement request documents to:
U.S. Fish and Wildlife Service, Pacific Region
911 NE 11th Avenue
Portland, OR 97232
ATTN: Fire Management, Fire Business Specialist

G. Submit notices to DOFAW at:
State of Hawaii, Division of Forestry and Wildlife
1151 Punchbowl St., Room 325
Honolulu, HI 96813
ATTN: Fire Protection Forester

VIII. FIRE SUPPRESSION INVOICE REQUIREMENTS:

- List jurisdictional unit on each invoice/bill
- Cooperator name, address, phone number, and agency financial contact
- DOFAW's DUNS number
- Invoice or bill number
- Agreement number
- Incident name and number
- Resource Order Number(s)
- Dates of the incident covered by the billing
- Summary and detailed cost data for the amount being billed. Details should include standard resource type designation, number of personnel, and hours worked. Use incident generated cost information or standard generated cost reports generated by the Agency to support the billing whenever possible.

Summary cost data may include, but not be limited to, a list of personnel expenses including base, overtime and travel and a listing by vendor name and amount spent for supplies and services procured.

Electronic Funds Transfer (EFT): District shall designate a financial institution or an authorized payment agent through which a federal payment may be made in accordance with U.S. Treasury Regulations, Money, and Finance at 31 CFR 208, which requires that federal payments are to be made by EFT to the maximum extent possible.

In order to receive EFT payments, the District shall register in the System for Award Management (SAM) at www.sam.gov and follow the instructions online to register as a new entity.

Third Party Cost Recovery: Procedures for determining a cost recovery process will be in the Statewide Operating Plan. Investigation process is determined locally. The USFWS needs to investigate the cause of all fires that cross onto Refuge land. Further, the *Interagency Standards for Fire and Fire Aviation Operations* states, “For all human-caused fires where responsibility and negligence can be determined, actions must be taken to recover the cost of suppression activities, land rehabilitation, and damages to the resources and improvements.” The parties will undertake efforts both to protect the point of origin and to facilitate the effective investigation for cost recovery efforts.

IX. DEFINITION OF TERMS

- A. Principal Contacts. A list of appropriate contacts for DOFAW and the Service.
- B. Direct Costs. Costs directly related to the suppression effort. These costs do not include dispatch or other administrative costs.
- C. Duty Officer. The Service employs a fire management staff person that serves as the “Duty Officer”. The Service Duty Officer is the primary point for coordination with local units for payment and reimbursement issues during incidents and they are not the Incident Commander.
- D. Jurisdictional Agency. Agency which has overall land and resource management and/or protection responsibility as provided by Federal or State law.
- E. Overhead Costs. Costs not directly chargeable to suppression efforts, but which are part of the overall cost of operation.
- F. Suppression Work. All work of confining and extinguishing a fire beginning with its discovery.
- G. Reimbursable Work. Providing monetary compensation at the current rate schedule as updated annually for the use of any fire engines, fire support vehicles or equipment and wages for qualified wildland fire personnel and support staff responding to wildfires on Service lands.
- H. Reciprocal Fire Assistance. To provide reciprocated fire response assistance without charge.
- I. Appropriate Charges. Comprises all charges related to direct costs, overhead costs, and suppression work.
- J. Multijurisdictional Incident. An incident requiring action from multiple agencies that each have jurisdiction to manage certain aspects of an incident. In an Incident Command System (ICS), these incidents will be managed under Unified Command.

K. Unified Command. An application of ICS used when there is more than one agency with incident jurisdiction or when incidents cross political jurisdictions. Agencies work together through the designated members of the Unified Command to establish their designated Incident Commanders at a single Incident Command Post (ICP) and to establish a common set of objectives and strategies and a single Incident Action Plan.

This MOU involves no exchange of funds between the parties. Further, nothing shall be considered as obligating the SERVICE to expend funds or otherwise obligate the SERVICE for the future payment of money in excess of appropriations authorized by law and administratively allocated for the activities associated with this MOU, Antideficiency Act, P.L.97-258, 96 Stat 923.

The party's hereto have executed this Memorandum of Understanding by and through their authorized representatives on the day and year last written below.

 David Smith, Administrator
 State of Hawaii, Division of Forestry and Wildlife

 Date

 Ric Lopez, Refuge and Monument Supervisor
 U.S. Fish and Wildlife Service, Pacific Islands Refuges and Monuments

 Date

 Frank Lee, Procurement Officer
 U.S. Fish and Wildlife Service, Interior Region 12

 Date

Exhibit A.

Principal Contacts

PRINCIPAL CONTACT LIST			
NAME	TITLE	OFFICE	CELL
Michael Walker	Fire Protection Forester, State of Hawaii	(808)295-5853	
Ric Lopez	Refuge and Monument Supervisor	(808)792-9540	

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