

State of Hawai‘i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawai‘i 96813

December 13, 2024

Board of Land and Natural Resources
State of Hawai‘i
Honolulu, Hawai‘i

REQUEST FOR APPROVAL OF A STANDARD “MEMORANDUM OF AGREEMENT REGARDING USE OF DIVISION OF AQUATIC RESOURCES’ VESSEL FOR RESEARCH PURPOSES ONLY AND IN EXCHANGE FOR DATA AND RESEARCH GAINED FROM THE USE OF VESSEL” TEMPLATE FOR USE WITH GOVERNMENTAL AGENCIES, NON-GOVERNMENTAL ORGANIZATIONS, AND ACADEMIC INSTITUTIONS

AND

REQUEST TO DELEGATE AUTHORITY TO THE ADMINISTRATOR OF THE DIVISION OF AQUATIC RESOURCES TO ENTER INTO, FINALIZE, AND EXECUTE MEMORANDA OF AGREEMENT WITH FUTURE PARTER ORGANIZATIONS, SUCH AS GOVERNMENTAL AGENCIES, NON-GOVERNMENTAL ORGANIZATIONS, AND ACADEMIC INSTITUTIONS, FOR USE OF DEPARTMENT OF AQUATIC RESOURCES’ VESSELS FOR RESEARCH PURPOSES

BACKGROUND AND DISCUSSION

The Department of Land and Natural Resources’ [DLNR] mission is to “[e]nhance, protect, conserve and manage Hawai‘i’s unique and limited natural, cultural and historic resources held in public trust for current and future generations of the people of Hawai‘i nei, and its visitors, *in partnership with others from the public and private sectors*” [emphasis added]. DLNR’s Division of Aquatic Resources [DAR] is tasked with managing, conserving, and restoring the State’s unique aquatic resources for present and future generations. To facilitate this goal, DAR enters into agreements with various federal, state, and municipal agencies, along with non-governmental organizations and academic institutions, so that it can cooperate, share resources, and more efficiently accomplish its stated goals.

This Board submittal requests approval of a Memorandum of Agreement [MOA] template between DAR and future research partners, such as governmental agencies, non-governmental organizations, and academic institutions, that will allow DAR to provide transportation and vessel support to these future partners so that they can access research sites and conduct research.

If these future research partners seek to conduct research that involves SCUBA¹ diving, DAR would not be providing divers or dive equipment, nor would it oversee or be liable for research partners' dive plans or activities.

DLNR, and DAR in particular, is tasked with managing, conserving, and restoring the State's aquatic resources, and research, data collection, and monitoring are integral parts of its mission. DAR, however, does not always have adequate staff resources and funding to complete its research objectives. In many instances, outside organizations, such as other governmental agencies, non-governmental organizations, and academic institutions, seek to conduct novel research in Hawai'i state waters that would be of immense value to DAR, and DAR would like to encourage and support this research. As many of these partner organizations have adequate staff and funding but lack vessel and transportation support, DAR believes that offering vessel support to these partners would achieve many of DAR's research objectives with little cost to DAR itself.

To ensure that partner organizations' transportation needs do not conflict with internal DAR priorities, objectives, or obligations, this MOA template explicitly prohibits DAR from providing vessel support and transportation to partner organizations if there is a conflict over vessel usage between DAR and the partner organization.

As outlined in the MOA template, all potential partner organizations must obtain and maintain comprehensive insurance coverage throughout the term of the MOA. This insurance must cover losses, damages, or theft of all dive equipment, gear, and related assets used in connection with the activities under the MOA. Furthermore, as the partner organizations must provide their own dive teams, dive equipment, and dive plans if diving, the partner organizations must agree to indemnify the State against all liabilities, damages, losses, expenses, and claims arising out of any actions taken by DAR in its efforts to provide transportation to the partner organizations.

Anytime the MOA template is used for collaboration between DAR and a partner organization, a DAR employee² will be on the DAR-owned vessel(s). Only DAR employees will be operating and captaining the DAR-owned vessel(s).

The Board has statutory authority to prescribe forms of instruments and documents, such as this MOA template. HRS § 171-6(3).

Section 187A-8, HRS, provides that the Department shall cooperate with agencies of the United States or other governmental authorities having an interest in the subject matter of Title 12, HRS, in every way possible. The statute allows the Department to permit any appropriate agency of the United States or other governmental authority to "use any appliance, apparatus, or property controlled by the department, either independently or in conjunction with the department, upon such terms and conditions as the department and the agency may agree." HRS § 187A-8.

Section 187A-12, HRS, provides the University of Hawai'i shall have the privilege, free of charge, of using Department apparatus and appliances for the purposes of a biological laboratory

¹ Self-Contained Underwater Breathing Apparatus

² For purposes of this Agreement, "DAR employee" includes any person employed by DAR or on contract to DAR.

and for research and investigation in connection therewith, so far as it can be done without material interference with the use of the same.

Section 187A-4, HRS, provides that the Administrator of DAR has “charge, direction, and control of all matters relating to aquatic resources management, conservation, and development activities and such other matters as the board may direct.” Here, the Board could direct the DAR Administrator to enter into, finalize, and execute MOAs with future partner organizations based on the MOA template.

Section 187A-2, HRS, provides that the Department shall “[g]ather and compile information and statistics concerning the habitat and character of, and increase and decrease in, aquatic resources in the State, including the care and propagation of aquatic resources for protective, productive, and aesthetic purposes, and other useful information, which the department deems proper.” This statute mandates that the Department shall engage in data collection with regard to aquatic resources, and providing transportation to research partners who will be required to share all data collected with DAR would help fulfil that mandate.

This Board submittal further requests that the Board authorize the delegation of authority to the Administrator of DAR to enter into, finalize, and execute MOAs between DAR and future partner organizations, based on this MOA template, for the purpose of reducing the number of agenda items at Board meetings and increasing Department-wide efficiency.

RECOMMENDATIONS:

That the Board:

1. Authorize and approve the “Memorandum of Agreement Regarding Use of [DAR] Vessel for Research Purposes Only and in Exchange for Data and Research Gained from Use of Vessel” template for future collaborations with partner governmental agencies, non-governmental organizations, and academic institutions for the transportation of non-DAR researchers to research sites; and
2. Authorize the Administrator of the Division of Aquatic Resources to enter into, finalize, and execute future Memoranda of Agreement, based on the “Memorandum of Agreement Regarding Use of [DAR] Vessel for Research Purposes Only and in Exchange for Data and Research Gained from Use of Vessel” template, with partner governmental agencies, non-governmental organizations, and academic institutions.

Respectfully submitted,



BRIAN J. NEILSON, Administrator

Division of Aquatic Resources

APPROVED FOR SUBMITTAL



DAWN N. S. CHANG, Chairperson

Board of Land and Natural Resources

Attachments:

Exhibit 1 – Memorandum of Agreement Regarding Use of [DAR] Vessel for Research Purposes Only and In Exchange for Data and Research Gained from Use of Vessel (Template)

EXHIBIT 1

MEMORANDUM OF AGREEMENT REGARDING USE OF DIVISION OF AQUATIC RESOURCES VESSEL FOR RESEARCH PURPOSES ONLY AND IN EXCHANGE FOR DATA AND RESEARCH GAINED FROM USE OF VESSEL (TEMPLATE)

MEMORANDUM OF AGREEMENT

BETWEEN

THE STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES

AND

[PARTNER AGENCY/ORGANIZATION/ACADEMIC INSTITUTION]

REGARDING

USE OF DIVISION OF AQUATIC RESOURCES' VESSEL
FOR RESEARCH PURPOSES ONLY AND
IN EXCHANGE FOR DATA AND RESEARCH GAINED FROM THE USE OF VESSEL

This Memorandum of Agreement (“Agreement”) is made and entered into on this _____ day of _____, 20__, by and between the State of Hawaii, Department of Land and Natural Resources (“DLNR”), Division of Aquatic Resources (“DAR”), whose mailing address is 1151 Punchbowl Street, Honolulu, Hawai‘i 96813, and [PARTNER AGENCY/ ORGANIZATION/ACADEMIC INSTITUTION], whose mailing address is [insert address], regarding the use of DAR vessel for research purposes only and in exchange for DAR access to all data and research gained from use of the vessel.

WITNESSETH

WHEREAS, DLNR’s mission is to manage and conserve State lands and resources, including cultural and natural resources, and does so through eight operating divisions; and

WHEREAS, DAR’s mission is to work with the people of Hawaii to manage, conserve and restore the State’s unique aquatic resources and ecosystems for present and future generations; and

WHEREAS, [Partner Agency/Organization/Academic Institution]’s mission is to [insert organization’s mission]; and

WHEREAS, DAR and [Partner Agency/Organization/Academic Institution] share a common interest in conducting research on [insert research objectives here]; and

WHEREAS, DAR and [Partner Agency/Organization/Academic Institution] seek to conduct [insert research objectives here] at [insert location] (“Research Area”); and

[WHEREAS, both DAR and [Partner Agency/Organization/Academic Institution] have diving programs that comply with standards set by the American Academy of Underwater Sciences

(AAUS), as described in the National Oceanic and Atmospheric Administration’s (NOAA) Diving Standards and Safety Manual;¹; and] *

[WHEREAS, [Partner Agency/Organization/Academic Institution] utilizes diving equipment, including Self-Contained Underwater Breathing Apparatus (or “SCUBA”) equipment, to conduct its underwater research but does not possess a boat or vessel to transport its researchers to the Research Area; and]*

WHEREAS, DAR possesses boats or vessels that are capable of transporting [Partner Agency/Organization/Academic Institution]’s researchers to the Research Area, but DAR does not currently have the staff capacity to participate in research activities that would aid in [Partner Agency/Organization/Academic Institution]’s research; and

WHEREAS, a Memorandum of Agreement that clarifies the relationship between DAR and [Partner Agency/Organization/Academic Institution] would greatly benefit both Parties and the general public by enabling [Partner Agency/Organization/Academic Institution] to conduct research on DAR-owned vessels and by enabling DAR to access [Partner Agency/Organization/Academic Institution]’s research and data, now both Parties hereto deem it mutually advantageous and desirable to cooperate and hereby agree as follows:

A. [Partner Agency/Organization/Academic Institution] agrees to:

1. [Ensure that its SCUBA diving program and SCUBA dive team comply with DAR’s Diving Safety Manual (last updated February 27, 2024) or comparable standards set by the AAUS, as described in the NOAA Diving Standards and Safety Manual;] *
2. [Submit a Dive Plan and Emergency Management Plan to DAR’s Diving Control Board two (2) weeks, or more, in advance of the diving operation;] *
3. [Cover all [Partner Agency/Organization/Academic Institution] SCUBA divers under [Partner Agency/Organization/Academic Institution]’s auspice for any dive conducted under this Agreement;]*
4. [Provide all SCUBA divers, SCUBA equipment, topside SCUBA diving support personnel, and SCUBA emergency equipment for the SCUBA operations;]*
5. [Ensure the safety of all divers during SCUBA operations;]*
6. Provide all equipment necessary for the research, except the DAR-owned vessel;

¹ NOAA Diving Standards & Safety Manual, *available at* http://www.oma.noaa.gov/sites/default/files/documents/NDSSM%20Final_041217.pdf

* Bracketed clauses may be deemed inapplicable and subsequently omitted in the event that the utilization of Self-Contained Underwater Breathing Apparatus (SCUBA) equipment or the engagement in SCUBA diving activities is not anticipated.

7. Share all research data obtained by [Partner Agency/Organization/Academic Institution] with DAR, upon request;
8. Share all publications by [Partner Agency/Organization/Academic Institution] developed, in part or wholly, as a result of this Agreement;
9. Provide all funding necessary for the research conducted pursuant to usage of the DAR-owned vessel, except for the DAR expenses outlined in paragraph B.7. of this Agreement;
10. Obtain and maintain comprehensive insurance coverage throughout the term of this Agreement. This insurance must cover losses, damages, or theft of all dive equipment, gear, and related assets used in connection with the activities under this Agreement. [Partner Agency/Organization/Academic Institution] must provide a certificate of insurance or other acceptable proof of coverage to DAR within two (2) weeks before the commencement of any research operations pursuant to this Agreement and upon each renewal or modification of the insurance policy. This proof of insurance must clearly indicate the effective dates of the policy, the coverage amounts, and a summary of the covered items and risks;
11. Indemnify, defend, and hold harmless the State of Hawai‘i, its officers, directors, agents, employees, and other related parties from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments including reasonable attorneys' fees, costs and expenses, incidental thereto, which may be suffered by, accrued against or charged to the Government arising out of or relating to any act or error or omission, negligence, or misconduct by DAR, its officers, directors, agents, employees or subcontractors; and
12. Comply with any federal, state, county, or other applicable laws, including but not limited to chapter 343, Hawai‘i Revised Statutes.

B. DAR agrees to:

1. [Timely review [Partner Agency/Organization/Academic Institution]’s Dive Plan and Emergency Management Plan received by DAR’s Diving Control Board;] *
2. Provide DAR-owned vessel(s) to transport [Partner Agency/Organization/Academic Institution]’s dive team to the Research Area, subject to the availability of vessel(s);
3. Provide at least one DAR employee² to operate the DAR-owned vessel for any usage of any DAR-owned vessel provided for [Partner Agency/Organization/Academic Institution]’s research under this Agreement;

* Bracketed clauses may be deemed inapplicable and subsequently omitted in the event that the utilization of Self-Contained Underwater Breathing Apparatus (SCUBA) equipment or the engagement in SCUBA diving activities is not anticipated.

² For purposes of this Agreement, “DAR employee” includes any person employed by DAR or on contract to DAR.

4. Assess environmental and traffic conditions at the Research Area and relay this information to [Partner Agency/Organization/Academic Institution]'s research team;
5. [Provide [Partner Agency/Organization/Academic Institution]'s diving supervisor permission to commence SCUBA diving operations;]*
6. Acknowledge [Partner Agency/Organization/Academic Institution]'s research contribution where any related research or data are reported or used in a DLNR-issued report or publication;
7. Provide all funding necessary for the operation of the DAR-owned vessel, such as fuel and DAR employee time; and
8. Comply with any federal, state, county, or other applicable laws.

THE PARTIES FURTHER AGREE THAT:

1. This Agreement will remain in effect as long as DAR and [Partner Agency/Organization/Academic Institution] abide by the conditions stated herein and may be altered only by written agreement of the parties.
2. This Agreement may be terminated by either Party upon thirty (30) Days written notice to the other party.
3. Only DAR employees may operate or captain DAR-owned vessel(s) used under this Agreement.
4. DAR shall not prioritize [Partner Agency/Organization/Academic Institution]'s research or SCUBA operations above DAR priorities, objectives, or obligations. In the event of a conflict over vessel usage, DAR-related vessel use will always have priority over [Partner Agency/Organization/Academic Institution]'s use of DAR-owned vessels.
5. If [Partner Agency/Organization/Academic Institution]'s research, research data, or publication that is shared with DAR pursuant to this Agreement is in any form confidential, [Partner Agency/Organization/Academic Institution] shall submit a cover sheet with any such information indicating that it is confidential and requesting that DAR hold it in confidence. If no such confidentiality notice is provided, DLNR shall be under no obligation to keep such information confidential. Any information provided to the DLNR is subject to the Chapter 92F, Hawai'i Revised Statutes. The Parties may supplement this Agreement with a data use agreement, if necessary.
6. There shall be no payment required from [Partner Agency/Organization/Academic Institution] for usage of DAR-owned vessels pursuant to this Agreement.

7. [All SCUBA divers, employed or contracted by any Party, have all necessary professional qualifications to participate in any research operation under this Agreement. Each Party is responsible for ensuring its SCUBA divers are appropriately trained and qualified.]*
8. [If [Partner Agency/Organization/Academic Institution] fails to provide DAR with the Dive Plan and Emergency Management Plan to DAR's Diving Control Board two (2) weeks in advance or fails to maintain any required insurance, any DAR employee may cancel any scheduled usage of DAR-owned vessels under this Agreement until such plans or insurance are provided to DAR.]*
9. [If both Parties participate in [Partner Agency/Organization/Academic Institution]'s Dive Plan under this Agreement, the Parties shall agree in writing, no later than two (2) weeks in advance of any diving operation, to determine which Party shall take the lead on the dive plan and auspice. Each Party bears the responsibility of ensuring that its SCUBA divers have the proper Letter of Reciprocity for diving under each other's auspice.]*
10. All notices, bills, demands, payments, accounting or other communications that any party desires or is required to give under the provisions of this Agreement shall be given in writing and shall be deemed to have been given if hand delivered, sent by facsimile, emailed, or if mailed by United States mail, prepaid to the party or parties at the address noted below or such other address as a party may designate in writing from time to time:

Department of Land and Natural Resources:

Division of Aquatic Resources
1151 Punchbowl Street, Room 330
Honolulu, Hawaii 96813
(808) 587-0115

[Partner Agency/Organization/Academic Institution]

Contact Person Name
Address
City, State, Zip Code
Phone Number

* Bracketed clauses may be deemed inapplicable and subsequently omitted in the event that the utilization of Self-Contained Underwater Breathing Apparatus (SCUBA) equipment or the engagement in SCUBA diving activities is not anticipated.

IN WITNESS WHEREOF, the State of Hawaii, Department of Land and Natural Resources, Division of Aquatic Resources and [Partner Agency/Organization/Academic Institution] have executed this Memorandum of Agreement as of the date first written above.

THE STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF AQUATIC RESOURCES

Form Approved by the Board of Land
and Natural Resources at its meeting on

_____.

By: _____

[Name]

Administrator

Division of Aquatic Resources

*Pursuant to the delegation of authority by the Board
of and Natural Resources at its meeting on _____.*

Date: _____

[PARTNER AGENCY/ORGANIZATION/ACADEMIC INSTITUTION]

By: _____

Date: _____

Printed Name: _____

Title: _____