

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

January 9, 2008

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Board members:

SUBJECT: REQUEST FOR APPROVAL OF A MEMORANDUM OF AGREEMENT BETWEEN THE U.S. FISH AND WILDLIFE SERVICE, PACIFIC ISLANDS FISH AND WILDLIFE OFFICE, THE STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES, AND THE HAWAII WILDLIFE CENTER

SUMMARY:

This Board Submittal requests approval of a Memorandum of Agreement (MOA) between the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (Service), the State of Hawaii Department of Land and Natural Resources (DLNR), and the Hawaii Wildlife Center (HWC) to establish certain commitments binding upon the Service, DLNR, and HWC regarding the establishment of oiled wildlife stabilization and rehabilitation capabilities in the State of Hawaii.

BACKGROUND:

In accordance with the Oil Pollution Act of 1990, as amended (33 U.S.C. §2701-2761), the United States Department of Interior, U.S. Fish and Wildlife Service, the State of Hawaii Department of Health, and the State of Hawaii Department of Land and Natural Resources are the Federal and State Trustees, respectively, with the authority to pursue the "immediate and effective protection, rescue, and rehabilitation of, and minimization of risk of damage to, fish and wildlife and their habitat that are harmed or may be jeopardized by a discharge".

In the event of an oil spill in Hawaii, it is recognized that significant risks may ensue for various species of wildlife in particular waterbirds, seabirds, and shorebirds. The Department, as a Trustee, in coordination with other members of the Area Committee, a committee responsible for

oil spill response and preparedness planning within the State of Hawaii, is responsible for pre-spill planning, including identification of resources at risk, and ensuring that the trust resources in the State of Hawaii are being adequately addressed by the spill response.

The Board through the Department of Land and Natural Resources is charged with the management of wildlife resources in the State of Hawaii, (Sections 183D-2(1), 183D-2(6), 183D-2(7) HRS). The Department of Land and Natural Resources is the duly authorized agency within the State of Hawaii with the statutory (HRS Title 12, chapters and sections therein) and constitutional (Article XI) responsibility for the management and conservation of wildlife. The actions by the Department are authorized under HRS Chapter 183D, Wildlife, Section 183D-2, Powers and Duties of Department, HRS Chapter 195D, Conservation of Aquatic Life, Wildlife, and Land Plants, Section 195D-1, General Provisions, and Section 195D-5(b2), Conservation Programs.

The MOA establishes a cooperative partnership that will benefit various species of wildlife in particular, waterbirds, seabirds, and shorebirds protected under the Migratory Bird Treaty Act of 1918, the Endangered Species Act of 1973, and Hawaii Revised Statutes in the event of an oil spill.

DISCUSSION:

The goal of the MOA is for the parties to establish oiled wildlife (primarily bird) rehabilitation capabilities in Hawaii, including: 1) the identification and maintenance of a local network of qualified individuals for collection, stabilization, and rehabilitation of oiled birds and other wildlife as appropriate; and, 2) the identification of and agreement(s) with adequate facilities for stabilization and rehabilitation as described in the Hawaii Area Contingency Plan (HACP).

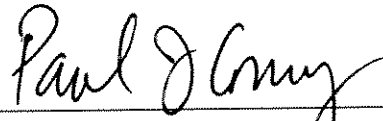
The Memorandum of Agreement may be terminated by providing sixty (60) days prior written notice to the other parties or by agreement of all parties.

RECOMMENDATION:

That the Board authorize the Chairperson to execute a Memorandum of Agreement between the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, the State of Hawaii

Department of Land and Natural Resources, and the Hawaii Wildlife Center subject to the approval as to form of the Memorandum of Agreement by the Attorney General's office.

Respectfully submitted,



Paul J. Conry, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN, Chairperson

**MEMORANDUM OF AGREEMENT
BETWEEN
THE U. S. FISH AND WILDLIFE SERVICE, PACIFIC ISLANDS FISH AND
WILDLIFE OFFICE
THE STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES,
AND
THE HAWAII WILDLIFE CENTER**

**REGARDING THE
ESTABLISHMENT OF OILED WILDLIFE STABILIZATION AND
REHABILITATION CAPABILITIES
IN THE STATE OF HAWAII**

WHEREAS, in accordance with the U.S. Fish and Wildlife Response Plan required under the Oil Pollution Act of 1990 (Pub.L.101-380, Aug. 18, 1990, 104 Stat. 484 as amended) (33 U.S.C. §2701-2761) and the Federal Water Pollution Control Act (as codified at 33 USCG § 1321) the United States Department of Interior, U. S. Fish and Wildlife Service (Service); the State of Hawaii Department of Health (DOH) and the State of Hawaii Department of Land and Natural Resources (DLNR) are the Federal and State Trustees, respectively, with authority to pursue the “immediate and effective protection, rescue, and rehabilitation of, and minimization of risk of damage to, fish and wildlife resources and their habitat that are harmed or may be jeopardized by a discharge;”

WHEREAS, in the event of an oil spill in Hawaii, it is recognized that significant risks may ensue for various species of wildlife, in particular waterbirds, seabirds, and shorebirds protected under the Migratory Bird Treaty Act of 1918, as amended (MBTA) (16 U.S.C. §703-712), the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. §1531-1544), and State law (HRS Chapter 183D);

WHEREAS, the Trustees, in coordination with other members of the Area Committee, are responsible for pre-spill planning, including identifying resources at risk and ensuring that Service and State trust resources in the State of Hawaii are being adequately addressed by the spill response;

WHEREAS, via regulations, permits, and Memoranda of Agreement, Service and State personnel possess the necessary authority under the MBTA and the ESA to take appropriate action to protect wildlife in the event of an emergency such as an oil spill;

WHEREAS, it is the Service’s and DLNR’s responsibility to ensure that the wildlife response contractor is qualified to treat and care for oiled wildlife, holds the appropriate permits, and maintains proper chain-of-custody procedures;

WHEREAS, the Service has oversight for all phases of a migratory bird rehabilitation effort (see

attached “Best Practices for Migratory Bird Care During Spill Response”);

WHEREAS, as part of the pre-spill planning effort, it is important that the Trustees identify appropriate personnel and facilities for oiled bird (and other wildlife, as appropriate) collection, stabilization, and rehabilitation, and ensure such personnel and facilities are available for immediate use in the event of an oil spill;

WHEREAS, the Hawaii Area Contingency Plan, Change 5, dated May 2005 (HACP), which is hereby incorporated by reference, specifies the procedures that will be followed for oiled wildlife rehabilitation in Hawaii (Section 3500);

WHEREAS, the Trustees may enter into agreements with nonprofit organizations to establish and equip oiled wildlife rescue and rehabilitation facilities for spill response activities; and,

WHEREAS, the Hawaii Wildlife Center (HWC), a 501(c)(3) State-registered domestic non-profit corporation is dedicated to establishing and operating a center for the care and conservation of native Hawaiian wildlife through hands-on treatment, emergency response, research, training, public outreach, cultural and educational programs, and any other appropriate means; possesses regional and international expertise in stabilizing and rehabilitating oiled birds; trains personnel to collect, stabilize, and rehabilitate such birds; and identifies, equips, and manages wildlife rescue and rehabilitation facilities;

NOW, THEREFORE, the Service, DLNR, and HWC (hereinafter “the Parties”) agree to the following provisions:

AGREEMENT

I. COOPERATIVE PROJECT

The Parties agree to work together to establish oiled wildlife (primarily bird) rehabilitation capabilities in Hawaii, including: 1) the identification and maintenance of a local network of qualified individuals for collection, stabilization, and rehabilitation of oiled birds and other wildlife as appropriate; and, 2) the identification of and agreement(s) for adequate facilities for stabilization and rehabilitation, as described in the HACP.

II. TERM OF AGREEMENT

This Agreement shall become effective upon being executed by all parties and will remain in force and effect until terminated. Any party to this Agreement may terminate it by providing 60 days prior written notice to the other parties or by agreement by all parties.

III. SPECIFIC OBLIGATIONS OF THE PARTIES

A. HWC Obligations

1. HWC will, upon request by and establishment of contract with the Trustees, conduct a thorough assessment of the current capabilities for oiled wildlife collection, stabilization, and rehabilitation in Hawaii, and perform an assessment of current needs, and will provide a report with a summary of the assessments and recommendations for action by the Trustees, to include: 1) recommendations for specific facilities in Hawaii for the stabilization and rehabilitation of waterbirds, seabirds, shorebirds, and other wildlife as appropriate in the event of an oil spill; and, 2) recommendations for equipment, personnel, and training needed at said facilities.
2. HWC will, upon request by and establishment of contract with the Trustees, provide the necessary training for local personnel in wildlife collection, stabilization, and rehabilitation procedures (see "Best Practices for Migratory bird Care during Oil Spill Response.")
3. HWC will, upon request by and establishment of contract with the Trustees and after obtaining all necessary Federal and State permits, serve as a wildlife rehabilitation facility in the State of Hawaii in the event of an oil spill.

B. DLNR Obligations

1. DLNR will ensure that the plan of action recommended by HWC for the collection and rehabilitation of oiled birds meets all requirements of State laws, regulations, and policies.
2. DLNR will pursue the hiring of a State oiled wildlife response coordinator, to assist in all aspects of oiled wildlife response within the State, including coordination with the other Trustees and HWC.
3. DLNR will provide technical assistance and guidance to HWC and the Service regarding the natural resources that may be affected by an oil spill and local facilities and expertise that may be available for coordination with HWC.
3. DLNR will assist the HWC and other local oiled wildlife collectors and rehabilitators in securing the appropriate State permits.
4. DLNR will pursue funding for accomplishment of the tasks identified in this Agreement.

C. Service's Obligations

1. The Service will ensure that the plan of action recommended by HWC for the collection and rehabilitation of oiled birds meets all requirements of Federal laws,

regulations, and policies.

2. The Service will provide technical assistance and guidance to HWC and DLNR regarding the natural resources that may be affected by an oil spill and local facilities and expertise that may be available for coordination with HWC.
3. The Service will ensure that all appropriate Federal permits are in place for HWC and local wildlife collectors and rehabilitators.
4. The Service will pursue funding for the tasks identified in this Agreement.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by an authorized official on the Day and Year set forth opposite their signature.

U.S. FISH AND WILDLIFE SERVICE

Patrick Leonard, Field Supervisor
Pacific Islands Fish and Wildlife Office
U. S. Fish and Wildlife Service

Date

STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES

Laura H. Thielen, Chairperson
State of Hawaii Department of Land and Natural Resources

Date

APPROVED AS TO FORM:

Deputy Attorney General

Date

HAWAII WILDLIFE CENTER

Linda Elliott, President
Hawaii Wildlife Center

Date

APPENDIX A – “Best Practices for Migratory Bird Care During Oil Spills Response”

Available on-line at: http://www.fws.gov/contaminants/OtherDocuments/best_practices.pdf