

**NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 02-111-09
MAY 21, 2003**

**Protected Resources Management
Section 6 Agreements**

**COOPERATIVE AGREEMENT BETWEEN NMFS AND THE PUERTO RICO
DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES**

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Signed _____ /s/ **12/19/05** _____ Date

James H. Lecky

Date

Director, Office of Protected Resources

ENDANGERED SPECIES ACT
SECTION 6 COOPERATIVE AGREEMENT BETWEEN
THE NATIONAL MARINE FISHERIES SERVICE
OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
OF THE U.S. DEPARTMENT OF COMMERCE, AND THE PUERTO RICO
DEPARTMENT OF NATURAL AND ENVIRONMENTAL RESOURCES

This Cooperative Agreement is entered into pursuant to Section 6(c) (1) of the Endangered Species Act of 1973, 16 U.S.C. §1531 *et seq.*, ("the Act"), between the National Marine Fisheries Service ("NMFS"), an agency of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, and the Puerto Rico Department of Natural and Environmental Resources ("PRDNER").

I

WHEREAS, the Congress of the United States has found that there are resident species of fish or wildlife which are in danger of extinction and that these species of fish or wildlife are of aesthetic, ecological, educational, scientific, economic, and other value to the Nation and its people;

II

WHEREAS, the purposes of the Act are to provide a means whereby the ecosystems upon which endangered or threatened fish or wildlife depend may be conserved, to provide a program for the conservation of such species, and to take such steps as may be appropriate to achieve the purposes of the various treaties and conventions related to the conservation of fish or wildlife;

III

WHEREAS, the Congress of the United States has declared that encouraging the incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in its fish or wildlife;

IV

WHEREAS, the Secretary of Commerce has delegated responsibilities under the Act to the NMFS;

V

WHEREAS, NMFS desires to enter into this Agreement for the purpose of assisting in the implementation of the endangered and threatened fish or wildlife conservation programs of the Commonwealth of Puerto Rico for those species under NMFS jurisdiction pursuant to Reorganization Plan Number 4 of 1970 and any subsequent agreement with the U.S. Fish and Wildlife Service;

VI

WHEREAS, the Commonwealth of Puerto Rico, acting through PRDNER, wishes to administer its programs for the conservation of endangered or threatened fish or wildlife listed in Appendix I of this Agreement in harmony with the terms and spirit of the Act;

VII

WHEREAS, the parties agree that programs of PRDNER are designed to assist resident endangered fish and wildlife listed in Appendix I and that it is the mutual desire of PRDNER and NMFS to work in harmony for the common purposes of planning, developing and conducting programs to protect, manage and enhance populations of all resident endangered or threatened fish or wildlife within this Commonwealth listed in Appendix I;

VIII

WHEREAS, NMFS has the statutory and administrative responsibility to establish programs for the conservation of endangered and threatened species which are under its jurisdiction pursuant to Reorganization Plan Number 4 of 1970 and any subsequent agreement with the U.S. Fish and Wildlife Service; to reach agreement with PRDNER as to which resident endangered or threatened species are most urgently in need of a conservation program in the Commonwealth of Puerto Rico; to provide review of the PRDNER program at annual intervals; to provide funding to that program as such funding is available and in accordance with the terms of the Act; to provide coordination among the programs of the various States, Commonwealths, and Territories; and to exchange with PRDNER such biological data or other information which may result in the enhancement of the opportunities for the continued survival of endangered or threatened fish or wildlife;

IX

WHEREAS, PRDNER has statutory and administrative responsibility to conserve endangered or threatened fish or wildlife which are resident in the Commonwealth of Puerto Rico, including waters of the Commonwealth of Puerto Rico, and listed in Appendix I of this Agreement;

X

WHEREAS, PRDNER (a) has authority to conserve resident fish or wildlife determined by PRDNER or the Secretary to be endangered or threatened and listed in Appendix I of this Agreement; (b) has established and provided copies of acceptable conservation programs for those resident threatened and endangered species in the Commonwealth of Puerto Rico identified as most urgently in need of conservation (c) is authorized to conduct investigations to determine the status and requirements for survival of resident fish and wildlife listed in Appendix I; (d) has authority to establish programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened fish or wildlife listed in Appendix I;

and (e) provides for public participation in the designation of resident fish or wildlife as endangered or threatened.

Now, therefore, the parties agree as follows:

1. Cooperative Program

(a) PRDNER shall carry out the activities identified in its conservation programs including those in Appendix II of this Agreement for the benefit of the endangered or threatened fish or wildlife which are resident in the Commonwealth of Puerto Rico including marine waters under the jurisdiction of the Commonwealth and listed in Appendix I of this Agreement.

(b) In order to ensure that PRDNER continues to maintain an acceptable conservation program, consistent with the purposes and policies of the Act, for those species listed in Appendix I, on June 30 each year, in conjunction with the reporting requirements required by section 6(b) of this Agreement, PRDNER shall furnish to NMFS all pertinent details, information and data requested by NMFS, that identifies the conservation programs for those species that NMFS and PRDNER agree are most urgently in need of such conservation programs.

(c) NMFS may agree with PRDNER to provide financial assistance for the implementation of an acceptable project for the conservation of endangered and threatened fish or wildlife. Such financial assistance will require the submission of an application for Federal Assistance and Grant-In-Aid Award and successful negotiation of a Project Agreement. NMFS in providing financial assistance must comply with all relevant Federal law.

(d) As addition...] sped-nfre-::!rlenfish or w:ldlife i:: tl1f'ommomv alth (;f Puerto Rico are determined by NMFS to be endangered or threatened pursuant to Section 4(a) of the Act, the parties agree to revise Appendix I promptly upon such final determination, and upon a determination by NMFS based on a submission of information by PRDNER, that PRDNER maintains an adequate and active conservation program with respect to such species, and to cooperate in the development of programs and projects for the benefit of such species.

(e) It is understood that any Federal funding pursuant to Section 6(d) of the Act is contingent on the continued implementation of an adequate and active program for the conservation of Federally listed endangered and threatened fish or wildlife which are resident in the Commonwealth of Puerto Rico and which are listed in Appendix I. If the program for conservation of such fish or wildlife is determined by NMFS to be inadequate or inactive, this Agreement and funding pursuant thereto shall be terminated in accordance with section 6 of this Agreement.

(f) As part of the listing, designation, and recovery plan processes of Section 4 of the Act, the consultation process of Section 7 of the Act, and the permit process of Section 10 of the Act, and in accordance with the policy issued by NMFS and the U.S. Fish and Wildlife Service on July 1, 1994 with respect to cooperation with State, Commonwealth and Territorial governments, the parties agree to exchange biological and other data as necessary to facilitate implementation of the ESA with respect to resident fish and wildlife in the Commonwealth of Puerto Rico.

(g) All activities affecting endangered and threatened marine mammals shall be consistent with the Marine Mammal Protection Act of 1972 (MMPA), 16 U.S.C. §1361 *et seq.*, as well as with the Act, including all permitting requirements.

(h) PRDNER agrees not to engage in, or issue a permit authorizing the taking of, any resident Federally endangered fish or wildlife listed at 50 C.F.R. 222.23(a), or any resident Federally threatened fish or wildlife listed at 50 C.F.R. 227.4 the taking of which is prohibited without the prior issuance of a permit to the applicant by NMFS.

(i) As part of this cooperative program, the law enforcement authorities of NMFS and the Commonwealth of Puerto Rico shall cooperate to the extent practicable in the detection, apprehension, and prosecution of violators of the Act or Commonwealth laws which are intended to conserve endangered and threatened fish or wildlife. This Agreement does not grant Federal enforcement authority to Commonwealth enforcement officers or Commonwealth enforcement authority to NMFS officers.

(j) Entering into this Agreement shall not affect the applicability of prohibitions set forth in or authorized pursuant to Section 4(d) or Section 9(a)(1) of the Act.

2. Records

In addition to any further record keeping requirements for specific programs or projects that may be set forth in Appendix II of this Agreement, PRDNER shall maintain records of its Federally funded projects for the conservation of endangered and threatened fish or wildlife listed in Appendix I in accordance with the Federal Aid Manual.

3. Notification.

(a) PRDNER agrees to inform NMFS of any change in circumstances that could cause the program to be out of conformance with the requirements of Section 6 (c) of the Act, including changes in PRDNER's relevant constitutional, statutory, or regulatory authority. PRDNER shall promptly furnish NMFS with an assessment of the effect of such a change on PRDNER's ability to remain in compliance with the requirements of Section 6 (c) of the Act.

(b) PRDNER agrees to promptly inform NMFS of any change in the programs or projects identified in Appendix II, or any change in circumstances that affect such programs or projects.

(c) NMFS agrees to notify PRDNER of all regulations, issued in accordance with Section 4 of the Act, which might affect the adequacy and effectiveness of the conservation program for PRDNER.

4. Effective Date and Renewal.

(a) This Agreement shall become effective when signed by the Assistant Administrator for Fisheries of NOAA, and the Secretary of the PRDNER.

(b) This Agreement may be renewed in the following manner:

(1) No later than June 30 of each year PRDNER shall submit to NMFS the following: (i) an updated list of Federal and Commonwealth listed endangered and threatened fish and wildlife which are resident in the Commonwealth of Puerto Rico and a statement of any modifications PRDNER wishes to propose to the list of fish or wildlife species; (ii) a memorandum of law analyzing any changes in PRDNER statutory authority for the protection and conservation of endangered and threatened fish or wildlife, if any changes in statute or regulation were made since the date of the previous program submission; (iii) a description of any substantial changes in PRDNER programs for the resident endangered and threatened fish or wildlife which are being proposed or which have occurred since the date of the previous program submission; and (iv) copies of such reports PRDNER may have prepared since the previous program submission which discusses its conservation program accomplishments for listed endangered and threatened fish or wildlife.

For purposes of this Agreement, the phrase "previous submission" means either the program submission of the original Agreement or the most recent renewal application of this Agreement, whichever is later in time.

(2) The Assistant Administrator for Fisheries of NOAA or authorized delegate will notify PRDNER in writing on or before October 1 of each year that: (i) this Agreement is renewed effective October 1 of that year upon a reconfirmation of the finding that PRDNER maintains an adequate and active program for the conservation of resident threatened and endangered species listed in Appendix I of this Agreement; or (ii) PRDNER programs or authorities are not in compliance with the criteria of Section 6 (c) of the Act. Such notification in the latter situation shall also state that unless appropriate changes are made by June 30 of the following year, this Agreement shall terminate. If PRDNER has not received notification concerning the renewal of this Agreement by October 1 of each year, the Agreement shall continue in force and effect as if it had been renewed.

5. ; ,ucndnu;nts.

Any part of this Agreement or Appendices may be amended at any time with the concurrence of the signatory parties or their authorized delegates.

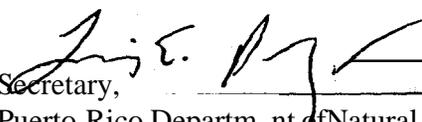
6. Termination.

This Agreement may be terminated (a) by mutual agreement; (b) by PRDNER upon 60 days written notice to the Assistant Administrator for Fisheries; or (c) notwithstanding the renewal provision of subsection 6 (b) of this Agreement, by the Assistant Administrator for Fisheries, NOAA, or authorized delegate, upon 60 days written notice to PRDNER from NMFS stating reasons why PRDNER conservation programs are no longer in compliance with the criteria of Section (c) of the Act or that PRDNER has violated a provision of this Agreement. PRDNER may submit a written request for review to the Secretary of Commerce within 30 days of receipt of the termination notice. The Secretary shall consider all evidence submitted by PRDNER in its request for review and either reaffirm the conclusion of NMFS and terminate this Agreement at the end of the 60-day notification period, or reverse the conclusion of NMFS and revoke the notice of termination. Any provision in Appendix II may also be terminated in accordance with section 6 of this Agreement. Any Federal funds that have been obligated to, but not expended by, PRDNER as of the date of the termination notice pursuant to any of the above provisions, shall be retained by NMFS for reallocation pursuant to Section 6(d) of the Act, unless (1) those funds are specifically approved for expenditure before the date of actual termination (2) or the notice of termination is revoked by NMFS.



Assistant Administrator for Fisheries,
National Oceanic and Atmospheric Administration

8 April 2003
Date



Secretary,
Puerto Rico Department of Natural and
Environmental Resources

April 7 2003
Date

APPENDIX I

Endangered Species

Caribbean monk seal (*Monachus tropicalis*): probably extinct.
Humpback whale (*Megaptera novaeangliae*)
Sperm whale (*Physeter macrocephalus*)
Finback whale (*Balaenoptera physalus*)
Sei whale (*Balaenoptera borealis*)
Blue whale (*Balaenoptera musculus*)
Hawksbill sea turtle (*Eretmochelymbricata*)
Leatherback sea turtle (*Dermochelys coriacea*)
Green sea turtle (*Chelonia mydas*)*

Threatened Species

Loggerhead sea turtle (*Caretta caretta*)

*Green turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific Coast of Mexico, which are listed as endangered.

Candidate Species

Goliath grouper (*Epinephelus itajara*)
Staghorn coral (*Acropora cervicornis*)
Elkhorn coral (*Acropora alcornis*)

Critical Habitat

Green sea turtle: The waters extending seaward 3 nautical miles (5.6 km) from the mean high water line of Culebra Island, Puerto Rico.

Hawksbill sea turtle: The waters extending seaward 3 nautical miles (5.6 km) from the mean high water line of Mona and Monito Islands, Puerto Rico.

APPENDIX II

The following conservation program and activities are identified by PRDNER for the benefit of the endangered or threatened fish or wildlife which are resident in the Commonwealth of Puerto Rico (listed in Appendix I of this Agreement) including marine waters under the jurisdiction of the Commonwealth. PRDNER's Endangered Species Program seeks to carry out the following research priorities and actions should funding be secured for such activities.

1. Develop, implement, and continue in-water research projects that will help with sea turtle recovery efforts and determine state fishery impacts on turtles.
 - a) Identify potential foraging and developmental habitats for sea turtles.
 - b) Continue gathering baseline data on in-water studies at Mona, Monito, Desecheo, Caja de Muertos, and Culebra Islands.
 - c) Implement other research efforts that will provide a sound basis for development and enactment of future conservation measures.
2. Continue to expand coverage and efficiency of coverage of inshore areas by the DNER Sea Turtle Stranding and Salvage Network.
3. Provide additional support to the Caribbean Stranding Network on reporting marine mammal strandings.