

***NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 02-111-10
JULY 11, 2003***

***Protected Resources Management
Section 6 Agreements***

***COOPERATIVE AGREEMENT BETWEEN NMFS AND THE U.S. VIRGIN ISLANDS
DEPT. OF PLANNING AND NATURAL RESOURCES FOR THE CONSERVATION
OF ENDANGERED AND THREATENED SPECIES***

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/s/ 12/19/05

Signed _____

James H. Lecky

Date

Office of Protected Resources

Cooperative Agreement Between the
United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
and the U.S. Virgin Islands Department of Planning and Natural Resources
for the Conservation of Threatened and Endangered Species

This limited authorities Cooperative Agreement is entered into pursuant to section 6(c) (1) of the Endangered Species Act of 1973, 16 U.S.C. section 1531 *et seq.*, as amended (hereinafter referred to as "the Act"), and Title 12 of the U.S. Virgin Islands Code (USVIC), between the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and the U.S. Virgin Islands Department of Planning and Natural Resources. Hereinafter, the parties shall be referred to as NMFS and VIDPNR respectively. All terms contained herein shall be given the same meaning as defined at 50 CFR section 222.102.

Whereas, the Act authorizes the Secretary of Commerce (hereinafter referred to as "the Secretary") to enter into cooperative agreements, in accordance with section 6 of the Act, with states that establish and maintain adequate and active programs for the conservation of endangered and threatened species;

Whereas, the state is authorized pursuant to Title 3 USVIC section 67 to enter into agreements with Federal agencies for the conservation of endangered and threatened species;

Whereas the U.S. Virgin Islands has established a conservation program consistent with the purposes and policies of the Act for the following species of fish and wildlife occurring in the state which have been deemed by the Secretary to be endangered or threatened and under the jurisdiction of NMFS and which are listed in Appendix I, attached hereto and incorporated herein;

Whereas, the purposes of the Act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, to provide a program for the conservation of such endangered and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection 2(a) of the Act;

Whereas, the Secretary has delegated to the Assistant Administrator for Fisheries of NMFS the authority to enter into cooperative agreements with states for the purpose of supporting programs for endangered and threatened species conservation;

Whereas, the Act requires the Secretary to determine that the state agency (1)has established and provided copies of acceptable conservation programs, consistent with the purposes and policies of the Act, for those resident threatened and endangered species in the Territory of the U. S. Virgin Islands identified as most urgently in need of conservation; (2)has the authority to acquire land or aquatic habitat, or interests therein for the purposes of conservation of endangered or threatened species of fish and wildlife; (3) is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife; and (4)has made provision for public participation in designating resident species of fish and wildlife as endangered or threatened;

Whereas, NMFS hereby determines that VIDPNR satisfies the Act's legal requirements for such cooperative agreements as specified in the immediately preceding paragraph;

Whereas, the parties to this agreement are in accord that the programs administered in the Territory of the U.S. Virgin Islands are designed to conserve resident endangered and threatened species, and that it is the mutual desire of VIDPNR and NMFS to cooperate for the common purpose of planning, developing, and conducting programs to protect, manage, and enhance populations of all resident endangered and threatened species covered by this agreement within the Territory of the U.S. Virgin Islands;

Whereas, the Assistant Administrator for Fisheries of NMFS has the administrative authority to establish programs for the conservation of endangered and threatened species; to provide periodic review of the state program at no greater than annual intervals; to provide funding for the development of endangered and threatened species conservation programs or to assist in monitoring candidate and recovered species as such funding is available and in accordance with the terms of the Act; to provide coordination among the programs of various states; and to exchange with states such biological data or other information that may result in the continued conservation of endangered or threatened species;

Whereas, the Assistant Administrator for Fisheries of NMFS authorizes the Southeastern Regional Administrator of NMFS to monitor the implementation of this cooperative agreement;

Therefore the parties agree as follows:

1. Consistent with section 6(d) of the Act, NMFS may provide financial assistance to VIDPNR for the development of endangered and threatened species conservation programs or to assist in monitoring candidate and recovered species. Such projects will be developed jointly by NMFS and VIDPNR in accordance with the Act, and shall be explained in detail in an appendix to this agreement (see Appendix II).

2. NMFS and VIDPNR will carry out the cooperative program for the conservation of endangered and threatened species, which may involve law enforcement, research, management, and public information and education activities conducted for the benefit of resident endangered and threatened species in the Territory of the U.S. Virgin Islands.

3. Pursuant to section 6(c)(ii) of the Act, entry into this agreement shall in no way affect the applicability of the prohibitions set forth in or authorized pursuant to section 4(d) and section 9 of the Act with respect to the taking of any resident endangered or threatened species of fish or wildlife.

4. Effective Date and Renewal

(a) This agreement shall become effective when signed by the Assistant Administrator for Fisheries of NMFS and the Director of VIDPNR, and may be renewed in the following manner: Not later than June 30 each year VIDPNR will submit to the Assistant Administrator for Fisheries of NMFS the following: (1) the current list of the state listed resident endangered and threatened fish and wildlife within the jurisdiction of NMFS and a description of all changes to such list since the date of the previous submission of the list to NMFS;

(2) a certification of any amendments in VIDPNR's legal authority or regulatory programs for endangered and threatened fish and wildlife that were made since the date of the previous submission of the program to NMFS; (3) a list of all changes in the endangered and threatened species conservation programs since the date of the previous submission of the program to NMFS; and (4) any additional information requested by the Assistant Administrator for Fisheries of NMFS that pertains to VIDPNR's program for the conservation of endangered and threatened fish and wildlife;

(b) The Assistant Administrator for Fisheries of NMFS will, on or before October 1 of each year, notify VIDPNR in writing whether the cooperative agreement is renewed effective October 1 of that year, or that the VIDPNR's program or authorities are no longer in compliance with the criteria of section 6(c) of the Act, and unless appropriate changes are made by June 30 of the following year, this agreement shall be terminated.

5. Amendment

This agreement may be amended at any time with the written concurrence of the signatories.

6. Termination

This agreement may be terminated: (a) by mutual agreement; (b) by VIDPNR upon 60 days written notice to the Assistant Administrator for Fisheries of NMFS; or (c) by NMFS upon 60 days notice to VIDPNR from the Assistant Administrator for Fisheries of NMFS, stating reasons why the state's conservation program for endangered and threatened species is no longer in compliance with the criteria in section 6(c) of the Act, or that the state has otherwise violated provisions of this agreement. VIDPNR may submit a written request for review to the Secretary within 30 days of the receipt of the termination notice. The Secretary will consider all evidence submitted by

VIDPNR in its request for review and either reaffirm the termination of this agreement at the end of the 60-day notification period, or reverse the determination of the Assistant Administrator of NMFS and revoke the notice of termination.

William T. Hogarth

William T. Hogarth, Ph.D.
Assistant Administrator for Fisheries
National Marine Fisheries Service

7/3/03

Date

Dean C. Plaskett

Dean C. Plaskett, Esq.
Commissioner
U.S. Virgin Islands
Department of Planning and Natural Resources

7/11/03

Date

APPENDIX I

Species to Which the Limited Agreement Applies, and Status of Each Species

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 (*Eretmochelys imbricata*)

Leatherback sea turtle (*Dermochelys coriacea*)

Green sea turtle (*Chelonia mydas*)**

Threatened Species

Loggerhead sea turtle (*Caretta caretta*)

*Species not on most-current USVI list of endangered and threatened species, dated June 5, 1991, provided by past-Commissioner of VIPDNR, Roy E. Adams.

**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 alcicornis*)

Critical Habitat

Leatherback sea turtle: The waters adjacent to Sandy Point, U.S. Virgin Islands, up to and inclusive of the waters from the hundred fathom curve shoreward to the level of mean high tide with boundaries at 17° 42'12"N and 64° 50'00"W.

APPENDIX II

Conservation Program

The following conservation program and activities are identified by VIDPNR for the benefit of the endangered or threatened fish or wildlife which are resident in the U.S. Virgin Islands (listed in Appendix I of this Agreement) including marine waters under the jurisdiction of the Government of the U.S. Virgin Islands. VIDPNR's Division of Fish and Wildlife (DFW) endangered species program seeks to carry out the following research priorities and actions should funding be secured for such activities. Marine turtles are the most abundant endangered marine species found in U.S. Virgin Islands; therefore, VIDPNR would concentrate its efforts on evaluating the status and protection of the marine turtles at the feeding and developmental grounds. Projects (and estimated annual expenses) include:

1) Juvenile Green and Hawksbill Turtle Population Assessment (\$40,000): The continuation of DFW's existing project would involve netting juvenile turtles in seagrass beds near coral reefs. Turtles would be tagged, weighed, and measured, and blood samples taken (DFW has an ESA section 10 research permit from NOAA Fisheries to conduct this research). Four sampling periods each year will provide information on growth rates, sex, and movement patterns. The data will additionally yield estimates of population sizes. Several years of data and comparisons with past projects will provide indications of population trends.

2) Inshore Turtle Foraging Habitat Assessment (\$30,000): This project would involve surveys of seagrasses and coral reef habitats to determine the status of the habitat and use by sea turtles. Transect data would be used to determine value of foraging habitat to green turtles (by observing and recording instances of seagrass grazing scars) and to hawksbill turtles (by observing and recording turtle bite marks on sponges). These habitats would be mapped and identified as high priority areas for protection. Potential impacts would be identified and targeted for mitigation.

3) Coastal Habitat Utilization by Nesting Sea Turtles (\$40,000): The objective of this project is to determine near shore habitat utilization by nesting turtles during the nesting season in order to reduce impacts on nesting turtles from boat interaction, fishing gear, etc. Turtles would be marked with radio or satellite transmitters to determine their primary areas of residence between nesting activities.

4) Effect of Trammel Nets and Gill Nets on Turtle Populations (\$15,000): The objective of this grant is to determine the turtle bycatch by gill and trammel nets on St. Croix. Nets deployed by fishers would be randomly sampled using snorkel and scuba gear around the island of St. Croix. Location of the net, numbers and species of turtles caught, numbers, and species of turtles in the immediate vicinity of the net, and the type and length of the net would be recorded. Fishers would be surveyed regarding turtle bycatch to augment the in water survey. Recommendations would be submitted to VIDPNR to reduce turtle bycatch by gill and trammel nets based on the results of this study.

5) Endangered Species Education (\$10,000): The objective of this project would be to develop educational materials (videos, brochures, signs, curricula, etc.) to educate the general public on the status of U.S. Virgin Islands' marine endangered species, what is affecting them, and what can be done for them. These materials would be made available to teachers, school groups, and the general public through various means.

6) Whale Sighting Network (\$8,000): The objective of the project is to assess the numbers of whales and calves transiting U.S. Virgin Islands' waters every winter and to estimate trends in numbers. The project would improve and continue a whale sighting network that as been informally carried out for the past 14 years. New forms would be designed, signs made and posted, and comprehensive surveys done to ensure that all sightings are recorded.