NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 02-111-15 ***October 9, 2009***
Protected Resources Management ***Section 6 Agreements***
COOPERATIVE AGREEMENT BETWEEN NMFS AND THE TEXAS PARKS AND WILDLIFE DEPT. FOR THE CONSERVATION OF THREATENED AND ENDANGERED SPECIES
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SUMMARY OF REVISIONS:

Cooperative Agreement Between the

United States Department of Commerce

National Oceanic and Atmospheric Administration

National Marine Fisheries Service and the

Texas Parks and Wildlife Department for the

Conservation of Threatened and Endangered Species

This cooperative agreement is entered into pursuant to section 6(c)(1) of the Endangered Species Act of 1973, as amended (hereinafter referred to as "the Act"), and section 1.011 of the Texas Parks and Wildlife Code, between the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and the Texas Parks and Wildlife Department. Hereinafter, the parties shall be referred to as NMFS and TPWD, respectively. All terms contained herein shall be given the same meaning as defined at 50 C.F.R. 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 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 section 11.0171 of the Texas Parks and Wildlife Code to enter into agreements with federal agencies for the conservation of endangered and threatened species;

Whereas Texas 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:

Listed Species	Scientific Name	Status	Date Listed
Marine Mammals			
blue whale	*Balaenoptera musculus*	Endangered	12/02/1970
finback whale	*Balaenoptera physalus*	Endangered	12/02/1970
humpback whale	*Megaptera novaeangliae*	Endangered	12/02/1970
sei whale	*Balaenoptera borealis*	Endangered	12/02/1970
sperm whale	*Physeter macrocephalus*	Endangered	12/02/1970
Turtles			
green sea turtle	*Chelonia mydas*	Threatened1	07/28/1978
hawksbill sea turtle	*Eretmochelys imbricata*	Endangered	06/02/1970
Kemp's ridley sea turtle	*Lepidochelys kempii*	Endangered	12/02/1970
leatherback sea turtle	*Dermochelys coriacea*	Endangered	06/02/1970
loggerhead sea turtle	*Caretta caretta*	Threatened	07/28/1978
Fishes			
smalltooth sawfish	*Pristis pectinata*	Endangered	05/01/2003

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 section 2(a) of the Act;

Whereas, the Secretary has delegated to the Director 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: (1) the state's agency is authorized to establish conservation programs, including the acquisition of land or aquatic habitat, or interests therein, for all resident species of fish and wildlife listed in this agreement; (2) the state's agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and

wildlife; (3) the state's agency has made provision for public participation in designating resident species of fish and wildlife as endangered or threatened; and (4) the species listed in this agreement will be given immediate attention, as NMFS and TPWD agree that those species are most urgently in need of conservation programs;

Whereas, NMFS hereby determines that TPWD 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 state of Texas are designed to conserve resident endangered and threatened species, and that it is the mutual desire of TPWD 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 state of the Texas;

Whereas, the Director 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 Director of NMFS authorizes the Southeast 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 TPWD for the development of endangered and threatened species conservation programs or to assist in monitoring candidate and recovered species. Such projects shall be approved by NMFS in accordance with the Act.

2. NMFS and TPWD shall 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 state of Texas.

3. Pursuant to section 6(1)(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 Director of NMFS and the Director of TPWD, and may be renewed in the following manner: Not later than June 30 each year, TPWD shall 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 TPWD'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 Director of NMFS that pertains to TPWD's program for the conservation of endangered and threatened fish and wildlife.

(b) The Director of NMFS will, on or before October 1 of each year, notify TPWD in writing that the cooperative agreement is renewed effective October 1 of that year, or that the state'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. If TPWD, after satisfying the renewal provisions of the immediately preceding paragraph, has not been notified 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. 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 TPWD upon 60 days written notice to the Director of NMFS; or (c) notwithstanding the renewal provisions in section 4(b) of this cooperative agreement, by NMFS upon 60 days notice to TPWD from the Director 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. TPWD may submit a written request for review to the Secretary within 30 days of the receipt of the termination notice. The Secretary shall consider all evidence submitted by TPWD in its request for review and either re-affirm the termination of this agreement at the end of the 60-day notification period, or reverse the determination of the Director of NMFS and revoke the notice of termination. Any federal funds that have been awarded pursuant to this agreement to TPWD, but not

expended by TPWD, as of the date termination of this agreement or final reaffirmation thereof shall be returned to NMFS for reallocation pursuant to section 6(d).

James W. Balsiger, Ph.D.
Acting Assistant Administrator for Fisheries
National Marine Fisheries Service

10/9/09
Date

Carter Smith, Executive Director
Texas Parks and Wildlife Department

10/23/09
Date

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