
Limited Cooperative Agreement Between the
United States Department of Commerce National
Oceanic and Atmospheric Administration National
Marine Fisheries Service and the
Oregon Department of Fish and Wildlife for the
Conservation of Threatened and Endangered Species

This limited 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 the Oregon Revised Statutes 496.146, between the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and the Oregon Department of Fish and Wildlife. Hereinafter, the parties shall be referred to as NMFS and ODFW, respectively. All terms contained herein shall be given the same meaning as defined at 50 C.F.R. § 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, ODFW is authorized pursuant to Oregon Revised Statutes 496.146 to "enter into contracts with any person or governmental agency for the development and encouragement of wildlife research and management programs and projects," including the authority to "perform such acts as may be necessary for the establishment and implementation of cooperative wildlife management programs with agencies of the federal government"

Whereas ODFW has the collective authority under various Oregon Revised Statutes to establish conservation programs consistent with the purposes and policies of the Act for the following species of marine mammals, sea turtles, and marine fish occurring within the waters of the state, which have been deemed by the Secretary to be endangered, threatened, or candidate¹ species under the jurisdiction of NMFS and to be urgently in need of conservation programs:

Endangered Species

Southern resident killer whale (*Orcinus orca*)

Sperm whale (*Physeter catodon*)

Fin whale (*Balaenoptera physalus*)

Sei whale (*Balaenoptera borealis*)

Blue whale (*Balaenoptera musculus*)

Northern right whale (*Balaena glacialis*)

Humpback whale (*Megaptera novaeangliae*)

Steller sea lion (*Eumetoptas jubatus*)

¹ A candidate" species is any species is undergoing a status review by NMFS in consideration of listing as a threatened or endangered species under the Endangered Species Act, but is not yet the subject of a proposed rule (see see 50 CFR §424.02)/

Leatherback sea turtle (*Dermochelys coriacea*)

Threatened Species

Green sea turtle (*Chelonia mydas*)

Loggerhead sea turtle (*Caretta caretta*)

Green sturgeon (*Acipenser medirostris*)-Southern Distinct Population Segment

Federal Candidate Species

Eulachon (*Thaleichthys pacificus*)

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: (1) ODFW is authorized to conduct investigations to determine the status and requirements for survival of resident² species of fish and wildlife; (2) ODFW is authorized to establish conservation programs, including the acquisition of land or aquatic habitat or interests therein, for the conservation of resident endangered or threatened species of fish or wildlife; (3) provision is made for public participation in designating resident species of fish and wildlife as endangered or threatened; and (4) plans are included under which immediate attention will be given to those resident species of fish and wildlife which are determined by the Secretary or ODFW to be endangered or threatened and which the Secretary and ODFW agree are most urgently in need of conservation programs.

Whereas, NMFS hereby determines that ODFW has satisfied the Act's legal requirements for such limited cooperative agreements as specified in the immediately preceding paragraph;

Whereas, the parties to this agreement are in accord that the programs administered by the State of Oregon are designed to conserve resident endangered and threatened species, and that it is the mutual desire of ODFW 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 Oregon;

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

² For the purposes of section 6, "resident species" is defined as "a species that exists in the wild in that state during any part of its life." 50 C.F.R. §222.102.

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 Northwest 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 ODFW 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 ODFW will carry out cooperative programs 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 Oregon.
3. Pursuant to sections 6(c)(1)(E)(ii) of the Act, entry into this agreement shall not effect 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 marine mammal, sea turtle, or marine fish species covered by this agreement.
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 ODFW, and may be renewed in the following manner: Not later than June 30th each year, ODFW shall submit to the Northwest Regional Administrator 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 ODFW's legal authority or regulatory programs for endangered and threatened marine mammal, sea turtle, and marine fish species listed in this agreement that were made since the date of the previous submission of the program to NMFS; (3) a description of any changes to the endangered and threatened species conservation programs proposed or carried out by the State pursuant to this agreement subsequent to the date of the State's previous submission of the program information to NMFS; (4) a report on the status of all projects funded pursuant to paragraph one of this agreement; and (5) any additional information requested by the Northwest Regional Administrator of NMFS that pertains to ODFW's program for the conservation of endangered and threatened marine mammals, sea turtle, and marine fish species listed in this agreement;

(b) The Northwest Regional Administrator of NMFS will, on or before October 1st of each year, notify ODFW in writing whether this limited cooperative agreement is renewed effective October 1st 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 wdess appropriate changes are made by June 30th of the following year, this agreement shall be tenninated. If ODFW, after satisfying the renewal provisions of the immediately preceding paragraph, has not been notified concerning the renewal of this agreement by October 1st 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 Assistant Administrator for Fisheries of NMFS and the Director of ODFW.

6. Termination

This agreement may be terminated: (a) by mutual agreement; (b) by ODFW upon 60 days written notice to the Assistant Administrator for Fisheries of NMFS; or (c) notwithstanding the renewal provisions in section 4(b) of this cooperative agreement, by NMFS upon 60 days notice to ODFW from the Assistant Administrator for Fisheries of NMFS, stating the 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 a provision of this agreement. ODFW 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 ODFW in its request for review and either reaffirm the tennination of this agreement at the end of the 60 day notification period, or reverse the detennination of the Assistant Administrator of NMFS and revoke the notice of termination. Any Federal funds that have been awarded pursuant to this agreement to ODFW, but not expended by ODFW, as of the date termination of this agreement or final reaffirmation of a termination decision shall be returned to NMFS for reallocation pursuant to Section 6(d) of the Act.

Administrator for Fisheries
National Marine Fisheries Service

12/22/09
Date

f!;v/Director
Oregon Department of Fish and Wildlife

3/ro/to
Date