NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 30-121-02
AUGUST 27, 1992

Administration and Operations
Agreements with the National Ocean Service

COOPERATIVE ENFORCEMENT AGREEMENT B/W NOAA, US COAST GUARD AND STATE OF HAWAII FOR LAW ENFORCEMENT SERVICES UNDER THE MFCMA, ESA AND MMPA

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Please contact Law Enforcement at 301-427-2300 for details until agreement is entered into PDS

SUMMARY OF REVISIONS:

Signed _____
[Approving Authority name] Date
[Approving Authority title]

Appendix E

COOPERATIVE ENFORCEMENT AGREEMENT

between the

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

and

UNITED STATES DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

and

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT

for

LAW ENFORCEMENT SERVICES UNDER THE

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT
(16 U.S.C. 1801 *et seq.*)

and

ENDANGERED SPECIES ACT OF 1973
(16 U.S.C. 1531 *et seq.*)

and

MARINE MAMMAL PROTECTION ACT OF 1972
(16 U.S.C. 1361 *et seq.*)

This Agreement is entered into by and between the Secretary of Commerce, the Commander, Fourteenth Coast Guard District for the United States of America, and the State of Hawaii, Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (hereinafter referred to as the State).

WITNESSETH:

Whereas, the Magnuson Fishery Conservation and Management Act (MFCMA), as amended, 16 U.S.C. 1801 et seq., establishes a regime for managing certain fisheries in the exclusive economic zone (as established by Presidential Proclamation 5030, dated March 10, 1983) contiguous to the seaward boundary of each coastal state; and

Whereas, the Endangered Species Act of 1973 (ESA), as amended, 16 U.S.C. 1531 et seq., and the Marine Mammal Protection Act of 1972 (MMPA), as amended, 16 U.S.C. 1361 et seq., provide for the protection and conservation of endangered and threatened species and marine mammals; and

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Whereas, under 16 U.S.C. 1861(a) of the MFCMA, under 16 U.S.C. 1540(e) of the ESA, under 16 U.S.C. 1377(b) of the MMPA, the Secretary of Commerce and Commander, Fourteenth Coast Guard District are specifically authorized to enter into, among other things, agreements with State agencies to utilize such personnel, services, equipment and other facilities of such State agencies as may be necessary to carry out the enforcement responsibilities of the MFCMA, ESA, MMPA, and

Whereas, the State possesses law enforcement personnel, vessels, aircraft, vehicles, and other equipment and capabilities presently engaged in enforcing State conservation laws that could be utilized in assisting the Secretaries in carrying out the law enforcement responsibilities mandated by the Acts listed in this Agreement;

NOW THEREFORE, it is mutually agreed:

I. DEPUTIZATION OF STATE OFFICERS AS FEDERAL ENFORCEMENT AGENTS

A. Those law enforcement officers of the State of Hawaii, Department of Land and Natural Resources, Division of Conservation and Resources Enforcement (hereinafter referred to as Officers) are hereby are deputized as Federal law enforcement agents and authorized to enforce the MFCMA, ESA, MMPA and regulations promulgated thereunder. Enforcement shall be compliance with directives established by the Secretary of Commerce and Commander, Fourteenth Coast Guard District, and their designees.

B. All Officers, while acting as federal law enforcement agents under this Agreement, shall possess the powers and authorities set forth in the MFCMA, ESA and MMPA but shall not be held or considered as employees of the United States for the purposes of any laws administered by the United States Office of Personnel Management. Such Officers, while acting as federal law enforcement agents, shall not be compensated, salaried or otherwise reimbursed by the United States for any services performed or expenses incurred in the performance of such duties except as provided by this Agreement.

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C. Such Officers may be covered under 5 U.S.C. 8191-8193, Law Enforcement Officers not Employed by the United States, for injuries sustained while enforcing Federal laws, provided the injuries occurred under one of the circumstances enumerated in Section 8191. The Secretary of Labor will provide compensation for covered injuries as enumerated in Section 8192. This coverage is intended to supplement rather than replace any state or local benefits otherwise payable.

D. All Officers, while acting as Federal law enforcement agents, shall be considered to be (1) investigative or law enforcement officers of the United States for purposes of the tort claims provisions of Chapter 171 of Title 28 of the United States Code, and (2) officers or employees of the Department of Commerce within the meaning of Sections 111 and 1114 of Title 18 of the United States Code.

E. Officers shall not have the authority to carry out any functions or responsibilities of the United States Government except as provided in this Agreement.

F. Those Officers who for any reason leave or are removed from service as members of the Division of Conservation and Resources Enforcement will be simultaneously divested of authority conferred herein.

G. All Officers exercising authority under this Agreement shall submit written documentation of any action taken pursuant to this Agreement to the National Marine Fisheries Service Special Agent in Charge (SAC) for the Southwest Area, or the SAC's designee. Such documents shall include, but not be limited to, case investigation reports, a copy of any written warning or documentation of violation, and any supporting exhibits, affidavits, photographs or other evidence gathered. In addition, the State shall immediately notify the Special Agent in Charge or his/her designated representative of any arrest made as a result of any action brought under the Acts listed in this Agreement, and shall prepare and submit individual case investigation reports to the Special Agent in Charge on a timely basis. The National Marine Fisheries Service will be responsible for providing information

to the U.S. Coast Guard on the status of cases made under this Agreement.

H. Any property, including cargo, fishing gear, vessels, fish or the fair market value thereof, seized under the authorities of the Acts listed in this Agreement shall be delivered to the United States Government official designated by the SAC or other appropriate federal authority. If such official, however, cannot be contacted, employees of the State will be expected to make reasonable arrangements for the temporary care, handling, and preservation of seized property. Costs to third parties with whom arrangements are made under this paragraph shall be considered as separate items for payment by the Secretary of Commerce and will not be the responsibility of the State.

I. Officers will be made available, upon request by the appropriate Federal authority, to appear as witnesses in connection with any action brought with which they have an involvement. It is the responsibility of the National Marine Fisheries Service to reimburse

the Officers who appear in cases related to this Agreement for travel expenses and per diem (at the federal standard rate) for travel incurred when appearing as a witness.

J. The State shall provide access to its law enforcement telecommunications network to the National Marine Fisheries Service and the U.S. Coast Guard. Costs incurred in acquiring access to and using the State communications system shall be borne by the National Marine Fisheries Service.

II. POWERS OF AUTHORIZED OFFICERS UNDER 16 U.S.C. 1861(b)

A. In accordance with 16 U.S.C. 1861(b), Officers are hereby delegated the authority described in that section while performing duties in accordance with this Agreement.

B. No unilateral law enforcement action by the State with respect to foreign or stateless vessels is authorized by this Agreement.

If, however, foreign vessels are encountered, the State will immediately contact the Fourteenth Coast Guard District and await instructions before boarding, seizing any vessel, or making an arrest.

C. Any arrest or seizure of domestic vessels contemplated by the State shall be reported as soon as possible to the Special Agent in Charge or his/her designee, who, subject to the availability of appropriate personnel, will dispatch NMFS Special Agents to assist the Officers, or assist via radio or telephone communications when units are not available. National Marine Fisheries Service Agents and Coast Guard Boarding Officers have the authority to make arrests and seizures aboard a domestic vessel, and this authority is hereby delegated to Officers. The National Marine Fisheries Service and the United States Coast Guard will advise each other concerning arrests and seizures made under this Agreement.

III. UNITED STATES COAST GUARD ASSISTANCE TO THE STATE

A. Pursuant to 14 U.S.C. 141, the United States Coast Guard may, operational considerations permitting, provide assistance to the parties for the purpose of this agreement.

B. Officers may, operations and space permitting, accompany any United States Coast Guard vessel or aircraft on law enforcement patrols to aid in enforcement of the Acts listed in this Agreement.

C. If violations of State fisheries laws and regulations by fishing vessels registered under the laws of the State are detected by United States Coast Guard law enforcement patrols, the United States Coast Guard will notify the State and may provide back-up assistance consistent with the terms of this Agreement.

D. Subject to approval by the United States Coast Guard, personnel will be made available to appear as witnesses in connection with any criminal or in rem court proceedings resulting from any fishery enforcement action brought under State laws and regulations with which they have involvement.

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IV. NATIONAL MARINE FISHERIES SERVICE ASSISTANCE TO THE STATE

A. TRAINING

The National Marine Fisheries Service will provide training for the Officers in the enforcement of the Acts listed in this Agreement with the length of training and location to be agreed upon by the State. Training expenses, except travel, will be borne by the National Marine Fisheries Service.

B. PROPERTY LOAN

The National Marine Fisheries Service will loan the State purchased or excess (including seized) vehicles, vessels, and other operational equipment based upon the availability of said equipment. All property transferred hereunder will be on the basis of an executed Property Loan Agreement and Receipt form. Costs incurred for the transportation, care, handling and preservation of said property transferred under this paragraph shall be considered as separate items for payment and will be the responsibility of the State. If for any

reason the property on loan is lost, destroyed, or stolen by circumstances beyond the control of the State, the State will not be held responsible for reimbursement of the cost of said property.

V. COMMITMENT BY THE STATE

The State and the Secretary of Commerce, in managing the fisheries in their respective jurisdictions, agree to adopt conservation, management and enforcement measures and regulations which are complementary, in accordance with, and to the extent authorized by the Act and Hawaii statutes.

VI. CONDITIONS AND TERMS OF AGREEMENT

A. This Agreement shall be effective as of the date it is signed by all Parties and shall remain in effect until terminated by any Party, giving the other Parties written notice, in which event it shall terminate on the day immediately following the thirtieth day of such

notice. This Agreement may be amended with the mutual consent of the Parties in writing.

B. In no event shall this Agreement be interpreted to conflict with specific operating policies and procedures promulgated by any of the Parties without the express oral or written consent of an appropriate official of all of the Parties.

C. This Agreement shall be construed to be consistent with the MFCMA, ESA, MMPA and regulations promulgated thereunder.

D. Nothing herein is intended to conflict with current National Oceanic and Atmospheric Administration, United States Coast Guard, or State directives. If the terms of this Agreement are inconsistent with existing directives of the agencies entering into this Agreement, those portions of this Agreement that are determined to be inconsistent shall be invalid, but the remaining terms and conditions shall remain in full force and effect.

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL MARINE FISHERIES SERVICE
OFFICE OF ENFORCEMENT

BY: Morris M. Pallozzi

TITLE: Director, Office of Enforcement

DATE: August 27, 1992

UNITED STATES DEPARTMENT OF TRANSPORTATION
COMMANDANT
UNITED STATES COAST GUARD

BY: James H. Boschue

TITLE: Acting District Commander

DATE: September 18, 1992

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF CONSERVATION AND RESOURCES ENFORCEMENT

BY: [signature]

TITLE: Chairperson, Department of Land and Natural Resources

DATE: August 11, 1992

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