

COOPERATIVE ENFORCEMENT AGREEMENT

BETWEEN THE

**UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

AND

**THE STATE OF FLORIDA
FISH AND WILDLIFE CONSERVATION COMMISSION
DIVISION OF LAW ENFORCEMENT**

FOR

**LAW ENFORCEMENT SERVICES UNDER THE
MAGNUSON-STEVENS 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.)**

AND

**LACEY ACT AMENDMENTS OF 1981
(16 U.S.C. 3371 et. seq.)**

AND

**NATIONAL MARINE SANCTUARIES ACT
(16 U.S.C. 1431 et. seq.)**

AND

**FLORIDA KEYS NATIONAL MARINE SANCTUARY AND PROTECTION ACT
(PL 101-605)**

July 1999

This Agreement is entered into by and between the Secretary of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NOAA Fisheries) and the State of Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, hereinafter referred to as the State.

Whereas, the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), 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

Whereas, the Lacey Act Amendments of 1981 (Lacey Act), 16 U.S.C. 3371, et seq., provide restrictions on the trafficking of fish and wildlife taken and/or possessed in violation of state, Federal, Indian tribal, and foreign laws; and

Whereas, the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 et seq., provides for the designation of national marine sanctuaries areas of the marine environment which are of special national significance; and

Whereas, the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA), PL 101-605, provides for the protection of the Florida Keys National Marine Sanctuary; and

Whereas, under 16 U.S.C. 1861(a) (MSFCMA), 16 U.S.C. 1540(e) (ESA), 16 U.S.C. 1377(b) (MMPA), and 16 U.S.C. 3375(a) (Lacey Act), the Secretary of Commerce is 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 MSFCMA, ESA, MMPA, and Lacey Act; and

Whereas, under 16 U.S.C. 1437(g) (NMSA) , the Secretary of Commerce is specifically authorized to enter into, among other things, agreements with State agencies to utilize such personnel, services, and other facilities of such State agencies as may be necessary to carry out the enforcement responsibilities of the NMSA; 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 used to assist the Secretary of Commerce in carrying out the law enforcement responsibilities mandated by the Acts listed in this agreement; the parties do hereby agree to the following terms and conditions.

I. DEPUTIZATION OF STATE OFFICERS AS FEDERAL ENFORCEMENT AGENTS

A. Those law enforcement officers who are members of the State of Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, (hereinafter referred to as "Officers") and who are designated by the State, are hereby deputized as Federal law enforcement agents and authorized to enforce the MSFCMA, ESA, MMPA, Lacey Act, NMSA, FKNMSPA, and regulations promulgated thereunder. Enforcement shall be in compliance with directives established by the Secretary of Commerce, and his or her designees.

B. All Officers, while acting as Federal law enforcement agents under this agreement, shall possess the powers and authorities set forth in the MSFCMA, ESA, MMPA, Lacey Act, and NMSA. Officers shall not be held or considered 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 or pursuant to any grant, contract, or joint project entered into between the parties.

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 that such injuries occurred under one of the circumstances enumerated in Section 8191. The Secretary of Labor will provide compensation for covered injuries 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 28 U.S.C. Chapter 171, and (2) officers or employees of the Department of Commerce within the meaning of 18 U.S.C. Sections 111 and 1114.
- 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 State of Florida Fish and Wildlife Conservation Commission, Division of Law 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 NOAA Fisheries Special Agent in Charge (SAC) for the Southeast 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 SAC or the SAC's designee 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 SAC on a timely basis.

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, or his or her designee, and shall not be the responsibility of the State. The Secretary of Commerce, or his or her designee, must determine that the costs are, in fact, reasonable under the circumstances before payment will be made.

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 NOAA Fisheries to reimburse the Officers who appear in cases related to this Agreement for travel expenses and per diem (at rates authorized under the Federal Travel Regulations), for travel incurred while providing direct services to the Federal Government as a witness, in accordance with applicable Federal law.

J. The State shall provide access to its law enforcement telecommunications network to NOAA Fisheries. Costs incurred in acquiring access to and using the State communications system shall be borne by NOAA Fisheries.

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

- A. In accordance with 16 U.S.C. 1861(b)(1), Officers are hereby delegated the authority described in that section while performing duties under this Agreement.
- B. No unilateral law enforcement action by the State with respect to foreign or stateless vessels for violations of Federal laws and regulations is authorized by this Agreement. If, however, foreign vessels are encountered, the State will immediately contact the appropriate U.S. Coast Guard District and/or NOAA Fisheries SAC or the SAC's designee and await instructions before seizing any vessels or making an arrest pursuant to Federal laws and regulations.
- C. Any arrest or seizure of domestic vessels contemplated by the State shall be reported as soon as possible to the appropriate U.S. Coast Guard District and/or NOAA Fisheries SAC or the SAC's designee, who, subject to the availability of appropriate personnel and units, will dispatch enforcement personnel to assist the Officers, or assist via radio or telephone communications when units are not available. Under the authority of 16 U.S.C. 1861(b)(1), NOAA Fisheries agents have authority to make arrests and seizures aboard a domestic vessel. This authority is hereby delegated to State Officers.

III. NOAA FISHERIES ASSISTANCE TO THE STATE

A. CONTRACTUAL ARRANGEMENTS

To meet its law enforcement responsibilities under any of the Acts listed in this agreement, and consistent with the provisions of these Acts, NOAA Fisheries may execute contracts and other agreements with the State to provide funds in exchange for the use or services of the State's law enforcement personnel, vessels, aircraft, vehicles and/or other equipment. These contracts and other agreements shall be negotiated separate from this Agreement.

B. TRAINING

NOAA Fisheries will provide training for the Officers in enforcement of the Acts listed in this Agreement with the length and location of the training to be agreed upon by the State. Training expenses will be borne by NOAA Fisheries.

C. USE OF NOAA FISHERIES' PERSONAL PROPERTY

NOAA Fisheries will, at its discretion, grant a revocable license to the State to use NOAA Fisheries-purchased or excess (including seized) vehicles, vessels, and other operational equipment based upon the availability of such equipment. All property transferred will be on the basis of an executed Revocable License Agreement and receipt form. The revocable license is

given to the State with the understanding that the property will be used only for the purposes contemplated in this Agreement. 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. Liability for the property shall be governed by Section 6 of the PPM which provides that, except for reasonable wear and tear, the contractor (State) shall be liable for all loss, damage, or destruction of Government property.

IV. COMMITMENT BY THE STATE

The State and the Secretary of Commerce, and his or her designee, in managing the fisheries in their respective jurisdictions, agree to promote the adoption of conservation, management and enforcement measures and regulations which are complimentary, in accordance with, and to the extent authorized by the Acts listed in this Agreement and the State of Florida statutes.

V. CONDITIONS AND TERMS OF AGREEMENT

A. This Agreement shall be effective on the date it is signed by all parties and shall remain in effect until terminated by any party, after having given the other party 14 calendar days written notice. This agreement may be amended with the mutual written consent of the parties.

Participation in this Agreement by the Department of Commerce and NOAA Fisheries, is, at all times, subject to the availability of funds.

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 the parties. In the event oral approval is given, it shall be reduced to writing at the earliest opportunity.

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

D. Nothing herein is intended to conflict with NOAA or State directives. If the terms of this Agreement are inconsistent with such directives, those portions of this Agreement that are inconsistent will be invalid, but the remaining terms and conditions shall remain in full force and effect.

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL MARINE FISHERIES SERVICE
OFFICE FOR LAW ENFORCEMENT

BY: *Dale Jones*
DALE JONES
CHIEF OF ENFORCEMENT

DATE: 6-30-99

STATE OF FLORIDA
FISH AND WILDLIFE CONSERVATION COMMISSION
DIVISION OF LAW ENFORCEMENT

BY: *Robert L. Edwards*
COL. ROBERT L. EDWARDS
DIRECTOR

DATE: July 12, 1999

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Tracy H. [Signature]
Commission Attorney

