

Limited Cooperative Agreement Between the
United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
and the California 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 California Fish and Game Code Section 1501.5, between the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and the California Department of Fish and Wildlife. Hereinafter, the parties shall be referred to as NMFS and CDFW 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 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 California Fish and Game Code Section 1501.5 to enter into contracts with public and private entities for fish and wildlife habitat preservation, restoration, and enhancement, to assist in meeting CDFW’s duty to preserve, protect, and restore fish and wildlife;

Whereas, CDFW has the authority to establish a conservation program(s) consistent with the purposes and policies of the Act for the following species occurring within the waters of the state, and which have been deemed by the Secretary to be endangered or threatened and under the jurisdiction of NMFS and to be urgently in need of conservation programs:

Endangered Species

- Black abalone (*Haliotis cracherodii*)
- White abalone (*Haliotis sorenseni*)
- Blue whale (*Balaenoptera musculus*)
- Fin whale (*Balaenoptera physalus*)
- Sei whale (*Balaenoptera borealis*)
- Humpback whale (*Megaptera novaeangliae*)¹
- North Pacific right whale (*Eubalaena japonica*)
- Sperm whale (*Physeter macrocephalus*)
- Killer whale (*Orcinus orca*) – Southern resident Distinct Population Segment (DPS)
- Gray whale (*Eschrichtius robustus*) – Western North Pacific DPS
- Loggerhead turtle (*Caretta caretta*) – North Pacific DPS
- Green turtle (*Chelonia mydas*)²
- Olive ridley turtle (*Lepidochelys olivacea*) – Mexico’s Pacific coast breeding colonies³
- Hawksbill turtle (*Eretmochelys imbricata*)
- Leatherback turtle (*Dermochelys coriacea*)
- Scalloped hammerhead shark (*Sphyrna lewini*) – Eastern Pacific DPS

Threatened Species

- Green sturgeon (*Acipenser medirostris*) – Southern DPS
- Pacific eulachon (*Thaleichthys pacificus*) – Southern DPS
- Guadalupe fur seal (*Arctocephalus townsendi*)
- Steller sea lion (*Eumetopias jubatus*) – Eastern DPS⁴

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;

¹ Currently, all humpback whales are listed as endangered. However, on April 21, 2015, NMFS proposed 14 DPSs for humpback whales (80 FR 22304). In the Eastern North Pacific, the Mexico DPS was proposed as “Not at Risk”, while the Central America DPS was proposed as threatened.

² Currently, green turtles are listed as threatened, except for breeding populations in Florida and on the Pacific coast of Mexico, where they are listed as endangered. However, on March 23, 2015, NMFS and the USFWS proposed 11 DPSs of green turtles (80 FR 15271). In the Eastern North Pacific, the East Pacific DPS was proposed as threatened.

³ Olive ridley turtles are listed as threatened, except for breeding populations on the Pacific coast of Mexico, where they are listed as endangered.

⁴ Delisted on November 4, 2013 (78 FR 66140), but still eligible for section 6 during the five-year monitoring period following delisting.

Whereas, the Act requires the Secretary to determine that: (1) the state agency is authorized to establish conservation programs, including the acquisition of land or aquatic habitat or interests therein, for all resident⁵ species of fish and wildlife listed in this agreement; (2) the state agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife; (3) the state 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 CDFW agree that those species are urgently in need of conservation programs;

Whereas, NMFS hereby determines that CDFW 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 by the State of California are designed to conserve resident endangered and threatened species, and that it is the mutual desire of CDFW 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 California;

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 West Coast Regional Administrator of NMFS to monitor the implementation of this cooperative agreement.

⁵ "Resident species means, for purposes of entering into cooperative agreements with any state pursuant to section 6(c) of the Act, a species that exists in the wild in that state during any part of its life." 50 CFR 222.102

Therefore the parties agree as follows:

1. Consistent with Section 6(d) of the Act, NMFS may provide financial assistance to CDFW 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 CDFW 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 California.

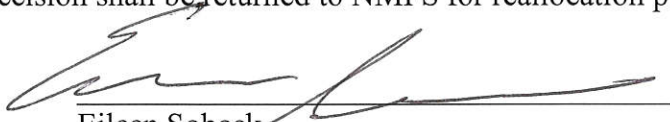
3. Pursuant to section 6(c)(1)(E)(ii) of the Act, entry into this agreement shall in no way affect the applicability of the prohibitions set forth in or authorized pursuant to section 4(d) and section 9 of the Act with respect to the taking of any resident endangered or threatened species of fish or 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 CDFW, and may be renewed in the following manner: Not later than June 30th of each year CDFW 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 by the state's Attorney General's office, or other counsel authorized by CDFW, of any amendments in CDFW'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 CDFW's program for the conservation of endangered and threatened fish and wildlife listed in this agreement; (b) The West Coast Regional Administrator will, on or before October 1st of each year, notify CDFW in writing whether the 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 unless appropriate changes are made by June 30th of the following year, this agreement shall be terminated. If CDFW, 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 signatories.

6. Termination: This agreement may be terminated: (a) by mutual agreement; (b) by CDFW 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 CDFW 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. CDFW 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 CDFW 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 for Fisheries of NMFS and revoke the notice of termination. Any Federal funds that have been awarded pursuant to this agreement to CDFW, but not expended by CDFW, as of the date of termination of this agreement or of final reaffirmation of a termination decision shall be returned to NMFS for reallocation pursuant to section 6(d) of the Act.



Eileen Sobeck
Assistant Administrator for Fisheries
National Marine Fisheries Service

2/2/16
Date



Charlton Bonham
Director
California Department of Fish and Wildlife

2/24/16
Date

