Limited Cooperative Agreement Between the
United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
and the Alaska Department of Fish and Game
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"), between the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and the Alaska Department of Fish and Game. Hereinafter, the parties shall be referred to as NMFS and ADF&G 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, ADF&G is authorized pursuant to Alaska Statute Sections 16.05.020 and 16.05.050 to enter into agreements with federal agencies for the conservation of marine endangered and threatened species;

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

<u>Endangered Species</u>
Steller sea lion, *Eumetopias jubatus*, western Distinct Population Segment (DPS)
Beluga whale, *Delphinapterus leucas*, Cook Inlet DPS
Bowhead whale, *Balaena mysticetus*

Threatened Species
Steller sea lion, *Eumetopias jubatus*, eastern DPS

Whereas, the Secretary is authorized to provide funding to ADF&G to assist in monitoring the following marine mammal candidate species as such funding is available, and in accordance with the terms of the Act;

Candidate Species[1]
Ringed seal, *Pusa hispida*
Bearded seal, *Erignathus barbatus*

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, under the State program: (1) the state 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 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 endangered and threatened species listed in this agreement will be given immediate attention, as NMFS and ADF&G agree that those species are urgently in need of conservation programs;

Whereas, NMFS hereby determines that ADF&G satisfies the Act's legal requirements for such cooperative agreements as specified in the immediately preceding paragraph;

[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 50 CFR §424.02)

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

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 Alaska 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 ADF&G 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 ADF&G 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 Alaska.

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 Commissioner of ADF&G, and may be renewed in the following manner: Not later than June 30th of each year ADF&G shall submit to the Assistant Administrator for Fisheries of NMFS the following: (1) the current list of the state listed resident endangered species under Alaska Statute 16.20.180-210 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 ADF&G's legal authority or regulatory programs for federally listed endangered and threatened species listed in this agreement 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 ADF&G's program for the conservation of endangered and threatened fish and wildlife listed in this agreement;

(b) The Alaska Regional Administrator will, on or before October 1st of each year, notify ADF&G 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 ADF&G, 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 ADF&G 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 ADF&G 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. ADF&G

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 ADF&G 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 ADF&G, but not expended by ADF&G, 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.

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

12-3-09
Date

for Denby S. Lloyd
Commissioner
Alaska Department of Fish and Game

12/3/09
Date