

Limited Cooperative Agreement Between the
United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service and the
Massachusetts Division of Marine Fisheries and the
Massachusetts Division of Fisheries 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 Massachusetts General Law c. 131A (Massachusetts Endangered Species Act), c. 131, § 4, and c. 130, § 17, as may be amended, between the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service ("NMFS"), and the Massachusetts Division of Fisheries and Wildlife ("DFW") and the Massachusetts Division of Marine Fisheries ("DMF") (collectively "MASS"). Hereinafter, the parties shall be referred to as NMFS and MASS, 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, MASS is authorized to enter into agreements with federal agencies for the conservation of endangered and threatened species;

Whereas MASS has the authority to establish a conservation program(s) consistent with the purposes and policies of the Act for species of fish and wildlife, occurring within the state, which have been deemed by the Secretary to be endangered or threatened and under the jurisdiction of NMFS;

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, and annually reconfirm, that: (1) the state agency 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; (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 state agency has established and provided copies of acceptable plans, consistent with the purpose and policies of the Act, to give immediate attention to those resident threatened and endangered species that NMFS and the state agency have agreed are most urgently in need of conservation programs;

Whereas MASS and NMFS share a mutual desire to work in harmony for the common purposes of planning, developing and conducting programs to protect, manage and conserve those resident endangered and threatened fish and wildlife which NMFS and MASS agree are most urgently in need of conservation programs, and which are listed in Appendix A, as may be amended;

Whereas, NMFS hereby determines that MASS satisfies the Act's legal requirements for such cooperative agreements and will annually reconfirm this determination in accordance with the Act;

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

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 Greater Atlantic Regional Fisheries Office Regional Administrator of NMFS to monitor the implementation of this cooperative agreement and update the status of species listed in Appendix A of this agreement;

Therefore the parties agree as follows:

1. Consistent with Section 6(d) of the Act, NMFS may provide financial assistance to MASS 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 MASS 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 to recover resident endangered and threatened species in Massachusetts for their esthetic, ecological, educational, scientific, historical, and recreational value to the Nation and its people.

3. Pursuant to section 6(c)(1)(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 Directors of DFW and DMF (collectively "MASS"), and may be renewed in the following manner: Not later than June 30 each year, MASS 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 or the listing process since the date of the previous submission of the list to NMFS; (2) a certification of any amendments in MASS's legal or regulatory authority that affect the conservation of 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 or proposed 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 MASS's program for the conservation of endangered and threatened fish and wildlife;

(b) The Greater Atlantic Regional Fisheries Office Regional Administrator will, on or before October 1 of each year, notify MASS in writing whether the cooperative agreement is renewed effective October 1 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 30 of the following year, this agreement shall be terminated. If MASS, after satisfying the renewal provisions of the immediately preceding paragraph, has not been notified concerning the renewal of this agreement by October 1 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. With the written consent of the signatories below or their authorized representatives, Appendix A may be amended to accurately reflect the status of resident species under the Act, without need for further modification to this agreement. The Greater Atlantic Regional Fisheries Office Regional Administrator is an authorized representative of the Assistant Administrator for Fisheries and may consent to amendments to Appendix A, consistent with NMFS's existing policies, during the renewal process described in paragraph 4.

6. Termination

This agreement may be terminated: (a) by mutual agreement; (b) by MASS 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 MASS 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. MASS 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 MASS 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 MASS, but not expended by MASS, as of the date of termination of this agreement or of final reaffirmation thereof shall be returned to NMFS for reallocation pursuant to section 6(d) of the Act. To the extent permissible by law, this agreement shall be binding upon any successor in interest of the MASS and shall not be rendered invalid solely because the MASS is renamed, reorganized, or consolidated.



Chris Oliver
Assistant Administrator for Fisheries
National Marine Fisheries Service



Date



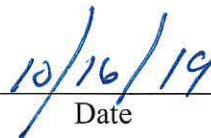
David Pierce, Ph.D.
Director
Massachusetts Division of Marine Fisheries



Date



Mark Tisa, Ph.D., M.B.A.
Director
Massachusetts Division of Fisheries and Wildlife



Date

APPENDIX A

Resident Endangered Species

Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) (New York Bight, Chesapeake Bay, Carolina, and South Atlantic Distinct Population Segments)

Fin whale (*Balaenoptera physalus*)

Kemp's ridley sea turtle (*Lepidochelys kempii*)

Leatherback sea turtle (*Dermochelys coriacea*)

North Atlantic right whale (*Eubalaena glacialis*)

Sei whale (*Balaenoptera borealis*)

Shortnose sturgeon (*Acipenser brevirostrum*)

Resident Threatened Species

Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) (Gulf of Maine Distinct Population Segment)

Green sea turtle (*Chelonia mydas*) (North Atlantic Distinct Population Segment)

Loggerhead sea turtle (*Caretta caretta*) (Northwest Atlantic Ocean Distinct Population Segment)