



GOVERNMENT OF BERMUDA

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

**UNITED STATES OF AMERICA
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE
OFFICE OF NATIONAL MARINE SANCTUARIES**

**AND THE
GOVERNMENT OF BERMUDA
MINISTRY OF ENVIRONMENT, PLANNING AND
INFRASTRUCTURE STRATEGY**

**TO COLLABORATE ON INTERNATIONAL PROTECTION,
CONSERVATION AND MANAGEMENT
OF THE HUMPBACK WHALE**

NOS Agreement Code: MOA-2012-058/8588

I. PARTICIPANTS AND PURPOSE

- A. This Sister Sanctuary Agreement aims to implement the Letter of Intent (LOI 30 June 2011) signed between the U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), Office of National Marine Sanctuaries (ONMS) and, the Government of Bermuda, hereafter referred to as “Participants.”
- B. This Agreement establishes a Sister Sanctuary partnership between the Stellwagen Bank National Marine Sanctuary (SBNMS) and the Bermuda Marine Mammal Sanctuary (hereinafter designated as BMMS) for the development, promotion, and support of activities concerning the conservation, stewardship, and management of the humpback whale and its respective habitats overseen by the Participants, and other marine mammal species as is appropriate.
- C. The Participants do not intend this Sister Sanctuary Agreement to be a legally binding “international agreement” as defined in the Case-Zablocki Act (1 U.S.C. 112b). Their intent is solely to foster cooperation on activities of mutual interest. To the extent any provisions in this Sister Sanctuary Agreement are considered to be obligations, the Participants do not intend them to be subject to international law.

II. BACKGROUND

- A. ONMS’s primary mandate is the protection of the resources of each sanctuary. The system of sanctuaries represents many of the diverse and productive marine habitats in U.S. Ocean waters and Great Lakes waters.
- B. SBNMS protects 842 square miles (638 square nautical miles) of ocean, stretching between Cape Ann, MA and Cape Cod, MA. Renowned for its remarkable productivity, the SBNMS supports a rich diversity of marine life including 22 species of marine mammals and is one of the most intensively used whale habitats in the northeast continental region in the United States. Of special note, the data set for humpback whales in the Stellwagen Bank Sanctuary is the longest and most detailed study of baleen whales in the world. Matrilineal studies show evidence of four generations (1975–2006) of humpback use of, as well as inter-generational site fidelity to, the sanctuary as a feeding and nursery area.
- C. The humpbacks whales are resident in SBNMS feeding grounds from April through December and migrate to lower latitudes in the Caribbean Sea during the winter months to mate and calve. Being located along this pathway, BMMS serves as a migratory corridor for our ‘shared’ humpback whale population.

D. BMMS was created by Ministerial Order pursuant to Section 4 of the Fisheries Act 1972 and covers the full extent of Bermuda's Exclusive Economic Zone, a total of 173,889 sq. miles. All marine mammals have been designated as protected species in Bermuda's waters since the 1978 Fisheries (Protected Species) Order of 1978 (BR8/1978), issued under the 1972 Fisheries Act (1972:76). Additional protection for humpback and sperm whales was provided by the 2012 Protected Species Order (BR7/2012), which recognizes them as 'vulnerable' according to the criteria set out by the International Union for the Conservation of Nature's Red List of Threatened Species.

E. The international agreement in Bermuda leading to the establishment of this Sister Sanctuary Agreement is the result of the work of the Sargasso Sea Alliance – an alliance led by the Government of Bermuda, in collaboration with scientists, international marine conservation groups and private donors, who all share a vision of protecting the unique and vulnerable ocean ecosystem of the Sargasso Sea and the marine resources that it harbors and supports.

F. This Sister Sanctuary Agreement involves two marine protected areas (MPAs), 773 miles (1244.68km) apart that provide critical support for the same humpback whale population of around 1,000 humpback whales. The Sister Sanctuary partnership will serve as a model for transboundary marine mammal protection and particularly for the protection of humpback whales by increasing public awareness and support for marine mammal conservation through the exploration of this collaborative management effort.

G. The Sister Sanctuary Agreement between SBNMS and BMMS, while supplemental, will contribute to the implementation of the Action Plan for the Conservation of Marine Mammals in the Wider Caribbean Region, adopted by the Contracting Parties (which includes the USA) to the Protocol on Specially Protected Areas and Wildlife of the Cartagena Convention, and in particular to its objective 2.4.1 "By mutual agreement among the contracting Parties involved, design and declare marine protected areas and other management regimes, that maintain ecological connections (e.g., Sister Sanctuaries that promote the protection of transboundary assets) with user and stakeholders involvement and participation".

III. AUTHORITIES

- A. The legal and programmatic authority for ONMS to enter into this Agreement is the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.*, which includes the purposes to develop and implement coordinated plans for the protection and management of these two critical humpback whale habitats with appropriate international organizations and other public and private interests concerned with continuing the health and resilience of these marine areas, and to cooperate with global

programs encouraging the conservation of marine resources; and specifically 16 U.S.C. 1435(c), which allows the Secretary, in consultation with the Secretary of State and other appropriate Federal agencies, to cooperate with other governments and international organizations in the furtherance of the purposes and policies of this Act and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.

- B. As indicated above, Bermudian law protects all marine mammals within Bermudian waters under the provisions of the 1972 Fisheries Act, as implemented by the 1978 Fisheries (Protected Species) Order of 1978, and gives special recognition to humpback and sperm whales by the 2012 Protected Species Order passed under the 2003 Protected Species Act. In August, 2012, the Government of Bermuda approved the creation of the Bermuda Marine Mammal Sanctuary and the negotiation of this Agreement.

IV. OBJECTIVES

Collaboration between the Participants may include but is not limited to:

- Exchange of technical information, scientific data, and practical experiences about humpback whales and their respective habitats, including staff exchanges, common activities such as scientific cruises, and site visits;
- Development of methodologies for their protection within marine protected areas;
- Development, coordination, and evaluation of research and monitoring programs and campaigns, outreach and education programs, enforcement methodology, performance assessments, and community involvement mechanisms for humpback whale research and marine protected areas;
- Participation in relevant regional and international initiatives that contribute to the transboundary protection of marine mammals and cooperation with appropriate national and international institutions and organizations in that respect ; and,
- Support of workshops, conferences, and other meetings sponsored by each Participant.

V. FUNDING ARRANGEMENTS

- A. Activities in this Sister Sanctuary Agreement will be conducted subject to the availability of funds.
- B. Each Participant shall cover the costs associated with any travel or other activities for its own staff, unless as otherwise agreed to by both Participants via written amendment to

this agreement.

- C. This Sister Sanctuary Agreement defines in general terms the basis on which the Participants will cooperate, and as such, does not constitute a fiscal or funds obligation document.

. CONTACTS

- A. The points of contact for this Agreement are:

SBNMS

Craig D. MacDonald, PhD
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Stellwagen Bank National Marine Sanctuary
175 Edward Foster Road
Scituate, MA 02066
USA
Telephone: 781-545-8026, ext. 202
Facsimile: 781-545-8036
Email: Craig.MacDonald@noaa.gov

Bermuda

Dr. Derrick Binns
Permanent Secretary
Ministry of Environment, Planning and Infrastructure Strategy
Dame Lois Browne-Evans Bldg., 5th Floor
58 Court Street
Hamilton HM 12 Bermuda
Telephone: [441-294-9000](tel:441-294-9000)
Email: dsbinns@gov.bm

- B. If there is a change to the points of contact, the Participant making the change will notify the other Participant in writing of such change. Changes to this section will not require an amendment.

VII. DURATION, AMENDMENTS, OR TERMINATION

- A. This Sister Sanctuary Agreement will become effective after signature by both Participants. The Agreement will expire after a period of five years from date of last signature, unless terminated by mutual written consent, with one Participant's written notice six months in advance, or completion of the terms and conditions of the


Agreement.

- B. The Sister Sanctuary Agreement may be amended at any time within the scope of this Agreement, or extended at any time through the written mutual consent of the Participants before its expiration.
- C. The Participants will review this Sister Sanctuary Agreement once every five years to determine whether it should be extended, revised or terminated.
- D. If the Participants disagree over how to interpret this Sister Sanctuary Agreement, they shall present their differences to each other in writing, and they shall discuss them. If the Participants fail to resolve their differences within thirty (30) days, they may refer the matter to the Director of NOAA's ONMS or the Permanent Secretary within the Government of Bermuda's Ministry of Environment, Planning and Infrastructure.

APPROVALS

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE
OFFICE OF NATIONAL MARINE
SANCTUARIES

GOVERNMENT OF BERMUDA
MINISTRY OF ENVIRONMENT,
PLANNING AND INFRASTRUCTURE
STRATEGY

BY: 
Daniel J. Basta
Director

BY: 
Dr. Derrick Binns
Permanent Secretary

DATE: SEP 10 2012

DATE: 20th Sept 2012