

Memorandum of Understanding
between
The National Museum of Natural History, Smithsonian Institution
and
Nha Trang University

This Memorandum of Understanding ("MOU"), effective as of the date of signing by the parties is entered into by and between the Smithsonian Institution, a non-profit trust instrumentality of the United States created in 1846 by an act of the United States Congress, having its principal place of business at 1000 Jefferson Drive, SW, Washington, D.C. 20560, U.S.A., by and through the Department of Vertebrate Zoology, National Museum of Natural History (hereafter "NMNH/SI" or "Smithsonian") and Nha Trang University (hereafter "NTU"), an academic institution, having its principal place of business at Khanh Hoa Province, Vietnam.

WHEREAS the Smithsonian was established for the "increase and diffusion of knowledge" and has established museums, research centers and programs dedicated to the understanding and preservation of humanity's cultural heritage, the encouragement of contemporary cultural creativity, and the understanding and sustaining of the planet's biodiversity. NMNH/SI is an educational and research institution with active research programs specific to the study of fishes of the world in general, and the Pacific in particular.

WHEREAS NTU was established in 1959, as one of the Vietnam's major multidisciplinary, multi-leveled universities, and a leading university for fishery research, training and advanced technology development in Vietnam;

WHEREAS the Smithsonian has the legal authority to enter into this MOU pursuant to 20 U.S.C. §41 et seq., and NTU has the legal authority to enter into this MOU pursuant to the Higher Education Law.

WHEREAS both the Smithsonian and NTU have expressed their willingness to engage in mutual cooperation and agree to undertake a collaboration on the study of commercially important fishes of Vietnam based on fishes collected from Vietnamese fish markets and fish landings, DNA barcoding and specimen vouchering of the purchased fishes, and training for food safety (the "Project").

WHEREAS, both the Smithsonian and NTU as well as the scientific community and the Vietnamese people in general will benefit from the creation of a publicly accessible reference specimen and DNA library of commercial fishes for use in the research and management of the country's valuable fishery resources.

NOW, THEREFORE, the Smithsonian and NTU (collectively the "Parties") agree as follows:

1. Areas of Collaboration

The Smithsonian and NTU will work collaboratively to:

- 1.1 Study the commercially important fishes of Vietnam based on fishes purchased from Vietnamese fish markets and fish landings, by tissue sampling of specimens for DNA barcoding and preservation and vouchering of the purchased fishes;
- 1.2 Conduct training related to identification techniques used to identify fishes for food safety; and
- 1.3 Build knowledge and skills, by conducting training for participants in the Project.

2. Responsibilities of the Parties

- 2.1 Smithsonian agrees to:
 - 2.1.1 Conduct training for concerned participants on fish taxonomy research methods as part of the Project;
 - 2.1.2 Cover NMNH/SI personnel Project costs, including food and accommodation expenses, as well as freight, and customs fees incurred by the Project during joint collecting trips;
 - 2.1.3 Facilitate the necessary US customs clearances, permits and authorities for carrying out the Project activities as required by applicable U.S. laws, rules and regulations.
- 2.2 NTU agrees to:
 - 2.2.1 Assign qualified scientists and researchers required for Project implementation;
 - 2.2.2 Provide laboratory and field equipment, as available, to conduct the Project;
 - 2.2.3 Facilitate the necessary shipping arrangements, customs clearances, permits and authorities for carrying out the Project activities required by applicable Vietnamese laws, rules and regulations; and
 - 2.2.4 Facilitate the physical movement of Project supplies and equipment within Vietnam.

3. Implementation of Specific Projects

The Parties will enter into a separate written agreement for each specific initiative or project arising under this MOU that requires the commitment of funds and other resources from both Parties or otherwise necessitates binding written documents reflecting the Parties' mutual understanding in detail for planning, development and implementation of the project ("Project Agreement").

4. Funding

This MOU creates no financial obligation or commitment of staff or other resources on the part of either Party. All activities undertaken pursuant to this MOU shall be subject to available funding.

5. Representatives

- 5.1 Institutional Representative. Each Party hereby designates an Institutional Representative who will have authority to execute, modify, and terminate this MOU and interpret the terms and conditions, as necessary. The Institutional Representatives for the respective Parties are as follows:

Smithsonian:

KIRK JOHNSON, Ph.D., Sant Director, National Museum of Natural History, 1000 Jefferson Drive, SW, Washington, D.C. 20560, U.S.A.

NTU:

Nguyen Thi Ngan, Ph.D., Vice Director, Dept. of External Cooperation – Nha Trang University, No. 2 Nguyen Dinh Chieu, Nha Trang city, Khanh Hoa province, Vietnam

- 5.2 Project Liaison. Each Party hereby designates a Project Liaison who will be responsible for the oversight of the activities described herein and will be the point of contact for the day-to-day activities regarding the implementation of this MOU. The Project Liaison will serve as the primary point of contact for this MOU and to whom communications should be sent, unless otherwise specified in this MOU. The Project Liaison will not have authority to execute or terminate this MOU or amendments thereto. Each Project Agreement will also include a Project Liaison. The Project Liaisons for the respective Parties are as follows:

Smithsonian:

JEFFREY T. WILLIAMS, Ph.D., Collection Manager of Fishes, Museum Support Center, MRC-534, 4210 Silver Hill Road, Suitland, MD 20746 USA, williamsjt@si.edu

NTU:

DANG THUY BINH, Ph.D., Institute for Biotechnology and Environment, Nha Trang University, No 2 Nguyen Dinh Chieu, Nha Trang city, Khanh Hoa province: binhdt@ntu.edu.vn

- 5.3 Each Party reserves the right to substitute, with prior notice to and subject to approval of the other Party, the Institutional Representative or the Project Liaison.

6. Public Disclosure

Both Parties may disclose to the public the existence of this MOU and information with respect to activities and projects contemplated herein in accordance with their respective policies on the disclosure of information. Nothing in this MOU shall be deemed confidential.

7. Use of Names and Marks

Each Party may use the other Party's name and/or mark in announcing and otherwise promoting this collaboration or a specific Project Agreement, provided all language and phrases concerning or referring to the other Party shall be approved in writing in advance by the other Party. Except as permitted under this paragraph, no Party shall refer to another Party or use the other Party's name, logo or trademarks in any manner or through any medium whether written, oral or visual for any purpose whatsoever, including but not limited to advertising, marketing, promotion, publicity, solicitation or fund raising, without the other Party's prior written approval.

8. Dissemination of Research/Intellectual Property

- 8.1 As a general principle, the Parties will encourage their staff to publish and otherwise disseminate all knowledge and information derived from research conducted under this MOU. For collaborative research projects initiated together, the Parties will freely share data, publications, and technical advice.
- 8.2 Each Party shall retain all rights, including copyright, in the intellectual property produced or contributed solely by its employees, agents, and contractors pursuant to this MOU. The Parties will cooperate in identifying intellectual property that is solely the work of one Party and that which is a product of a collaborative effort.
- 8.3 If the collaboration results in copyrightable subject matter, the Parties agree to jointly own the copyright, with the understanding that both Parties may freely use, copy or distribute, publish, and authorize others to use such materials, in all media now known or hereafter invented, for educational, non-commercial purposes, subject to providing credit to the other Party. The Parties shall not be required to share any revenues that may result from the use of these jointly owned materials.

9. Nondiscrimination

In the administration of this MOU or any Project Agreements, the Parties shall not discriminate on any basis prohibited by applicable law, including on the basis of race, sex, age, disability, ethnicity, religion, or national origin.

10. Term and Renewal

This MOU shall commence on the Effective Date (date of signing), as set forth above, and shall continue in effect for five (5) years unless terminated earlier in accordance with this MOU. The Parties may renew this MOU upon their mutual written consent.

11. Termination

Either Party may terminate this MOU for any reason prior to its expiration by providing thirty (30) days written notice of its intent to terminate to the Institutional Representative. This MOU also may be terminated at any time by mutual written agreement of the Parties. Termination of specific Project Agreements will be governed by the terms of the specific Project Agreement.

12. Relationship of the Parties

Under no circumstances will this MOU be construed as creating or establishing any formal, legal, association, partnership, joint venture, principal/agent or master/servant relationship between the Parties.

13. Indemnification and Liability

To the extent authorized by law, each Party agrees to indemnify and hold the other Party harmless from any and all claims, liabilities, damages, judgments, settlements, and expenses ("Claims") arising or related to this MOU or any project arising thereunder, except for Claims arising from a Party's negligence or willful misconduct. Each Party is responsible for the acts, omissions, or negligence of its own officers, employees, agents and representatives acting within the scope of their employment in carrying out their respective responsibilities under this MOU.

14. Assignment

This MOU may not be assigned by either Party, except with the express written permission of the other Party's Institutional Representative.

15. Dispute Resolution

Any dispute arising under this MOU that cannot be resolved by the Project Liaisons will be resolved by good faith consultation or negotiation by the Institutional Representatives or their designees, or by any other way mutually agreed upon by the Parties.

16. Official Language

The official language of this MOU is English, which shall be the controlling language for all matters relating to the meaning or interpretation of this MOU.

17. Modification and Waivers

No variation, amendment, change, modification or waiver of any term, provision or condition of this MOU will be valid unless in writing and signed by the Institutional Representatives of both Parties.

18. Force Majeure

The Parties acknowledge that this MOU or any project arising under it may be suspended or terminated due to an event of force majeure including, but not limited to, fire, earthquake, epidemic, explosion, casualty, strike, act of war, riot, civil disturbance, terrorism, act of God, state, local or national law, decrees or ordinance, or any executive or judicial order, or any other reason beyond the Parties' control. Each Party will notify the other Party as soon as it is aware of any event of force majeure which would delay or prevent the performance. In the event of a force majeure, the Parties will consult with each other to determine a revised timeline for performance or whether to terminate the MOU.


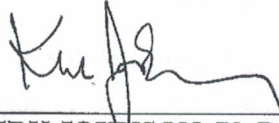
19. Entire Agreement

The terms and conditions herein constitute the entire agreement and understanding by and between the Parties and shall supersede all other communications, negotiations, arrangements, and agreements either oral or written, with respect to the subject matter herein.

20. Counterparts; Signature

This MOU may be executed in duplicate and each original shall be equally effective. Signatures on this MOU sent by facsimile or pdf are valid and binding as original signatures.

WE, THE UNDERSIGNED HAVE READ AND AGREE WITH THIS MOU:

NHA TRANG UNIVERSITY	THE SMITHSONIAN INSTITUTION
By: 	By: 
ASSOC. PROF. TRANG SI TRUNG Rector, NTU	KIRK JOHNSON, Ph.D. Sant Director NMNH/SI
Date: _____	Date: <u>12/11/19</u>