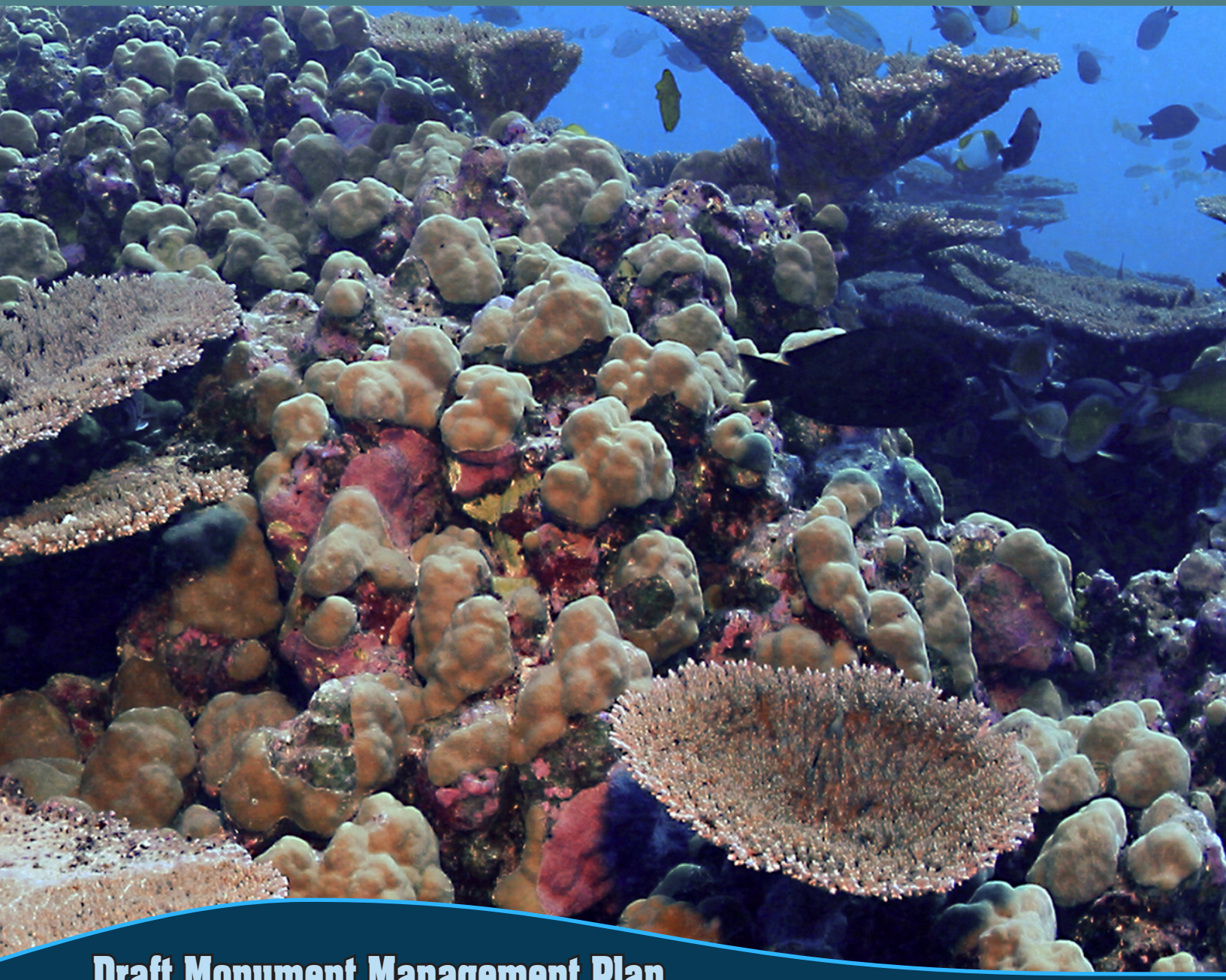
Papahānaumokuākea
Marine National Monument



Draft Monument Management Plan
Appendices: Supporting Documents & References

U.S. Fish & Wildlife Service * National Oceanic and Atmospheric Administration * State of Hawai'i

Volume III

Papahānaumokuākea Marine National Monument

Draft Management Plan

Volume III: Appendices

Supporting Documents and References

April 2008

Prepared by:

Papahānaumokuākea Marine National Monument

United States Fish and Wildlife Service
300 Ala Moana Blvd., Room 5-231
Honolulu, Hawaii 96850

National Oceanic and Atmospheric Administration
6600 Kalanianaole Highway, Suite 300
Honolulu, Hawaii 96825

Hawai‘i Department of Land and Natural Resources
1151 Punchbowl Street, Room 130
Honolulu, Hawai‘i 96813

Volume III: Appendices

Supporting Documents and References

Appendix A: Permitting Process
Appendix B: Midway Atoll National Wildlife Refuge Draft Conceptual Site Plan (See Volume IV)
Appendix C: Midway Atoll Draft Visitor Services Plan
Appendix D: FWS Compatibility Determinations
Appendix E: Maintenance of Wilderness Character
Appendix F: Presidential Proclamations 8031 and 8112
Appendix G: Monument Regulations
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APPENDIX A:
Permitting Process

Papahānaumokuākea Marine National Monument
Monument Permit Application Unified Public Notification Policy

Effective 02/01/08

Background

A permit is required for most activities allowed in the Papahānaumokuākea Marine National Monument (Monument), including Hawaiian Islands National Wildlife Refuge, the Midway Atoll National Wildlife Refuge, Battle of Midway National Memorial, Northwestern Hawaiian Islands State Marine Refuge, Kure Atoll Hawaii State Seabird Sanctuary, and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. Permit applications are accepted:

- February 1: For activities occurring between June 1 and August 31
- May 1: For activities occurring between September 1 and December 31
- September 1: For activities occurring between January 1 and May 31

Permit applications received after the deadline dates are not guaranteed to be processed before the associated activity period commences.

The following unified public notification policy will engage and inform the public of activities proposed to occur within the Monument. Posting of a permit application does not equate to permit approval. After posting, each application is thoroughly reviewed. Final permitted activities may differ from the proposed activities.

Policy

- Within 10 calendar days of receipt of application, a summary of the applicant's proposed activities will be posted on an agency web site for public viewing.

- Within 40 calendar days of receipt of application, full permit applications will be posted on an agency website for public viewing. A full application is one from which reviewers are able to evaluate the merits of the proposed activity.

- The permit application will be posted for a minimum of 30 calendar days prior to agency determination.

- Proposed activities that respond to urgencies, meet a high management priority, and are exigent in either opportunity or need for execution shall be considered separately. Examples of such occasions from the 2007 field season include providing twin monk seal captive care, as well as an unanticipated opportunity to gather critical mapping data.

It is noted that there are additional opportunities for public notification and input:

- Monument Regulations (50 CFR Part 404.11) require Monument permit applications for Special Ocean Use be posted for public notice and comment 30 days prior to the issuance of a Monument permit.

- Appropriate regulatory and environmental reviews (e.g. Environmental Impact Statements, Environmental Assessments, and Compatibility Determinations) related to Monument permit applications are posted for public comment.

- Monument permit applications that include proposed activities within the Northwestern Hawaiian Islands State Marine Refuge are posted to the Board of Land and Natural Resources (BLNR)

website for 7 days prior to the scheduled BLNR meeting as part of the overall Land Board submittal.

This policy provides guidance to the Co-Trustee representatives for public notification of permit applications for proposed activities in the Monument.

It is also important to note that the permit application that is posted may not include some of the detailed logistical and compliance information being considered prior to permit issuance. An activity may be provisionally approved based on the posted full application, but a permit will only be issued after the receipt of all required information (e.g. final crew/team roster, hull inspection certification, etc.).

Note to Readers:

In accordance with Presidential Proclamation 8031, which established Papahānaumokuākea Marine National Monument, applicants may seek one of six different Monument permits depending upon the type of activity they wish to pursue. Each permit type has a separate application and instructions. To reduce the size of this document, only one application and instructions—the one for research permits—is included in this Appendix. Applications and instructions for the other permit types are available at:

http://www.hawaiireef.noaa.gov/resource/permit_apply.html

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Papahānaumokuākea Marine National Monument
Research Permit Application Instructions
January 2008

Introduction

On June 15, 2006, President Bush established the Papahānaumokuākea Marine National Monument (Presidential Proclamation 8031, 71 FR36443, June 26, 2006) under the authority of the Antiquities Act (Act) (16 U.S.C. 431). The Proclamation reserves all lands and interests in lands owned or controlled by the Government of the United States in the Northwestern Hawaiian Islands (NWHI), including emergent lands and submerged lands and waters, out to a distance of approximately 50 nautical miles (nmi) from the islands. The outer boundary of the Monument is approximately 950nmi long by 100nmi wide, extending around coral islands, seamounts, banks, and shoals. The area includes the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge and the Northwestern Hawaiian Islands State Marine Refuge.

The three principals with responsibility for managing lands and waters of the Monument, the Department of Commerce, Department of the Interior, and the State of Hawaii (collectively the Co-Trustees), work cooperatively to administer the Monument. This relationship is further described in the Memorandum of Agreement among the Co-Trustees signed on December 8, 2006.

Permit Application Deadlines

Permit applications must be received by:

- February 1: For activities occurring between June 1 and Aug 31
- May 1: For activities occurring between September 1 and December 31
- September 1: For activities occurring between January 1 and May 31

NOTE: Issuance of a Monument permit is dependent upon the completion and review of the application and Compliance Information Sheet.

Confidential Information

The Co-Trustees intend to post completed permit applications on the Internet for public review. Applicants are requested to indicate any information that is considered proprietary business information. Such information is typically exempt from disclosure to anyone requesting information pursuant to the Freedom of Information Act (FOIA) and all applicable State law. NOAA, the U.S. Fish and Wildlife Service and the State of Hawaii attempt to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b) and applicable State law. Typically exempt information includes trade secrets, commercial and financial information (5U.S.C. 552(b) (4)). Personal information affecting an individual's privacy, such as personal telephone numbers and addresses will also be kept confidential

consistent with 5 U.S.C. 552(b) (6) and applicable State law. Unless such information is so identified, the application may be made available to the public in its entirety.

Intellectual Property

The permittee retains ownership of any data, derivative analyses or other work product, or any photographic or video material, or other copyrightable works, but the Federal Government and the State of Hawaii retain a lifetime, non-exclusive, worldwide, royalty-free license to use the same for government purposes, including copying and redissemination, and making derivative works.

Indemnification

The permittee and any person participating in any activity authorized by this permit shall release, indemnify, and hold harmless National Oceanic and Atmospheric Administration, the Department of Commerce, the U.S. Fish and Wildlife Service, the Department of the Interior, the United States Government, the State of Hawaii, and their respective employees acting within the scope of their duties from and against any claims, demands, actions, liens, rights, subrogated or contribution interests, debts, liabilities, judgments, costs, and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon the issuance of this permit or the entry into or habitation upon the Papahānaumokuākea Marine National Monument or as the result of any action of the permittee or persons participating in the activity authorized by this permit.

Reporting Burden

Submittal of the information requested in these guidelines is required to obtain a permit pursuant to Monument regulations (50 CFR Part 404). This data is to evaluate the potential benefits of the activity, determine whether the proposed methods will achieve the proposed results, evaluate any possible detrimental environmental impacts, and determine if issuance of a permit is appropriate. It is through this evaluation that the Co-trustees are able to use permitting as one of the management tools to protect Monument resources and qualities.

Public reporting burden for this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated as:

A. Twenty-four (24) hours per response for Special Ocean Use permits;
B. Five (5) hours per response for General (Research, Conservation and Management, and Education), Native Hawaiian Practices, and Recreation permits;
C. Four (4) hours per response for VMS installation and maintenance;
D. Five (5) minutes per response for entry and exit notices and VMS certification;
E. Five (5) seconds per response for hourly VMS reports.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Papahānaumokuākea Marine National Monument Permit Coordinator, 6600 Kalaniana'ole Hwy. # 300, Honolulu, HI 96825.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Directions for filling out the Monument Permit Application

1. Download the Research permit application If you are unsure of the category for your proposed project, contact the Monument Permit Coordinator (contact information below).
2. Click on the document to open.
3. You will now be able to type in all the gray text field boxes and check boxes.
4. You will not be able to alter, copy, delete or modify the permit application questions and cover page in any way.

If you have difficulty filling out the application, contact the PMNM Permit Coordinator at (808) 397-2660 OR nwhipermit@noaa.gov.

Send Permit Applications to:

Papahānaumokuākea Marine National Monument Permit Coordinator
6600 Kalaniana'ole Hwy. # 300
Honolulu, HI 96825
nwhipermit@noaa.gov
PHONE: (808) 397-2660 FAX: (808) 397-2662

NOTE: SUBMITTAL VIA ELECTRONIC MAIL IS PREFERRED BUT NOT REQUIRED. YOU ARE ALSO REQUIRED TO SEND ONE SIGNED ORIGINAL APPLICATION VIA MAIL TO THE MONUMENT OFFICE ABOVE:

Papahānaumokuākea Marine National Monument

RESEARCH Permit Application Instructions

NOTE: ***This Permit Application (and associated Instructions) are to propose activities to be conducted in the Papahānaumokuākea Marine National Monument. The Co-Trustees are required to determine that issuing the requested permit is compatible with the findings of Presidential Proclamation 8031. Within this Application, provide all information that you believe will assist the Co-Trustees in determining how your proposed activities are compatible with the conservation and management of the natural, historic and cultural resources of the Papahānaumokuākea Marine National Monument (Monument).***

Permit Application Cover Sheet Summary Information

NOTE: The permit application cover sheet is intended to provide summary information on permit applications for activities proposed to occur in the Papahānaumokuākea Marine National Monument. Information submitted in this section will be posted on the Monument website to inform the public regarding projects proposed to occur in the Monument.

Applicant Name: Enter the name of the person who is in charge of the proposed activity and who will be responsible for all the personnel and actions under the authority of the requested Monument permit.

Affiliation: Specify the Applicant's affiliation, if any, in relation to the proposed project.

Proposed Activity Dates: Specify the dates of your activities.

Proposed Method of Entry: Specify whether you will enter the Monument via vessel or aircraft.

Proposed Locations: Provide a brief summary of the location(s) for proposed activities (e.g. French Frigate Shoals, or 300-1500 meters depth east of Twin Banks, etc.). NOTE: Specific GPS and other location information are requested in the Monument Compliance Information Sheet.

Estimated number of individuals to be covered under this permit: Provide an ESTIMATE of the number of individuals (including Applicant) to be covered under this permit.

Estimated number of days in the Monument: Provide the ESTIMATED number of days in the Monument.

Description of proposed activities: Include a brief description of the proposed activities, including the following:

- Define the objective of the proposed activity (*The proposed activity will. . .*)
- Identify what the action will entail (*To accomplish this activity we would. . .*)
- Explain the benefit of the activity to the Monument (*This activity would help the Monument by. . .*)

Other information or Background: Include any other information relevant to your proposed activity summary.

Section A: Applicant Information

1. State the name and title of the Applicant. The Applicant is the individual who is in charge of the proposed activity and, therefore, responsible for all the personnel and actions undertaken under the authority of the any Monument Permit issued pursuant to this application. Attach the Applicant's CV, resume or biography if applicable.

1a. If you will not be present in the Monument for the proposed activities in your application, provide the full name(s), affiliation(s) and contact information of the person or persons responsible for ensuring the permit conditions are followed in the Monument. Attach their respective CV, resume, or biography if applicable.

2. State the Applicant's mailing address, phone number, fax number, and email address. If the Applicant is a student, state the Major Professor's contact information in addition to his/her own.

3. Specify the Applicant's affiliation, if any, in relation to the proposed project.

4. List all personnel roles and/or names. Include first and last name, position (Research Diver, Field Technician, Medical Assistant, etc.), affiliation, telephone number, and email address for each individual. If specific names of all participants are not known at the time this form is submitted, then specific roles must be provided as placeholders for numbers of persons requested to enter the Monument. The Application Review Committee may request resumes, biographies, or CVs for any personnel listed, at a later date. Attach additional information if necessary.

It is the Applicant's responsibility to keep Monument staff apprised of any proposed personnel changes. Full names of personnel and roles will be required in the Monument Compliance Information Sheet prior to issuance of a permit.

Section B: Project Information

5a. Project Location: Check the boxes of all applicable locations where the proposed activities will occur. Indicate whether your project will occur on land, in the ocean, or both. Also indicate whether your project will occur in deep water or shallow water, or both. Shallow water is defined by water less than 100 meters in depth. NOTE: Include alternate locations if appropriate.

* Location Description: Provide a description of the location of the proposed activity that includes sufficient detail. Refer to the Monument Compliance Information Sheet for information on including specific site and collection location(s).

5b. Check all applicable regulated activities proposed to be conducted in the Monument by the Applicant at any of the locations mentioned in 5a.

*Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging, or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving Monument resource.

*Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands.

*Anchoring means dropping anything on to the ocean bottom with the intention of holding something fast to the bottom. Generally an anchor secures a vessel, but it may also be used for a mooring or any other item.

*Deserting a vessel aground, at anchor, or adrift.

*Discharging or depositing any material into Special Preservation Areas or the Midway Atoll Special Management Area except vessel engine cooling water, weather deck runoff, and vessel engine exhaust.

OR

*Discharging or depositing any material or other matter into the Monument, or discharging or depositing any material or other matter outside of the Monument that subsequently enters the Monument and injures any resources of the Monument, except fish parts (i.e. chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust.

*Touching any coral, living or dead.

*Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument.

*Attracting any living Monument resources.

*Sustenance Fishing means fishing for bottomfish or pelagic species within Federal waters, but outside of Special Preservation Areas, Ecological Reserves and the Midway Atoll Special Management Area, in which all catch is consumed within the Monument, and that is incidental to another activity permitted under Presidential Proclamation 8031.

*Subsistence Fishing means fishing for bottomfish or pelagic species in State waters in which all catch is for direct personal consumption within the Monument, and that is incidental to another activity permitted under Presidential Proclamation 8031.

*Swimming means entering the water and propelling oneself by movements of the limbs, without special equipment of any kind.

*Snorkeling means entering the water and swimming with the aid of a mask, snorkel, and fins, or any combination of the aforementioned equipment.

*SCUBA Diving means entering the water and submerging oneself with the aid of self-contained underwater breathing apparatus.

6. State the purpose of the proposed activities, including the goals and objectives of the activities.

7. The Secretaries of Commerce and Interior are required to determine that issuing the requested permit is compatible with the Findings of Presidential Proclamation 8031. Answer the Monument findings below and provide information that you believe will assist the Co-Trustees in determining your proposed activities are compatible with the conservation and management of the natural, historic and cultural resources of the Monument:

The Findings are as follows:

a. How can the activity be conducted with adequate safeguards for the cultural, natural and historic resources and ecological integrity of the Monument?

b. How will the activity be conducted in a manner compatible with the management direction of the proclamation, considering the extent to which the conduct of the activity may diminish or enhance Monument cultural, natural and historic resources, qualities, and ecological integrity, any indirect, secondary, or cumulative effects of the activity, and the duration of such effects?

c. Is there a practicable alternative to conducting the activity within the Monument? If not, explain why your activities must be conducted in the Monument.

d. How does the end value of the activity outweigh its adverse impacts on Monument cultural, natural and historic resources, qualities, and ecological integrity?

e. Explain how the duration of the activity is no longer than necessary to achieve its stated purpose.

f. Provide information demonstrating that you are qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct.

g. Provide information demonstrating that you have adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct.

h. Explain how the methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to Monument cultural, natural and historic resources, qualities, and ecological integrity.

i. Has your vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of Presidential Proclamation 8031?

j. Demonstrate that there are no other factors that would make the issuance of a permit for the activity inappropriate.

8. Describe the procedures and methods you will use in performing the proposed activity while within the Monument.

Describe in detail how you will get to your work locations and specific sites (walking, climbing, wading, swimming, snorkeling, diving, boating, etc.). Will you need to enter a seabird colony? Will you need access to beaches? Will you work at night?

Will you request assistance from Monument staff to maintain the equipment or collect data or samples in association with the proposed activity in your absence or presence? If so, describe procedures for doing so including how often it is to occur and how long it will take per maintenance/data/sample collection event. Describe how you plan to compensate volunteers for the maintenance or data/sample collection work.

NOTE: If you will not collect specimens, you may enter "N/A" for questions 9-11 and skip to question 12a.

9a. List all specimens (organisms or objects) you plan to collect. If applicable, list each species common name, scientific name, number to be collected, maximum size of specimens to be collected, amount taken and the size of the organism from which you will take any sample(s), and general collection location requested in #5a. Also indicate whether you will take the whole organism or a subsample thereof.

9b. List the post project disposition of specimens. What will be done with the parts of samples that are not used in your initial analysis?

9c. Check the appropriate box to indicate if the organisms will be kept alive after collection. If the organisms are to be kept alive, state where will they be housed. (Provide the general site and/or location.) Also check the appropriate box to indicate if there is an open or closed-system for maintaining living organisms and if there is an outfall or discharge. If applicable, note whether the organisms will be kept with other species and if so, the species names of the other organisms. Will any organisms be released? If so, where?

10. How will the collected samples be transported out of the Monument? Will samples be transported by vessel or aircraft? Will samples be transported frozen, in formalin, in alcohol, or other media?

11. Describe whether you are collaborating with others to reduce duplicative activities in the Monument or elsewhere in the State of Hawaii or other Pacific Remote Island National Wildlife Refuges. If you are collecting samples for someone else, stipulate to whom the samples will be

provided and give their Monument permit number. Also, list State of Hawaii and United States Fish and Wildlife Service permit numbers for any relevant collaborations or research related to this project, including projects in the main Hawaiian Islands and Pacific Remote Island National Wildlife Refuges. Provide information on permit applications for related research that are under review at any of the above agencies.

12a. Provide a complete itemized list of work related gear/equipment/supplies, including collecting equipment, radio isotopes, dive equipment, etc. that will be taken into and removed from the Monument. If you wish to store any items on any island between field seasons, request so here. Indicate how and where you propose the stored items be kept. If you propose to take any work or personal items ashore that will require use of resources (electrical, power, water, or other resources) also describe that in this section.

12b. For any Hazardous Materials also include the following information:
*List all hazardous materials by common name, proper shipping name, hazard class, and amount to be taken into the Monument. Provide a Material Safety Data Sheet for each hazardous material.
*Describe how each hazardous material will be contained and stored while in the Monument.
*Describe how each hazardous material will be used for the proposed activity. Describe how and when each hazardous material will be removed from the Monument.

NOTE: The Principal Investigator (Applicant) is responsible for disposal of, storage or unauthorized use of any left-over hazardous materials from any permitted activity.

13. If applicable, indicate the types of permanent or semi-permanent installments you would like to install in the Monument, and answer the following questions:
*What is it made of?
*What will be installed?
*How will it be installed?
*Where will it be installed?
*How long will it be installed?
*Will the installation require maintenance? If so, who will conduct the maintenance and how often?
*How and when will the installation be removed?

14. Provide information regarding the projected completion dates of the following: sample analysis, write-up and publication of information gathered within the Monument.

15. List all publications directly related to the proposed project:

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Papahānaumokuākea Marine National Monument

RESEARCH Permit Application

NOTE: ***This Permit Application (and associated Instructions) are to propose activities to be conducted in the Papahānaumokuākea Marine National Monument. The Co-Trustees are required to determine that issuing the requested permit is compatible with the findings of Presidential Proclamation 8031. Within this Application, provide all information that you believe will assist the Co-Trustees in determining how your proposed activities are compatible with the conservation and management of the natural, historic, and cultural resources of the Papahānaumokuākea Marine National Monument (Monument).***

ADDITIONAL IMPORTANT INFORMATION:

- Any or all of the information within this application may be posted to the Monument website informing the public on projects proposed to occur in the Monument.

- In addition to the permit application, the Applicant must either download the Monument Compliance Information Sheet from the Monument website OR request a hard copy from the Monument Permit Coordinator (contact information below). The Monument Compliance Information Sheet must be submitted to the Monument Permit Coordinator after initial application consultation.

- Issuance of a Monument permit is dependent upon the completion and review of the application and Compliance Information Sheet.

INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED

Send Permit Applications to:
Papahānaumokuākea Marine National Monument Permit Coordinator
6600 Kalaniana'ole Hwy. # 300
Honolulu, HI 96825
nwhipermit@noaa.gov
PHONE: (808) 397-2660 FAX: (808) 397-2662

SUBMITTAL VIA ELECTRONIC MAIL IS PREFERRED BUT NOT REQUIRED. FOR ADDITIONAL SUBMITTAL INSTRUCTIONS, SEE THE LAST PAGE.

Permit Application – Research
OMB Control # 0648-0548

Papahānaumokuākea Marine National Monument
Permit Application Cover Sheet

This Permit Application Cover Sheet is intended to provide summary information and status to the public on permit applications for activities proposed to be conducted in the Papahānaumokuākea Marine National Monument. While a permit application has been received, it has not been fully reviewed nor approved by the Monument Management Board to date. The Monument permit process also ensures that all environmental reviews are conducted prior to the issuance of a Monument permit.

Summary Information

Applicant Name:
Affiliation:

Permit Category: Research
Proposed Activity Dates:
Proposed Method of Entry (Vessel/Plane):
Proposed Locations:

Estimated number of individuals (including Applicant) to be covered under this permit:

Estimated number of days in the Monument:

Description of proposed activities: (complete these sentences):

a.) The proposed activity would…

b.) To accomplish this activity we would ….

c.) This activity would help the Monument by …

Other information or background:

Permit Application – Research
OMB Control # 0648-0548

Section A - Applicant Information

1. Applicant

Name (last, first, middle initial):

Title:

1a. Intended field Principal Investigator (See instructions for more information):

2. Mailing address (street/P.O. box, city, state, country, zip):

Phone:

Fax:

Email:

For students, major professor's name, telephone and email address:

3. Affiliation (institution/agency/organization directly related to the proposed project):

4. Additional persons to be covered by permit. List all personnel roles and names (if known at time of application) here (e.g. John Doe, Research Diver; Jane Doe, Field Technician):

Permit Application – Research
OMB Control # 0648-0548

Section B: Project Information

5a. Project location(s):

		Ocean Based	
☐ Nihoa Island	☐ Land-based	☐ Shallow water	☐ Deep water
☐ Necker Island (Mokumanamana)	☐ Land-based	☐ Shallow water	☐ Deep water
☐ French Frigate Shoals	☐ Land-based	☐ Shallow water	☐ Deep water
☐ Gardner Pinnacles	☐ Land-based	☐ Shallow water	☐ Deep water
☐ Maro Reef			
☐ Laysan Island	☐ Land-based	☐ Shallow water	☐ Deep water
☐ Lisianski Island, Neva Shoal	☐ Land-based	☐ Shallow water	☐ Deep water
☐ Pearl and Hermes Atoll	☐ Land-based	☐ Shallow water	☐ Deep water
☐ Midway Atoll	☐ Land-based	☐ Shallow water	☐ Deep water
☐ Kure Atoll	☐ Land-based	☐ Shallow water	☐ Deep water
☐ Other			

NOTE: There is a fee schedule for people visiting Midway Atoll National Wildlife Refuge via vessel and aircraft.

Location Description:

5b. Check all applicable regulated activities proposed to be conducted in the Monument:

☐ Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging any living or nonliving Monument resource

☐ Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands

☐ Anchoring a vessel

☐ Deserting a vessel aground, at anchor, or adrift

☐ Discharging or depositing any material or matter into the Monument

☐ Touching coral, living or dead

☐ Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument

☐ Attracting any living Monument resource

☐ Sustenance fishing (Federal waters only, outside of Special Preservation Areas, Ecological Reserves and Special Management Areas)

☐ Subsistence fishing (State waters only)

☐ Swimming, snorkeling, or closed or open circuit SCUBA diving within any Special Preservation Area or Midway Atoll Special Management Area

Permit Application – Research
OMB Control # 0648-0548

6 Purpose/Need/Scope ***State purpose of proposed activities:***

7. Answer the Findings below by providing information that you believe will assist the Co-Trustees in determining how your proposed activities are compatible with the conservation and management of the natural, historic, and cultural resources of the Monument:

The Findings are as follows:

a. How can the activity be conducted with adequate safeguards for the cultural, natural and historic resources and ecological integrity of the Monument?

b. How will the activity be conducted in a manner compatible with the management direction of this proclamation, considering the extent to which the conduct of the activity may diminish or enhance Monument cultural, natural and historic resources, qualities, and ecological integrity, any indirect, secondary, or cumulative effects of the activity, and the duration of such effects?

c. Is there a practicable alternative to conducting the activity within the Monument? If not, explain why your activities must be conducted in the Monument.

d. How does the end value of the activity outweigh its adverse impacts on Monument cultural, natural and historic resources, qualities, and ecological integrity?

e. Explain how the duration of the activity is no longer than necessary to achieve its stated purpose.

f. Provide information demonstrating that you are qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct.

g. Provide information demonstrating that you have adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct.

h. Explain how your methods and procedures are appropriate to achieve the proposed activity's goals in relation to their impacts to Monument cultural, natural and historic resources, qualities, and ecological integrity.

i. Has your vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of Presidential Proclamation 8031?

j. Demonstrate that there are no other factors that would make the issuance of a permit for the activity inappropriate.

8. Procedures/Methods:

NOTE: If land or marine archeological activities are involved, contact the Monument Permit Coordinator at the address on the general application form before proceeding, as a customized application will be needed. For more information, contact the Monument office on the first page of this application.

9a. Collection of specimens - collecting activities (would apply to any activity): organisms or objects (List of species, if applicable, attach additional sheets if necessary):

Common name:

Scientific name:

& size of specimens:

Collection location:

☐ Whole Organism ☐ Partial Organism

9b. What will be done with the specimens after the project has ended?

9c. Will the organisms be kept alive after collection? ☐ Yes ☐ No

• General site/location for collections:

• Is it an open or closed system? ☐ Open ☐ Closed

• Is there an outfall? ☐ Yes ☐ No

• Will these organisms be housed with other organisms? If so, what are the other organisms?

• Will organisms be released?

10. If applicable, how will the collected samples or specimens be transported out of the Monument?

11. Describe collaborative activities to share samples, reduce duplicative sampling, or duplicative research:

12a. List all specialized gear and materials to be used in this activity:

12b. List all Hazardous Materials you propose to take to and use within the Monument:

13. Describe any fixed installations and instrumentation proposed to be set in the Monument:

Permit Application – Research
OMB Control # 0648-0548

14. Provide a time line for sample analysis, data analysis, write-up and publication of information:

15. List all Applicants' publications directly related to the proposed project:

With knowledge of the penalties for false or incomplete statements, as provided by 18 U.S.C. 1001, and for perjury, as provided by 18 U.S.C. 1621, I hereby certify to the best of my abilities under penalty of perjury of that the information I have provided on this application form is true and correct. I agree that the Co-Trustees may post this application in its entirety on the Internet. I understand that the Co-Trustees will consider deleting all information that I have identified as "confidential" prior to posting the application.

Signature Date

SEND ONE SIGNED APPLICATION VIA MAIL TO THE MONUMENT OFFICE BELOW:

Papahānaumokuākea Marine National Monument Permit Coordinator
6600 Kalaniana'ole Hwy. # 300
Honolulu, HI 96825
FAX: (808) 397-2662

DID YOU INCLUDE THESE?

☐ Applicant CV/Resume/Biography
☐ Intended field Principal Investigator CV/Resume/Biography
☐ Electronic and Hard Copy of Application with Signature
☐ Statement of information you wish to be kept confidential
☐ Material Safety Data Sheets for Hazardous Materials

Permit Application – Research
OMB Control # 0648-0548

Papahānaumokuākea Marine National Monument
Compliance Information Sheet
Instructions

NOTE: Issuance of a Monument permit is dependent upon the completion and review of the application and Compliance Information Sheet.

1. Updated list of participating personnel. List all personnel participating in the proposed activity. Include first and last name, position (John Doe, Diver; Jane Doe, Field Technician; Jerry Doe, Medical Assistant, etc.), affiliation, telephone number, and email address for each individual. If specific names of all participants are not known at the time this form is submitted, then specific positions must be provided as placeholders for numbers of persons requested to enter the Monument. The Application Review Committee may request resumes, biographies, or CVs for any personnel listed, at a later date. Attach additional information if necessary.

It is the Applicant's responsibility to keep Monument staff apprised of any proposed personnel changes. Full names of personnel and roles will be required in the Monument Compliance Information Sheet prior to issuance of a permit.

2. Provide additional detail on site locations here. Additional detail may include, but is not limited to: specific lat/long coordinates, habitat type, water depth, substrate type, etc. If appropriate, attach an Excel spreadsheet or Shape file to this sheet. Contact the Monument Permit Coordinator for additional instructions.

3. List permit numbers for all other related Federal or State Permits for which you have applied or received. These may include, but are not limited to, a Bird Banding Lab Migratory Bird Banding Permit, State of Hawaii Department of Land and Natural Resources Division of Forestry and Wildlife Permit, State Conservation District Use Permit, Endangered Species Act consultations, Marine Mammal Protection Act Permit, International Animal Care and Use Committee, or any University permits. Attach copies of permits already received. You will be required to provide copies of all required permits to the Monument permit coordination personnel prior to departure for the Monument.

List all permits you have received for the same or similar activities from any State or Federal entity.

3a. For each of the permits listed, identify any permit violations or any permit that was suspended, amended, modified, or revoked. Explain the circumstances surrounding the violation or permit suspension, amendment, modification or revocation.

4. Include a budget and funding sources specific to the proposed activities. **Salary information and detailed program budgets are not necessary.** List any in-kind contributions awarded for the proposed activities.

5. The "Activity start" and "Activity completion" must include the entire span of the proposed activity. In other words, these dates must specify if the proposed activity is a multi-year activity and if so, the duration the proposed activity is expected to be conducted in the Monument. NOTE: Multi-year projects do NOT guarantee the issuance of additional permits in subsequent years.

If specific dates cannot be determined at the time of application, explain the reasons dates are pending (e.g., ship schedules, flight schedules). At minimum, describe the intervals of time you propose to visit the Monument, e.g. during a specific nesting season or quarterly, and the proposed duration of the proposal.

For Personnel Schedule, list those who will be in the Monument (specific locations) and for what periods of time. Attach additional documentation if necessary.

6. All persons covered under the permit are responsible for the cost of removing themselves from the Monument at the conclusion of the term of the permit, revocation, or other enforcement matters. Additionally, persons covered under the permit are responsible for the cost of removing themselves from the Monument in the event of a necessary medical evacuation, emergency evacuation, including weather, or for the cost of any necessary search and rescue operation. Demonstrate that all persons covered under the permit have either insurance coverage, adequate bond, or have other financial resources to pay Monument Co-Trustees for the cost of their necessary search and rescue and/or removal from the Monument.

NOTE: The State of Hawaii requires permittees to carry general liability insurance.

7. Check the appropriate box to indicate how personnel will enter the Monument. Note which vessel(s) or aircraft(s) will be used to transport personnel. If entering by a vessel which is not already permitted to enter the Monument in support of your proposed activity, you must include that respective vessel and its crew on this permit application. If entering by a vessel which is already permitted to enter the Monument in support of your proposed activity, state the vessel's Monument Permit number here.

8. Check the relevant inspections that you will conduct prior to departure for the Monument. Include the dates of scheduled inspections. Upon completion of the inspections and any required cleaning operations, you will be required to provide proof of approved inspections and cleaning to Monument Permit coordination personnel.

All vessels must have at a minimum a Rodent Free Inspection, Hull Inspection, and Ballast Water Record Inspection no more than 14 days prior to departure for the Monument. If any small boat operations are proposed to occur within the Monument, then a Tender Vessel Fouling Inspection must occur in this time frame as well. If any gear will be placed or used in the water or on land, you must schedule an inspection of these items before departing for the Monument. For more information on arranging these inspections contact the Monument Permit Coordinator at (808) 397-2660, or nwhipermit@noaa.gov.

NOTE: Results of inspections may require cleaning operations such as rodent eradication, hull cleaning, or ballast water maintenance at your own cost before departing for the Monument. If proposed gear or materials are found to be contaminated with alien species you may be required to conduct specific cleaning measures or complete replacement of contaminated items at your own cost before departing for the Monument. Re-inspection may be required.

9. List all vessel information: Vessel name, owner, captain's name, vessel type, length, gross tonnage and vessel identification number. List vessel International Maritime Organization Number (if applicable), flag of origin, call sign, port of embarkation, total ballast water capacity volume (m^3), total number of fuel tanks on ship, total number of ballast water tanks on ship, total fuel capacity and last port.

Indicate whether the vessel has a Marine Sanitation Device (MSD) and its type. Explain in detail how you will comply with the regulations regarding discharge in the Monument. If applicable, attach schematics of the vessel's discharge and treatment systems.

List all types and amounts of hazardous materials to be carried on board for vessel or tender vessel use.

Indicate that the vessel has a NOAA Office of Law Enforcement (OLE)-approved Vessel Monitoring System (VMS). Provide the name and contact information of the contractor responsible for installing the VMS system. For more information on NOAA OLE-approved VMS systems, refer to 50 CFR 407.11 (e) (f). This information can be located at: http://hawaiireef.noaa.gov/PDFs/VMSfedreg.pdf

List the make and model of the VMS to be used while conducting activities in the Monument.

NOTE: All vessels entering the Monument MUST have an NOAA OLE-approved VMS System installed PRIOR to entering the Monument, "An owner or operator of a vessel that has been issued a permit for accessing the Monument must ensure that such a vessel has an operating vessel monitoring system (VMS) on board, approved by the OLE in the National Oceanic and Atmospheric Administration in the Department of Commerce when voyaging within the Monument" (50 CFR 404.5).

* NOTE: This question is not required if you are traveling aboard a NOAA vessel.*

10. List all workboats (tenders) which will be use to transport personnel, gear and materials within the Monument. Include information on the number of tenders/skiffs aboard the vessel and the specific types of motors on each tender/skiff.

Additional Information for Land Based Operations

ANSWER QUESTIONS IN THIS SECTION IF YOU WISH TO CONDUCT ACTIVITIES ON LAND

11. Answer the following questions:
*If personnel, gear and materials are to be transported to the Monument by vessel, how will personnel, gear and materials be transported between ship and shore?
*If applicable, how will personnel be transported between islands within any one atoll?
*Provide a time line of all significant transportation events for arrivals and departures.

12. Describe where personnel will sleep/eat/bathe while on the island(s). Note how many personnel will be using U.S. Fish and Wildlife Service and/or State of Hawaii supplied accommodations and for how long.

13. Describe office/desk/workbench/workshop/lab space you expect to use during the proposed activity on the island(s). Describe all electrical and water needs you expect to use during the proposed activity on the island(s). Describe what disposal route all of the water and hazardous materials will take (e.g., laboratory sink, drains, flow-through aquaria) and where these materials will ultimately end up.

NOTE: charging batteries, rinsing gear, cleaning tools, painting and maintaining equipment, etc., all take space and resources. Requesting use of these resources should be done in this section.

Papahānaumokuākea Marine National Monument
Compliance Information Sheet

1. Updated list of personnel to be covered by permit. List all personnel names and their roles here (e.g. John Doe, Diver; Jane Doe, Field Technician, Jerry Doe, Medical Assistant):

2. Specific Site Location(s): (Attach copies of specific collection locations):

3. Other permits (list and attach documentation of all other related Federal or State permits):

3a. For each of the permits listed, identify any permit violations or any permit that was suspended, amended, modified or revoked for cause. Explain the circumstances surrounding the violation or permit suspension, amendment, modification or revocation.

4. Funding sources (Attach copies of your budget, specific to proposed activities under this permit and include funding sources. See instructions for more information):

5. Time frame:
Activity start:
Activity completion:

Dates actively inside the Monument:
From:
To:

Describe any limiting factors in declaring specific dates of the proposed activity at the time of application:

Personnel schedule in the Monument:

6. Indicate (with attached documentation) what insurance policies, bonding coverage, and/or financial resources are in place to pay for or reimburse the Monument trustees for

the necessary search and rescue, evacuation, and/or removal of any or all persons covered by the permit from the Monument:

7. Check the appropriate box to indicate how personnel will enter the Monument:

☐ Vessel
☐ Aircraft

Provide Vessel and Aircraft information:

8. The certifications/inspections (below) must be completed prior to departure for vessels (and associated tenders) entering the Monument. Fill in scheduled date (attach documentation):

☐ Rodent free, Date:
☐ Tender vessel, Date:
☐ Ballast water, Date:
☐ Gear/equipment, Date:
☐ Hull inspection, Date:

9. Vessel information (NOTE: if you are traveling aboard a National Oceanic and Atmospheric Administration vessel, skip this question):
Vessel name:
Vessel owner:
Captain's name:
IMO#:
Vessel ID#:
Flag:
Vessel type:
Call sign:
Embarkation port:
Last port vessel will have been at prior to this embarkation:
Length:
Gross tonnage:
Total ballast water capacity volume (m3):
Total number of ballast water tanks on ship:
Total fuel capacity:
Total number of fuel tanks on ship:
Marine Sanitation Device:
Type:

Explain in detail how you will comply with the regulations regarding discharge in the Monument. Describe in detail. If applicable, attach schematics of the vessel's discharge and treatment systems:

Other fuel/hazardous materials to be carried on board and amounts:

Provide proof of a National Oceanic and Atmospheric Administration (NOAA) Office of Law Enforcement-approved Vessel Monitoring System (VMS). Provide the name and contact information of the contractor responsible for installing the VMS system. Also describe VMS unit name and type:

VMS Email:
Inmarsat ID#:

10. Tender information:

On what workboats (tenders) will personnel, gear and materials be transported within the Monument? List the number of tenders/skiffs aboard and specific types of motors:

Additional Information for Land Based Operations

11. Proposed movement of personnel, gear, materials, and, if applicable, samples:

12. Room and board requirements on island:

13. Work space needs:

DID YOU INCLUDE THESE?
☐ Map(s) or GPS point(s) of Project Location(s), if applicable
☐ Funding Proposal(s)
☐ Funding and Award Documentation, if already received
☐ Documentation of Insurance, if already received
☐ Documentation of Inspections
☐ Documentation of all required Federal and State Permits or applications for permits

This page intentionally left blank.

PAPAHĀNAUMOKUĀKEA
MARINE NATIONAL MONUMENT
_____PERMIT TEMPLATE

Permittee:

Permit Number: PMNM-200x-xxx
Effective Date:
Expiration Date:

Project Title: _____

This permit is issued for activities in accordance with Proclamation 8031 ("Proclamation") establishing the Papahānaumokuākea Marine National Monument ("Monument") under the Antiquities Act of 1906, 16 USC §§ 431-433 ("Antiquities Act") and implementing regulations (50 CFR Part 404). All activities must be conducted in accordance with the Proclamation and the regulations (attached). No activity prohibited by the Proclamation or 50 CFR Part 404 is allowed except as specified below. Chapter 13-60.5, Hawaii Administrative Rules remains in effect for proposed activities in State waters.

Subject to the terms and conditions of this permit, the National Oceanic and Atmospheric Administration (NOAA), the State of Hawai'i, and the U.S. Fish and Wildlife Service (collectively, the Co-Trustees) hereby authorize the permittee listed above to conduct _____activities within the Monument. All activities are to be conducted in accordance with this permit. The permit application is incorporated into this permit and made a part hereof; provided, however, that if there are any conflicts between the permit application and the terms and conditions of this permit, the terms and conditions of this permit shall be controlling.

PERMITTED ACTIVITY DESCRIPTION:

The following activities are authorized by this permit:

1.

No further disturbance of the cultural or natural resources of the Monument is allowed.

Papahānaumokuākea
Marine National Monument
6600 Kalaniana'ole Hwy
Suite 300
Honolulu, HI 96825

PERMITTED ACTIVITY LOCATION:

Other than entrance into the Monument, the permitted activities listed above are allowed at the following locations:

1.

GENERAL TERMS AND CONDITIONS:
In accordance with the Proclamation and applicable regulations, the permitted activities listed above are subject to the following general terms and conditions:

1. The permittee must sign and date this permit on the appropriate line below. Once signed and dated, the permittee must provide a signed original copy to the Monument official identified below. The permit becomes valid on the date the last Monument official signs the permit and shall remain valid for not more than one (1) year from that date.

   Permit Coordinator
   Papahānaumokuākea
   Marine National Monument
   6600 Kalaniana‘ole Hwy. Suite 300
   Honolulu, HI 96825

2. This permit is neither transferable nor assignable and must be carried by the permittee while engaging in any activity authorized by this permit. All other persons entering the Monument under the authority of this permit must provide the name of the permittee or the permit number to any authorized enforcement or management personnel upon request.

3. This permit may only be modified by written amendment approved by the Co-Trustees. Modifications to this permit must be requested in the same manner as the original request was made. Any modifications requested by the permittee, such as adding or changing personnel to be covered by the permit or to change the activities that are allowed, must be made in writing.

4. This permit is subject to suspension, modification, non-renewal, or revocation for violation of the Proclamation, implementing regulations, or any term or condition of the permit. Any verbal notification of a violation from an authorized Monument representative may require immediate cessation of activities within the Monument. The issuance of a permit shall not constitute a vested or property right to receive additional or future permits. This permit may, in the sole discretion of the Co-Trustees, be renewed or reissued. However, there is no right to a renewal or re-issuance of a permit. Failure to fulfill permit requirements may affect consideration of future permit applications.

5. Permit terms and conditions shall be treated as severable from all other terms and conditions contained in this or any other ancillary permit. In the event that any provision of this permit is found or declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms or conditions of this permit.

6. This permit does not relieve the permittee of responsibility to comply with all federal, state and local laws and regulations. Activities under this permit may be conducted only after any other permits or authorizations necessary to conduct the activities have been obtained.

7. The permittee may be held liable for the actions of all persons entering the Monument under the authority of this permit.

8. All persons entering the Monument under the authority of this permit are considered under the supervision of the permittee and may be liable in addition to the permittee for any violation of this permit, the Proclamation and implementing regulations in conjunction with this permit. The permittee must ensure that all such persons have been fully informed of the permit terms and conditions prior to entry into the Monument. Each such person must provide written acknowledgment to the permittee, prior to entry into the Monument, that he/she has received a copy of the permit, agrees to abide by all applicable terms and conditions, and may be liable for violations of the permit. The permittee shall maintain all signed acknowledgments and submit them with the summary report described in General Condition #22.b.

9. Notification of entry into the Monument must be provided at least 72 hours, but no longer than one month, prior to the entry date. Any updates to the list of personnel must also be provided at least 72 hours before entering the Monument. Notification of departure from the Monument must be provided within 12 hours of leaving the Monument. Notification may be made via e-mail, or telephone by contacting: E-mail: nwhi.notifications@noaa.gov; Telephone: 1-866-478-6944; or 1-808-395-6944. No other methods of notification will be considered valid.

10. The permittee and any person entering the Monument under the authority of this permit shall, before entering the Monument, attend a cultural briefing or view designated cultural informational materials on Papahānaumokuākea regarding the region's cultural significance and Native Hawaiians' spiritual and genealogical connection to the natural and cultural resources. Persons entering the Monument at Midway Atoll may satisfy this requirement upon arrival.

11. All vessels (including tenders and dive boats), engines and anchor lines shall be free of introduced species prior to entry into the Monument. To ensure this, all vessels, engines and anchor lines shall be inspected for potential introduced species prior to departing the last port before entering the Monument. No later than 24 hours prior to entry, the permittee shall provide the Monument Permit Coordinator with a report prepared by the individual conducting the inspection that: a) sets forth when and where the inspection

occurred; b) identifies any introduced species observed, including where found; c) summarizes efforts to remove any species observed; and d) certifies the vessel as free of all introduced species. The Monument Permit Coordinator shall review the report and, based on the review, may delay the entry into the Monument until all concerns identified by the Monument Permit Coordinator have been addressed.

12. All hazardous materials, biohazards and sharps, must be pre-approved by the Co-Trustees. For purposes of this permit, "hazardous material" has the same meaning as the definition found at 49 CFR §105.5 (U.S. Department of Transportation). All hazardous materials, biohazards and sharps must be stored, used, and disposed of according to applicable laws and Monument-approved protocols. The permittee, or a designated individual entering the Monument under the authority of this permit must be properly trained in the use and disposal of all such materials proposed. Proof of appropriate training may be required by the Co-Trustees. No such material may be left in the Monument after the departure of the permittee unless it has been previously approved by Monument staff. Immediately after the project is complete the permittee must remove all such materials from the Monument. The permittee will be responsible for all costs associated with use, storage, transport, training, disposal, or HazMat response for these materials.

13. All equipment or supplies brought into the Monument, or structures of any kind built in the Monument by the permittee are the responsibility of the permittee. All materials that are brought to the Monument by the permittee must be removed by the permittee except as otherwise permitted. Any permanent structures, equipment, or supplies that require maintenance, are determined to be unserviceable, or are a safety hazard, must be immediately repaired or removed from the Monument by the permittee. No structures, equipment, or supplies may be left in the Monument following the completion of the project except as listed in the permit.

14. If Monument staff are present at the field site, the permittee must meet with them before beginning permitted activities. Even with a valid permit, authorized Monument staff may prohibit entry into any location(s) within the Monument as they may deem appropriate to conserve or manage resources, particularly in areas where cumulative impacts of permitted activities are concentrated.

15. In order to facilitate monitoring and compliance, any person entering the Monument under the authority of this permit, including assistants and ship's crew shall, upon request by authorized Monument enforcement personnel, promptly: a) allow access to and inspection of any vessel or facility used to carry out permit activities; b) produce for inspection any sample, record, or document related to permit activities, including data, logs, photos, and other documentation obtained under, or required by, this permit; and c) allow inspection on board the vessel or at the permittee's premises of all organisms, parts of organisms, and other samples collected under this permit.

16. It is prohibited to possess or consume alcohol in the Hawaiian Islands National Wildlife Refuge in accordance with refuge regulations. Any violations will result in immediate

removal of the offender from the Monument at the individual's own cost. Offenders may not be readmitted to the Monument.

17. All persons entering the Monument under the authority of this permit are responsible for the cost of removing themselves from the Monument at the conclusion of the term of the permit or upon revocation or suspension of the permit. All such persons are also responsible for the cost of removing themselves from the Monument in the event of a necessary medical evacuation, emergency evacuation, including weather, or for the cost of any necessary search and rescue operation.

18. Except as expressly required by applicable law, the Co-Trustees are not liable for any damages to equipment or injuries to the permittee and persons entering the Monument under the authority of this permit. The permittee and any person entering the Monument under the authority of this permit shall release, indemnify, and hold harmless the National Oceanic and Atmospheric Administration, the Department of Commerce, the U.S. Fish and Wildlife Service, the Department of the Interior, the United States Government, the State of Hawai‘i, and their respective employees and agents acting within the scope of their duties from and against any claims, demands, actions, liens, rights, subrogated or contribution interests, debts, liabilities, judgments, costs, and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon the issuance of this permit or the entry into or habitation upon the Monument or as the result of any action of the permittee or persons participating in the activity authorized by this permit. In the event that a government employee, acting in his official capacity, is the permittee, or is entering the Monument under the authority of this permit, then he shall be subject to all applicable federal and State laws that pertain to claims by or against him predicated upon the issuance of this permit or entry into or habitation upon the Monument.

19. Monument managers or their designees may verbally require the permittee to modify or cease activities not identified in this permit if, in the opinion of the managers or designees, such action is necessary to limit disturbance to or protect Monument resources, to protect government equipment, or to ensure the safety of personnel. After providing such verbal instructions, the managers or designees will provide the permittee with a written modification, suspension or revocation to this permit at the earliest practicable opportunity. The failure to follow verbal instructions or modified permit terms, or to cease activities upon suspension or revocation of this permit, may constitute a violation of this permit, the Proclamation, the regulations, or other applicable law.

20. Disturbance of any cultural or historic property, including but not limited to Native Hawaiian cultural sites, burials, archaeological deposits, and WWII structures and features, such as stone walls and mounds, stone uprights, bunkers, batteries, camp sites, hospitals, housing areas, and radio towers; or the disturbance or collection of any historic or cultural materials and artifacts, including but not limited to bottles, dishes, cartridges, hospital materials, carvings, human remains, or Native Hawaiian bone or stone implements, found within the Monument, including the sale or trade in such items, is prohibited.

21. All Monument resources within the jurisdiction of the State of Hawai‘i are held in trust under the Hawai‘i State Constitution, Article XI, Sec. 1. The State of Hawai‘i and the Government of the United States reserve ownership or control, as the case may be, of Monument resources, both living and nonliving, that may be taken or derived from those found in the Monument.

22. The permittee must satisfy the following reporting requirements:

    a. For activities on State lands or within State waters, the permittee must submit a monthly report on the specified form.

    b. The permittee must maintain a cruise log including, but not limited to: anchoring locations and small boat dive locations. The log must contain a description of cruise activities and the geographic locations of those activities. Within thirty (30) days after the end of the cruise or the expiration date of this permit, the permittee must submit the cruise log and a summary report of activities conducted under this permit. The permittee having authority over the vessel must maintain a vessel discharge log, which must be submitted with the cruise log.

    c. Annual Report. The comprehensive annual report is a summary of all activities undertaken, including but not limited to: dates of all arrivals and departures from islands and atolls within the Monument, names of all persons involved in permitted activities, details of all specimens collected, handled, etc., any other pertinent information, GPS locations of all samples collected, transects, etc., results of work to date, copy of all data collected, and a proposed schedule of publication or production of final work. The report shall include a concise summary or abstract for use in Monument reports. Two hard copies and one electronic copy (Microsoft Word preferred, but not required), must be submitted to the Co-Trustees. The annual report is due by the end of the second week of January of the calendar year that follows the year that the permit was in effect or before a new permit is issued, whichever comes first. Subsequent annual reports are required each year until all data collected under research permits are fully analyzed.

    d. The permittee must debrief the Co-Trustees following the completion of all activities in the Monument covered under this permit. The permittee must schedule the debriefing upon submitting the annual report.

    e. The permittee must submit two copies of any article, publication, or other product created as a result of the information gained or work completed under this permit, including materials generated at any time in the future following expiration of this permit.

    f. Any publications and/or reports resulting from activities conducted under the authority of this permit must include the notation that the activity was conducted

under permit number PMNM-200x-xxx. This requirement does not apply to publications or reports produced by the news media.

g. All required submissions (including plans, logs, reports, and publications) shall be provided to the Monument official at the address indicated in General Condition #1.

23. All data acquired or created in conjunction with this permit will be submitted with the summary report, and annual report. Photographic and video material is considered data. The permittee retains ownership of any data, (including but not limited to any photographic or video material), derivative analyses, or other work product, or other copyrightable works, but the Federal Government and the State of Hawai‘i retain a lifetime, non-exclusive, worldwide, royalty-free license to use the same for government purposes, including copying and redissemination, and making derivative works. The permittee will receive acknowledgment as to its ownership of the data in all future use. This requirement does not apply to data acquired or created by the news media.

24. Because photographic or video material that is created for personal use (i.e., not specifically acquired or created in conjunction with this permit) could unintentionally collect data that is also valuable for management purposes, the Co-Trustees reserve the right to request copies of any such material and the permittee agrees to provide a copy of such material within a reasonable time. The Co-Trustees may use such material for management purposes.

25. Any question of interpretation of any term or condition of this permit will be resolved by the Co-Trustees.

Your signature below, as permittee, indicates that you accept and agree to comply with all terms and conditions of this permit. This permit authorized only those activities listed above. This permit becomes valid on the date when signed by the last Monument Official. Please note that the expiration date on this permit will not be extended by a delay in your signing below.

PERMITTEE Date

Attachments (3):

1. Proclamation 8031, June 15, 2006
2. 50 CFR Part 404
3. Maps of the Papahānaumokuākea Marine National Monument

XX
Chairperson
Department of Land and Natural Resources
State of Hawaii

Date

XX
Superintendent
U.S. Fish and Wildlife Service
Papahānaumokuākea Marine National Monument

Date

XX
Superintendent
NOAA
Papahānaumokuākea Marine National Monument

Date

APPENDIX B:
Midway Atoll National Wildlife Refuge
Draft Conceptual Site Plan

Please see Volume IV of the Draft Papahānaumokuākea Marine National Monument Management Plan

APPENDIX C:
Midway Atoll Draft Visitor Services Plan

Draft Visitor Services Plan

for

Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Papahānaumokuākea Marine National Monument's Midway Atoll Special Management Area

Peter Learyl/USFWS

April 2008

Draft Visitor Services Plan

for

Midway Atoll National Wildlife Refuge

and the

Battle of Midway National Memorial

and the

Papahānaumokuākea Marine National Monument's

Midway Atoll Special Management Area

Prepared by:

U.S. Fish and Wildlife Service
Midway Atoll National Wildlife Refuge and
Pacific Islands Division of External Affairs and Visitor Services
Box 50167
Honolulu, Hawai'i 96850

in consultation with the
National Oceanic and Atmospheric Administration
and the
State of Hawai'i

Approved: _____ Date: _____

Carolyn Bohan, Regional Chief
National Wildlife Refuge System
Pacific Region

Midway Atoll National Wildlife Refuge, Battle of Midway National Memorial,
and Midway Atoll Special Management Area
Visitor Services Plan
Approval Submission
U.S. Fish and Wildlife Service, Pacific Region

In accordance with the National Wildlife Refuge System Administration Act of 1966, as amended, (16 U.S.C. 668dd-668ee) and Fish and Wildlife Service Manual Section 605, this visitor services plan has been prepared for Midway Atoll National Wildlife Refuge and the Battle of Midway National Memorial. In addition, it is incorporated into the Papahānaumokuākea Marine National Monument Management Plan to guide visitor activities within the Midway Atoll Special Management Area. This visitor services plan is compliant with Presidential Proclamation 8031 and was prepared in consultation with the Secretary of Commerce by Honolulu-based National Oceanic and Atmospheric Administration staff, the State of Hawai‘i’s Department of Land and Natural Resources, and the Office of Hawaiian Affairs. This visitor services plan is submitted for approval by the Regional Chief of the National Wildlife Refuge System for the Pacific Region.

Submitted by:

_____ _____

Barry Christenson, Refuge Manager — Date
Midway Atoll National Wildlife Refuge and
Battle of Midway National Memorial

Concur:

_____ _____

Susan White, FWS Superintendent — Date
Papahānaumokuākea Marine National Monument

_____ _____

Barry W. Stieglitz, Project Leader — Date
Hawaiian and Pacific Islands
National Wildlife Refuge Complex

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Executive Summary

In 1996, the Fish and Wildlife Service (FWS) prepared a public use plan to guide visitor services on Midway Atoll National Wildlife Refuge. Since then, new laws and policy regarding wildlife-dependent recreation in the National Wildlife Refuge System have been promulgated, and a new visitor services plan is required to ensure recreational uses at Midway Atoll are compatible with the Refuge System mission and the purposes of the refuge and the Battle of Midway National Memorial. In addition, all recreational and special ocean use activities must be compliant with the requirements of the recently designated Papahānaumokuākea Marine National Monument (Monument).

This document was based on an interim plan to guide visitor activities on Midway Atoll until such time as the broader Monument Management Plan that meets the applicable requirements of a refuge comprehensive conservation plan and visitor services plan was completed. Although substantially the same as the Interim Visitor Services Plan for Midway Atoll, this plan is now a step-down plan to the overall Monument Management Plan. It was developed prior to full implementation of the interim plan, and, therefore, evaluation and adaptive management of the visitor program is a key element of the Monument Management Plan's Midway Atoll Visitor Services Action Plan. FWS will continue to work closely with its Co-Trustees in the Monument, the National Oceanic and Atmospheric Administration (NOAA) and State of Hawai'i, as this visitor services plan is implemented.

This plan documents approved recreational activities at Midway Atoll and identifies the structure of the visitor services program. Special ocean uses that support recreational activities within the Midway Atoll Special Management Area are also addressed. The plan also outlines activities that honor and interpret the World War II history at Midway Atoll in recognition of its status as the Battle of Midway National Memorial. It discusses operational limitations, biological constraints, and partnership opportunities beyond Midway Atoll.

Since 1995, FWS has been strongly committed to welcoming visitors to Midway Atoll. This is the first and only remote island national wildlife refuge in the Pacific – and the only place within Papahānaumokuākea Marine National Monument – to provide the general public with an opportunity to learn about and experience these unique ecosystems. A regularly scheduled visitor program operated on Midway Atoll until early in 2002 but ended when our cooperator left the atoll. Since then, visitors have arrived almost exclusively by the occasional cruise ship or sailboat, or for a Battle of Midway commemorative event. Through this visitor services plan, we hope to offer limited opportunities to expand the visitor program to allow more people to experience Midway's wildlife and historic treasury.

The following wildlife-dependent recreational uses have been determined to be compatible at Midway Atoll Special Management Area and National Wildlife Refuge: wildlife observation and photography, environmental education and interpretation, and participatory research. Hunting and fishing, two uses normally given priority on national wildlife refuges when compatible, will not take place at Midway Atoll. All animal species are protected by law or occur in numbers too low for harvest to allow hunting opportunities. Recreational fishing is precluded under Presidential Proclamation 8031, which designated the Monument.

Additional compatibility determinations allow for beach use activities such as swimming and volleyball, nonadministrative airport operations, limited outdoor sports such as bicycling and jogging, and amateur radio use. Each compatibility determination includes stipulations necessary to ensure protection of Midway's natural and historic resources. Any additional activities that may be proposed within Midway Atoll National Wildlife Refuge would need to be evaluated through the compatibility determination

process with formal public review. Activities that are determined to be compatible are authorized through the issuance of Monument permits, which fall within six permit types: conservation and management, research, education, Native Hawaiian uses, special ocean uses, and recreation.

Goals, objectives, and strategies for the visitor program are discussed in Chapter 4 of this plan. FWS will encourage individual visitors as well as organized groups to come to Midway. Opportunities for teacher workshops in environmental education, college courses, and distance learning will be explored. Improvements to trails and installation of blinds will benefit wildlife observation and photography opportunities, as will snorkeling and guided kayaking tours. Although not expected to be available in the early years of the visitor program, a dive program will be instituted as soon as practicable. Onsite and offsite interpretation of Midway Atoll's historic and wildlife resources will be enhanced.

In order to ensure a high quality visitor experience using the limited infrastructure currently available, the total number of overnight visitors that would be allowed on Midway Atoll at any one time will be limited to 50 people as long as this visitor services plan is effective. This number of visitors may be exceeded for short duration (less than a day) prearranged visits by ocean vessels or aircraft. In these cases, visitor activities are closely supervised and primarily consist of guided tours or participation in commemorative events.

For the next 4 years (2008-2011), visitor programs will operate from November through July, which coincides with the albatross season on Midway. The months of August through October are reserved primarily for planned construction and major maintenance activities.

With no additional FWS funding available to support a visitor program, visitation at Midway Atoll must be financially self-sustaining. Fees reflecting actual costs for transportation, lodging, food services, and visitor services staffing are included in this plan. Additional permitting requirements also are discussed.

For the initial stage of the visitor program, FWS intends to operate primarily with its own staffing and with help from Monument Co-Trustees and volunteers. Outside entities may be needed to provide assistance with marketing the program and to establish a dive program at Midway; these options will be evaluated over the coming 2 years. In the longer term, and based on the results of the evaluation required in the Monument Management Plan's Midway Atoll Visitor Services Action Plan, other operational designs may be instituted.

Chapter 1 Introduction and Background

1.1 Introduction

On June 15, 2006, President George W. Bush established the Papahānaumokuākea Marine National Monument (Monument) by Proclamation 8031. The Monument incorporates the Hawaiian Islands National Wildlife Refuge, the Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, and State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge and Kure Atoll Wildlife Sanctuary.

The Monument was established to protect the historic and scientific features of the Northwestern Hawaiian Islands and to enhance visitation in a special area around Midway Atoll (through the establishment of the Midway Atoll Special Management Area), provide for carefully regulated educational and scientific activities, preserve access for Native Hawaiian cultural activities, prohibit unauthorized access to the Monument, phase out commercial fishing over a 5-year period, and ban other types of resource extraction and dumping of waste.

The Midway Atoll Special Management Area is located about 1,250 miles (2,012 km) northwest of Honolulu. It includes three small islands (Sand Island, 1,117 acres (452 ha); Eastern Island, 336 acres (136 ha); and Spit Island, 15 acres (6 ha)), an encircling protective coral reef, and submerged lands and waters out to the 12-nautical mile territorial seas (581,864 acres; 235,473 ha).

Midway Atoll is an unincorporated territory of the United States and is the only atoll/island in the Hawaiian archipelago not part of the State of Hawai‘i. Midway Atoll National Wildlife Refuge is owned and administered by the U.S. Fish and Wildlife Service (FWS) on behalf of the American people and has international significance for both its historic and natural resources.

1.2 Human History

Like on many of the low islands and atolls in the Northwestern Hawaiian Islands, the first visitors to what is now called Midway Atoll may have been Polynesians/Hawaiians exploring the Pacific in voyaging canoes. Unfortunately, no physical evidence of their visits remains, but oral histories and chants refer to distant low-lying islands with abundant birds and turtles. Native Hawaiians named the atoll “Pihemanu,” which means “the loud din of birds.”

Midway Atoll’s central location in the midst of the Pacific Ocean has made it a vital link in modern-day communication, transportation, and military history. The first recorded landing at Midway Atoll was made in 1859 by Captain N. C. Brooks. In 1867, the Secretary of the Navy sent Captain Reynolds to take possession of the islands for the United States. Efforts in the 1870s to open a channel in the reef were unsuccessful, and for the next 30 years visits to the atoll were limited to shipwreck survivors and bird feather collectors, who sought to satisfy the significant demand for feathers in the millinery trade. In January 1903, President Theodore Roosevelt placed the Midway Islands and environs “under the jurisdiction and control of the Navy Department” by Executive Order 199–A to stop the “wanton destruction of birds that breed on Midway.”

Midway’s role as an important communications link was established in 1903, when the Commercial Pacific Cable Company chose Sand Island for one of its relay stations. The cable link between Honolulu and Guam was completed on July 4, 1903, in time for President Roosevelt to send the first round-the-world message wishing Americans a happy Independence Day. In 1905, the U.S. Lighthouse Service established a lighthouse on Sand Island.

In 1935, Pan American World Airways established a seaplane base in the harbor and a small (but relatively luxurious) hotel on Sand Island. Midway became a regular fuel stop on a transpacific route that also included Honolulu, Wake Island, Guam, and Manila. The short-lived era of the "Clipper" seaplanes was an important chapter in aviation history.

But Midway's most significant historic role was as a military base. Military interest in Midway accelerated as World War II started in Europe. In 1941, the Naval Air Station was commissioned, altering the civilian character of Midway. On December 7, 1941, not only Pearl Harbor but Midway was attacked by the Japanese, who landed a direct hit on the power plant. First Lieutenant George Cannon was fatally wounded in the attack and became the first Medal of Honor recipient for the U.S. Marine Corps in World War II. On June 4, 1942, the atoll was again attacked, but the men stationed on the atoll played a significant role in the ensuing Battle of Midway, credited with turning the tide of the war in the Pacific. In July 1942, the Midway Submarine Advanced Base was formally established and operated until the end of World War II.

Though relatively quiet as a military base for several years after World War II, Midway's importance returned in 1953 with the Cold War and the construction of the Distant Early Warning (DEW) Line. By 1958, Midway was an important part of the "Pacific Barrier," which extended North America's early warning system from Alaska to the mid-Pacific, and a significant construction program to support operations was underway. "Willy Victor" radar planes flew night and day as part of the DEW Line, and antenna fields covered the islands, part of an intricate chain of radar defenses. During the Vietnam War, Midway was one of the main aircraft and ship refueling stations, and it also hosted classified missile and submarine monitoring missions.

By the early 1990s, military activities significantly declined, replaced by new technologies and centralized operations. On October 1, 1993, Naval Air Facility Midway was operationally closed under the Base Realignment and Closure Act of 1990. Prior to the Navy's departure in 1997, a massive cleanup effort removed all buildings and structures from Eastern Island, and many of the Cold War era buildings from Sand Island. A significant effort was made to remove the environmental contaminants left by more than 90 years of military operations. In transferring Midway to the FWS, the Secretary of the Navy remarked that Americans are "trading guns for goonies," and a new era began.

1.3 Monument and Refuge History

1.3.1 Establishment of the Refuge, Memorial, and Monument

FWS staff have been conducting research and/or assisting the Navy with wildlife management issues on Midway Atoll for almost 50 years. Cooperative projects increased in the 1970s, addressing issues such as rodent control and lead poisoning in seabirds. A cooperative management plan developed by the Navy and FWS in the early 1980s further defined responsibilities and eventually led to establishment of an "overlay" national wildlife refuge on Midway in 1988. As on other military bases with similar arrangements, the Navy retained primary jurisdiction, while FWS staff provided wildlife management assistance.

When Naval Air Facility Midway was identified for closure in 1993, the Navy began planning to transfer the atoll to the FWS. On October 31, 1996, President William Clinton signed Executive Order 13022, directing the Secretary of the Interior, through the FWS, to administer Midway Atoll National Wildlife Refuge. The purposes of the refuge, as defined in the Executive order, are to maintain natural biological diversity; conserve fish and wildlife and their habitats; fulfill international wildlife treaty obligations;

provide opportunities for research, education, and compatible wildlife-dependent recreation; and recognize and maintain the atoll's historic significance.

On September 13, 2000, in accordance with language in the Fiscal Year 2000 Interior Appropriations Act, Secretary of the Interior Bruce Babbitt signed Secretary's Order 3217 designating the lands and waters of Midway Atoll National Wildlife Refuge as the Battle of Midway National Memorial "so that the heroic courage and sacrifice of those who fought against overwhelming odds to win an incredible victory will never be forgotten."

On June 15, 2006, President George W. Bush established the Papahānaumokuākea Marine National Monument (Monument) by signing Proclamation 8031. The Monument provides immediate and permanent protection for the lands and waters associated with the Northwestern Hawaiian Islands, including Midway Atoll National Wildlife Refuge. According to the Proclamation:

> The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), will have the primary responsibility regarding management of the marine areas, in consultation with the Secretary of the Interior. The Secretary of Interior, through the Fish and Wildlife Service (FWS), will have sole responsibility for management of the areas of the Monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce.

As the only atoll currently open to public visitation in the Monument, Midway Atoll provides a window to the newly established Monument.

1.3.2 Monument Vision, Mission, Guiding Principles, and Management Goals

Vision:
That the health, diversity, and resources of the vast NWHI ecosystems and the wildlife they support – unique in the world – be protected forever.

Mission:
To carry out integrated management to achieve strong, long-term protection and perpetuation of NWHI ecosystems, Native Hawaiian cultural practices, and heritage resources for current and future generations.

Guiding Principles:
The Monument shall be managed in a manner that:

- is consistent with the Vision and Mission;
- recognizes that the resources of the Northwestern Hawaiian Islands are held as a public trust by the Co-Trustees;
- affirms that the NWHI and its wildlife are important, unique, and irreplaceable;
- honors the significance of the NWHI for Native Hawaiians;
- honors the historic importance of the NWHI;
- incorporates best practices, scientific principles, traditional knowledge, and an adaptive management approach;
- errs on the side of resource protection when there is uncertainty regarding impacts of an activity;
- enhances public appreciation of the unique character and environments of the NWHI;
- authorizes only uses consistent with Presidential Proclamation 8031, and other applicable laws;
- coordinates with federal, state, and local governments, Native Hawaiians, and relevant organizations; and
- carries out effective surveillance, enforcement, and outreach to promote compliance.

Goals:

- Goal 1. Protect, preserve, maintain, and where appropriate restore the natural biological communities and their associated biodiversity, habitats, populations, native species, and ecological processes.
- Goal 2. Support, promote, and coordinate research, inventory, and monitoring that increases understanding of the NWHI and improves management decisionmaking.
- Goal 3. Manage human activities to maintain ecosystem integrity and prevent or minimize negative impacts.
- Goal 4. Provide for cooperative conservation, including community involvement, that achieves effective Monument operations and ecosystem-based management.
- Goal 5. Enhance public understanding and appreciation of and support for protection of the Monument's natural, cultural and historic resources.
- Goal 6. Support Native Hawaiian practices consistent with long-term conservation and protection.
- Goal 7. Identify, interpret, and protect Monument historic and cultural resources.
- Goal 8. Offer visitor opportunities at Midway Atoll to discover and appreciate the wildlife and beauty of the NWHI, enhance conservation, and honor its unique human history.

1.4 Purpose and Need for the Visitor Services Plan

This Visitor Services Plan is incorporated as Appendix C of the Papahānaumokuākea Marine National Monument Management Plan to provide additional detail to implement the Midway Atoll Visitor Services Action Plan. It is based primarily on the Interim Visitor Services Plan approved on May 23, 2007, and incorporates the same compatibility determinations that were approved on that date (see Appendix D).

In 1996, FWS prepared a public use plan to guide visitor services on Midway Atoll National Wildlife Refuge. Since then, the National Wildlife Refuge System Improvement Act of 1997 (an amendment to the National Wildlife Refuge System Administration Act of 1966) set new standards for visitor programs on refuges, and in 2006, new guidance was issued in the form of FWS Manual chapters regarding wildlife-dependent recreation. In accordance with the National Wildlife Refuge System Administration Act of 1966, as amended, and FWS guidance, this visitor services plan is required to ensure recreational uses are compatible with the Refuge System mission and the purposes, goals, and objectives of the refuge and national memorial. In addition, all recreational activities must be in compliance with Proclamation 8031 and its codifying regulations at 50 CFR Part 404.

This plan documents approved recreational activities at Midway Atoll and identifies the structure of the visitor services program. Special ocean uses that support recreational activities within the Midway Atoll Special Management Area are also addressed. The plan also outlines activities that honor and interpret the World War II history at Midway Atoll in recognition of its status as the Battle of Midway National Memorial. It discusses operational limitations, biological constraints, and partnership opportunities beyond Midway Atoll.

This plan is partially based on experiences with Midway visitors since 1996, but also reflects new information and new requirements. In 2005, a *Midway Atoll National Wildlife Refuge Visitor Program Market Analysis and Feasibility Study* was completed by Pandion Systems, Inc., of Gainesville, Florida, under contract to FWS. The complete study is available on the FWS Website at http://www.fws.gov/midway. This visitor services plan also reflects insights gained from their study.

Furthermore, Proclamation 8031 reinforced the importance of Midway as a vital link to the Northwestern Hawaiian Islands ecosystem, especially as an opportunity for visitors to experience, learn about, and

appreciate the area. This visitor services plan not only addresses various FWS policy requirements, but goes beyond those requirements and looks at Midway Atoll as a "window to the Monument." Here visitors may learn about the broader Monument, and the interrelationships among the islands and the wildlife moving on, between, and among them.

Since 1995, the FWS has been strongly committed to welcoming visitors to Midway Atoll. This is the first and only remote island national wildlife refuge in the Pacific to provide the general public with an opportunity to learn about and experience these unique ecosystems. With this visitor services plan, we rededicate our efforts to share the atoll's wildlife and historic resources with the world.

1.5 Internal/External Issues

In August 2007, as part of the Monument management planning process, the following issues were identified related to visitor use at Midway Atoll. These issues will all be addressed in the appropriate sections below and within pertinent sections of the Monument Management Plan.

Midway Atoll NWR – Access and Permitting	*What is the appropriate total number of people to visit, work, and volunteer on Midway?*	The Interim Visitor Services Plan identified up to 40 overnight visitors at one time and at least 300 visitors per year as appropriate given the current staffing and infrastructure. The proposed Co-Trustee operational hub at Midway Atoll, including new programs and staff, would further strain the island's operational infrastructure and potentially increase wildlife disturbance. The MMP will propose establishing a carrying capacity and maximum number of people on Midway, a site plan for the allocation of land uses, and facilities needed to balance people and wildlife.
Midway Atoll NWR – Interpretation	*How will visitors be provided information to introduce and sensitize them to the fragile Midway atoll ecosystem and history? To what extent should new interpretive and educational exhibits be placed at Midway?*	The Midway Interim Visitor Service Plan offers several opportunities to interpret the natural and cultural features of the Monument, including guided tours, self-guided interpretive walks, guided boat trips, interpretive exhibits and signs, and programs and presentations focusing on wildlife, historic structures, artifacts, memorials, and key sites. The MMP will address expanding the current visitor program to represent the entire Monument.
	To what extent should historic structures be preserved and restored for interpretation on Midway?	The determination to preserve, restore, reuse, or demolish a given building has to be done case by case, as the state of each building, its relative historic importance, interpretive opportunities, and the cost to restore and maintain varies widely. Decisions will likely be controversial, as Midway means different things to different people. An appropriate balance of on-island and off-island interpretation is needed and will be further addressed in the MMP.

During development of the Interim Visitor Services Plan, issues raised included the fee structure, natural resource protection, historical recognition, authorized uses, cruise ship impacts, visitor capacity, length of visits offered, and type of facilities offered, infrastructure capacity, and transportation. These issues and comments included within 6,282 letters, e-mails, or telephone calls were addressed in the final Interim Visitor Services Plan.

1.6 Local Setting

1.6.1 Community Description

Midway Atoll is so remote (about 1,250 miles from Honolulu, its nearest major city) that it must operate independently as its own small town. It provides its own power system, water treatment and distribution, facilities maintenance, sewage treatment, waste management systems, communications systems, and all the other operational necessities found in a small municipality.

The refuge is currently staffed by six full-time FWS employees, one of whom is stationed in Honolulu. A few volunteers (normally one to four) assist the refuge staff in biological and habitat management activities. One part-time NOAA-Fisheries and part-time U.S. Geological Survey employee is based on Midway Atoll. The atoll also hosts transient[1] researchers, other FWS employees, or U.S. Coast Guard personnel on an occasional basis. During "construction season," from August through October, as many as 30 additional workers may be on the island. NOAA and the State of Hawai'i will also base a small number of staff (8-10 people) on Midway, as outlined in 3.6.3, Coordinated Field Operations Action Plan and the Midway Conceptual Site Plan (Appendix B). The refuge has contracted with a private entity to operate the infrastructure of the atoll. The contractor currently has approximately 50 employees on Midway.

Island residents live in renovated Navy housing, including single family homes, duplexes, and Bachelor Officers Quarters (BOQ). One BOQ (known as Charlie Barracks), which contains 36 rooms, has been set aside for transient and visitor use. Almost all of the residents and transients eat at the "Clipper House," where three meals a day are served buffet style. Most supplies, particularly foodstuffs, are flown to the island on chartered aircraft. Approximately once a year, a barge brings in equipment, food, and supplies too large or heavy for the aircraft. Fuel to operate the generators and small vehicles and to refill chartered aircraft is brought by fuel barge about once a year. All fuel deliveries operate in compliance with FWS regulations and the Midway Atoll Spill Prevention Control and Counter Measure Plan.

Current funding to operate Midway Atoll comes from FWS, supplemented by Federal Aviation Administration funding that fully covers airport operations costs and a share of infrastructure operations costs. A small amount of funding is generated by other users of the atoll, such as other federal agencies conducting activities on Midway.

1.6.2 Travel Links

The only means of accessing Midway Atoll are by air or vessel. Midway has a fully certified airport known as Henderson Airfield, maintained to standards specified in Federal Aviation Administration Title 14 Code of Federal Regulations, Part 139. Midway is used as a required emergency landing site for extended twin-engine operations (ETOPS) flights across the Pacific Ocean. Under current regulations, twin-engine aircraft must be within a maximum of 180 minutes from a Part 139 certified airfield in case of an emergency. Midway's 7,900-foot runway is capable of handling almost any type of aircraft.

As a Navy base, numerous facilities were built to support a variety of vessel types. Small boats can enter the inner harbor and moor dockside or in the harbor. Larger vessels resupplying the island and research vessels generally come into the cargo pier, inside Midway's lagoon but outside the inner harbor. Cruise

[1] Transients include those coming to Midway Atoll for official duties, e.g., refuge employees, Co-Trustee staff, Coast Guard or other law enforcement entities, contractors, researchers, other federal or state employees, or other permitted personnel.

ships are required to remain outside the reef and shuttle their passengers in via tenders due to port security requirements.

1.6.3 Visitor Services Opportunities (Beyond Midway)

When Midway Atoll was opened to the public in 1995, it became the first and only remote refuge in the Pacific open to public visitation. The other islands in the Northwestern Hawaiian Islands are protected within the Hawaiian Islands National Wildlife Refuge (from Nihoa to Pearl and Hermes Atoll) or in the State of Hawai‘i’s Kure Atoll Wildlife Sanctuary. Because of their fragility and sensitive wildlife, these other islands and atolls are all closed to public use.

The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve was established adjacent to and seaward of the seaward boundaries of the State of Hawai‘i and Midway Atoll National Wildlife Refuge in 2001, and is administered by NOAA. The area was under consideration for designation as a national marine sanctuary until the area was set aside as a Marine National Monument. As required in the Presidential proclamation establishing the Monument, special ocean uses such as ecotourism may be permitted outside the Midway Atoll Special Management Area if:

- the activity will directly benefit the conservation and management of the Monument;
- the activity is for research or education related to the resources or qualities of the Monument;
- the public is provided an opportunity to review the application for a special ocean use permit at least 30 days before the permit is issued; and
- the activity does not involve the use of a commercial passenger vessel.

The State of Hawai‘i also administers submerged lands and waters out to 3 nautical miles from the islands and atolls except at Midway. In 2005, the State created a marine refuge in those waters with regulations prohibiting commercial and recreational fishing. Other uses (such as research, education, and Native Hawaiian cultural practices and subsistence fishing) are regulated by Monument permit.

Although numerous visitor opportunities exist in the main Hawaiian Islands or at other islands in the Pacific, none offer the unique combination of natural and historic resources found at Midway Atoll.

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Chapter 2 Significant Features

2.1 Terrestrial Resources

Humans have greatly changed Midway Atoll from its original form. Only Spit Island has the general terrestrial habitat characteristics of an undisturbed atoll island, though it probably formed as an unintended result of channel dredging. Although the combined effects of dredging and filling, seawall construction, and importation of soil and many nonnative plant species has greatly expanded and altered the original acreage of Midway, it is still a wildlife habitat of worldwide importance.

The earliest botanical descriptions of Midway were made in 1902. Since then, 355 different plant species have been identified. Twelve species are native and 2 are questionably indigenous to Hawai‘i. One plant species, *Cenchrus agriminoides* var. *laysanensis*, is listed as endangered, but it has not been observed on Midway since the early 1900s. Numerous exotic species are found on Midway, including some that are invasive and affect wildlife habitat. Ecological restoration efforts are underway to eradicate the worst invasive plants, control others, and revegetate with native species.

Since the first insect (a moth) was described from Midway in 1894, more than 300 species of arthropods and land snails have been found on Midway, most introduced aliens.

Almost 2 million breeding seabirds of 19 species make Midway one of the most important breeding areas of seabird conservation in the Pacific. Midway hosts the world's largest populations of both Laysan albatross (448,341 nesting pairs in 2007) and black-footed albatross (25,320 nesting pairs). Midway's breeding populations of white terns, black noddies, and red-tailed tropicbirds constitute the largest colonies in the Hawaiian archipelago. After eradication of rats in the mid-1990s, the Bonin petrel colony at Midway has rebounded to more than 32,000 pairs. One or two endangered short-tailed albatrosses generally visit Midway each year, although none have nested since the 1960s.

In 2004, 20 endangered Laysan ducks were transported to Midway from their home at Laysan Island in the Hawaiian Islands National Wildlife Refuge. Biologists hope to establish a second "insurance" population of this endemic duck. The birds adapted well to the seeps created on Sand Island and surprised biologists by breeding during their first year, with 12 ducklings successfully fledging. An additional 22 ducks were transported to Midway in 2005, most of which were introduced to Eastern Island. By the end of 2007, almost 200 Laysan ducks were living on Midway Atoll.

Midway also serves as an overwintering area for several arctic migrant shorebirds, including the rare bristle-thighed curlew. The availability of predator-free islands on which this large shorebird can spend its nonbreeding season is essential, because they become flightless during their molt. Many other migratory birds also visit Midway, some regularly and some rarely.

2.2 Marine Resources

Midway Atoll is one of the northernmost coral atolls in the world, presenting a unique opportunity to study the effect of colder waters on the growth, development, and ecology of coral reefs. Its neighbor, Kure Atoll, is the northernmost atoll in the world. Midway Atoll drops off steeply outside the barrier reefs, making it possible to observe in a relatively small area the different organisms and communities associated with pelagic, reef crest, ocean reef slope, deep reef, and lagoon habitats.

The lagoon is filled with dense networks of linear reticulated and circular reefs that block circulation in much of the lagoon and trap sand washed over the northeastern reefs. These sediments limit coral

development in much of the lagoon, except in the central lagoon where a modest amount of fingercoral gardens exists. Seagrass meadows are common in the lagoon, as are rock-boring urchins, calcareous green algae, and brown turban algae.

Massive spurs and grooves high in coralline algal cover face the open ocean along the northwest to southwest perimeter reefs and offer evidence of the importance of coralline algae as a major reef builder in the far end of the Northwestern Hawaiian Islands. Corals are more abundant elsewhere on some ocean facing reefs and especially on shallow back-reefs and lagoon pinnacles.

A total of 29 species of coral have been recorded at Midway, mostly *Pocillopora*, *Porites*, and *Montipora* species. Blue encrusting coral tentatively identified as *Montipora* cf. *turgecens* occurs in spectacular formations in the lagoon and back reef habitats and may be endemic to the Northwestern Hawaiian Islands.

The first systematic marine invertebrate survey was conducted at Midway in 1997. It documented 316 invertebrate species, 250 of which had not been previously recorded at Midway. Crustaceans were the dominant macroinvertebrates, composing 46 percent of the total species.

More than 100 species of algae are known from Midway, including 35 previously unrecorded species at Midway and 1 seaweed species new to science, *Dudresnaya babbittiana*. One alien algae, one alien fish (blueline snapper), and four alien marine invertebrate species are established at Midway as found in 2000-2003 surveys. Incidental observations of two other introduced species, blacktail snapper and bluespotted grouper, have occurred at Midway in the last decade.

A total of 266 species of fish, including 7 pelagic species, have been recorded at Midway. Some of these species are either not found in the main Hawaiian Islands or are very rare. Despite its low species diversity, Midway's reef fish biomass is higher than in the main Hawaiian Islands, largely due to lower fishing pressures. Midway and its neighboring atolls have the highest rates of endemic reef fishes within the archipelago, in some cases reaching 52 percent.

Many Midway species grow to larger than average size. All trophic levels are well represented, including jacks and four species of sharks. Several species of fish found elsewhere only in deep waters are found at shallow diving depths at Midway, including the endemic Hawaiian black grouper (hapu‘upu’u).

Threatened green sea turtles are frequently seen inside the lagoon and basking on beaches. No turtle nesting had been documented until successfully hatched eggs were discovered on Spit Islet in July 2006. High surf uncovered the eggs, which probably hatched in 2005. In 2007, a sea turtle nest was documented on Sand Island. Endangered hawksbill sea turtles are infrequently seen in the lagoon. About 65 endangered Hawaiian monk seals are usually present at Midway at any one time, and pupping levels have increased significantly since 1996, with a record number of 17 in 2004. However, as is common throughout the Hawaiian Islands, survivorship of juveniles is low and contributes to the critically endangered status of the species. In an effort to increase survivorship, NOAA-Fisheries established a captive care program on Sand Island in 2006. Six females were released in March 2007.

Approximately 200-300 Hawaiian spinner dolphins rest within Midway's lagoon and forage outside its reef. Bottlenosed, striped, spotted, and rough-toothed dolphins may occasionally be seen in the open ocean, as well as beaked, pilot, and endangered humpback whales.

2.3 Historic Resources

2.3.1 Early Cultural Resources Investigations

Study of Midway's heritage resources was initiated in 1986 by the National Park Service when it conducted a survey of World War II-era properties eligible for designation as a National Historic Landmark. Nine structures, all defensive positions on the west side of Sand Island, were identified on Midway that convey a close association with the pivotal Battle of Midway, including ammunition magazines (ARMCO huts), a pillbox, and gun emplacements. Later that year, the nine defensive positions on Sand Island identified as eligible by the National Park Service and surrounding buffer areas were designated as a landmark.

Between 1992 and 1994, the Navy sponsored studies of the Naval Air Facility on Midway, including archival research, interviews, and field surveys. The initial field effort consisted of an architectural history survey of the structures, buildings, and objects located on Sand and Eastern Islands.

The study of Cold War Resources was conducted in 1993-94 by contractors hired by the Department of the Navy in order to identify the most important Cold War-era resources, even though they were less than 50 years old, as part of the Base Closure process. The historian hired to conduct the inventory, research, and make recommendations regarding the significance of the buildings on Midway was a specialist in the Cold War period. The Cold War-era buildings were constructed on Midway between 1957 and 1969. The recommendation accepted by the Navy was that the Cold War-era buildings and structures on Midway lacked architectural merit, were not directly associated with President Nixon's visit, and do not convey a direct link to the events that occurred during the Cold War. The Navy subsequently demolished many of the Cold War-era buildings and structures prior to the transfer to the FWS.

In addition to the landmark structures, 69 buildings, structures, and objects associated with the 1903-1945 historic period on Sand and Eastern Islands were determined to be eligible according to criteria established for the National Register. The properties evaluated as significant are associated with three major themes: colonization, initial years of base construction and the Battle of Midway, and 1942-1945 base construction.

Archaeological surveys of Sand and Eastern Islands were conducted in 1992 and 1994. Surface inspections, 68 subsurface core samples, and 5 shovel-test units revealed no evidence of Polynesian/Hawaiian or pre-1900 historic period cultural remains. A literature review of Hawaiian legends found numerous references to distant low-lying islands with abundant birds and turtles but no clear tie to Midway. However, like many low islands and atolls in the Northwestern Hawaiian Islands, Midway may have been visited by Polynesians/Hawaiians in their extended travels. Prior to extensive military-era construction, these islands were periodically scoured by storms and high winds that may have removed or buried evidence of use.

2.3.2 Programmatic Agreement and Treatment of Midway's Historic Properties

In 1996, the Navy's Pacific Division, Naval Facilities Engineering Command; the Advisory Council on Historic Preservation; and FWS signed a programmatic agreement directing how Midway Atoll's historic properties were to be treated during the closure of Naval Air Facility Midway. These properties were assigned to one of six categories of preservation treatment: reuse and maintain, secure and abandon in place, abandon in place and leave as is, fill or cover, relocate, or demolish. FWS was required to prepare a long-term Historic Preservation Plan, which it completed in 1999.

2.3.3 Historic Preservation Plan

The June 1999 *Midway Atoll National Wildlife Refuge Historic Preservation Plan* defines a program to integrate historic preservation planning with the wildlife conservation mission of FWS at Midway Atoll. The plan focuses on the long-term management conditions and goals for preserving and stabilizing historic properties. It also recommends procedures for treating new discoveries, caring for museum collections, and implementing a visitor program that includes historic preservation work. The plan will be revised and updated over the coming year. In the future, the Co-Trustees will incorporate submerged cultural resource protection into such plans.

Chapter 3 Limitations on the Visitor Program

3.1 Visitor Access

The wildlife treasury that makes Midway Atoll so special for visitors also requires certain restrictions be placed on visitors for the protection of plants and animals. As on all national wildlife refuges, wildlife takes priority. Albatross nesting within the main housing areas of Sand Island continues successfully, even in the presence of human residents, but management measures are necessary to control human access to the nesting habitat of more sensitive bird species and the beach areas frequented by monk seals and sea turtles.

To maximize visitor safety and minimize wildlife disturbance and habitat degradation temporally, land-based visitor activities (other than walking, bicycling, and refuge manager-approved interpretive programs) will be restricted to daylight hours (legal sunrise to legal sunset), and water-based to ½-hour after legal sunrise to ½-hour before legal sunset. Vessels involved in the visitor program must return to dock at least 1 hour before sunset to allow sufficient time for search and rescue operations if necessary.

To prevent disturbance of petrel and shearwater burrows, visitors and residents will be required during their initial orientation and through appropriate handout material to remain on paved or gravel roads and designated trails. The trails that are open for visitor use will be clearly marked on maps (see Figure 3.1.1). North Beach from Rusty Bucket to the fuel farm is considered a 'trail.'

Most of the beaches on the western half of Sand Island are closed to public access to protect Hawaiian monk seals from disturbance, although there will be opportunities for beach viewing access from a primitive walking trail to designated viewing sites. "Turtle Beach," located on the eastern side of Sand Island from the old seaplane ramp to Cross Point and several wetlands inhabited by endangered Laysan ducks are also closed to visitors. For visitor safety, the fuel farm and active airport runways are closed to the public, except for designated crossing points on the runways.

Spit Island is closed to all public access, and Eastern Island is open only to visitors with FWS or FWS-trained escorts on scheduled trips. Since 1988, all beach areas (including all beach crest vegetation to its deepest extent inland), lagoon waters, and ocean waters to a depth of 20 fathoms – except on Sand Island and its harbor – have been designated critical habitat for Hawaiian monk seals. Power boats engaged in recreational activities are not allowed within buffer areas of at least 500 feet around Eastern, Spit, and most of Sand Island (see Figure 3.1.2), although they may transit to the pier on Eastern Island for interpretive tours and volunteer work. No visitors will be allowed on the coral reefs surrounding the lagoon. Water activities will avoid preferred monk seal and sea turtle resting habitat areas on these reefs.

To protect threatened and endangered species, visitors are required to remain at least 150 feet away from Hawaiian monk seals, short-tailed albatrosses, and sea turtles on land or in the water. This distance is recommended under Watchable Wildlife guidelines. Disturbance or harassment of these species is a violation of the Endangered Species Act. Collection of live or dead wildlife, including feathers, bones, eggs, shells, and coral, also is prohibited under 50 CFR 27.61. Objects of antiquity are similarly protected from removal under 50 CFR 27.62, and military shipwrecks and aircraft wrecks are also protected under the Sunken Military Craft Act of 2005 and other statutes.

All visitor activities allowed under this visitor services plan, as authorized by compatibility determinations, will occur within the Midway Atoll Special Management Area. No excursions beyond that boundary will occur.

Figure 3.1.1 Visitor Access Map

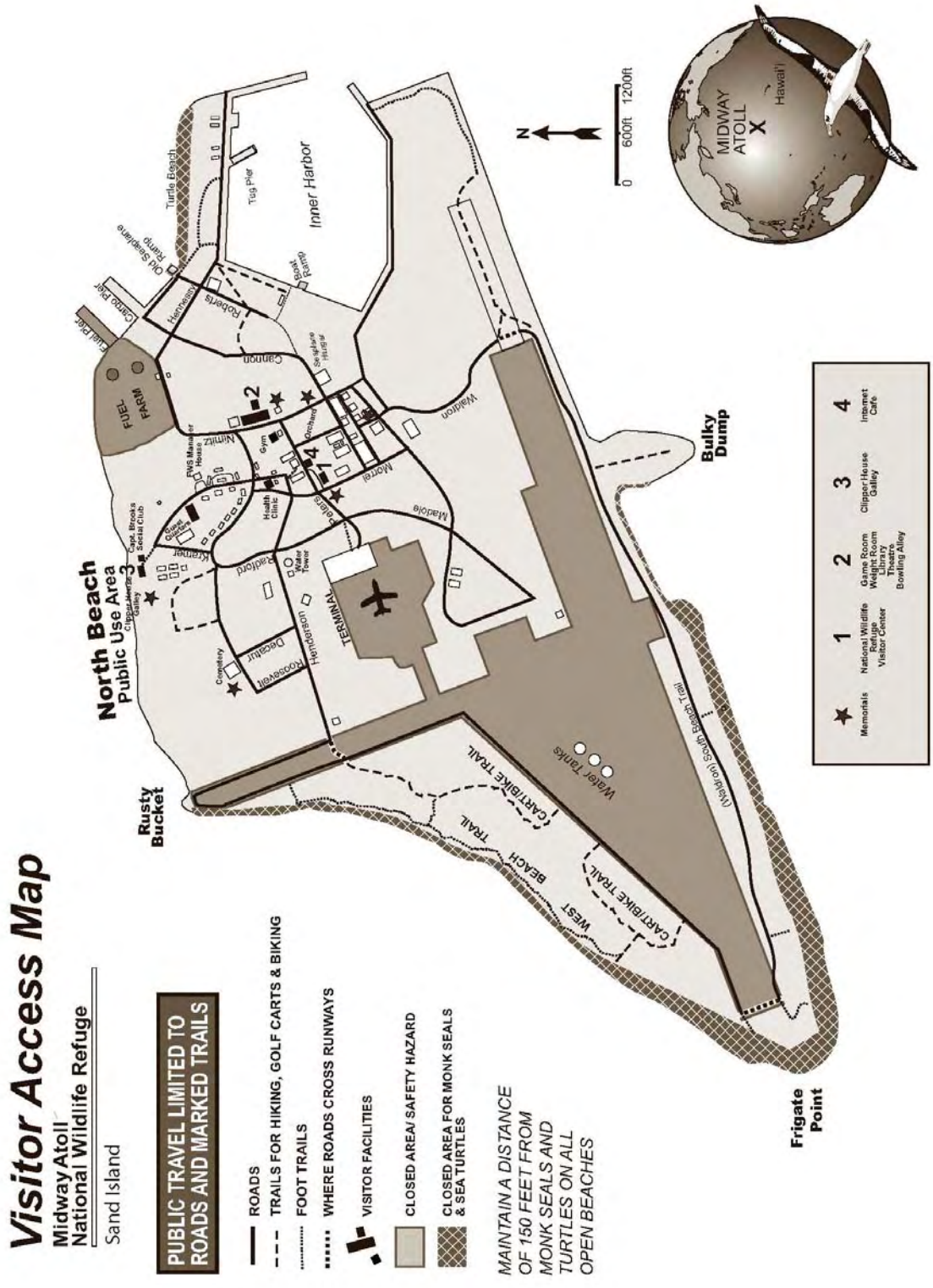
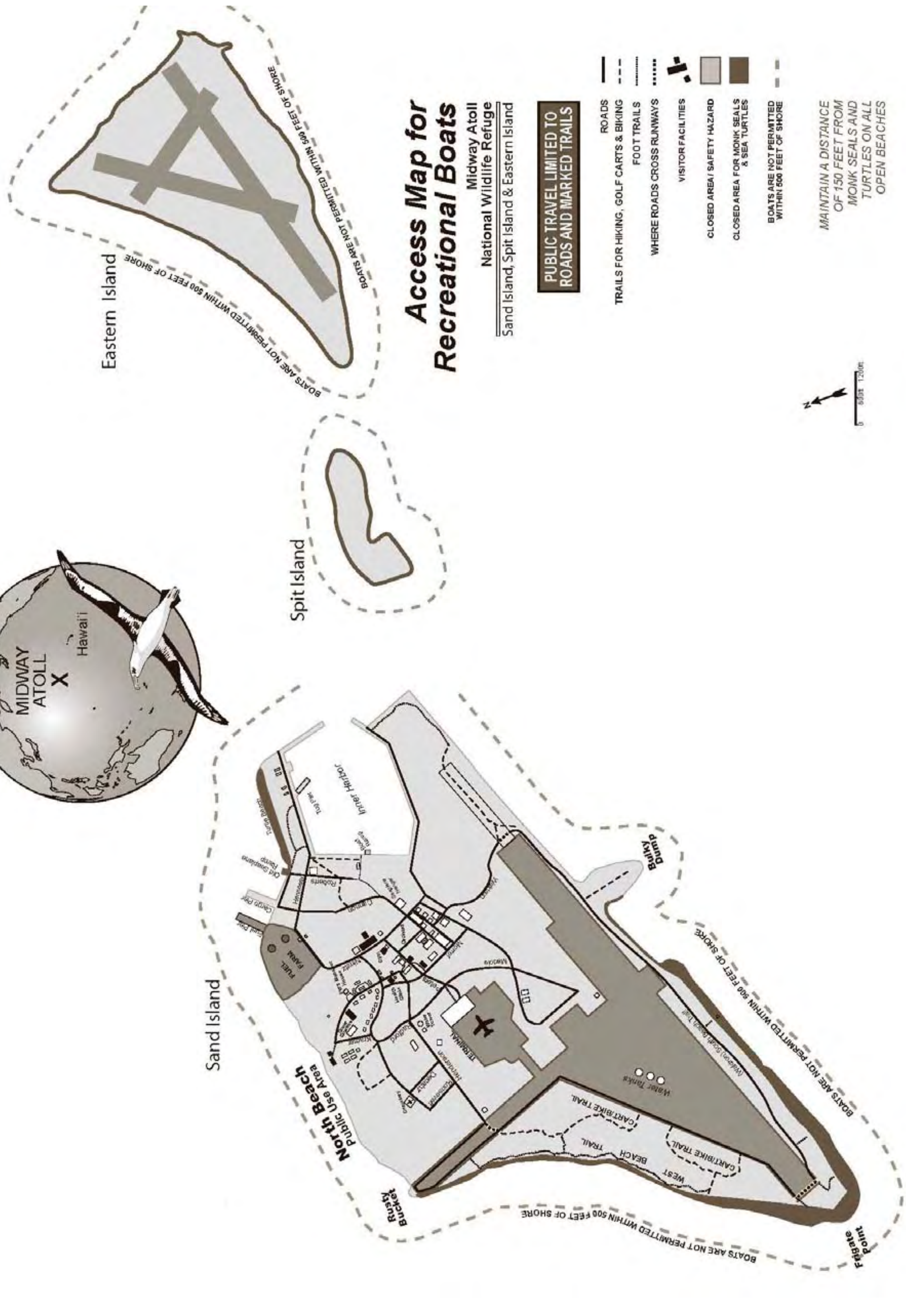


Figure 3.1.2 Recreational Powerboat Buffer Area Map



Refuge staff and volunteers are working diligently to remove invasive species from Midway Atoll. Although the battle is far from won, we want to ensure no additional invasive species – particularly plants and insects – are inadvertently introduced to the atoll, or conversely, taken from Midway and introduced into Hawai‘i or elsewhere. To help prevent this, an inspection program will be implemented both before departure from Honolulu and before departure from Midway. All flights will originate from Hawai‘i to reduce the risk of invasive species reaching Midway. In addition, visitors going to Eastern Island will be asked to check their gear for mice before departure to prevent accidental introductions. Prior to returning to Sand Island, they will be asked to clean their shoes, clothing, and gear to prevent spread of the invasive black mustard onto Sand Island.

Passengers arriving by vessel are required to clean their footwear before coming ashore. Sailboats are inspected by FWS staff upon arrival and before docking to ensure they are rat free.

In addition, all permitted vessels must have their hulls inspected and cleaned when required, including the visual inspection of anchors and tender vessels. Proclamation 8031 prohibits the release of ballast water within the Special Management Area. Protocols have also been developed and will be enforced for the treating of snorkel and dive gear to prevent the inadvertent introduction or transmission of alien species.

To minimize conflicts between aircraft and birds in flight, all visitor flights from November through July will be scheduled to arrive and depart Midway at night, unless specifically authorized by the refuge manager.

3.2 Visitor Capacity and Scheduling

Many of Midway’s infrastructure systems (i.e., water, sewer, power generation) were originally designed to service a population of up to 5,000 individuals. However, Sand Island’s current population of FWS employees and volunteers, contractors, etc., is less than 100 people. FWS is concluding several millions of dollars of construction downsizing the primary infrastructure systems in order to create long-term efficiencies. These new, more economical and efficient systems are designed to support a population of no more than 200 individuals, including interagency personnel, volunteers, researchers, and visitors engaged in any activity.

In order to ensure a quality visitor experience using the limited infrastructure currently available, the total number of overnight visitors allowed on Midway Atoll at any one time will be limited to no more than 50 people. At the present time, a maximum of 24 rooms are available for visitors, which may be more restrictive than the 50 person limit depending on multiple occupancies of the same rooms. All visitors must stay in existing facilities; the policy to disallow camping continues due to potential impacts on wildlife habitat and the species themselves. Although visitors arriving by sailboat will not require rooms, they will still be counted toward the total number of visitors since they may require other infrastructure support such as fresh water and food. In addition to lodging, other factors such as the number of visitors who can be accommodated on the aircraft and in our dining facility limit the total number of visitors.

Due to other infrastructure or visitor safety limitations, all visitors may not be able to engage in the same activity at one time (e.g., snorkel boat capacity, a limited number of approved guides, etc.). Children are welcome at Midway, though parents are cautioned that limited medical facilities are available in this remote location. Parents will be responsible for monitoring their children’s activities.

The 50-visitor limit may be exceeded for short duration (less than a day) prearranged visits by ocean vessels or aircraft. In these cases, visitor activities are closely supervised and primarily consist of guided tours or participation in commemorative events.

For the next 4 years (2008-2011), visitor programs will operate from November through July, which coincides with the albatross season on Midway. To ensure the safety of visitors and enhance their experience on Midway, visitor programs will be concentrated in this 9-month timeframe. The months of August through October are reserved for planned construction and major maintenance activities. Very few rooms will be available during these months due to the number of contractors on island, and aircraft capacity will be needed both for contractors and supplies.

3.3 Monitoring Visitor Impacts

Midway Atoll Monument staff will monitor the impacts of visitors and other users on wildlife and historic resources to ensure continuing compatibility, as required by Monument and FWS policies. Monitoring methodology to assess impacts on seabirds, Hawaiian monk seals, sea turtles, corals, and fishes has been developed by the refuge biologist based on previous work on other refuges and protected areas, in consultation with the Co-Trustees. The visitor program supervisor, in consultation with the FWS and NOAA cultural resources program staffs, will monitor impacts on historic resources. Impact monitoring of marine resources will be conducted in partnership with NOAA using the multiagency monitoring protocols developed collaboratively since 2000.

Based on FWS experience from 1996-2002, when up to 100 overnight visitors were allowed on Midway at any one time, we anticipate few impacts as long as visitors comply with refuge and Monument rules and regulations. A refuge officer has been hired to enforce these rules and regulations, as well as to assist with coordinated law enforcement throughout the Monument. Additional refuge officers may be detailed to Midway for special events or activities. Under the National Wildlife Refuge System Administration Act, the refuge manager has the authority to close areas, halt activities, or restructure visitor programs if necessary to protect wildlife or historic resources or to ensure a quality visitor program.

3.4 Midway Atoll Law Enforcement Activities

Lands within the National Wildlife Refuge System are generally considered strict liability lands, where the visitor is responsible for knowing the rules. Because of the "closed until open" concept of the National Wildlife Refuge System Administration Act of 1966, as amended, everything is initially prohibited. Because entry into the Monument is prohibited without an appropriate permit, this same concept applies. A refuge may be opened to particular uses or a suite of uses through a finding of appropriateness, when required, and approved compatibility determinations. The public may then be notified of this opening through one of several mechanisms found in Title 50 of the Code of Federal Regulations 25.31: conspicuously posted signs, special regulations published in 50 CFR 26.33, maps, or other appropriate methods that give the public actual or constructive notice of the permitted activity.

At Midway, the public review and comment period associated with development of the interim visitor services plan, as well as issuance of this plan, serve as constructive notice to the visitor under the strict liability standard. Additionally, the mandatory visitor orientation presentation within 24 hours of arrival; visitor access maps provided at that orientation, posted throughout the island, and contained in information notebooks in each room; signs; and other information found within the information notebooks located in each hotel room provide the visitor with additional actual or constructive notice.

A visitor found in violation of these rules may be issued a Notice of Violation, or arrested in the most serious cases. A Notice of Violation usually includes an option for paying a fine under an established Forfeiture of Collateral Schedule or appearing in court before a Magistrate Judge. In addition, depending on the violation, other applicable laws and penalties will apply.

Monument permits will incorporate all applicable requirements, and the signed Monument permit also serves as actual notice of these requirements.

Chapter 4 Visitor Services Standards

4.1 Welcome and Orient Visitors

> "We will assure that refuges are welcoming, safe, and accessible. We will provide visitors with clear information so they can easily determine where they can go, what they can do, and how to safely and ethically engage in recreational and educational activities. Facilities will meet the quality criteria defined in [policy]. We will treat visitors with courtesy and in a professional manner."
> *Fish and Wildlife Service Manual, 605 FW 1*

Goal 8. Offer visitor opportunities at Midway Atoll to discover and appreciate the wildlife and beauty of the NWHI, enhance conservation, and honor its unique human history.

Objective 1 Provide visitor opportunities for at least 500 overnight visitors annually, with no more than 50 overnight visitors at any one time.

Strategy 1.1 By September 2008, solicit sufficient additional staff or qualified volunteers to support the visitor program.

Strategy 1.2 By June 2009 and based on a completed Midway Conceptual Site Plan, seek funding to establish additional housing opportunities for individuals and groups.

Strategy 1.3 By December 2008, seek larger capacity aircraft to service Midway Atoll on a regular basis.

Strategy 1.4 Limit the total number of overnight visitors to no more than 50 at any one time to match the existing infrastructure, ensure a quality program, and limit impacts to wildlife.

Strategy 1.5 Work with private groups to arrange facilitated visits to Midway.

Strategy 1.6 Offer a minimum of four 3- to 7-day visits annually for independent travelers to come to Midway on less structured visits.

Discussion: With the small size of the initial program, one interpreter will be hired in 2008 to help with orientation sessions and tours, followed by a supervisory visitor services manager by October. This manager will have the primary responsibility for Midway's visitor program, including program development, program implementation, program evaluation, coordination with NOAA, and supervision of the interpretive staff. This employee would be responsible for implementing the visitor services plan for Midway in collaboration with Monument Co-Trustee staff. Until this employee has been hired, FWS staff in Honolulu will continue to provide support for the Midway visitor program. An additional FWS ranger (interpretation) or qualified volunteer will be stationed on Midway by 2009 to assist in providing orientation and interpretive programs and staff the interpretive facilities. A refuge officer (law enforcement) will be in place to enforce rules and regulations on Midway and to assist with law enforcement throughout the Monument. The refuge zone officer will also assist with enforcement activities at Midway. FWS will work with its contractor to identify additional contractor staffing needs for lodging, food service, and administrative work in support of the visitor program.

The limit of no more than 50 overnight visitors on Midway at any one time reflects the limited capacity of our means of transportation and island infrastructure. Our Fiscal Year 2008 aircraft charter company operates a Gulfstream G-1 aircraft with 19 seats and a weight capacity of 3,200 pounds. Therefore, it is likely that no more than 15 seats will be available on any flight. In general, visitor groups will be transported on separate charter flights from those that bring food; mail; supplies; repair parts; and FWS, contractor, and Co-Trustee staff to and from the atoll. Most visits will be for one week at a time, although occasionally a shorter-term visit may be offered.

Of the 36 rooms in our guest lodging facility (Charlie Barracks), 24 rooms generally will be available for overnight guests at any one time (except from August through October). The remaining rooms may occasionally be available, but often will be occupied by off-island staff, Co-Trustee staff, and contractors. The seating capacity at Midway's dining facility is likewise limited. Although meal times can be staggered to accommodate larger numbers of people on island, aircraft seating and lodging still limit the size of the program.

FWS Monument staff, in coordination with NOAA, will evaluate other types of aircraft that could safely and more cost-effectively transport visitors to Midway Atoll. We will work with the Department of the Interior's Office of Aircraft Services and NOAA's Marine and Aviation Operations office to identify suitable potential bidders for an aircraft charter service. Our goal would be to be able to transport 25-30 visitors to and from Midway per flight. We also continue to evaluate the island infrastructure to identify additional needs for visitor housing, food services facilities, etc., for future planning and budget development purposes.

Since 2002, various private groups have inquired about the possibility of bringing structured groups of people to Midway for 2 to 7-day visits. FWS will encourage such visits, working with the organizers to arrange trips in the most cost-efficient manner possible. These groups will be led by a FWS-approved guide who has been thoroughly briefed in refuge and Monument rules and regulations, and all proposed activities on Midway Atoll will be approved in advance by the refuge manager in compliance with Monument regulations and necessary permit conditions.

Although most visits would be part of structured programs, we will offer at least four 3- to 7-day periods annually when individuals may come to Midway to enjoy the atoll's historic and wildlife resources in a less structured manner. Such visitors would participate in available guided activities but would not be with an organized group. All of the rules and restrictions that apply to other visitors would apply to independent travelers. These independent travelers would require more oversight by Monument employees than organized groups, but still deserve the opportunity to visit their public lands.

Objective 2 **Provide visitor opportunities for private sailboats and up to three individual cruise ship visits per year.**

Strategy 2.1 Continue to allow private sailboat crews with prior approval to stop at Midway Atoll and moor in the inner harbor. All sailboats must obtain a Monument permit and meet Monument requirements during their voyage.

Strategy 2.2 Continue to allow up to three cruise ship visits to Midway Atoll during any calendar year for 8-12 hour visits. These vessels are limited in size to no more than 800 passengers and will meet all refuge and Monument cruise ship requirements.

Discussion: Although the number of sailboats visiting Midway Atoll varies from year to year, the average number seeking prior permission to land is about five per year. Midway Atoll is not en route to

normal sailboat destinations in the Pacific, and due to prevailing winds and currents, it is difficult to sail from Midway back to Honolulu. Those that do come to Midway generally stay only a few days, remaining overnight on their vessels. Occasionally they eat some of their meals at the Clipper House dining facility.

For the past several years, Midway has hosted from one to four commercial cruise ships of varying passenger capacities for walking tours of Sand Island. Weather permitting, the cruise ships remain outside of the southern reef at the channel entrance and offload their passengers in groups of up to 100 in the ships' tenders. These small boats come into the inner harbor, where the passengers disembark and are divided into groups for a 2-hour walking tour along existing roads to specific sites where FWS, National Park Service, and/or volunteer interpreters provide informative talks. Each group is accompanied by tour guides from the ship to ensure the passengers remain on the clearly marked guided tour route. Visitors return to the cruise ship at the end of their walking tour. Some of these cruise ships have been on theme-based itineraries to World War II Pacific battlefields, while others have been more general in nature. Many visitors – including those on world tours – have remarked that their stop at Midway Atoll was one of their most enjoyable and educational experiences.

Each cruise ship must follow the Monument's requirements, including obtaining a Monument Special Ocean Use permit, as well as numerous refuge requirements. A separate permit is required for each visit to Midway Atoll, and no more than three special ocean use permits for cruise ship visits will be granted per year. Monument permit conditions such as hull inspections, specific vessel monitoring systems, and discharge limitations apply to cruise ships as well as other vessels permitted within the Monument. Permits are not issued if the vessels do not meet the requirements of Proclamation 8031 and 50 CFR 404.11. The refuge manager and ship's captain have the authority to cancel any visit should weather and ocean conditions be too dangerous for human safety.

Cruise ship companies cover the cost of bringing additional interpreters to the island. In order to ensure that these short-term visits do not conflict with the overnight visitors, we will limit the number of cruise ship visits to no more than three per year. Since they are generally scheduled months in advance of the visit, we may be able to avoid scheduling overnight visitor trips at times when cruise ships will arrive.

Objective 3 **Ensure all visitors feel welcome, enjoy a safe experience, and understand refuge and Monument rules and regulations during their stay on Midway Atoll.**

Strategy 3.1 Ensure visitors with disabilities feel welcome at Midway and enjoy a quality experience. Opportunities to improve existing facilities for the disabled will be evaluated in 2008 and funding for improvements will be sought in 2009.

Strategy 3.2 Ensure all visitors arriving at Midway Atoll receive advance materials regarding the sensitivity of Midway's resources and participate in a mandatory orientation briefing within 12 hours after their arrival.

Strategy 3.3 On an ongoing basis, maintain notebooks in each visitor room with maps and information on safety, wildlife viewing etiquette, regulations, and emergency contacts.

Strategy 3.4 Staff the visitor center at least 4 regularly scheduled hours a day during workweeks so that visitors can ask questions and seek additional information.

Strategy 3.5 By June 2015, complete installation of directional, regulatory, and interpretive signage as proposed in the Midway interpretive plan and sign plan.

Strategy 3.6 Continue monitoring visitor satisfaction surveys on a weekly basis, adjusting the visitor program, visitor facilities, and maintenance schedules as appropriate.

Strategy 3.7 By March 2009 and biennially thereafter, assess the level of visitor satisfaction, financial stability of the program, level of staffing, and program structure resulting in recommendations for improvement.

Strategy 3.8 Based on the assessment above, seek funding, authority, or other needs to implement the recommendations.

Discussion: Opportunities to enhance accessibility for all visitors will be sought throughout implementation of the visitor program. Wheelchair-accessible lodging is currently available for visitors in Bravo Barracks on Sand Island. The boardwalk leading to the dining facility also is accessible. Due to Sand Island's mostly flat terrain, most of the roads are passable for all visitors. A review of Midway's facilities with particular attention to their accessibility was completed in 1997 and will be reviewed in 2008.

Advance materials will be provided to registered visitors with helpful hints about what to bring to Midway, how to avoid introducing new invasive species, how to avoid disturbing wildlife, and what to expect on the atoll. Since 1995, all visitors arriving at Midway Atoll have been required to attend a mandatory orientation session led by FWS personnel, even those who may have participated in a pre-trip briefing. During this time, visitors learn about some of the natural and historical resources of Midway Atoll, cultural resources of Papahānaumokuākea Marine National Monument, rules and regulations that protect wildlife, and personal safety information. They are provided maps and other information to make their visit more enjoyable and educational. The schedule of the briefing varies by the time the aircraft/vessel arrives on Midway, but it always occurs within 12 hours. As a helpful reference, each guest room will have a notebook containing this information. These notebooks will be in place by November 2008 and will be updated on a regular basis. Information on natural, military, and other hazards will be included in both the orientation and the reference notebooks. Staffing the visitor center at least 4 hours per day will allow visitors the opportunity to seek answers to any questions.

For cruise ships, briefings are either given on board the ship prior to arrival or, if no FWS-approved guides are on board, via written materials developed by the cruise ship company in coordination with FWS and Monument Co-Trustees. Since all cruise ship visitors are guided in small groups from one site to another along existing roads, these methods of orientation suffice.

We try to minimize the number of signs on Midway both to reduce impacts on wildlife and to allow visitors to have a more natural experience. Street signs have been lowered to minimize collisions by birds in flight. During 2009, refuge staff will analyze the need for additional signage and complete a sign plan in consultation with NOAA.

Because of the age of Midway's infrastructure, the atoll's harsh climate, and the difficulty of getting materials and supplies to the atoll, maintenance of visitor facilities is a major and expensive endeavor. Efforts will be made to improve these facilities during 2008-2011. However, to ensure a minimal level of funding is available, visitor program fees will be structured to cover maintenance costs for lodging and dining facilities, on-island means of transportation (e.g., golf carts and bicycles), and at least some of the interpretive facilities. FWS will also work with its other partners on Midway to seek funding for island infrastructure maintenance and repair.

FWS' contractor will design and implement a visitor satisfaction survey. A previous questionnaire distributed by a private partner at Midway provided valuable insight into how we could improve our visitor program. FWS, contractor, and Co-Trustee staff will work together to make appropriate changes to enhance the visitor experience based on this feedback.

After 1 year of operation, FWS will evaluate the visitor program and work with the Co-Trustees to form recommendations for its improvement. As feasible, these recommendations will be implemented. Such assessments will continue on at least a biennial basis.

4.3 Provide Quality Hunting Opportunities

> "Hunting is a wildlife-dependent recreational use and, when compatible, an appropriate use of resources in the Refuge System. Hunting programs will meet the quality criteria defined in [policy] and, to the extent practicable, be carried out consistent with State laws, regulations, and management plans."
>
> *Fish and Wildlife Service Manual, 605 FW 1*

Midway Atoll has no available hunting opportunities because all of its animal species are protected by law as either nongame species or threatened or endangered species, or they occur in numbers too low for harvest (e.g., migratory waterfowl).

4.4 Provide Quality Fishing Opportunities

> "Fishing is a wildlife-dependent recreational use and, when compatible, an appropriate use of resources in the Refuge System. Fishing programs will meet the quality criteria defined in [policy] and, to the extent practicable, be carried out consistent with State laws, regulations, and management plans."
>
> *Fish and Wildlife Service Manual, 605 FW 1*

Consistent with relevant law, FWS grants wildlife-dependent public uses, including fishing, special consideration on national wildlife refuges. When determined compatible, wildlife-dependent public uses receive priority consideration over all other uses of a refuge. In this instance however, Midway Atoll is managed not just as a national wildlife refuge but as part of the Monument. In accordance with Proclamation 8031 "[r]emoving, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving Monument resource" is prohibited without a permit, and recreational permits cannot be issued for activities that result in the extraction of Monument resources. Therefore, sportfishing at Midway Atoll will not be permitted.

4.5 Provide Quality Wildlife Observation and Photographic Opportunities

> "Visitors of all ages and abilities will have an opportunity to observe and photograph key wildlife and habitat on the refuge when it is compatible with refuge purpose(s). Viewing and photographing wildlife in natural or managed environments should foster a connection between visitors and natural resources . . ..
>
> *Fish and Wildlife Service Manual, 605 FW 1*

Goal 5. Enhance public understanding and appreciation of and support for protection of the Monument's natural, cultural, and historic resources.

Goal 8. Offer visitor opportunities at Midway Atoll to discover and appreciate the wildlife and beauty of the NWHI, enhance conservation, and honor its unique human history.

Objective 4 **Within 3 years, improve wildlife viewing and photography opportunities for all visitors to Midway Atoll.**

Strategy 4.1 Working with Monument Co-Trustees, re-establish an active dive program for visitors on Midway by May 2011.

Strategy 4.2. In Fiscal Year 2010, seek funding for two new boats to support the visitor program, one capable of carrying at least 25 visitors to Eastern Island, the other to support the dive program.

Strategy 4.3 By 2011, establish remote viewing cameras to transmit live video of terrestrial and marine species and their habitats to the visitor center and other locations beyond Midway Atoll.

Discussion: At few other places in the world can visitors be so totally surrounded by wildlife. Midway's seabirds have little fear of humans, and visitors are offered opportunities to observe and photograph them from the time they arrive until they leave. To enhance their experience and ensure their expectations are met, a wildlife calendar has been developed showing what species are present at Midway during each month of the year. Existing bird and fish checklists have been reviewed and updated, then printed for distribution. A wildlife map of Midway Atoll shows visitors where they might have the best opportunity to see specific wildlife species. These documents will also be available on the Midway Atoll website.

In 1997, West Beach – wrapping all the way from Rusty Bucket around Frigate Point – was closed to protect Hawaiian monk seals that use the beach for resting and pupping. To continue to allow visitors to reach historic resources in that area and to expand their opportunities to see the wildlife resources of Midway, FWS constructed a trail through the ironwood forest adjacent to West Beach, in consultation with NOAA-Fisheries. At several locations along the trail, spur trails leading to overlooks were marked and native vegetation planted to create natural wildlife viewing blinds. That trail is being renovated in 2008 to ensure visitor safety and to ensure the viewing blinds are effective in screening visitors from resting monk seals. Though generally left as a self-guided tour for visitors to explore, FWS also offers a guided West Beach trail tour approximately once every week.

Unlike the albatrosses and some other seabird species, Laysan ducks are frequently secretive and wary of humans. To increase opportunities for visitors to see this highly endangered species, an accessible observation/photography blind is being constructed at the water catchment basin in 2008. If needed, a spotting scope may be added to the blind to enhance viewing opportunities.

A limited water-based wildlife observation program began in 2008, using existing refuge. FWS and its partners will seek additional resources to expand the program. Because of the inherent safety concerns of any water-based activities, particularly in such a remote location, strict standards and rules will be established and enforced before any visitors are allowed to engage in these activities.

Snorkeling and guided kayaking opportunities are offered during daylight hours only (one-half hour after sunrise to one hour before sunset) to learn about and enjoy Midway's marine resources. Small groups of up to eight snorkelers per guide are taken by FWS-approved guides to specified locations within the lagoon to enjoy snorkeling within the lagoon and adjacent to the reef (except within the 500-foot buffer zone identified in Figure 3.1.2). Snorkeling sites are rotated to reduce marine impacts and avoid preferred monk seal and sea turtle haulout sites. Visitors are also allowed to snorkel near the cargo pier as long as no monk seals are in the vicinity. Use of the "buddy system" is required.

Guided kayaking tours of the lagoon will also be offered in 2008 in groups of no more than six kayaks. All participants will be carefully instructed in kayak safety and wildlife/marine resource viewing etiquette before launching the boats. Kayaks will launch from Sand Island and may tour only from the cargo pier across the northern beach, around Rusty Bucket to Frigate Point. All kayak tours must remain at least 150 feet from shore to avoid disturbing resting monk seals on the beach. Kayak tours will remain at least 500 feet from shore at West Beach if a monk seal mother and pup are present. FWS or FWS-approved kayak guides will be trained in kayak operation and in radio contact with employees on Sand Island. Individuals may not take kayaks out on their own. Kayaking tours will not be allowed to head toward Eastern Island or Spit Island, or to approach the reef. No snorkeling will be conducted from kayaks.

Visitors may also want to explore the coral reefs in waters outside the lagoon through SCUBA diving. Monument staff will work toward re-establishing a dive program by May 2011, through the use of a concessionaire. As a preliminary step toward a dive program, the refuge manager has determined guided dive tours focused on wildlife observation and photography would be a compatible wildlife-dependent use. Divers would be accompanied by a certified master diver, with a maximum of six divers per one dive master. The dives would be specialized for divers interested in marine life and underwater photography, and all NOAA-Fisheries guidelines for viewing marine mammals and sea turtles would be met. No night diving would be allowed due to increased shark activity. Typically, this would be a seasonal activity, generally from May through September when the seas are calmer. Specific Monument protocols to ensure invasive species and disease are not transmitted through snorkel and dive gear will be implemented.

Although live-aboard dive cruises are offered on the Island of Hawai‘i and many other areas of the Pacific, Midway's remote location would mean vessels would need to be in transit for many days before reaching the atoll to dive, and that they would need to transit the waters of the Monument. It is highly unlikely such a vessel could meet the environmental standards required of vessels within the Monument. Any request for such use at Midway Atoll would require the approval of the Co-Trustees through the permitting process. Cruise ships are only onsite for sufficient time to allow terrestrial tours and occasionally the opportunity to swim off the North Beach. No other alternatives (e.g., snorkeling or diving) for cruise ship passengers will be allowed. All requirements outlined in the compatibility determinations for wildlife observation and nonwildlife-dependent recreational activities would apply.

As technology improves and funding becomes available, we will work with our Co-Trustees to provide opportunities to broadcast live images of sensitive species such as the short-tailed albatross, Hawaiian monk seal, and Laysan duck and coral reef habitats to the visitor center on Sand Island and perhaps to the

main Hawaiian Islands (such as at the Mokupapapa Discovery Center in Hilo) and beyond through the National Marine Sanctuary Program's web portal (http://www.oceanslive.org/portal/).

Objective 5 **Work with and encourage qualified groups or individuals to develop specialized wildlife-dependent programs such as wildlife monitoring, photography, and art in 2008 and beyond**.

Strategy 5.1 Continue to seek new vendors who would be interested in bringing groups to Midway.

Discussion: In the *Midway Atoll National Wildlife Refuge Visitor Program Market Analysis and Feasibility Study*, Pandion Systems, Inc., recommended several target audiences within the broad category of sustainable ecotourism, including specialized programs such as service learning activities, photography tours, writing and artist workshops, and educational tours. The FWS and Monument Co-Trustees agree and will continue to explore opportunities to reach such vendors. Since these programs generally bring a leader/guide/instructor with them, we need only ensure their understanding and compliance with rules and regulations and provide local expertise as needed. Proposed activities that would generate revenue or profits would require Monument Special Ocean Use permits.

4.6 Develop and Implement Quality Environmental Education Programs

> "Through curriculum-based environmental education packages based on national and State education standards, we will advance public awareness, understanding, appreciation, and knowledge of key fish, wildlife, plant, and resource issues. Each refuge will assess its potential to work with schools to provide an appropriate level of environmental education. We may support environmental education through the use of facilities, equipment, educational materials, teacher workshops, and study sites that are safe, accessible, and conducive to learning." *Fish and Wildlife Service Manual, 605 FW 1*

Goal 5. Enhance public understanding and appreciation and support for protection of the Monument's natural, cultural, and historic resources.

Objective 6 **Beginning in 2008, develop and provide biennial wildlife-dependent teacher workhops at Midway Atoll targeting a mix of science teachers and those from other fields of education and focused on Navigating Change curricula.**

Strategy 6.1 Working with the Navigating Change Educational Partnership, implement a week long standards-based teacher workshop on Midway in 2009 developed and conducted by the teacher focus group in 2008.

Strategy 6.2 Develop and conduct teacher workshops on Midway at least biennially in support of the Navigating Change curricula.

Strategy 6.3 By 2012, focus one teacher workshop on expanding Navigating Change curricula to meet the needs of intermediate and high school classrooms.

Discussion: The goal of these biennial teacher workshops is to inspire a new group of teachers to use environmental education as a method of connecting students to Hawai'i's wildlife and culture. Over the

past 5 years, the partners have joined together to create Navigating Change, a project conceived by the Polynesian Voyaging Society and focused on raising awareness and ultimately motivating people to change their attitudes and behaviors to better care for our islands and ocean resources. A standards-based educational curriculum for fourth and fifth graders was released by the partnership in 2005, and more than 15 workshops have been conducted on the main Hawaiian Islands to introduce the curriculum to local teachers. The major themes included within the curriculum could provide the stepping stones for future development of educational activities such as telepresence and distance learning projects.

The target date for the first actual teacher workshop on Midway would be summer 2009. Agency planning began in 2007, and the members of a teacher focus group held a planning workshop in January 2008. The 2009 teacher workshop and beyond will be conducted mainly by the focus group teachers with the Navigating Change Educational Partnership providing support. By 2012, a workshop will focus on designing upper grade level curriculum components as an extension of Navigating Change. Approximately 15 teachers could participate in each workshop.

Objective 7 **Beginning in 2009, facilitate at least two opportunities per year for accredited colleges, universities, or private/nonprofit environmental or historical organizations to conduct wildlife dependent or historical college level courses or administer informal educational camps.**

Strategy 7.1 During 2008, seek partners who may be interested in offering educational programs on Midway Atoll and set schedules for trial courses or camps in 2009.

Strategy 7.2 By March 2009, Monument staff will develop, design, and offer a mandatory 1-day orientation that all guides and instructors must attend before hosting a class on Midway for the first time.

Strategy 7.3 Assist with classes/camps on Midway, providing guidance to avoid impacts on wildlife resources and monitoring group activities.

Strategy 7.4 By 2010, collaborate with universities to offer semester internship opportunities for students interested in biological studies.

Strategy 7.5 By 2012, develop dormitory-style or other lower-cost housing, classrooms, and laboratories in support of longer-term classes on Midway.

Strategy 7.6 Investigate opportunities to bring select middle and high school students to Midway for courses in atoll ecosystems by 2015.

Discussion: Organizations have already shown their interest in using Midway for educational experiences, since it provides unparalleled wildlife dependent educational opportunities. Organizations will be held responsible for providing instructors and leading their participants. The Co-Trustees will provide guidance during the mandatory advance orientation. When possible, Monument staff can provide learning opportunities that engage participants in biological and historical projects such as habitat restoration or historic preservation. FWS staff will also monitor group activities to ensure Midway's wildlife and historic resources are protected.

The Co-Trustees support expanding environmental education opportunities to the extent feasible on Midway Atoll. Developing lower-cost housing and increasing classroom and laboratory space will facilitate these programs. An opportunity to study Midway's unique natural resources could be the catalyst to inspire lifelong devotion to the field of science.

Objective 8 **Develop and implement new tools to bring the place to the students rather than the students to the place by 2010.**

Strategy 8.1 Install appropriate technologies to make distance learning possible from Midway Atoll by 2009.

Strategy 8.2 Initiate a distance learning program from Midway Atoll to bring the Monument to classrooms across the Nation by 2010.

Discussion: FWS has long been interested in offering a distance learning program from Midway, but doing so from such a remote location is challenging. As technologies improve, the Co-Trustees will evaluate the possibility of establishing such a program that could bring the Northwestern Hawaiian Islands into Hawai'i classrooms in particular, but also to other educational venues. In order to provide support for staff, researchers, and distance learning, NOAA is exploring opportunities to install high-speed satellite uplinks on Midway Atoll.

4.7 Provide Quality Interpretation of Key Resources

> "We will communicate fish, wildlife, habitat, and other resource issues to visitors of all ages and abilities through effective interpretation. We will tailor core messages and delivery methods to provide interpretation to refuge visitors and present them in appropriate locations." *Fish and Wildlife Service Manual, 605 FW 1*

The rich natural and human history of Midway Atoll provides a unique opportunity to promote visitor understanding of and appreciation for America's natural and historic resources. Interpretation provides opportunities for visitors to make their own connections to the resource so that a sense of stewardship and respect for these resources develops. To ensure our interpretive products remain focused, we develop interpretive themes that guide development of all interpretive products on the refuge.

The primary interpretive themes for Midway Atoll are adapted from those of the Monument:

- Encircled by the earth's largest ocean, the small islands and coral reefs of the Northwestern Hawaiian Islands provide a scarce and safe haven for diverse native wildlife species to raise their young; to rest, grow, and play; and to survive into the future.
- These remote atolls host a complex reef ecosystem dominated by apex predators and rich in species found nowhere else in the world.
- Just as human actions can destroy wildlife and their habitat, people can restore island and reef ecosystems to benefit both wildlife and mankind through research, sound science, and special care.
- Stories, ancient chants, and archaeological remnants connect ancient Polynesians to the Northwestern Hawaiian Islands not only geographically but also spiritually.
- Throughout history, Midway has served as a vital outpost for humans as they explored their world, expanded their horizons, protected their boundaries, and sought peace in the world.
- Brave young men – far from home and loved ones – risked their lives at Midway to defend America, and in doing so, turned the tide of war in the Pacific to ensure our freedom.

These themes are designed to encompass the tremendous wildlife and historical treasury found at Midway. Through a variety of interpretive methods, these themes will be conveyed to our visitors.

Goal 5. Enhance public understanding and appreciation and support for protection of the Monument's natural, cultural, and historic resources.

Goal 7. Identify, interpret, and protect Monument historic and cultural resources.

Goal 8. Offer visitor opportunities at Midway Atoll to discover and appreciate the wildlife and beauty of the NWHI, enhance conservation, and honor its unique human history.

Objective 9 **By 2012, develop a Midway Atoll interpretive plan that will be incorporated into a Monumentwide interpretive plan addressing key interpretive sites and activities.**

Strategy 9.1 Develop detailed and site-specific descriptions of interpretive facilities, exhibits, signs, programs, trails, etc., that will meet the goals of the Monument, the interests and needs of Midway's visitors, and the unique and meaningful features of the Monument's natural and cultural resources.

Discussion: A Midway-specific interpretive plan will guide the development of additional interpretive facilities, exhibits, etc. It will be based on the Monument's interpretive themes and include information on project priorities, costs, staffing needs, and schedules. A conceptual-level interpretive plan was drafted in 2008, with more detailed, site-specific planning to follow.

Objective 10 **Continuously improve onsite interpretation and interpretive facilities to better educate visitors about the natural resources of Midway Atoll and the Northwestern Hawaiian Islands.**

Strategy 10.1 Offer wildlife-oriented guided tours to all visitors on at least a weekly basis.

Strategy 10.2 Transition the wildlife-related visitor center into a Papahānaumokuākea Marine National Monument visitor center by September 2008, to provide an educational window to the Monument. Annually review the exhibits and update them as needed and as described in the Midway Atoll interpretive plan.

Strategy 10.3 Provide additional opportunities for visitors to learn about ongoing management and research projects through field talks and evening programs.

Strategy 10.4 Offer evening programs in the Midway theater, including slide talks, videos, and other presentations on the Monument's natural and human history.

Strategy 10.5 Support and monitor an expanded Friends of Midway Atoll National Wildlife Refuge gift store, ensuring merchandise offers accurate and educational messages.

Discussion: The refuge interpreters will offer guided walks and bicycle/golf cart tours focused on natural history themes on at least a weekly basis. To ensure a quality experience, tour groups will be no larger than 25 people (except during cruise ship visits). Tour routes will vary depending on the physical ability of the participants, the weather, and wildlife use patterns. All visitors should have the opportunity to tour Sand Island. Dependent upon the weather and availability of transportation, visitors may also have the opportunity to have a guided tour of Eastern Island, which will combine both natural and historic resource features. Tours on Eastern Island generally walk from the boat pier to and along the historic World War II runways and Battle of Midway memorials. All beaches on Eastern Island are closed to visitors to protect Hawaiian monk seals and sea turtles, and tour routes will vary to accommodate wildlife needs.

Self-discovery and exploration is a key component of the Midway experience. To enhance their experience, interpretive panels regarding Midway's natural resources will be placed at a limited number of remote locations along existing trails on Sand Island, as identified in the Midway Atoll interpretive plan. These panels may include reminders of wildlife viewing etiquette, as appropriate. If a significant number of non-English-speaking visitors come to Midway, translated versions of these panels will be made available as handouts.

The natural resource interpretive exhibits in the Midway visitor center will be reviewed for currency and updated as necessary, working in cooperation with the Co-Trustees. As the "window to the Monument," the focus of the exhibits will be broadened to include the natural resources of the entire Monument.

Researchers and biologists will be encouraged to offer field talks to describe their work and/or provide insights into the world of individual wildlife species. NOAA-Fisheries has expressed an interest in providing guided tours to view monk seals in an unobtrusive manner, and frequently researchers provide presentations or demonstrations to broaden knowledge of their activities. By better understanding the needs of each species for its survival, visitors will gain knowledge of how they can help protect these animals.

Over the years, numerous films and documentaries about the Battle of Midway and other aspects of the atoll's history and its wildlife have been produced. Sharing these with visitors in the historic Midway theater enhances their learning experience and enjoyment.

Through the Friends of Midway Atoll National Wildlife Refuge, a gift store on Midway offers visitors the opportunity to purchase Midway Atoll-related items such as books, posters, postcards, coffee mugs, tee shirts, and note cards. Refuge staff will monitor sales items to ensure they accurately interpret refuge and Monument natural and historic resources. These items will also be available on the Friends website, broadening the distribution of these interpretive materials.

Objective 11 **By 2010, improve onsite interpretation and interpretive facilities to better educate visitors about the Battle of Midway National Memorial, Midway's human history, and Native Hawaiian culture.**

Strategy 11.1 Offer a history-oriented guided tour to all visitors on at least a weekly basis.

Strategy 11.2 Working with the Office of Hawaiian Affairs and the Native Hawaiian Cultural Working Group, add a Native Hawaiian cultural component to Midway's orientation session, visitor center exhibits, and outreach materials.

Strategy 11.3 Partner with NOAA to develop interpretive materials and displays for the temporary museum about the submerged historic sites (shipwrecks and aircraft) located within the Monument to enhance existing historic interpretation.

Strategy 11.4 By December 2010, seek funding to restore a historic building to house a permanent museum/library to recognize and honor Midway's – and the Northwestern Hawaiian Islands' – distinguished history..

Strategy 11.5 By December 2012, complete restoration of a historic building to house the museum and develop and install the interpretive exhibits as identified in the Midway Atoll interpretive plan.

Strategy 11.6 Annually review, update, and/or replace exhibits within the museum to ensure they appropriately represent the Monument.

Discussion: Much like the natural history tours, historic resource guided tours will be offered by refuge staff on at least a weekly basis. To ensure a quality experience, tour groups will be no larger than 25 people (except during cruise ship visits). Depending upon the physical ability of the participants, the weather, the length of the tour route, and the potential impacts on wildlife, these tours may be on foot, by bicycle, or by golf cart. On Sand Island, the history tour will be separate from the wildlife-oriented tour; on Eastern Island, both topics will be covered in one visit.

Sand Island's historic structures are found in all corners of the island. A self-guided historic resource tour map with descriptive information was developed in 1996 and was updated in 2008 for current visitor use. Interpretive panels regarding several of Midway's historic resources were produced in 2002. Because the regularly scheduled visitor program was no longer active, the panels were temporarily placed on portable stands for use only during cruise ship visits. Now that visitors are returning on a more regular basis to Midway, these panels have been mounted as originally planned at their designated sites to bring history to life along the self-guided tour.

As the "window to the Monument," interpretation at Midway will be broadened to include information about the Northwestern Hawaiian Islands' importance in Native Hawaiian culture. All interpretive materials and presentations will be reviewed to ensure the islands' cultural resources are appropriately represented.

History-related exhibits are currently housed on the first floor in the airport hangar. Because that location is rarely visited by visitors and because the building is deteriorating, the exhibits are being moved to a new temporary location in the visitor center in 2008. The new site will be more readily accessible to visitors.

In the longer term, one of the historic buildings – probably within the "Midway Mall" – will be restored to house a permanent museum/library. Detailed plans for this facility will be included in the Midway Atoll interpretive plan. In accordance with the *Midway Atoll National Wildlife Refuge Historic Preservation Plan*, FWS does not plan to acquire materials currently preserved in museums, archival institutions, and private collections to bring them to Midway's harsh environmental conditions. It is more appropriate to acquire copies of such materials for Midway, allowing the originals to remain secured at existing facilities or in a repository in Hawai‘i. Interpretive exhibits will be developed to reflect all of Midway's "eras," from prerecorded history to discovery, to shipwrecks and the Commercial Pacific Cable Company days, the Pan American Flying Clipper period, the Battle of Midway, and on through the Cold War and Vietnam conflicts. Broader based exhibits about cultural and historic sites throughout the Northwestern Hawaiian Islands will also be developed in partnership with NOAA's cultural resources program and the State of Hawai‘i.

Objective 12 **By 2010, develop at least two offsite exhibits and programs to educate the general public about the Northwestern Hawaiian Islands and Midway Atoll in particular.**

Strategy 12.1 In 2008, develop and install a visitor access exhibit in NOAA's Mokupāpapa Discovery Center in Hilo, Hawai‘i, as part of the updating of the facility.

Strategy 12.2 Working with the National Park Service and other key entities, develop offsite exhibits within the World War II in the Pacific Interpretive Concept that feature the historic Battle of Midway and Battle of Midway National Memorial.

Strategy 12.3 Work with the other venues to incorporate information about Midway Atoll and the Northwestern Hawaiian Islands in their exhibits.

Discussion: Since the number of visitors to Midway Atoll will always be relatively small, FWS will work with partner entities to provide information about the Northwestern Hawaiian Islands and Midway Atoll to a broader audience. The Mokupāpapa Discovery Center in Hilo, Hawai'i, informs an average of 60,000 visitors per year about the new Monument. As funding is available, FWS will work with NOAA to incorporate an exhibit about Midway Atoll and visitor opportunities. Additional opportunities, such as within the Northwestern Hawaiian Islands exhibit at the Waikiki Aquarium, will be sought in 2008 and beyond.

While some exhibits will focus on natural history, FWS will also ensure appropriate attention is placed on the Battle of Midway in offsite interpretive efforts. In establishing the Battle of Midway National Memorial, FWS was charged with helping others keep knowledge of this important battle alive for future generations. In the near term, our first efforts will be at Pearl Harbor with its many World War II in the Pacific themed attractions. We will also seek partners to help place an exhibit in Washington, D.C.

Objective 13 **Work with and encourage qualified groups or individuals to develop specialized historical programs that honor the Battle of Midway.**

Strategy 13.1 Continue to seek new vendors who would be interested in bringing history-related groups to Midway.

Discussion: FWS will explore opportunities to bring historical tours, either through commercial tour groups or veterans organizations, to Midway Atoll in recognition of its status as the Battle of Midway National Memorial. All such tours will be reviewed and approved through the Monument permitting process.

4.8 Manage for Other Recreational Use Opportunities

> "We may allow other recreational uses that support or enhance one of the wildlife-dependent recreational uses or minimally conflict with any of the wildlife-dependent recreational uses when we determine they are both appropriate and compatible. We will allow uses that are either legally mandated or occur due to special circumstances."
>
> *Fish and Wildlife Service Manual, 605 FW 1*

Objective 14 **Allow residents and visitors to engage in other recreational uses on Midway that have been determined to be compatible.**

Strategy 14.1 Allow residents and visitors to ride bicycles and jog for exercise on existing roads.

Strategy 14.2 Allow residents and visitors to play tennis and volleyball at designated facilities.

Strategy 14.3 Allow beach uses such as swimming and sunbathing for visitors and residents.

Strategy 14.4 Allow amateur radio use from Midway Atoll in accordance with stipulations that make the use compatible.

Discussion: The refuge manager has determined that several forms of nonwildlife-dependent recreation are compatible with the Refuge System mission and the refuge purposes, and therefore Monument permits may include special conditions to allow them. These activities will take place only during daylight hours on Sand Island, and most are within developed areas. Bicycling and jogging will be restricted to hard surface roads, including along the edges of the runway, or along the cart path of the West Beach trail. Volleyball will only be allowed in the designated court area adjacent to the Captain Brooks facility. The tennis court is located outside the airport hangar building.

Swimming and sunbathing may only occur on the open public beach along the northern shore of Sand Island during daylight hours (from one-half hour after sunrise to one-half hour before sunset) for visitor safety. Use of the "buddy system" will be required. During the mandatory orientation session, visitors will be advised of appropriate behavior if a monk seal or sea turtle approaches them in the water.

Because of potential bird strikes on amateur radio antennae, limitations will be placed on this use. FWS will work with amateur radio enthusiasts to implement a compatible program, as long as it does not displace wildlife-dependent visitors wanting to visit Midway Atoll. Placement of the outdoor antennae must be approved by the refuge manager.

4.9 Communicate Key Issues with Off-Site Audiences

> "Effective outreach depends on open and continuing communication and collaboration between the refuge and its many publics. Effective outreach involves determining and understanding the issues, identifying audiences, listening to stakeholders, crafting messages, selecting the most effective delivery techniques, and evaluating effectiveness. If conducted successfully, the results we achieve will further refuge purpose(s) and the Refuge System mission."
>
> *Fish and Wildlife Service Manual, 605 FW 1*

Goal 5. Enhance public understanding and appreciation and support for protection of the Monument's natural, cultural, and historic resources.

Goal 7. Identify, interpret, and protect Monument historic and cultural resources.

Objective 15 **On a continuing basis, maintain outreach efforts to Midway's diverse audiences to update them on the visitor program and wildlife-oriented news stories.**

Strategy 15.1 On a continuing basis, update the Monument and refuge websites with current information about the visitor program and wildlife viewing opportunities.

Strategy 15.2 On an as-needed basis, issue news releases and write articles for publication in newsletters, magazines, or other periodicals to keep key publics informed about the visitor program on Midway Atoll and wildlife issues throughout the Monument.

Strategy 15.3 Continue to support reporters and documentary filmmakers in developing appropriate articles and films/television productions about the wildlife and history of Midway Atoll.

Discussion: Midway Atoll, the Battle of Midway National Memorial, and the new Monument have been highly visible in the public eye for some time. The atoll has a broad following by government officials, Members of Congress, veterans' organizations, environmental organizations, media, former residents,

past and potential visitors, World War II historians, and others who can be defined as "key publics." Rather than being "local community" members, Midway's supporters are spread across the Nation and around the world.

As individual issues arise regarding Midway, refuge staff on Midway and in Honolulu will work together with their counterparts in the Monument to reach out to our publics with timely and accurate information. The Midway Atoll website (http://www.fws.gov/midway) and Monument website will be continuously updated with news of Midway's wildlife, ongoing visitor activities, Battle of Midway-related events, and other Monument-related topics. News releases will be issued to the media as appropriate, and information or articles for periodicals will be provided as requested.

Documentary filmmakers and videographers will be accommodated to the extent possible under Monument permits so that we can reach the broadest audiences. Staffing levels may limit the number of filmmakers that can be accommodated.

Objective 16 **By March 2009, evaluate the effectiveness of the visitor program marketing effort.**

Strategy 16.1 Assess the need to contract with a marketing firm to promote the visitor program.

Discussion: Although FWS will promote the visitor program at Midway to the best of its ability, the specialized skills of a marketing company may be needed to develop sufficient demand to make the program financially self-sustaining. If the evaluation indicates additional work is needed, FWS would work closely with the marketing firm to ensure appropriate and accurate information is distributed to target audiences.

Objective 17 **Working with partners, offer special events and programs on Midway and at other offsite locations that honor its history and natural resources.**

Strategy 17.1 Annually commemorate the anniversary of the Battle of Midway from June 4-6.

Strategy 17.2 Celebrate other Monument-focused special events such as Maritime Heritage Week, International Migratory Bird Day, and the International Year of the Reef.

Strategy 17.3 Work with outside entities to sponsor history-related programs and events on Midway.

Strategy 17.4 Seek other venues and opportunities to participate in special events that connect to Midway's history.

Discussion: Occasionally, special events will be offered at Midway, particularly in relation to its status as the Battle of Midway National Memorial. As staffing allows, we will also participate in other offsite events to bring the history of Midway to larger numbers of people.

FWS continues to believe the historic aspects of Midway Atoll are an important draw for visitors. In addition to organizations such as the International Midway Memorial Foundation, which is dedicated to honoring and preserving the memory and values of the Battle of Midway, many individuals who were stationed on Midway during the Cold War era have expressed an interest in returning to the atoll with their families.

Other internationally recognized designations such as the International Year of the Reef should also be celebrated on Midway Atoll.

4.10 Build Volunteer Programs and Partnerships with Midway Atoll Support Groups

> "Volunteer and Friends organizations fortify refuge staffs with their gifts of time, skills, and energy. They are integral to the future of the Refuge System. Where appropriate, refuge staff will initiate and nurture relationships with volunteers and Friends organizations and will continually support, monitor, and evaluate these groups with the goal of fortifying important refuge activities. The National Wildlife Refuge System Volunteer and Community Partnership Enhancement Act of 1998 strengthens the Refuge System's role in developing effective partnerships with various community groups. Whether through volunteers, Friends organizations, or other important partnerships in the community, refuge personnel will seek to make the refuge an active community member, giving rise to a stronger Refuge System."
>
> *Fish and Wildlife Service Manual, 605 FW 1*

Goal 1. Protect, preserve, maintain, and where appropriate restore the natural biological communities and their associated biodiversity, habitats, populations, native species, and ecological processes.

Goal 4. Provide for cooperative conservation, including community involvement, that achieves effective Monument operations and ecosystem-based management.

Goal 5. Enhance public understanding and appreciation and support for protection of the Monument's natural, cultural, and historic resources.

Goal 7. Identify, interpret, and protect Monument historic and cultural resources.

Goal 8. Offer visitor opportunities at Midway Atoll to discover and appreciate the wildlife and beauty of the NWHI, enhance conservation, and honor its unique human history.

Objective 18 **Incorporate at least 75 percent of visitors staying 3 days or longer into the volunteer program for habitat restoration.**

Strategy 18.1 Plan weekly invasive plant pulling parties to involve visitors in invasive weed control.

Strategy 18.2 Provide trash bags for visitors to take with them as they walk along the open beach so they can collect marine debris as they find it.

Strategy 18.3 Schedule monthly beach cleanups to pick up marine debris on closed beaches where Monument staff have determined no monk seals or sea turtles are resting.

Discussion: Hand pulling of weeds is labor intensive, but it is also an effective tool in the continuing battle against invasive plant species. On most areas of Midway Atoll, the sandy substrate makes weed pulling relatively easy. Many visitors want to "give something back" to the wildlife during their time on the atoll, and this activity will help restore acres of habitat for nesting seabirds.

Beach cleanups are also a valuable tool, not only to protect wildlife species but also to educate visitors about the marine debris problem. By involving them in cleanup efforts, they are more likely to seek

solutions and educate others about the problem. Refuge or other designated biologists would first ensure no resting monk seals or sea turtles are present in the stretch of beach to be cleaned. Areas to be cleaned would be rotated around the islands from one month to the next so that all beaches would be cleaned twice a year, if possible.

Objective 19 **Provide 25 percent of visitors staying 3 days or longer opportunities to assist with wildlife population monitoring as volunteers**.

Strategy 19.1 As refuge staff or long-term biological volunteers are available, offer interested visitors the opportunity to assist with seabird monitoring and banding activities.

Strategy 19.2 As refuge staff, U.S. Geological Survey-Biological Resources Discipline staff, or long-term biological volunteers are available, allow interested visitors the opportunity to assist with Laysan duck monitoring activities.

Discussion: Much like the habitat restoration work above, visitors gain a better appreciation for wildlife and their needs with direct involvement in a monitoring program. All such work would be under the direct supervision of a trained biologist to prevent impacts on the animals. This program will be limited in size and nature, and will be continually monitored by the refuge biologist and refuge manager to ensure it is useful to both the wildlife populations and the visitor.

Objective 20 **Seek long-term well qualified volunteers to assist Monument staff with the operation of the visitor services program.**

Discussion: As a complement to Midway Atoll's ongoing biological volunteer program, we will offer opportunities for qualified volunteers to assist with interpretive programs on Midway. Monument staff will explore the possibility of offering an intern program for college students or other similarly trained volunteers.

Objective 21 **Seek grant funds to bring at least two groups of volunteers to Midway each year to work on historic restoration projects under the guidance of FWS' cultural resources staff and/or historic preservation specialists.**

Strategy 21.1 Beginning in 2008, apply for a *Save America's Treasures* (SAT) grant for historic rehabilitation work on Midway Atoll.

Discussion: The SAT grant requires a 50/50 match, which FWS can accrue through volunteer service, direct contributions, or material donations. FWS received a SAT grant in 1999 that included termite control work, theater building window restoration, a condition assessment report for the interior of the theater and the Commercial Pacific Cable Company Station, reroofing of one cable building, restoration of an ARMCO hut, and collection of oral histories and memorabilia. A similar program could be reinitiated in the future.

Objective 22 **Provide at least 15 percent of visitors staying 3 days or longer opportunities to assist with historic preservation tasks and activities.**

Strategy 22.1 Much like the habitat restoration projects, volunteers will be offered opportunities to help accomplish historic preservation tasks that require few technical skills.

Discussion: FWS' Cultural Resources Team or Historic Preservation Specialist will update the list yearly or as needed to meet the refuge staff recommendations. Volunteers could greatly facilitate the maintenance of historic resources and give the public a greater appreciation and involvement with historic preservation.

4.11 Refuge Law Enforcement

A refuge law enforcement officer is present on Midway Atoll, and a law enforcement zone officer in Honolulu and other refuge officers in Hawai'i provide support on an as-needed basis. For large events, the zone officer assembles a group of officers from refuges throughout the Pacific Region to provide law enforcement. Midway's refuge officer will also assist with law enforcement issues for the Monument.

4.12 Concession Operations

Because this is a small-scale program that is just reopening, the Midway Atoll visitor program will be operated by existing Monument staff in its early years. The program evaluation required in 2009 and biennially thereafter will allow further assessment of whether the program should be operated by a concessionaire. Developing a solicitation for a concessionaire, seeking proposals, and evaluating them can take up to a year to complete.

The one exception to this could be a snorkeling/SCUBA diving concession, which was briefly discussed above in the wildlife observation standard. If interest is expressed in such a program, FWS and its Co-Trustees will evaluate the feasibility of a diving concession at Midway in 2009 or beyond.

4.13 Fee Programs

Midway Atoll National Wildlife Refuge has charged access fees for its visitor program since 1997, when it received approval under the Recreation Fee Demonstration Program. That program has now been renamed the Recreation Fee Program, established through the Federal Lands Recreation Enhancement Act of 2004 (Public Law 108-447). Almost all of the original fee program sites transitioned into the new program. The entrance fee for Midway Atoll National Wildlife Refuge is $5.00 per person per day.

With no additional FWS funding available to support a visitor program, the refuge has been charged by FWS with developing a visitor program that is financially self-sustaining. To help us meet this goal, Congress has also given the refuge receipts authority, which allows the refuge to keep reasonable fees collected for services provided at Midway Atoll. These fees will be used to offset costs of implementing the visitor services program.

The following fee schedule reflects actual costs for visiting Midway. The entrance fee is collected under the authority of the Federal Lands Recreation Enhancement Act. Lodging and meal fees cover additional hotel and food services staffing, hotel supplies, and food costs. The visitor fee is collected under Midway's receipt authority and contributes toward the cost of additional refuge staffing or extended on-island volunteers needed to work with visitors, as well as enhancing visitor facilities. The on-island transportation rental fees will enable repair and replacement of these items as necessary. Boating fees cover vessel maintenance and fuel costs. Round-trip airfare is based on the actual cost of the current flight, divided by the number of passengers that can be accommodated on the aircraft. If that cost can be reduced in the future, the airfare will be reduced accordingly.

Table 4.13.1 Visitor Program Fee Schedule

Description	Fee
Entrance fee	$5 per day
Round trip airfare	$2,000 per person
Lodging	$125 per night
Meals	$45 per day
Visitor fee	$55 per day
Bicycle rental (optional)	$5 per day
Golf cart rental (optional)	$25 per day
Snorkel rental (optional)	$25 per week
Boat fees (for Eastern Island or snorkeling trips)	$20 per half day

In the *Midway Atoll National Wildlife Refuge Visitor Program Market Analysis and Feasibility Study*, Pandion Systems surveyed similar tourism providers to ascertain a typical cost range. Excluding transportation costs, typical costs ranged from $200 to $400 per day. Thus the Midway fees above are considered reasonable for the experience offered.

FWS recognizes the extremely high airfare costs associated with our current charter aircraft. We will continue to seek a more cost-efficient means of transportation for our visitors.

4.14 Permitting

General Permit Requirements

As part of the newly established Monument, activities within the Midway Atoll Special Management Area will be managed differently than at other national wildlife refuges. Typically, and with few exceptions, lands and waters within the Refuge System, including Midway Atoll National Wildlife Refuge, are closed to all public access and use unless FWS has specifically opened the use or use program on that refuge. The process of opening a refuge includes planning, appropriateness review and compatibility determinations, public review and comment, and NEPA compliance. Some uses, such as sport fishing or hunting, may also require the adoption of refuge-specific regulations under the Administrative Procedure Act involving public comment and publication in the Federal Register. Throughout the Refuge System, this process is used to open a refuge for general access, a particular use, or suite of uses. The refuge manager may also require a special use permit for specialized uses.

However, Proclamation 8031 alters the regulatory regime under which the Midway Atoll National Wildlife Refuge is operated as part of the Monument. The Proclamation established new requirements and methods of management throughout the Northwestern Hawaiian Islands. By overlaying the Midway Atoll and Hawaiian Islands National Wildlife Refuges, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, and State of Hawai‘i Kure Atoll Wildlife Sanctuary and marine refuge with the Monument, the Proclamation created a mechanism to ensure the Co-Trustees provide consistent, unified management while meeting their respective obligations under other applicable statutes and regulations. Specifically, Midway Atoll National Wildlife Refuge is a location where the FWS conducts compatibility determinations in consultation with the Co-Trustees to aid the Secretaries of the Interior and Commerce, in their discretion, to issue a co-signed Monument permit in one of six permit categories described in the Proclamation, provided the Secretaries find the activity:

> *(i) is research designed to further understanding of Monument resources and qualities; (ii) will further the educational value of the Monument; (iii) will assist in the conservation and management*

of the Monument; (iv) will allow Native Hawaiian practices; (v) will allow a special ocean use; or (vi) will allow recreational activities.

Furthermore, the Secretaries may not issue any permit unless they find:

- the activity can be conducted with adequate safeguards for the resources and ecological integrity of the Monument;
- the activity will be conducted in a manner compatible[2] with the management direction of this proclamation, considering the extent to which the conduct of the activity may diminish or enhance Monument resources, qualities, and ecological integrity, and indirect, secondary, or cumulative effects of the activity, and the duration of such effects;
- there is no practicable alternative to conducting the activity within the Monument;
- the end value of the activity outweighs its adverse impacts on Monument resources, qualities, and ecological integrity;
- the duration of the activity is no longer than necessary to achieve its stated purpose;
- the applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;
- the applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;
- the methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to Monument resources, qualities, and ecological integrity;
- the applicant's vessel has been outfitted with a mobile transceiver unit approved by NOAA Office of Law Enforcement and complies with the requirements of this proclamation; and
- there are no other factors that would make the issuance of a permit for the activity inappropriate[3].

The six categories of Monument permits are:

1. Conservation and Management;
2. Native Hawaiian Practices;
3. Research;
4. Education;
5. Recreation; and
6. Special Ocean Use.

Permits for Visitor Services at Midway Atoll

Permit applications for visitor services at Midway Atoll will be considered using the findings required by Proclamation 8031 as described above. As discussed in sections 4.5-4.10, 4.12, and 4.13, the plan anticipates recreational, ecotourism, volunteer, and educational activities, which would require Monument permits in the recreation, special ocean use, conservation and management, or education categories.

Additional Requirements for Individual Recreational Uses

Recreational uses conducted by individuals at Midway Atoll, such as snorkeling from the cargo pier, must also comply with additional requirements. For the purposes of this chapter, the Monument recreation

[2] Note the use of this word is not necessarily consistent with the same terminology from the Administration Act and FWS policy and regulations promulgated thereunder.
[3] Note the use of this word is not necessarily consistent with the same terminology from the Administration Act and FWS policy and regulations promulgated thereunder

permit requirement applies to recreational visitors and transients within the Midway Atoll Special Management Area. The Secretaries may not issue a recreation permit unless they find:

- the activity is for the purpose of recreation when defined as "an activity conducted for personal enjoyment that does not result in the extraction of Monument resources and that does not involve a fee-for-service transaction"
- the activity is not associated with any for-hire operation; and
- the activity does not involve any extractive use.

Additional Requirements for Special Ocean Uses

Enterprises offering recreational use opportunities at Midway Atoll that generate revenue or profits for one or more of the persons associated with the activity or use (e.g., ecotourism, cruise ship companies, filmmakers, and potentially some education and research activities) must comply with not only the special ocean use permit requirements from the Proclamation, but also two additional requirements:

- the Secretaries find the activity furthers the conservation and management of the Monument; and
- the refuge manager has found the use compatible with the purposes for which Midway Atoll National Wildlife Refuge was designated.

For the purposes of this chapter, a FWS special use permit as described in the Administration Act or regulation or associated policy at the Midway Atoll National Wildlife Refuge would instead be issued as a Monument special ocean use permit.

Permits for Recreational[4] Uses within Midway Atoll Special Management Area

The permitting regime for the visitor services program for compatible wildlife-dependent recreational uses within the Midway Atoll Special Management Area will be as follows. This plan makes a distinction between visitors (those who visit Midway Atoll specifically to participate in some form of recreational, historical, or memorial-related activity covered under this plan) and transients (those who visit Midway Atoll to conduct work or other permitted activities but wish to recreate in their off-duty hours) and island residents. Island residents include FWS staff (employees and volunteers), NOAA staff, and various resident contractors living on Midway Atoll. Island residents' participation in recreational activities is part of the FWS morale, welfare, and recreation program. As such, it is covered under the FWS conservation and management Monument permit and is not discussed further in this plan. However, all morale, welfare, and recreation activities must adhere to all other requirements and stipulations; it is only in the form of permitting that these activities may differ.

This visitor services plan and its associated findings of appropriateness, compatibility determinations, and environmental assessment[5] evaluate broad categories of recreational uses that will generally be allowed or prohibited. Visitors and transients who desire to participate in any one of the uses approved within this plan may apply for a Monument permit. However, in order to be user-friendly and minimize paperwork, these individuals will be provided a Monument permit application as part of their registration forms instead of using the unified application process in advance. This paper form will fulfill the needs of the unified Monument permit application without placing an undue burden on the individuals or the Monument staff who must review them. Monument recreation permits are free under this visitor services

[4] "Recreational" is used here as defined in the National Wildlife Refuge System Administration Act of 1966, as amended.

[5] The FONSI signed on May 23, 2007, for the Interim Visitor Services Plan addressed most of these activities. Increased visitation is addressed in the Monument Management Plan Environmental Assessment, found in Volume II of the Plan.

plan, and valid for the remainder of the existing Federal fiscal year (October 1 – September 30 of the following calendar year).

The Midway Atoll National Wildlife Refuge manager is responsible for summarizing all individual Monument permits issued as described above during a fiscal year for the FWS annual public use report and the Monument permit tracking system.

The minimum information to be collected includes the full name and signature of applicant, home address and telephone number, types of approved uses in which permission is sought to engage, date(s) of participation, approximate time spent in each activity, etc.

Enterprises who wish to offer fee-for-service visitor opportunities in accordance with this plan must apply for a Monument special ocean use permit using the unified Monument permit application. These Monument special ocean use permits include permission "to transit the Monument as necessary to enter the Midway Atoll Special Management Area" and will be issued in accordance with all Proclamation special ocean use findings, criteria, and requirements, such as being valid for no more than 5 years, requiring the provider to carry insurance or a bond, etc. These permits will carry a variable fee based on recovering the government's cost in reviewing, issuing, and monitoring the permit under this visitor services plan. These permits may also include a per passenger fee, profit-sharing agreements, or use of government facilities.

Nothing in this plan is intended to limit the ability of the Co-Trustees to actively seek for-profit enterprises to enter into concession agreements or other legal relationships to provide specific for-fee services that help achieve refuge and Monument purposes or goals and this plan.

Emergency Provisions

In addition to Proclamation 8031's exemption to prohibitions for emergencies and law enforcement activities ("The prohibitions required by this proclamation shall not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes"), the Administration Act contains similar provisions which apply only to the national wildlife refuge portions of the Monument. These provisions are:

- Notwithstanding any other provision of this Act, the Secretary [of the Interior] may temporarily suspend, allow, or initiate any activity in a refuge in the [National Wildlife Refuge] System if the Secretary [of the Interior] determines it is necessary to protect the health and safety of the public or any fish or wildlife population.
- These provisions include, but are not limited to, compatibility and permitting requirements. Recreational uses previously found to be appropriate and compatible may be suspended for the protection of human health, life, or safety; property; general environment; or fish or wildlife population.

The refuge manager's execution of these provisions should be conducted in consultation with the Monument Co-Trustees in advance when practicable, or as quickly as practicable once the immediate emergency or threat has passed.

4.15 Cooperating Association/Friends Groups

Midway Atoll National Wildlife Refuge is fortunate to have a dedicated support group in the form of the Friends of Midway Atoll National Wildlife Refuge. This nonprofit group was formed in 1999 and currently has more than 200 members from across the Nation. The Friends group was formed to:

- support Midway Atoll National Wildlife Refuge in its efforts to preserve, protect, and restore the biological diversity and historical resources of Midway Atoll, while providing opportunity for wildlife-dependent recreation, education, and scientific research.
- make available interpretive and educational books and pamphlets primarily through retail book sales outlets and free distribution to add to the visitor's understanding of the refuge's management problems and programs, the natural and historic resources of the area, the Refuge System, and FWS.
- contribute funds, goods, and services for FWS interpretation, recreation, and educational programs. Interpretive, recreational, and educational facilities may also be constructed, rehabilitated, or maintained with the use of Friends donations.

The Friends of Midway Atoll operate a gift store on Midway, making such refuge or Monument-related items as books, posters, postcards, coffee mugs, tee shirts, and note cards available to visitors and residents. Donations from the Friends group are used to improve, maintain, and update Midway Atoll's interpretive, educational, recreational, or biological programs or facilities. In the past, the Friends have purchased bicycles for the refuge and financially supported the annual albatross count by volunteers. They sought grants to fund invasive species control work by volunteers that began in December 2006.

Chapter 5 Implementing the Plan

5.1 Proposed Staffing

Current FWS staffing at Midway Atoll includes a refuge manager, deputy refuge manager, wildlife biologist, park ranger (law enforcement), park ranger (interpretive), equipment operator, and administrative officer (stationed in Honolulu). With the very limited visitor program currently operating at Midway Atoll, this staff has been able to provide visitor services outlined in this plan. When cruise ships are scheduled to stop at Midway, the cruise ship company covers the cost of bringing additional visitor services staff to the atoll from the main Hawaiian Islands.

This plan includes activities that can be implemented with funded staff, but longer term development of the visitor program will require additional staff. These could include a supervisory visitor services manager and additional refuge interpretive rangers. Long-term qualified volunteers may also assist with staffing. In addition, our operations contractor will need to hire additional staff to support the visitor program. These positions will be phased in over the next 5 years as the program is implemented. Staffing may also be augmented by other Monument staff from NOAA or the State of Hawai‘i should those resources become available.

5.2 Table of Projects

The table below summarizes the various strategies and projects outlined in this visitor services plan. Implementation of these projects is dependent upon the availability of funding.

Table 5.2.1 Summary of Strategies/Projects

Strategy	Project	Target Date
21.1	Apply for Save America’s Treasures grant	04/30/2008
10.2	Update wildlife-related visitor center exhibits	09/30/2008
1.1	Hire a Visitor Services Manager	09/30/2008
12.1	Develop and install exhibit at Mokupapapa Discovery Center	12/31/2008
1.3	Seek larger capacity aircraft to service Midway Atoll on a regular basis	12/31/2008
1.1	Hire second Refuge Ranger (Interpretation)	01/31/2009
3.7	Complete evaluation of visitor program and make recommendations for improvements	03/31/2009
16.1	Assess need to seek marketing expertise	03/31/2009
6.1	Implement standards-based teacher workshop on Midway	07/31/2009
7.3	Implement wildlife-dependent college educational classes or educational camps	12/31/2009
4.2	Acquire new vessels to support visitor services program	10/31/2010
12.2	Develop Battle of Midway National Memorial interpretive exhibit in Pearl Harbor Historic District	12/31/2010
4.1	Work with NOAA to reestablish a dive program for visitors	05/31/2011
9.1	Complete Midway Atoll interpretive plan	12/31/2012
3.5	Develop and install interpretive exhibits in accordance with interpretive plan	05/31/2015
1.2 and 7.5	Establish additional housing opportunities for individuals and groups	Dependent upon the availability of funding
8.2	Initiate a distance learning program from Midway Atoll	Dependent upon availability of funding

Strategy	Project	Target Date
11.4	Restore historic building to house Midway Atoll museum	Dependent upon availability of funding
4.3	Establish remote viewing cameras on sensitive species	Dependent upon availability of funding

5.3 Partnership Funding and Resources

Midway Atoll has several partnering opportunities with other government entities. Henderson Field, Sand Island's airport, is operated in partnership with the Department of Transportation's Federal Aviation Administration (FAA). Significant funding has been provided by FAA to not only operate the facility but to upgrade its facilities to meet their Part 139 standards. In addition to serving Midway Atoll needs, the airfield is operated as an emergency landing site for twin-engine aircraft flying across the Pacific Ocean.

As part of the Monument, the refuge also partners with NOAA's National Marine Sanctuary Program, which shares jurisdiction for the Monument with FWS. We are also committed to working with the State of Hawai'i on Monument programs and issues. Opportunities to share resources and projects with these entities will bring enhanced efficiencies and effectiveness to all of our work in the Northwestern Hawaiian Islands.

NOAA's National Marine Fisheries Service also monitors Hawaiian monk seals on Midway. It also established a monk seal "captive care and release" program on Midway to enhance survivability rates for female monk seal pups as a cooperative conservation effort between NOAA, FWS, and nongovernmental organizations.

NOAA's Office of Law Enforcement provides significant support by enforcing Monument regulations, including at Midway Atoll.

Another Department of the Interior agency, the U.S. Geological Survey, worked with refuge staff to bring the endangered Laysan duck to Midway, establishing only the second wild population of the species in the world. The National Park Service has provided funding for historic preservation on Midway through the "Save America's Treasures" program and has also provided interpreters to assist with guided tours when large groups visit Midway.

Together, FWS and its Co-Trustees coordinate with the U.S. Coast Guard as they exercise their law enforcement, search and rescue, and medical evacuation responsibilities in the central Pacific. The Coast Guard is working with FWS to store aircraft fuel on Midway for mission-related use, and occasionally crews will stay on Midway during extended operations.

The Monument Co-Trustees also partner with universities to conduct research on Midway that will lead to better management of its resources and with documentary filmmakers and photographers who broaden public knowledge of Midway's wildlife and historic resources.

Other valued partners include our dedicated refuge volunteers, who generally give 3 months or more of their time working on Midway, and the Friends of Midway Atoll, our refuge support group.

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April 2008

APPENDIX D:
FWS Compatibility Determinations

Compatibility Determination

Use: Wildlife Observation and Photography

Refuge Name: Hawaiian Islands National Wildlife Refuge (NWR), Papahānaumokuākea Marine National Monument

City/County and State: City and County of Honolulu, State of Hawai‘i

Establishing and Acquisition Authority(ies):

The Hawaiian Islands Reservation was established by President Theodore Roosevelt through Executive Order (EO) 1019, dated February 3, 1909.

In 1940, President Franklin D. Roosevelt signed Presidential Proclamation (PP) 2416, which changed the name of the Reservation to the Hawaiian Islands NWR, but did not add to or otherwise modify the Reservation's purposes.

On June 15, 2006, President Bush signed PP 8031 making the Hawaiian Islands NWR part of a monument that became the Papahānaumokuākea Marine National Monument (Monument) on March 6, 2007 (PP 8112).

Refuge Purpose(s):

The purpose of the Hawaiian Islands Reservation is "…as a preserve and breeding ground for native birds…" (EO 1019).

The Monument covers a much larger area than the Refuge, but also includes the Refuge. The Monument's establishing purpose is "…protecting the objects described above (coral, fish, birds, marine mammals, and other flora and fauna), all lands and interest in lands owned or controlled by the Government of the United States…" (PP 8031).

Wilderness Management Objectives:

Portions of the Hawaiian Islands NWR were proposed for designation as wilderness under the Wilderness Act of 1964. Per FWS policy and Department of the Interior regulation, proposed wilderness is managed to preserve its wilderness character until such time as Congress takes action on the proposal and managed according to wilderness management objectives found in 6 Refuge Manual 8.3:

1. To manage the land to accomplish refuge purposes in such a way so as to preserve the wilderness resource for future benefit and enjoyment of the public; and
2. To provide opportunities for education, research, solitude, and recreation where these activities are compatible with refuge purposes.

National Wildlife Refuge System Mission:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. 668dd-668ee).

Description of Use(s):

The 1997 amendments to the National Wildlife Refuge System Administration Act of 1966 defined wildlife observation and photography as wildlife-dependent public uses. In that Act, the U.S. Congress charged that such uses be given special consideration in planning for and management of the National Wildlife Refuge System. When determined compatible on a refuge-specific basis, these uses are priority general public uses of that national wildlife refuge. National wildlife refuges are to seek opportunities to allow these uses in an appropriate and compatible manner.

The Hawaiian Islands NWR is not currently open to general public access, thus there would be few instances of public wildlife observation and photography. This purpose of this compatibility determination (CD) is to cover all individuals who come to the Refuge through a variety of means and would like to observe and photograph wildlife for personal enjoyment but are not covered under another CD. This could include but is not is limited to official guests or visiting government employees or contractors, dignitaries, sail boat crews, and teachers. Through this process we ensure the legality of this activity and protect the resources involved. On occasion, dignitaries or other special guests accompany U.S. Fish and Wildlife Service (FWS) employees performing their official duties. Additionally, other agency personnel with or without guests may be working on the Refuge. As such, these members of the general public and other agencies would be "incidentally" observing and photographing wildlife and other Refuge natural and cultural resources for noncommercial purposes.

Following are examples of this type of use. A congressional staffer may need to make a fact finding trip to one of the islands to determine the current state of and need for additional facilities. Due to the remote nature and the limited travel options, they would probably accompany a FWS employee performing his/her official duties. During this visit, they would observe and photograph wildlife. In a different instance, another agency staff member may travel to the Refuge for official government work and take pictures and view Monument resources. Periodically, the National Oceanic and Atmospheric Administration (NOAA) would transport teachers as part of the "Teacher at Sea Program" to the Refuge, where they could view and photograph wildlife. This program and the experience enables teachers to gain a firsthand experience of the national and cultural wonders of the Refuge and Monument and share it with their students back in the classroom. Most, but perhaps not all, of this particular activity would be covered under the Environmental Education and Interpretation CD.

Presently the Refuge has approximately 200 each year participating in this use, primarily researchers and crew on NOAA vessels. The FWS expects this number to triple over the next 15 years as research and management actions in the Monument increase.

These types of activities could occur on or around any of the islands within the Refuge but would be subject to all Refuge-specific conditions that restrict locations, times, number of visitors, etc. (see the Stipulations Necessary to Ensure Compatibility section). Some islands (e.g., Pearl and Hermes Atoll, Maro Reef, Lisianski Island) seldom receive a visit and others (e.g., Nihoa, Laysan Island, and French Frigate Shoals) may have several visitors per year. On all occasions, the persons would be accompanied by a Government employee or receive a detailed orientation from the employee and would be required to observe all policies and regulation regarding disturbance and observation distance. The number of annual visits and visitors would be controlled by the Refuge through the Monument's permitting process.

The FWS has some facilities and equipment available for this use, which include limited lodging and motorboats. The FWS is responsible for the costs of upkeep and replacement of these items.

Availability of Resources:

The FWS anticipates a minimal number of people requesting to engage in this use and accompany FWS employees while they perform their normal governmental operational and maintenance duties. Transportation to the Refuge is very costly due to its remote location. Persons covered under this CD would be expected to pay all costs or be covered under an agency that would be responsible for the costs. In cases where no funds and/or space are available, the activity would not occur.

The Refuge has sufficient staff time and other resources to allow this use at the current levels.

Category and Itemization	One-time ($)	Annual ($/yr)
Administration and Management		$2,500
Maintenance		$0
Monitoring		$2,000
Special equipment, facilities or improvements		$0
Offsetting revenues		$0

The numbers above reflect the current estimated costs. Estimated costs were calculated using 5% of the base cost of a GS-5 refuge biological technician and a 5% cost of a GS-9 refuge manager assuming that this priority activity would use that "portion of a year" to administer.

Transportation costs to reach the Refuge are paid by the participant or covered by another agency.

Anticipated Impacts of the Use(s):

Possible impacts from this use include: (1) disturbance to nesting and resting seabirds and other migratory birds; (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green turtles (*Chelonia mydas*) swimming and feeding in the nearshore marine environment or resting on beaches; (3) disturbance to spinner dolphins (*Stenella longirostris*) swimming and feeding in the nearshore marine environment; (4) disturbance to fish, cetaceans, marine invertebrates, and corals; (5) disturbance to Laysan ducks (*Anas laysanensis*), Nihoa finches (*Telespiza ultima*), Nihoa millerbirds (*Acrocephalus familiaris kingi*), and Laysan finches (*Telespiza cantans*); (6) trampling of native plants and insects; (7) damage to corals; (8) accidental release of pollution and contaminants; and (9) the accidental introduction and establishment of nonnative species to the Monument. All wildlife observation and photography activities would be designed and managed in a fashion to eliminate or minimize these impacts. However, even with proper management and execution of a well planned project, certain behavioral responses in wildlife may occur that are not easily recognized by the casual observer. Some proposed activities will require further analysis and compliance by the agencies as more detailed information becomes available and specific plans are developed. These requirements may include additional analysis in accordance with NEPA, and consultation under ESA, Marine Mammal Protection Act, NHPA, and other relevant laws.

Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, Nimon et al., 1995 and Kataysky et al., 2003). Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. When visitors and researchers are observing albatrosses, terns, boobies, Laysan ducks, or other species in the less visited areas, they would have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive. Kitaysky et al. (2003) showed that limited duration disturbance, however, has only minor, short-term effects. Observation periods for any

particular bird or group of birds would be kept to 15 minutes or less for this reason. Observations occurring at a FWS blind could continue for up to 1 hour. It is important to note that even wildlife photography by professionals or amateurs can often be disturbing depending on the manner in which it is pursued.

Human activities have played a major role in determining the status and trend of Hawaiian monk seals over the past two centuries (Ragen 1997). From the 1960s to the 1990s, decreases in monk seal populations at several locations (French Frigate Shoals, Midway Atoll, and Kure Atoll) have been associated with human disturbance (Gerrodette 1990). Recreational beach activities caused monk seals to alter their pupping and hauling patterns, and survival of pups in suboptimal habitats was low, leading to gradual population declines (Kenyon 1972). Human activity and disturbance caused incredible declines at Midway Atoll (Kenyon 1972). Beach counts of monk seals at Midway Atoll averaged 56 animals in the late 1950s, but declined severely by the late 1960s with a single seal observed during an aerial survey in 1968. Monks seals are very sensitive to disturbance and proposed activities should be carefully reviewed and, as appropriate, restricted so no further impacts to seals would occur.

Increased use of Monument waters also increases the potential for introductions of nonnative species and interactions (some negative) by boats or snorkelers/divers with monk seals, sea turtles, spinner dolphins, cetaceans, and live corals. One accidental introduction of a nonnative species on a boat or dive equipment could devastate the Monument. The introduced sea star (*Acanthaster planci*) in Guam killed 1 km of coral in a month in a narrow fringing coral reef and 90% of the coral in a 2.5 year period along 38 km of Guam's coastline (Chesher 1969). Any action of pursuit or annoyance from boats potentially disturbs marine mammals in the wild by causing disruption of their behavioral patterns or displacement from essential habitat areas, especially if the cetaceans or seals are in a resting phase (Bejder et al. 1999). Snorkel or dive operations also include the added risk of damaging living coral on the Refuge (Hawkins et al. 1999). Improper boat operation could result in localized impacts to the coral reef from anchoring, touching, standing, or other avoidable physical disturbance to the coral.

Due to the very limited nature of this activity, we do not expect any additional short-term, long-term, and/or cumulative and indirect/secondary impacts other than those normally associated with required existing FWS work. However, it is critical that all visitors follow all quarantine procedures to prevent the accidental introduction of nonnative species to the Monument. One invasive species has the potential to devastate the fragile ecosystem (Chesher 1969). It may be appropriate to set a limit to the number of participants allowed under this use even if staff are available to coordinate the activities. Proposed uses when transportation costs are not covered, quarantine procedures not followed, or there is an unnecessary risk to the natural and cultural resources of the Refuge and Monument would not be permitted.

Public Review and Comment:

This determination was issued for public review and comment as part of the Papahānaumokuākea Draft Monument Management Plan. The plan and associated compatibility determinations were also made available through printed copies upon request and through the Monument Web sites at http://www.fws.gov/pacificislands and http://hawaiireef.noaa.gov/. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended and as determined by the Co-Trustees of the Monument. The Monument is of national interest; therefore, the availability of the Monument Management Plan (including the CDs) was advertised at the national level.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

GENERAL TERMS AND CONDITIONS:

Each permittee would be required to adhere to all general conditions specified by the Monument Co-Trustees in their joint permit (Attachment 1).

A more comprehensive list of national wildlife refuge conditions and restrictions is included in this CD and 50 CFR Part 27. Not all of these conditions and restrictions would apply to every use. The type of use and where the activity occurs would drive which are relevant (Attachment 2).

All persons participating in the travel to and from any of the islands must adhere to the "Special Conditions for Movement to and from Islands" which cover the quarantine requirements (Attachment 3).

SPECIFIC TERMS AND CONDITIONS:

All projects would be monitored by Refuge staff to ensure the use remains compatible and natural, cultural, and historic resources (which include but are not limited to: nesting and resting seabirds and other migratory birds, Hawaiian monk seals, green turtles, spinner dolphins, fish, cetaceans, marine invertebrates, corals, Laysan ducks, Nihoa finches, Nihoa millerbirds, Laysan finches, native plants and insects, and cultural and historical resources) are not impacted. Staff will also monitor for the accidental release of pollution and contaminants, and the accidental introduction and establishment of nonnative species to the Refuge.

Permittees are responsible for acquiring and/or renewing any necessary State and Federal permits prior to beginning or continuing their project. In addition, the agencies commit to consultation under the Endangered Species Act, Marine Mammal Protection Act, as appropriate, prior to initiation of any action that may affect any marine mammal or Federally-listed species or designated critical habitat.

The Refuge Manager can suspend/modify conditions/terminate wildlife observation and photography that is already permitted and in progress should unacceptable impacts or issues arise or be noted.

All persons arriving are provided cultural briefing information, as well as orientation materials and related information to minimize disturbance to wildlife ("wildlife viewing etiquette"). Specific restrictions (e.g., 150-foot minimum distance for seals, prohibition of access to heavily burrowed areas, etc.) are strictly enforced. The orientation materials include specific indicators of wildlife behavioral responses to disturbance, especially for the Hawaiian monk seal and green turtle, as well as appropriate visitor response to being approached by wildlife. The orientation also includes a visual demonstration of a 150-foot distance. The 150-foot distance is the minimum, however greater distances may be required depending upon the response of the wildlife. Information on the nesting locations of particularly rare species (e.g., white-tailed tropicbirds) may be withheld to protect these birds from disturbance. Permittees are required to go through orientation immediately upon arrival.

Permittees would not be allowed to approach closer than 150 feet to Laysan duck wetlands.

Vessels involved in permitted activities would be required to return to dock at least 1 hour before sunset, which would also enhance boat operators' ability to avoid collisions with marine life. Permittees planning to engage in water-related activities during the albatross fledging season (June-July) would be thoroughly briefed on watching for shark activity, and water related activities are not permitted during peak shark foraging times (½-hour before dusk to ½-hour after sunrise).

Power boat operators may slow to allow permittee observation of approaching spinner dolphins but would neither pursue the dolphins nor specifically seek them out. If dolphins are encountered during transit between two points, we would allow the boat to slow and/or stop for permittee observation, but entering the water would not be allowed. Routes to and from snorkeling/dive sites would be plotted to avoid known resting areas of spinner dolphins in the lagoon, as well as preferred Hawaiian monk seal haulout, molting, and pupping sites.

To eliminate anchoring impacts on coral, boat operators would be required to anchor in known sand areas or tie up to a mooring buoy.

Only four-stroke outboard motors would be used for boats. These motors are cleaner-running and quieter than two-stroke motors and would not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals. No other loud sounds would be associated with this program.

Justification:

When determined compatible on a refuge-specific basis, wildlife observation and photography are priority public uses of that national wildlife refuge. The Hawaiian Islands NWR is closed to entry and use by the general public. However, there would be occasions when guests, dignitaries, sailboat crews, and teachers visit the Refuge. It is only natural that in a place as exotic and teeming with wildlife as the Hawaiian Islands NWR, these people would also be enjoying incidental wildlife observation and photography. The stipulations included herein would allow such uses to occur in a compatible manner.

Mandatory 10- or 15-year Reevaluation Date:

_____X_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____ Mandatory 10-year reevaluation date (for non-wildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

References Cited:

Bejder, L., S. M. Dawson, and J. A. Harraway. 1999. Responses by Hector's dolphins to boats and swimmers in porpoise bay, New Zealand. 15(3):738-750.

Chesher, R. H. 1969. Destruction of Pacific corals by the sea star *Acanthaster planci*. Science 165(3890):280-283.

Executive Order 1019. 3 February 1909. Establishing the Hawaiian Islands Reservation.

Fowler, G.S. 1995. Ecotourism, field studies and stress: behavioral and hormonal responses of Magellanic penguins to nest site disturbance. Abstracts to Pacific Seabird Group Annual Meeting, 1995.

Gerrodette, T.G., and W.G. Gilmartin. 1990. Demographic consequences of changed pupping and hauling sites of the Hawaiian monk seal. Conservation Biology 4:423-430.

Hawkins, J. P., C. M. Roberts, T. V. T. Hof, K. D. Meyer, J. Tratalos, and C. Aldam. 1999. Effects of recreational scuba diving on Caribbean coral and fish communities. Conservation Biology 13(4):888-897.

Jungius, H. and U. Mirsch. 1979. Changes in heartbeats in nesting birds at Galapagos by human disturbance. Journal of Field Ornithology. 120:299-310.

Kenyon, K.W. 1972. Man verses the Monk Seal. Journal of Mammalogy 53:687-696.

Kitaysky, A., M. Benowitz-Fredericks, Z. Kitaiskaia, M. Shultz, and B. Zaun. 2003. Effects of tourist disturbance on stress physiology of wedge-tailed shearwaters (*Puffinus pacificus*) chicks at Kilauea Point National Wildlife Refuge, Kauai, Hawaii. Unpubl. refuge report.

Nimon, A.J., R.C. Schroter, and B. Stonehouse. 1995. Heart rate of disturbed penguins. Nature 374:415.

Presidential Proclamation 2416, 1940. Renaming the Hawaiian islands Reservation as the Hawaiian Islands National Wildlife Refuge.

Presidential Proclamation 8031, 15 June 2006 (71 FR 36443). Establishing the Northwestern Hawaiian Islands as a marine national monument.

Presidential Proclamation 8112, 6 March 2007. Establishment of the Papahānaumokuākea Marine National Monument (72 FR 10031).

Ragen, T. 1997. Human Activities Affecting the Population Trends of the Hawaiian Monk Seal. Conservation of Long-Lived Marine Animals Conference. 24 August 1997; Monterey, CA.

Refuge Determination:

Refuge Manager
Approval**:** _____ Date:_____
(Signature)

FWS Superintendent,
Papahānaumokuākea Marine National Monument

_____ Date:_____
(Signature)

Project Leader,
Hawaiian and Pacific
Islands NWRC _____Date_____
(Signature)

Concurrence:

Refuge Supervisor,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

Regional Chief,
National Wildlife
Refuge System _____Date_____
Pacific Region (Signature)

Compatibility Determination

Use: Environmental Education and Interpretation

Refuge Name: Hawaiian Islands National Wildlife Refuge (NWR), Papahānaumokuākea Marine National Monument

City/County and State: City and County of Honolulu, State of Hawai‘i

Establishing and Acquisition Authority(ies):

The Hawaiian Islands Reservation was established by President Theodore Roosevelt through Executive Order (EO) 1019, dated February 3, 1909.

In 1940, President Franklin D. Roosevelt signed Presidential Proclamation (PP) 2416, which changed the name of the Reservation to the Hawaiian Islands NWR, but did not add to or otherwise modify the Reservation's purposes.

On June 15, 2006, President Bush signed PP 8031 making the Hawaiian Islands NWR part of a monument that became the Papahānaumokuākea Marine National Monument (Monument) on March 6, 2007 (PP 8112).

Refuge Purpose(s):

The purpose of the Hawaiian Islands Reservation is "…as a preserve and breeding ground for native birds…" (EO 1019).

The Monument covers a much larger area than the Refuge, but also includes the Refuge. The Monument's establishing purpose is "…protecting the objects described above (coral, fish, birds, marine mammals, and other flora and fauna), all lands and interest in lands owned or controlled by the Government of the United States…" (PP 8031).

Wilderness Management Objectives:

Portions of the Hawaiian Islands NWR were proposed for designation as wilderness under the Wilderness Act of 1964. Per FWS policy and Department of the Interior regulation, proposed wilderness is managed to preserve its wilderness character until such time as Congress takes action on the proposal and managed according to wilderness management objectives found in 6 Refuge Manual 8.3:

1. To manage the land to accomplish refuge purposes in such a way so as to preserve the wilderness resource for future benefit and enjoyment of the public; and
2. To provide opportunities for education, research, solitude, and recreation where these activities are compatible with refuge purposes.

National Wildlife Refuge System Mission:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. 668dd-668ee).

Description of Use(s):

The 1997 amendments to the National Wildlife Refuge System Administration Act of 1966 defined environmental education and interpretation as wildlife-dependent public uses. In that Act, the U.S. Congress charged that such uses be given special consideration in planning for and management of the National Wildlife Refuge System. When determined compatible on a refuge-specific basis, these uses are priority general public uses of that national wildlife refuge. National wildlife refuges are to seek opportunities to allow these uses in an appropriate and compatible manner.

Both environmental education and interpretation strive to convey an understanding and appreciation of national wildlife refuge resources, the issues that affect them, and the techniques and programs pursued in their management. For this reason these two uses have been combined in one compatibility determination (CD).

Due to the remote location of the Hawaiian Islands NWR and its limited accessibility, funding, and staffing, few opportunities for onsite environmental education and interpretive programs are available. However, with co-management of the Papahānaumokuākea Marine National Monument and new technology, we may be able to offer offsite programs through satellite transmissions to schools around the world. Additionally, from time to time private videographers and photographers may wish to develop environmental education and interpretation materials. These noncommercial activities by videographers covered under this CD would be subject to the same restrictions as the CD for commercial operators (CD for Photography, Videography, and Audiography).

In the future, these activities could occur on any of the islands within the Refuge during the year, but would only be led by government personnel and/or contractors and would be subject to all Refuge-specific conditions that restrict locations, times, number of visitors, etc. (see the Stipulations Necessary to Ensure Compatibility section). Any access for the public to participate in these activities would be primarily by boat and airplane, thus greatly restricting the opportunities for environmental education and interpretation. The number of annual visits and visitors would be controlled by the Refuge through the Monument's permitting process.

Specific examples of where this CD might apply are included in the Monument Management Plan as:

1) Section 3.1.1, Activity MCS-3.3: Include an educational component in marine research expeditions.
2) Section 3.5.4, Activity OEL-1.5, Continue Teacher- and Class-at-Sea programs on an annual basis.

Two National Oceanic and Atmospheric Administration (NOAA) vessels (*Oscar Elton Sette* and the *Hi'ialakai*) currently transit the Northwestern Hawaiian Islands, generally making three voyages total each year. During each voyage, there is usually one teacher aboard participating in the program who has the opportunity to visit the Refuge. In addition, in 2005 NOAA sponsored a "boatload of educators" tour within the Refuge. The Refuge expects the number of visits by NOAA vessels with teachers to triple in the next 15 years.

Onsite interpretation of the natural, historic, and cultural resources of the Hawaiian Islands NWR also occurs in association with research expeditions. Generally each ship carries an outreach staff member who works with the researchers and crew to transmit web-based features about their activities and Refuge resources. Occasionally they may visit the field camps at Tern Island or Laysan Island for brief daytime only visits on boats provided by the NOAA ship. These interpretive activities are expected to continue in

the future. Cultural resource activities and practices by Native Hawaiians, which includes access for cultural practitioners, are also covered under a separate CD (Cultural Resource Activities and Practices).

NOAA also offers an ongoing Teacher-at-Sea Program. This program enables teachers to gain firsthand experience of science and life at sea. Participation allows teachers to enrich their classroom curricula with a depth of understanding made possible by living and working side-by-side, day and night, with those who contribute to the world's body of oceanic and atmospheric scientific knowledge.

In the Teacher-at-Sea program, teachers apply and have three choices of vessel types; 1) Fisheries Research, 2) Oceanographic and Coastal Research, and 3) Hydrographic Surveys. They are usually at sea from 1-3 weeks and work the same shifts as the researchers. This sea based experience provides them excellent information for developing school programs and helps NOAA meet the objectives of their mission by promoting among teachers and their students a greater awareness of the need to understand and protect the world's oceans and their resources.

The Monument Management Plan also proposes to use telepresence technology for educational and outreach activities (section 3.5.4, Ocean Ecosystems Literacy). Technologies such as underwater video cameras, real-time video transmission, virtual field trips, and formal distance learning programs may be feasible from the Refuge in the future.

Availability of Resources:

The FWS has very limited staff, facilities, and equipment available for this use. The FWS is responsible for the costs of upkeep and replacement of these items. These facilities are described in greater detail in the Coordinated Field Operations Action Plan (section 3.6.3) within the Monument Management Plan.

Category and Itemization	**One time ($)**	**Annual ($/yr)**
Administration and Management		$5,250
Maintenance		$2,000
Monitoring		$5,250
Special equipment, facilities or improvements		$25,000
Offsetting revenues (estimated)		

Orientation and monitoring of impacts would be completed by the Refuge staff (5 % GS-7 Assistant Refuge Manager, $2,250; 5 % GS-9 Refuge Manager, $3,000). Additional maintenance of current facilities may be required to accommodate more people.

Additional funding for specialized telepresence technology would need to be made available (either through the FWS budget system or from an outside source) in order to allow this use to occur in a compatible manner. Should internal funding not materialize, the FWS would seek outside funding (e.g., from other agency partners or private conservation organizations.)

Transportation costs to reach the Refuge and are paid for by the participant or covered by another agency.

Anticipated Impacts of the Use(s):

Possible impacts from this use include: (1) disturbance to nesting and resting seabirds and other migratory birds; (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green turtles (*Chelonia mydas*) swimming and feeding in the nearshore marine environment or resting on beaches; (3) disturbance

to spinner dolphins (*Stenella longirostris*) swimming and feeding in the nearshore marine environment; (4) disturbance to fish, cetaceans, marine invertebrates, and corals; (5) disturbance to Laysan ducks (*Anas laysanensis*), Nihoa finches (*Telespiza ultima*), Nihoa millerbirds (*Acrocephalus familiaris kingi*), and Laysan finches (*Telespiza cantans*); (6) trampling of native plants and insects; (7) damage to corals; (8) accidental release of pollution and contaminants; and (9) the accidental introduction and establishment of nonnative species to the Monument. All activities would be designed and managed in a manner to eliminate or minimize these impacts. All environmental education and interpretive activities would be designed and managed in a fashion to eliminate or minimize these impacts. However, even with proper management and execution of a well planned project, certain behavioral responses in wildlife may occur that are not easily recognized by the casual observer. Some proposed activities will require further analysis and compliance by the agencies as more detailed information becomes available and specific plans are developed. These requirements may include additional analysis in accordance with NEPA, and consultation under ESA, Marine Mammal Protection Act, NHPA, and other relevant laws.

Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, Nimon et al., 1995 and Kataysky et al., 2003). Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. When participants are observing albatrosses, terns, boobies, Laysan ducks, or other species in the less visited areas, they would have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive. Kitaysky et al. (2003) showed that limited duration disturbance, however, has only minor, short-term effects. Observation periods for any particular bird or group of birds would be kept to 15 minutes or less for this reason.

Human activities have played a major role in determining the status and trend of Hawaiian monk seals over the past two centuries (Ragen 1997). From the 1960s to the 1990s, decreases in monk seal populations at several locations (French Frigate Shoals, Midway Atoll, and Kure Atoll) have been associated with human disturbance (Gerrodette 1990). Recreational beach activities caused monk seals to alter their pupping and hauling patterns, and survival of pups in suboptimal habitats was low, leading to gradual population declines (Kenyon 1972). Human activity and disturbance caused incredible declines at Midway Atoll (Kenyon 1972). Beach counts of monk seals at Midway Atoll averaged 56 animals in the late 1950s, but declined severely by the late 1960s with a single seal observed during an aerial survey in 1968. Monks seals are very sensitive to disturbance and proposed activities should be carefully reviewed and, as appropriate, restricted so no further impacts to seals would occur.

Increased use of Monument waters also increases the potential for introductions of nonnative species and interactions (some negative) by boats or snorkelers/divers with monk seals, sea turtles, spinner dolphins, cetaceans, and live corals. One accidental introduction of a nonnative species on a boat or dive equipment could devastate the Monument. The introduced sea star (*Acanthaster planci*) in Guam killed 1 km of coral in a month in a narrow fringing coral reef and 90% of the coral in a 2.5 year period along 38 km of Guam's coastline (Chesher 1969). Any action of pursuit or annoyance from boats potentially disturbs marine mammals in the wild by causing disruption of their behavioral patterns or displacement from essential habitat areas, especially if the cetaceans or seals are in a resting phase (Bejder et al. 1999). Snorkel or dive operations also include the added risk of damaging living coral on the Refuge (Hawkins et al. 1999). Improper boat operation could result in localized impacts to the coral reef from anchoring, touching, standing, or other avoidable physical disturbance to the coral.

Environmental Education

Impacts from visitors would be minimal and infrequent. Additionally, terrestrial and marine viewing areas would be carefully selected to limit wildlife disturbance and potential impacts to cultural resources.

Minimal to no impact on Monument resources is anticipated from offsite programs, designed to bring the place to the people rather than the people to the place. Educational demonstrations would be conducted or supervised by trained FWS-approved guides.

The specific impacts of the NOAA Teacher-at-Sea Program would be the same for any on island activities and would be permitted requiring the same restrictions as others. The Teacher-at-Sea permitting requirements are also covered under another CD (Operations of Co-managing Agencies).

Interpretation

Minimal impact to Refuge resources is anticipated, since only trained FWS-approved guides would conduct interpretive talks and would avoid sensitive wildlife and cultural areas.

Impacts may occur to nesting seabirds, Hawaiian monk seals (*Monachus schauinslandi*), and Hawaiian green turtles (*Chelonia mydas*) may occur if visitors and residents were to wander off guided interpretive walks. Possible impacts include: 1) destruction of Bonin petrels (*Pterodroma hypoleuca*), Tristram's storm petrels *(Oceanodroma tristrami)*, or wedge-tailed shearwaters (*Puffinus pacificus*) nesting burrows; 2) smashing, injuring or killing a seabird egg, chick, or adult by stepping on the bird or its nest; 3) negatively affecting seabird nesting success by causing abandonment;, 4) allowing seabird egg predation by shorebirds by flushing incubating adults; and (5) disturbing or deterring a resting monk seal or green turtle from a preferred haulout, molting, or pupping/nesting location. Fowler (1995) studied seabird colonies with ecotourism operations and documented that birds located away from frequently visited areas react strongly to any human activity. Birds were observed to habituate to high levels of constant visitation, but not to less constant (although regular) visitation. Therefore, birds located far from trails are more likely to be disturbed from wandering visitors or residents. Monk seal research has documented that pregnant females would abandon preferred pupping locations due to human disturbance (Kenyon 1972).

Talks may be located near seabird colonies, but leaders and participants would not enter into the main colony area for these talks. Keeping the group at the edge of the colony would help to limit stress levels. Studies have shown that birds can adapt to repeated disturbance (Fowler 1995), so selection of an area where the birds are regularly viewed by FWS personnel and visitors would minimize the impact of this activity.

Due to the very limited nature of this activity, we do not expect any additional short-term, long-term, and/or cumulative and indirect/secondary impacts other than those normally associated with required existing FWS work. However, it is critical that all visitors follow all quarantine procedures to prevent the accidental introduction of nonnative species to the Monument. One invasive species has the potential to devastate the fragile ecosystem (Chesher 1969). It may be appropriate to set a limit to the number of participants allowed under this use even if staff are available to coordinate the activities. Proposed uses when transportation costs are not covered, quarantine procedures not followed, or there is an unnecessary risk to the natural and cultural resources of the Refuge and Monument would not be permitted.

Public Review and Comment:

This determination was issued for public review and comment as part of the Papahānaumokuākea Draft Monument Management Plan. The plan and associated compatibility determinations were also made available through printed copies upon request and through the Monument Web sites at http://www.fws.gov/pacificislands and http://hawaiireef.noaa.gov/. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act

of 1966, as amended and as determined by the Co-Trustees of the Monument. The Monument is of national interest; therefore, the availability of the Monument Management Plan (including the CDs) was advertised at the national level.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

GENERAL TERMS AND CONDITIONS:

Each permittee would be required to adhere to all general conditions specified by the Monument Co-Trustees in their joint permit (Attachment 1).

A more comprehensive list of Refuge and Monument conditions and restrictions is included in this CD and 50 CFR Part 27. Not all of these conditions and restrictions would apply to every use. The type of use and where the activity occurs would drive which are relevant (Attachment 2).

All persons participating in the travel to and from any of the islands must adhere to the "Special Conditions for Movement to and from Islands" which cover the quarantine requirements (Attachment 3).

SPECIFIC TERMS AND CONDITIONS:

All projects would be monitored by Refuge staff to ensure the use remains compatible and natural, cultural, and historic resources (which include but are not limited to: nesting and resting seabirds and other migratory birds, Hawaiian monk seals, green turtles, spinner dolphins, fish, cetaceans, marine invertebrates, corals, Laysan ducks, Nihoa millerbirds, Nihoa finches, Laysan finshes, native plants and insects, and cultural and historical resources) are not impacted. Staff will also monitor for the accidental release of pollution and contaminants, and the accidental introduction and establishment of nonnative species to the Refuge.

Permittees are responsible for acquiring and/or renewing any necessary State and Federal permits prior to beginning or continuing their project. In addition, the agencies commit to consultation under the Endangered Species Act, Marine Mammal Protection Act, as appropriate, prior to initiation of any action that may affect any marine mammal or Federally-listed species or designated critical habitat.

The Refuge Manager can suspend/modify conditions/terminate on-refuge a project that is already permitted and in progress, should unacceptable impacts or issues arise or be noted.

All persons arriving to the Refuge are provided cultural briefing information, as well as orientation materials and related information to minimize disturbance to wildlife ("wildlife viewing etiquette"). Specific restrictions (e.g., 150-foot minimum distance from seals, prohibition of access to heavily burrowed areas, etc.) are strictly enforced. The orientation materials include specific indicators of wildlife behavioral responses to disturbance, especially for the Hawaiian monk seal and green turtle, as well as appropriate visitor response to being approached by wildlife. The orientation also includes a visual demonstration of a 150-foot distance. The 150-foot distance is the minimum, however greater distances may be required depending upon the response of the wildlife. Information on the nesting locations of particularly rare species (e.g., white-tailed tropicbirds) may be withheld to protect these birds

from disturbance. All persons arriving to the Refuge are required to go through orientation immediately upon arrival.

Permittees would not be allowed to approach closer than 150 feet to Laysan duck wetlands.

Vessels involved in permitted activities would be required to return to dock at least 1 hour before sunset, which would also enhance boat operators' ability to avoid collisions with marine life. Permittees planning to engage in water-related activities during the albatross fledging season (June-July) would be thoroughly briefed on watching for shark activity, and water related activities are not permitted during peak shark foraging times (½-hour before dusk to ½-hour after sunrise).

Power boat operators may slow to allow observation of approaching spinner dolphins, but would neither pursue the dolphins nor specifically seek them out. If dolphins are encountered during transit between two points, we would allow the boat to slow and/or stop for observation, but entering the water would not be allowed. Routes to and from snorkeling/dive sites would be plotted to avoid known resting areas of spinner dolphins in the lagoon, as well as preferred Hawaiian monk seal haulout, molting, and pupping sites.

To eliminate anchoring impacts on coral, boat operators would be required to anchor in known sand areas or tie up to a mooring buoy. Anchors will be lowered into place rather than tossed overboard to provide a more controlled placement.

Only four-stroke outboard motors would be used for boats. These motors are cleaner-running and quieter than two-stroke motors and would not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals. No other loud sounds would be associated with this program.

Justification:

When determined compatible on a station specific basis, environmental education and interpretation are priority public uses of that national wildlife refuge. The Hawaiian Islands NWR is closed to entry and use by the general public. However, there are occasions where environmental education and interpretation occur in a very limited manner and usually in the company of another government employee (e.g., a person accompanying a government employee who does not recognize or understand the Refuge resources). Additionally, funding and technologies may become available in the future to increase environmental education and interpretation.

References Cited:

Bejder, L., S. M. Dawson, and J. A. Harraway. 1999. Responses by Hector's dolphins to boats and swimmers in porpoise bay, New Zealand. 15(3):738-750.

Chesher, R. H. 1969. Destruction of Pacific corals by the sea star *Acanthaster planci*. Science 165(3890):280-283.

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Hawkins, J. P., C. M. Roberts, T. V. T. Hof, K. D. Meyer, J. Tratalos, and C. Aldam. 1999. Effects of recreational scuba diving on Caribbean coral and fish communities. Conservation Biology 13(4):888-897.

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Kenyon, K.W. 1972. Man verses the Monk Seal. Journal of Mammalogy 53:687-696.

Kitaysky, A., M. Benowitz-Fredericks, Z. Kitaiskaia, M. Shultz, and B. Zaun. 2003. Effects of tourist disturbance on stress physiology of wedge-tailed shearwaters (*Puffinus pacificus*) chicks at Kilauea Point National Wildlife Refuge, Kauai, Hawaii. Unpubl. refuge report.

Nimon, A.J., R.C. Schroter, and B. Stonehouse. 1995. Heart rate of disturbed penguins. Nature 374:415.

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Ragen, T. 1997. Human Activities Affecting the Population Trends of the Hawaiian Monk Seal. Conservation of Long-Lived Marine Animals Conference. 24 August 1997; Monterey, CA.

Mandatory 10- or 15-year Reevaluation Date:

_____X_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____ Mandatory 10-year reevaluation date (for non-wildlife-dependent public uses

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

Refuge Determination:

Refuge Manager
Approval**:** _____ Date:_____
(Signature)

FWS Superintendent,
Papahānaumokuākea Marine National Monument

_____ Date:_____
(Signature)

Project Leader,
Hawaiian and Pacific
Islands NWRC _____Date_____
(Signature)

Concurrence:

Refuge Supervisor,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

Regional Chief,
National Wildlife
Refuge System _____Date_____
Pacific Region (Signature)

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FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Hawaiian Islands National Wildlife Refuge

Use: Operations of Monument Co-Managing Agencies

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?	✔	
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ✔ No ___

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate_____ **Appropriate**✔

Refuge Manager:_____ Date:_____

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor:_____ Date:_____

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

Compatibility Determination

Use: Operations of Monument Co-managing Agencies

Refuge Name: Hawaiian Islands National Wildlife Refuge (NWR), Papahānaumokuākea Marine National Monument

City/County and State: City and County of Honolulu, State of Hawai‘i

Establishing and Acquisition Authority(ies):

The Hawaiian Islands Reservation was established by President Theodore Roosevelt through Executive Order (EO) 1019, dated February 3, 1909.

In 1940, President Franklin D. Roosevelt signed Presidential Proclamation (PP) 2416, which changed the name of the Reservation to the Hawaiian Islands NWR, but did not add to or otherwise modify the Reservation's purposes.

On June 15, 2006, President Bush signed PP 8031 making the Hawaiian Islands NWR part of a monument that became the Papahānaumokuākea Marine National Monument (Monument) on March 6, 2007 (PP 8112).

Refuge Purpose(s):

The purpose of the Hawaiian Islands Reservation is "…as a preserve and breeding ground for native birds…" (EO 1019).

The Monument covers a much larger area than the Refuge, but also includes the Refuge. The Monument's establishing purpose is "…protecting the objects described above (coral, fish, birds, marine mammals, and other flora and fauna), all lands and interest in lands owned or controlled by the Government of the United States…" (PP 8031).

Wilderness Management Objectives:

Portions of the Hawaiian Islands NWR were proposed for designation as wilderness under the Wilderness Act of 1964. Per FWS policy and Department of the Interior regulation, proposed wilderness is managed to preserve its wilderness character until such time as Congress takes action on the proposal and managed according to wilderness management objectives found in 6 Refuge Manual 8.3:

1. To manage the land to accomplish refuge purposes in such a way so as to preserve the wilderness resource for future benefit and enjoyment of the public; and
2. To provide opportunities for education, research, solitude, and recreation where these activities are compatible with refuge purposes.

National Wildlife Refuge System Mission:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. 668dd-668ee).

Description of Use(s):

Papahānaumokuākea Marine National Monument is co-managed by FWS, the National Oceanic and Atmospheric Administration (NOAA) and the State of Hawai'i (State). The Hawaiian Islands NWR is part of the Monument. This compatibility determination (CD) covers joint operational activities within the Hawaiian Islands NWR by NOAA and the State, which includes but is not limited to the joint use of facilities, small boats, vessels and aircraft, and coordinated field activities. All activities covered under this CD are reviewed by the Co-Trustees through their Monument permitting process.

Some examples of this joint-use include but are not limited to NOAA and the State: 1) sharing and using FWS living facilities, 2) conducting monitoring (not research) of plants and animals (research is covered in a separate CD), and 3) using FWS docking or landing facilities for their vessels and aircraft; and FWS, NOAA, and the State: 4) jointly using airplanes and ships for transporting supplies.

More specific examples of where and under what conditions this CD would apply are listed in the Monument Management Plan under:

1) Section 3.3.1, Activity MD-1.1, Continue working with partners to remove marine debris in the Monument and reduce additional debris entering the Monument.
2) Section 3.2.1, Activity TES-1.2, Support and facilitate emergency response for monk seals.

This is not a wildlife-dependent public use as defined by the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee).

These year-round, joint use and management activities occur throughout the Monument. This CD primarily covers facilities at Tern and Laysan Islands; field camps elsewhere in the refuge; use of small boats, vessels, and aircraft; and coordinated field activities within the Hawaiian Islands NWR. By coordinating these field activities, sharing infrastructure and equipment, the Co-Trustees can ensure safe and efficient management and monitoring operations while avoiding impacts to the natural, historic, and cultural resources within the Monument.

A Monument permit for all these types of operations and activities is issued by the Co-Trustees. The permit contains standard and specific operating requirements. Each Co-Trustee reviews all proposed activities by FWS, NOAA, State, and agency partners, contractors, and cooperators to ensure the protection of the Monument's unique environment.

This activity/use is proposed because the Presidential Proclamation 8031 establishes a coordinated regime within the Northwestern Hawaiian Islands. This allows all Monument personnel from FWS, NOAA, and the State to work together, and share facilities, equipment, and management activities.

FWS has some facilities and equipment available for this use at Tern Island that includes office space, housing, motorboats, dive tanks, and tools. Users share the cost of maintenance and replacement of these items or supply their own for special operational needs.

Availability of Resources:

The availability of resources is not entirely applicable to this CD, because the three co-managing agencies generally share costs involved or exchange costs borne by one agency for in kind services. The FWS operates its stations under a full cost recovery requirement. Monument co-managing agencies will develop cooperating agreements that clearly identify the cost sharing arrangements. Increases in annual

operating costs due to increased presence will be borne by the co-managing agencies with no additional cost borne by the FWS.

Transportation costs to reach the Refuge are paid by the individual agency or exchanged for in kind service.

Category and Itemization	**One-time ($)**	**Annual ($/yr)**
Administration and Management		$4,400
Maintenance		$10,000
Monitoring		$4,000
Special equipment, facilities or improvements		NA
Offsetting revenues		NA

The numbers above reflect the current estimated costs. Estimated costs were calculated using 8% of the base cost of a GS-9 refuge manager assuming that activity would use that estimated "portion of a year" to administer. Maintenance includes the buildings and other facilities on Tern Island and a tent camp on Laysan Island. If a year-round tent camp is also established at Pearl and Hermes Atoll, costs would be shared between the appropriate agencies. Monitoring would include the 8% of the base cost of a GS-7 assistant refuge manager assuming that activity would use that estimated "portion of a year" to administer.

Anticipated Impacts of the Use(s):

Possible impacts from persons involved in operations by Monument co-managing agencies include: (1) disturbance to nesting and resting seabirds and other migratory birds; (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green turtles (*Chelonia mydas*) swimming and feeding in the nearshore marine environment or resting on beaches; (3) disturbance to spinner dolphins (*Stenella longirostris*) swimming and feeding in the nearshore marine environment; (4) disturbance to fish, cetaceans, marine invertebrates, and corals; (5) disturbance to Laysan ducks (*Anas laysanensis*), Nihoa finches (*Telespiza ultima*), Nihoa millerbirds (*Acrocephalus familiaris kingi*), and Laysan finches (*Telespiza cantans*); (6) trampling of native plants and insects; (7) damage to corals; (8) accidental release of pollution and contaminants; and (9) the accidental introduction and establishment of nonnative species to the Monument. All activities would be designed and managed in a manner to eliminate or minimize these impacts. Some proposed activities will require further analysis and compliance by the agencies as more detailed information becomes available and specific plans are developed. These requirements may include additional analysis in accordance with NEPA, and consultation under ESA, Marine Mammal Protection Act, NHPA, and other relevant laws.

Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, Nimon *et al.,* 1995 and Kataysky *et al.,* 2003). Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. When co-managers are observing or working in the vicinity of albatrosses, terns, boobies, Laysan ducks, or other species in the less visited areas, they would have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive. Kitaysky *et al.* (2003) showed that limited duration disturbance, however, has only minor, short-term effects. Contact periods for any particular bird or group of birds would be kept to 15 minutes or less for this reason, unless there is a justified research question to answer and the length of time is acceptable. It is important to note

that even wildlife photography by professionals or amateurs can often be disturbing depending on the manner in which it is pursued.

Human activities have played a major role in determining the status and trend of Hawaiian monk seals over the past two centuries (Ragen 1997). From the 1960s to the 1990s, decreases in monk seal populations at several locations (French Frigate Shoals, Midway Atoll, and Kure Atoll) have been associated with human disturbance (Gerrodette 1990). Recreational beach activities caused monk seals to alter their pupping and hauling patterns, and survival of pups in suboptimal habitats was low, leading to gradual population declines (Kenyon 1972). Human activity and disturbance caused incredible declines at Midway Atoll (Kenyon 1972). Beach counts of monk seals at Midway Atoll averaged 56 animals in the late 1950s, but declined severely by the late 1960s with a single seal observed during an aerial survey in 1968. Monks seals are very sensitive to disturbance and proposed activities should be carefully reviewed and, as appropriate, restricted so no further impacts to seals would occur.

Increased use of Monument waters also increases the potential for introductions of nonnative species and interactions (some negative) by boats or snorkelers/divers with monk seals, sea turtles, spinner dolphins, cetaceans, and live corals. One accidental introduction of a nonnative species on a boat or dive equipment could devastate the Monument. The introduced sea star (*Acanthaster planci*) in Guam killed 1 km of coral in a month in a narrow fringing coral reef and 90% of the coral in a 2.5 year period along 38 km of Guam's coastline (Chesher 1969). Any action of pursuit or annoyance from boats potentially disturbs marine mammals in the wild by causing disruption of their behavioral patterns or displacement from essential habitat areas, especially if the cetaceans or seals are in a resting phase (Bejder et al. 1999). Snorkel or dive operations also include the added risk of damaging living coral on the Refuge (Hawkins et al. 1999). Improper boat operation could result in localized impacts to the coral reef from anchoring, touching, standing, or other avoidable physical disturbance to the coral.

Each activity by any of the co-managing agencies would be carefully reviewed to eliminate if possible and/or prevent any significant short-term, long-term, or cumulative impacts. All proposals would have to go through the Monument permitting process, which requires review by the other Monument Co-Trustees. This high level of review would help ensure that impacts of any kind are carefully considered before any permit for co-managing agencies activities is issued.

Proposals which may have a negative impact to the Monument resources would not be permitted.

Public Review and Comment:

This determination was issued for public review and comment as part of the Papahānaumokuākea Draft Monument Management Plan. The plan and associated compatibility determinations were also made available through printed copies upon request and through the Monument Websites at http://www.fws.gov/pacificislands and http://hawaiireef.noaa.gov/. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended and as determined by the Co-Trustees of the Monument. The Monument is of national interest, therefore, the availability of the draft Monument Management Plan (including the CDs) was advertised at the national level.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

GENERAL TERMS AND CONDITIONS:

Each permittee would be required to adhere to all general conditions specified by the Monument Co-Trustees in their joint permit (Attachment 1).

A more comprehensive list of NWR and Monument conditions and restrictions is included in this CD and/or 50 CFR Part 27. Not all of these conditions and restrictions would apply to every use. The type of use and where the activity occurs would drive which are relevant (Attachment 2).

All persons participating in the travel to and from any of the islands must adhere to the "Special Conditions for Movement to and from Islands" which cover the quarantine requirements (Attachment 3).

SPECIFIC TERMS AND CONDITIONS:

All projects would be monitored by Refuge staff to ensure the use remains compatible and natural, cultural and historic resources (which include but are not limited to: nesting and resting seabirds and other migratory birds, Hawaiian monk seals, green turtles, spinner dolphins, fish, cetaceans, marine invertebrates, corals, Laysan ducks, Laysan finches, Nihoa finches, Nihoa millerbirds, native plants and insects, and cultural and historical resources) are not impacted. Staff will also monitor for the accidental release of pollution and contaminants, and the accidental introduction and establishment of nonnative species to the Monument.

Permittees are responsible for acquiring and/or renewing any necessary State and Federal permits prior to beginning or continuing their project. In addition, the agencies commit to consultation under the Endangered Species Act, Marine Mammal Protection Act, as appropriate, prior to initiation of any action that may affect any marine mammal or Federally-listed species or designated critical habitat.

The Refuge Manager can suspend/modify conditions/terminate an activity that is already permitted and in progress should unacceptable impacts or issues arise or be noted.

Co-managers are provided cultural briefing information, as well as orientation materials and related information to minimize disturbance to wildlife ("wildlife viewing etiquette"). Specific restrictions (e.g., 150-foot minimum distance from seals, prohibition of access to heavily burrowed areas, etc.) are strictly enforced. The orientation materials include specific indicators of wildlife behavioral responses to disturbance, especially for the Hawaiian monk seal and green turtle, as well as appropriate visitor response to being approached by wildlife. The orientation also includes a visual demonstration of a 150-foot distance. The 150-foot distance is the minimum, however greater distances may be required depending upon the response of the wildlife. Information on the nesting locations of particularly rare species (e.g., white-tailed tropicbirds) may be withheld to protect these birds from disturbance.

At the discretion of the Refuge Manager, FWS-approved guides may be assigned to accompany permittees into particularly sensitive areas. Additional fees (approximately equal to the actual cost to the Refuge) would be charged for such special services.

Permittees would not be allowed to approach closer than 150 feet to Laysan duck wetlands.

Vessels involved in permitted activities would be required to return to dock at least 1 hour before sunset, which would also enhance boat operators' ability to avoid collisions with marine life. Permittees planning to engage in water-related activities during the albatross fledging season (June-July) would be

thoroughly briefed on watching for shark activity, and water related activities are not permitted during peak shark foraging times (½-hour before dusk to ½-hour after sunrise).
Power boat operators may slow to allow permittee observation of approaching spinner dolphins, but would neither pursue the dolphins nor specifically seek them out. If dolphins are encountered during transit between two points, we would allow the boat to slow and/or stop for permittee observation, but entering the water would not be allowed.

To eliminate anchoring impacts on coral, boat operators would be required to anchor in known sand areas or tie up to a mooring buoy.

Only four-stroke outboard motors would be used for permittee boats. These motors are cleaner-running and quieter than two-stroke motors and would not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals. No other loud sounds would be associated with this program.

Justification:

Presidential Proclamation 8031 establishes a coordinated management regime for Papahānaumokuākea Marine National Monument. This allows all Monument personnel from FWS, NOAA, and the State to work together, and share facilities, equipment, and management activities so the Monument's natural, cultural, and historic resources may be enjoyed and protected in perpetuity. The FWS, NOAA, and the State each have their own special expertise and experience and working together to achieve purposes of the Monument and the Refuge is cost-effective and produces synergistic benefits.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____X_____ Mandatory 10-year reevaluation date (for nonwildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

References Cited:

Bejder, L., S. M. Dawson, and J. A. Harraway. 1999. Responses by Hector's dolphins to boats and swimmers in porpoise bay, New Zealand. 15(3):738-750.

Chesher, R. H. 1969. Destruction of Pacific corals by the sea star *Acanthaster planci*. Science 165(3890):280-283.

Executive Order 1019. 3 February 1909. Establishing the Hawaiian Islands Reservation.

Fowler, G.S. 1995. Ecotourism, field studies and stress: behavioral and hormonal responses of Magellanic penguins to nest site disturbance. Abstracts to Pacific Seabird Group Annual Meeting, 1995.

Gerrodette, T.G., and W.G. Gilmartin. 1990. Demographic consequences of changed pupping and hauling sites of the Hawaiian monk seal. Conservation Biology 4:423-430.

Hawkins, J. P., C. M. Roberts, T. V. T. Hof, K. D. Meyer, J. Tratalos, and C. Aldam. 1999. Effects of recreational scuba diving on Caribbean coral and fish communities. Conservation Biology 13(4):888-897.

Jungius, H. and U. Mirsch. 1979. Changes in heartbeats in nesting birds at Galapagos by human disturbance. Journal of Field Ornithology. 120:299-310.

Kenyon, K.W. 1972. Man verses the Monk Seal. Journal of Mammalogy 53:687-696.

Kitaysky, A., M. Benowitz-Fredericks, Z. Kitaiskaia, M. Shultz, and B. Zaun. 2003. Effects of tourist disturbance on stress physiology of wedge-tailed shearwaters (*Puffinus pacificus*) chicks at Kilauea Point National Wildlife Refuge, Kauai, Hawaii. Unpubl. refuge report.

Nimon, A.J., R.C. Schroter, and B. Stonehouse. 1995. Heart rate of disturbed penguins. Nature 374:415.

Presidential Proclamation 2416, 1940. Renaming the Hawaiian Islands Reservation as the Hawaiian Islands National Wildlife Refuge.

Presidential Proclamation 8031, 15 June 2006 (71 FR 36443). Establishing the Northwestern Hawaiian Islands as a marine national monument.

Presidential Proclamation 8112, 6 March 2007. Establishment of the Papahānaumokuākea Marine National Monument (72 FR 10031).

Ragen, T. 1997. Human Activities Affecting the Population Trends of the Hawaiian Monk Seal. Conservation of Long-Lived Marine Animals Conference. 24 August 1997; Monterey, CA.

Refuge Determination:

Refuge Manager
Approval**:** _____ Date_____
(Signature)

FWS Superintendent,
Papahānaumokuākea Marine National Monument

_____ Date:_____
(Signature)

Project Leader,
Hawaiian and Pacific
Islands NWRC _____Date_____
(Signature)

Concurrence:

Refuge Supervisor,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

Regional Chief,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

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FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Hawaiian Islands National Wildlife Refuge

Use: Research, Scientific Collecting, and Surveys

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?	✔	
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ✔ No ___

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate_____ **Appropriate**✔

Refuge Manager:_____ Date:_____

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor:_____ Date:_____

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

Compatibility Determination

Use: Research, Scientific Collecting, and Surveys

Refuge Name: Hawaiian Islands National Wildlife Refuge (NWR), Papahānaumokuākea Marine National Monument

City/County and State: City and County of Honolulu, State of Hawai‘i

Establishing and Acquisition Authority(ies):

The Hawaiian Islands Reservation was established by President Theodore Roosevelt through Executive Order (EO) 1019, dated February 3, 1909.

In 1940, President Franklin D. Roosevelt signed Presidential Proclamation (PP) 2416, which changed the name of the Reservation to the Hawaiian Islands NWR, but did not add to or otherwise modify the Reservation's purposes.

On June 15, 2006, President Bush signed PP 8031 making the Hawaiian Islands NWR part of a monument that became the Papahānaumokuākea Marine National Monument (Monument) on March 6, 2007 (PP 8112).

Refuge Purpose(s):

The purpose of the Hawaiian Islands Reservation is "…as a preserve and breeding ground for native birds…" (EO 1019).

The Monument covers a much larger area than the Refuge, but also includes the Refuge. The Monument's establishing purpose is "…protecting the objects described above (coral, fish, birds, marine mammals, and other flora and fauna), all lands and interest in lands owned or controlled by the Government of the United States…" (PP 8031).

Wilderness Management Objectives:

Portions of the Hawaiian Islands NWR were proposed for designation as wilderness under the Wilderness Act of 1964. Per FWS policy and Department of the Interior regulation, proposed wilderness is managed to preserve its wilderness character until such time as Congress takes action on the proposal and managed according to wilderness management objectives found in 6 Refuge Manual 8.3:

1. To manage the land to accomplish refuge purposes in such a way so as to preserve the wilderness resource for future benefit and enjoyment of the public; and
2. To provide opportunities for education, research, solitude, and recreation where these activities are compatible with refuge purposes.

National Wildlife Refuge System Mission:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. 668dd-668ee).

Description of Use(s):

When determined compatible on a refuge-specific basis, research, scientific collecting, and surveys (research) are allowable uses and are conducted on refuge lands and waters by independent researchers, partnering agencies, and educational groups. FWS defines these uses as:

- Research: Planned, organized, and systematic investigation of a scientific nature.
- Scientific collecting: Gathering of refuge natural resources or cultural artifacts for scientific purposes.
- Surveys: Scientific inventory or monitoring.

The types of research vary greatly, but mostly revolve around birds, marine animals, sea turtles, coral reefs, the marine environment, fish population dynamics, marine debris, contaminants, habitat classification and restoration, and cultural and historic resources.

Presently on the Refuge 29 research projects are ongoing, which is representative of the numbers of projects that have occurred annually on the Refuge for the past 5 years. This number is expected to greatly increase in the next 10 years. Current research projects include but are not limited to: coral reef assessment, fledgling albatross movements, Bonin petrel (*Pterodroma hypoleuca*) abundance and distribution, juvenile reef fish recruitment, radio wave analysis, greenhouse gas monitoring, shark movement, and marine debris deposition analysis. The number of researchers on the islands at any one time ranges from 0 (Lisianski Island) to 10 people (Tern Island).

More specific examples of where this CD might apply are included in the Monument Management Plan, which lists approximately 80 proposed actions that would generate a multitude of research projects in the future. These proposed actions fall under the following categories: Native Hawaiian culture and history, historic resources, maritime heritage, threatened and endangered species, migratory birds, habitat management and conservation, marine debris, alien species, and maritime transportation and aviation. Examples of such activities include:

1) Section 3.2.1, Activity TES-4.2, Conduct studies to examine the correlation between reproductive success and contaminant loads.
2) Section 3.2.2, Activity MTA-2.1, Conduct studies on potential aircraft and vessel hazards and impacts.

Research proposals may be for any time of the year and on any of the islands and/or surrounding waters within the Refuge. However, the Refuge may limit the time and location of research projects to ensure that negative impacts to Refuge resources are avoided or limited.

Each research, scientific collection, or survey project would undoubtedly have different protocols and methodologies; therefore, each study necessitates its own scientific review. Each research project would be carefully reviewed to prevent any significant short-term, long-term or cumulative impacts. New research requests would be evaluated by refuge staff by comparing them to ongoing or recently completed research on the Refuge to determine if the species studied, methodologies used, or habitat type and locations used may lead to undesirable cumulative impacts. All projects would be subjected to the Monument permitting process, in which the Refuge also participates. This high level of review would help ensure all levels and types of impacts are carefully considered before any permit for research is issued. Within the permit, conditions would be clearly defined so as to protect and conserve the existing natural, cultural, and historic resources found within the Monument. Standard and specific conditions are included in this CD under Stipulations Necessary to Ensure Compatibility.

This use has been primarily proposed because the collecting and analyzing of scientific data is extremely valuable to the FWS for its ongoing management of the Refuge and Monument. The gathered information would also used by other scientists and teachers around the world. The published manuscripts from this research help to support achievement of the FWS mission and Refuge purposes, and disseminate scientific information about the significance of the Monument to other researchers and the public.

The FWS has some facilities and equipment available for this use that includes office space, housing, motorboats, dive tanks, and bird banding supplies. Users pay fees to use these facilities and equipment or they supply their own.

Availability of Resources:

The Refuge's extreme remoteness makes the operation and maintenance of its airfield, buildings, and infrastructure very costly for FWS. Therefore, appropriate fees would be charged for research projects occurring on the Refuge to help FWS defray their operational costs.

The FWS has sufficient staffing and funding to administratively support and monitor research that is currently taking place. Any significant increase in the number of research projects would create a need for additional employees to oversee the administration and monitoring of the researchers and their projects.

Any significant additional cost to the Refuge caused by researchers must be offset by the sponsoring agency or organization.

Category and Itemization	**One-time ($)**	**Annual ($/yr)**
Administration and Management		$2,000
Maintenance		$10,000
Monitoring & Research		$4,650
Special equipment, facilities, or improvements		$0
Offsetting revenues		$0

The numbers above reflect the current estimated costs. Estimated costs were calculated using 10 % of the base cost of a GS-7 assistant refuge manager and a 3 % cost of a GS-9 refuge manager assuming that the activity would use the estimated "portion of a year" to administer.

Transportation costs to reach the Refuge are paid for by the participant or covered by another agency.

Anticipated Impacts of the Use(s):

Possible impacts from this use include: (1) disturbance to nesting and resting seabirds and other migratory birds; (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green turtles (*Chelonia mydas*) swimming and feeding in the nearshore marine environment or resting on beaches; (3) disturbance to spinner dolphins (*Stenella longirostris*) swimming and feeding in the nearshore marine environment; (4) disturbance to fish, cetaceans, marine invertebrates, and corals; (5) disturbance to Laysan ducks (*Anas laysanensis*), Nihoa finches (*Telespiza ultima*), Nihoa millerbirds (*Acrocephalus familiaris kingi*), and Laysan finches (*Telespiza cantans*); (6) trampling of native plants and insects; (7) damage to corals; (8) accidental release of pollution and contaminants; and (9) the accidental introduction and establishment of

nonnative species to the Monument. All research would be designed and managed in a fashion with the best intent to eliminate or minimize these impacts. However, even with proper management and execution of a well planned project, certain behavioral responses in wildlife may occur that are not easily recognized by the casual observer. Some proposed activities will require further analysis and compliance by the agencies as more detailed information becomes available and specific plans are developed. These requirements may include additional analysis in accordance with NEPA, and consultation under ESA, Marine Mammal Protection Act, NHPA, and other relevant laws.

Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, Nimon et al., 1995 and Kataysky et al., 2003). Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. When participants are observing albatrosses, terns, boobies, Laysan ducks, or other species in the less visited areas, they would have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive. Kitaysky et al. (2003) showed that limited duration disturbance, however, has only minor, short-term effects. Observation periods for any particular bird or group of birds would be kept to 15 minutes or less for this reason, unless there is a justified research question to answer and the length of time is acceptable. Observations occurring from a FWS blind (if one were put in place) can continue for up to 1 hour. It is important to note that even wildlife photography by professionals or amateurs can often be disturbing depending on the manner in which it is pursued.

Human activities have played a major role in determining the status and trend of Hawaiian monk seals over the past two centuries (Ragen 1997). The historical record suggests that human access to the Northwestern Hawaiian Islands is increasing, and such activities may become a greater impediment to monk seal recovery if they are not limited to those compatible with wildlife conservation. From the 1960s to the 1990s, decreases in monk seal populations at several locations (French Frigate Shoals, Midway Atoll, and Kure Atoll) have been associated with human disturbance (Gerrodette 1990). Recreational beach activities caused monk seals to alter their pupping and hauling patterns, and survival of pups in suboptimal habitats was low, leading to gradual population declines (Kenyon 1972). Human activity and disturbance caused incredible declines at Midway Atoll (Kenyon 1972). Beach counts of monk seals at Midway Atoll averaged 56 animals in the late 1950s, but declined severely by the late 1960s with a single seal observed during an aerial survey in 1968. It is clear from these examples that monks seals are very sensitive to disturbance and proposed activities should be carefully reviewed and, as appropriate, restricted so no further impacts to seals would occur.

Increased use of Refuge waters also increases the potential for introductions of nonnative species and interactions (some negative) by boats or snorkelers/divers with monk seals, sea turtles, spinner dolphins, cetaceans, and live corals. One accidental introduction of a nonnative species on a boat or dive equipment could devastate the Refuge. The introduced sea star (*Acanthaster planci*) in Guam killed 1 km of coral in a month in a narrow fringing coral reef and 90% of the coral in a 2.5 year period along 38 km of Guam's coastline (Chesher 1969). Any action of pursuit or annoyance from boats potentially disturbs marine mammals in the wild by causing disruption of their behavioral patterns or displacement from essential habitat areas, especially if the cetaceans or seals are in a resting phase (Bejder et al. 1999). Snorkel or dive operations also include the added risk of damaging living coral on the Refuge (Hawkins et al. 1999). Improper boat operation could result in localized impacts to the coral reef from repeated anchoring, touching, standing, or other avoidable physical disturbance to the coral.

Although a single research project for a single year may cause few, if any, negative resource impacts, it may in fact cause cumulative impacts over multiple years or when considered additively with all research projects in the Monument. Therefore, it is critical for Monument managers to examine all projects with a multi-year timeframe in mind and consider all research that is planned concurrently in the Monument

before approval is granted. It may be appropriate to set a limit to the number of research projects occurring in a particular habitat or relative to a single species or species group, even if staff are available to coordinate the projects. Based on the shorter-term nature of the majority of the 29 research projects currently occurring at the Refuge, the probability of cumulative impacts is low.

Public Review and Comment:

This determination was issued for public review and comment as part of the Papahānaumokuākea Draft Monument Management Plan. The plan and associated compatibility determinations were also made available through printed copies upon request and through the Monument Websites at http://www.fws.gov/pacificislands and http://hawaiireef.noaa.gov/. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended, and as determined by the Co-Trustees of the Monument. The Monument is of national interest; therefore, the availability of the Draft Monument Management Plan (including the CDs) was advertised at the national level.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

GENERAL TERMS AND CONDITIONS:

Each permittee would be required to adhere to all general conditions specified by the Monument Co-Trustees in their joint permit (Attachment 1).

A more comprehensive list of Refuge and Monument conditions and restrictions is included in this CD and 50 CFR Part 27. Not all of these conditions and restrictions would apply to every use. The type of use and where the activity occurs would drive which are relevant (Attachment 2).

All persons participating in the travel to and from any of the islands must adhere to the "Special Conditions for Movement to and from Islands," which cover the quarantine requirements (Attachment 3).

SPECIFIC TERMS AND CONDITIONS:

All research permit holders would be required to submit an annual report to the Refuge that summarizes their activities for a given year and a final report when the project is completed. The report would include at a minimum the following: study title, fiscal year, progress, important findings, problems encountered, proposed resolution to problems, disposition of any collected samples, preparer, and date prepared.

All projects would be monitored by Refuge staff to ensure the use remains compatible and resources (which include but are not limited to nesting and resting seabirds and other migratory birds, Hawaiian monk seals, green turtles, spinner dolphins, fish, cetaceans, marine invertebrates, corals, Laysan ducks, Laysan finches, Nihoa finches, Nihoa millerbirds, native plants and insects, and cultural and historic resources) are not impacted. Staff will also monitor for the accidental release of pollution and contaminants, and the accidental introduction and establishment of nonnative species to the Refuge.

If the proposed research methods would impact or potentially impact Refuge resources (habitat or wildlife), it must be demonstrated that the research is essential (i.e., critical to survival of a species; Refuge islands provide only or critical habitat for a species; or assessment and/or restoration after cataclysmic events), and the researcher must identify the issues in advance of the impact. Highly intrusive or manipulative research is generally not permitted in order to protect native bird and marine mammal populations.

Researchers are responsible for acquiring and/or renewing any necessary State and Federal permits prior to beginning or continuing their project. In addition, the agencies commit to consultation under the Endangered Species Act, Marine Mammal Protection Act, as appropriate, prior to initiation of any action that may affect any marine mammal or Federally-listed species or designated critical habitat.

Researchers will adhere to current species protocols for data collection.

The Refuge Manager can suspend/modify conditions/terminate on-refuge research that is already permitted and in progress, should unacceptable impacts or issues arise or be noted.

Visitors, researchers, and residents are provided orientation materials and related information to minimize disturbance to wildlife ("wildlife viewing etiquette"). Specific restrictions (e.g., 150-foot minimum distance from seals, prohibition of access to heavily burrowed areas, etc.) are strictly enforced. The orientation materials include specific indicators of wildlife behavioral responses to disturbance, especially for the Hawaiian monk seal and green turtle, as well as appropriate visitor response to being approached by wildlife. The orientation also includes a visual demonstration of a 150-foot distance. The 150-foot distance is the minimum, however greater distances may be required depending upon the response of the wildlife. Information on the nesting locations of particularly rare species (e.g., white-tailed tropicbirds) may be withheld to protect these birds from disturbance.

Researchers would be required to obtain the appropriate Monument permit type. These permits stipulate more detailed access restrictions and regulations to protect wildlife. At the discretion of the Refuge Manager, FWS-approved guides may be assigned to accompany researchers into particularly sensitive areas. Additional fees (approximately equal to the actual cost to the Refuge) would be charged for such special services.

Visitors and researchers would not be allowed to approach closer than 150 feet to Laysan duck wetlands without specific approval from FWS staff.

Vessels involved in research activities would be required to return to dock at least 1 hour before sunset, which would also enhance boat operators' ability to avoid collisions with marine life. Visitors and researchers planning to engage in water-related activities during the albatross fledging season (June-July) would be thoroughly briefed on watching for shark activity, and water-related activities are not permitted during peak shark foraging times (½-hour before dusk to ½-hour after sunrise).

Power boat operators may slow to allow visitor and researcher observation of approaching spinner dolphins, but would neither pursue the dolphins nor specifically seek them out. If dolphins are encountered during transit between two points, we would allow the boat to slow and/or stop for visitor and researcher observation, but entering the water would not be allowed. Routes to and from snorkeling/dive sites would be plotted to avoid known resting areas of spinner dolphins in the lagoon, as well as preferred Hawaiian monk seal haulout, molting, and pupping sites and green turtle high use areas such as East Island.

To eliminate anchoring impacts on coral, boat operators would be required to anchor in known sand areas or tie up to a mooring buoy. Anchors will be lowered into place rather than tossed overboard to control placement.

Only four-stroke outboard motors would be used for visitor and researcher boats. These motors are cleaner-running and quieter than two-stroke motors and would not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals. No other loud sounds would be associated with this program.

All publications would need to reference the fact that research took place on the Refuge and also state that the Refuge is closed to general public use.

Justification:

Research on the Refuge and in the Monument is inherently valuable to the FWS, since it is intended to expand the knowledge base of those who are given the responsibility of managing the resources found within. This is particularly true in this case where many of the resources remain in pristine condition and detailed information is lacking for a portion of these species. In many cases, if it were not for the Refuge providing access to the lands and waters along with some support, the research would never take place and less scientific information would be available to FWS to aid in managing and conserving the Refuge and the Monument resources.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____X_____ Mandatory 10-year reevaluation date (for nonwildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

References Cited:

Bejder, L., S. M. Dawson, and J. A. Harraway. 1999. Responses by Hector's dolphins to boats and swimmers in porpoise bay, New Zealand. 15(3):738-750.

Chesher, R. H. 1969. Destruction of Pacific corals by the sea star *Acanthaster planci*. Science 165(3890):280-283.

Executive Order 1019. 3 February 1909. Establishing the Hawaiian Islands Reservation.

Fowler, G.S. 1995. Ecotourism, field studies and stress: behavioral and hormonal responses of Magellanic penguins to nest site disturbance. Abstracts to Pacific Seabird Group Annual Meeting, 1995.

Gerrodette, T.G., and W.G. Gilmartin. 1990. Demographic consequences of changed pupping and hauling sites of the Hawaiian monk seal. Conservation Biology 4:423-430.

Hawkins, J. P., C. M. Roberts, T. V. T. Hof, K. D. Meyer, J. Tratalos, and C. Aldam. 1999. Effects of recreational scuba diving on Caribbean coral and fish communities. Conservation Biology 13(4):888-897.

Jungius, H. and U. Mirsch. 1979. Changes in heartbeats in nesting birds at Galapagos by human disturbance. Journal of Field Ornithology. 120:299-310.

Kenyon, K.W. 1972. Man verses the Monk Seal. Journal of Mammalogy 53:687-696.

Kitaysky, A., M. Benowitz-Fredericks, Z. Kitaiskaia, M. Shultz, and B. Zaun. 2003. Effects of tourist disturbance on stress physiology of wedge-tailed shearwaters (*Puffinus pacificus*) chicks at Kilauea Point National Wildlife Refuge, Kauai, Hawaii. Unpubl. refuge report.

Nimon, A.J., R.C. Schroter, and B. Stonehouse. 1995. Heart rate of disturbed penguins. Nature 374:415.

Presidential Proclamation 2416, 1940. Renaming the Hawaiian Islands Reservation as the Hawaiian Islands National Wildlife Refuge.

Presidential Proclamation 8031, 15 June 2006 (71 FR 36443). Establishing the Northwestern Hawaiian Islands as a marine national monument.

Presidential Proclamation 8112, 6 March 2007. Establishment of the Papahānaumokuākea Marine National Monument (72 FR 10031).

Ragen, T. 1997. Human Activities Affecting the Population Trends of the Hawaiian Monk Seal. Conservation of Long-Lived Marine Animals Conference. 24 August 1997; Monterey, CA.

Refuge Determination:

Refuge Manager

Approval**:** _____ Date:_____
(Signature)

FWS Superintendent,
Papahānaumokuākea Marine National Monument

_____ Date:_____
(Signature)

Project Leader,
Hawaiian and Pacific
Islands NWRC _____Date_____
(Signature)

Concurrence:

Refuge Supervisor,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

Regional Chief,
National Wildlife
Refuge System _____Date_____
Pacific Region (Signature)

FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Hawaiian Islands National Wildlife Refuge

Use: Cultural Resource Activities and Practices

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?		✔
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?	✔	
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ✔ No ___

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate_____ **Appropriate**✔

Refuge Manager:_____ Date:_____

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor:_____ Date:_____

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

Finding of Appropriateness of a Refuge Use: Attachment 1

Use: Cultural Resource Activities and Practices

Additional information regarding the U.S. Fish and Wildlife Service (FWS) evaluation of proposed Cultural Resource Activities and Practices at Hawaiian Islands National Wildlife Refuge (NWR), Papahānaumokuākea Marine National Monument.

d. The activity is not consistent with public safety. Since the activity may have failed to meet this requirement and consistent with relevant policy (603 FW 1.11 B.), the Refuge has completed an "Exceptional or Unique Circumstances Analysis" (see below).

Exceptional or Unique Circumstances Analysis for cultural practices at the Hawaiian Islands National Wildlife Refuge (NWR), Papahānaumokuākea Marine National Monument (603 FW 1.11 B.).

The "Finding of Appropriateness of a Refuge Use" determination revealed that proposed Cultural Resources Activities and Practices may not be consistent with public safety. Despite the possibility of not meeting this requirement and consistent with relevant policy (603 FW 1.11 B.), the Refuge has made a determination that the use is appropriate for the following reasons.

- The use would only be allowed if it were also determined compatible.
- This use is an important component of the Native Hawaiian culture and Presidential Proclamation 8031 recognizes its significance and provided for this use when certain conditions are met. FWS possesses the resources to manage this use at the current levels.
- One or more support vessels would accompany Hawaiian sailing canoes during their voyages for safety.
- Length of stay on islands would be limited and be required to have a FWS-approved guide to accompany them, which would contribute to a higher level of safety. The guide would make sure landings at islands only occurred during good weather conditions and in safe areas. The guide would brief all participants on the safety issues involved in sailing in the Monument and visiting islands.
- Participants would be required to carry appropriate first aid supplies that could be used to treat minor injuries.

Compatibility Determination

Use: Cultural Resource Activities and Practices

Refuge Name: Hawaiian Islands National Wildlife Refuge (NWR), Papahānaumokuākea Marine National Monument

City/County and State: City and County of Honolulu, State of Hawai‘i

Establishing and Acquisition Authority(ies):

The Hawaiian Islands Reservation was established by President Theodore Roosevelt through Executive Order (EO) 1019, dated February 3, 1909.

In 1940, President Franklin D. Roosevelt signed Presidential Proclamation (PP) 2416, which changed the name of the Reservation to the Hawaiian Islands NWR, but did not add to or otherwise modify the Reservation's purposes.

On June 15, 2006, President Bush signed PP 8031 making the Hawaiian Islands NWR part of a monument that became the Papahānaumokuākea Marine National Monument (Monument) on March 6, 2007 (PP 8112).

Refuge Purpose(s):

The purpose of the Hawaiian Islands Reservation is "…as a preserve and breeding ground for native birds…" (EO 1019).

The Monument covers a much larger area than the Refuge, but also includes the Refuge. The Monument's establishing purpose is "…protecting the objects described above (coral, fish, birds, marine mammals, and other flora and fauna), all lands and interest in lands owned or controlled by the Government of the United States…" (PP 8031).

Wilderness Management Objectives:

Portions of the Hawaiian Islands NWR were proposed for designation as wilderness under the Wilderness Act of 1964. Per FWS policy and Department of the Interior regulation, proposed wilderness is managed to preserve its wilderness character until such time as Congress takes action on the proposal and managed according to wilderness management objectives found in 6 Refuge Manual 8.3:

1. To manage the land to accomplish refuge purposes in such a way so as to preserve the wilderness resource for future benefit and enjoyment of the public; and
2. To provide opportunities for education, research, solitude, and recreation where these activities are compatible with refuge purposes.

National Wildlife Refuge System Mission:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. 668dd-668ee).

Description of Use(s):

Presidential Proclamation 8031 defines Native Hawaiian Practices as "…cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment, and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of Monument resources for direct personal consumption while in the monument."

Cultural resource activities and practices are a means to honor and continue the traditional knowledge and practices that are vital to the Native Hawaiian community. They continue to remind and teach the Native Hawaiian connections and relationships that ancestors have passed down from generation to generation.

Activities could involve, but are not limited to, voyaging by traditional sailing canoes with at least one support vessel to one or more of the islands within the Monument. Although requests for general access may be received for any of the islands within the Monument, most often the activity would occur on either Nihoa or Mokumanamana (Necker Island) in the Hawaiian Islands NWR. The use may be conducted at any time during the year, but would most often occur during equinoxes and solstices. The permittees would explore where ancestors traveled and practiced their culture, teach others the Native Hawaiian culture and history, practice living and traveling as ancestors did, and make a spiritual connection with nature and ancestors. The use may include overnight visits on some islands, sailing by canoe to the islands, celestial navigation, spiritual ceremonies, and presentation of offerings. However, camping on Nihoa Island or Mokumanamana is not considered under this CD due to the lack of appropriate and suitable sites (rugged terrain, and presence of cultural sites and endangered species) on these islands. Cultural practitioners requesting to camp on these islands would require the Service complete additional determinations for appropriateness and compatibility.

More specific examples of where this CD might apply are listed in the Monument Management Plan under:

1) Section 3.1.2, Activity NHCH-2.3, Facilitate field research and cultural education opportunities annually during the field season.
2) Section 3.1.2, Activity NHCH-2.6, Support Native Hawaiian cultural accesses to assure cultural research needs are met.

The study and use of native fish, wildlife, plants, and their habitats by Native Hawaiians is integral to their cultural practices. However this activity is not a wildlife-dependent use as defined by the National Wildlife Refuge System Administration Act of 1966, as amended.

This activity could include fishing and gathering of renewable natural resources for ceremonial, religious, nutritional, and other traditional cultural purposes. Resources of interest may include, but are not limited to, shed feathers, fish, shells, or salt. Gathering of resources of interest may be requested in Native Hawaiian Practices Permit applications and considered by Monument managers on a case-by-case basis. Approval of these requests must include, but are not limited to, consideration of surplus populations available for harvest; maintenance of biological integrity and diversity; maintenance of self-sustaining populations; permittee possession of other necessary permits (e.g., for migratory birds), etc.

Since the establishment of the Monument, only two Native Hawaiian practices permits have been issued. This permit allowed 14 Native Hawaiians to anchor off of Nihoa and Mokumanamana Islands and conduct cultural ceremonies on the islands for no more than 2 full days.

Native Hawaiian practitioners must first apply for and receive a permit from the Monument. After issuance, the practitioners would normally travel to the island(s) by boat and conduct the activity on land

or in the water. The FWS would typically expect 1 boat per permit (2, if a support vessel is accompanying a traditional sailing canoe) with less than 15 people and would anticipate fewer than 3 permits per year. A FWS staff member would accompany all parties permitted to engage in this use to increase safety, ensure the activity is compatible, and does not impact other Refuge or Monument resources or other permitted uses.

No facilities are dedicated solely to these uses that need to be covered by this compatibility determination.

Availability of Resources:

No funding presently exists specifically for this use. However, the occurrence of this activity is currently infrequent and is not expected to grow significantly in the near future, thus the costs to the Refuge are minimal and can be accommodated within the existing budget. The issuance of the permit and FWS staff time to act as a guide for the cultural group account for the major costs.

Category and Itemization	One-time ($)	Annual ($/yr)
Administration and Management		$2,000
Maintenance		
Monitoring		$2,000
Special equipment, facilities or improvements		
Offsetting revenues		

The cost reflects the estimated Refuge current expense for this use (5% of a GS-12 wildlife biologist).

Transportation costs to reach the Refuge are paid for by the participant or covered by another agency.

Anticipated Impacts of the Use(s):

Short-term impacts should be very minimal since the applicant must follow very strict permit regulations (i.e., quarantine procedures for each island) and have a FWS-approved guide. Some minimal disturbance of wildlife may occur from the parties entering and leaving the islands. The permit does not allow disturbance or collection of the historic or cultural resources. However, we recognize some of the Native Hawaiian cultural/spiritual practices may involve moving stones which would not be considered disturbance.

Possible impacts from this use include: (1) disturbance to nesting and resting seabirds and other migratory birds; (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green turtles (*Chelonia mydas*) swimming and feeding in the nearshore marine environment or resting on beaches; (3) disturbance to spinner dolphins (*Stenella longirostris*) swimming and feeding in the nearshore marine environment; (4) disturbance to fish, cetaceans, marine invertebrates, and corals; (5) disturbance to Laysan ducks (*Anas laysanensis*), Nihoa finches (*Telespiza ultima*), Nihoa millerbirds (*Acrocephalus familiaris kingi*), and Laysan finches (*Telespiza cantans*); (6) trampling of native plants and insects; (7) damage to corals; (8) accidental release of pollution and contaminants; and (9) the accidental introduction and establishment of nonnative species to the Monument. All cultural resource activities would be designed and managed in a fashion with the best intent to eliminate or minimize these impacts. However, even with proper management and execution of a well planned project, certain behavioral responses in wildlife may occur that are not easily recognized by the casual observer. Some proposed activities will require further analysis and compliance by the agencies as more detailed information becomes available and specific

plans are developed. These requirements may include additional analysis in accordance with NEPA, and consultation under ESA, Marine Mammal Protection Act, NHPA, and other relevant laws.

Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, Nimon et al., 1995 and Kataysky et al.., 2003). Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. When participants are observing albatrosses, terns, boobies, Laysan ducks, or other species in the less visited areas, they would have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive. Kitaysky et al. (2003) showed that limited duration disturbance, however, has only minor, short-term effects. Observation periods for any particular bird or group of birds would be kept to 15 minutes or less for this reason. Observations occurring from a blind can continue for up to 1 hour. It is important to note that even wildlife photography by professionals or amateurs can often be disturbing depending on the manner in which it is pursued.

Human activities have played a major role in determining the status and trend of Hawaiian monk seals over the past two centuries (Ragen 1997). From the 1960s to the 1990s, decreases in monk seal populations at several locations (French Frigate Shoals, Midway Atoll, and Kure Atoll) have been associated with human disturbance (Gerrodette 1990). Recreational beach activities caused monk seals to alter their pupping and hauling patterns, and survival of pups in suboptimal habitats was low, leading to gradual population declines (Kenyon 1972). Human activity and disturbance caused incredible declines at Midway Atoll (Kenyon 1972). Beach counts of monk seals at Midway Atoll averaged 56 animals in the late 1950s, but declined severely by the late 1960s with a single seal observed during an aerial survey in 1968. Monks seals are very sensitive to disturbance and proposed activities should be carefully reviewed and, as appropriate, restricted so no further impacts to seals would occur.

Increased use of Monument waters also increases the potential for introductions of nonnative species and interactions (some negative) by boats with monk seals, sea turtles, spinner dolphins, cetaceans, and live corals. One accidental introduction of a nonnative species on a boat or dive equipment could devastate the Monument. The introduced sea star (*Acanthaster planci*) in Guam killed 1 km of coral in a month in a narrow fringing coral reef and 90% of the coral in a 2.5 year period along 38 km of Guam's coastline (Chesher 1969). Any action of pursuit or annoyance from boats potentially disturbs marine mammals in the wild by causing disruption of their behavioral patterns or displacement from essential habitat areas, especially if the cetaceans or seals are in a resting phase (Bejder et al. 1999). Snorkel or dive operations also include the added risk of damaging living coral on the Refuge (Hawkins et al. 1999). Improper boat operation could result in localized impacts to the coral reef from repeated anchoring, touching, standing, or other avoidable physical disturbance to the coral.

Due to the very limited nature of this activity (i.e., 1- to 2-day duration limited to access to one or two islands), we do not expect any additional short-term, long-term, and/or cumulative and indirect/secondary impacts other than those normally associated with required existing FWS work. However, it is critical that all visitors follow all quarantine procedures to prevent the accidental introduction of nonnative species to the Monument. One invasive species has the potential to devastate the fragile ecosystem (Chesher 1969). It may be appropriate to set a limit to the number of participants allowed under this use even if staff are available to coordinate the activities. Proposed uses when transportation costs are not covered, quarantine procedures not followed, or there is an unnecessary risk to the natural and cultural resources of the Refuge and Monument would not be permitted.

Public Review and Comment:

This determination was issued for public review and comment as part of the Papahānaumokuākea Draft Monument Management Plan. The plan and associated compatibility determinations were also made available through printed copies upon request and through the Monument Websites at http://www/fws/gov/pacificislands and http://hawaiireef.noaa.gov/. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended, and as determined by the Co-Trustees of the. The Monument is of national interest; therefore, the availability of the Monument Management Plan (including the CDs) was advertised at the national level.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

GENERAL TERMS AND CONDITIONS:

Each permittee would be required to adhere to all general conditions specified by the Monument Co-Trustees in their joint permit (Attachment 1).

A more comprehensive list of Refuge and Monument conditions and restrictions is included in this CD and 50 CFR Part 27. Not all of these conditions and restrictions would apply to every use. The type of use and where the activity occurs would drive which are relevant (Attachment 2).

All persons participating in the travel to and from any of the islands must adhere to the "Special Conditions for Movement to and from Islands" which cover the quarantine requirements (Attachment 3).

SPECIFIC TERMS AND CONDITIONS:

Persons desiring access for cultural purposes to areas not generally open to the public would be required to obtain a Native Hawaiian Practices Permit from the Monument. These permit applications are reviewed by select cultural practitioners or cultural resource managers to ensure the proposed activities meet the findings outlined in the Proclamation. Permits issued may stipulate more detailed access restrictions and regulations to protect wildlife.

All projects would be monitored by Refuge staff to ensure the use remains compatible and cultural and natural resources (which include but are not limited to nesting and resting seabirds and other migratory birds, Hawaiian monk seals, green turtles, spinner dolphins, fish, cetaceans, marine invertebrates, corals, Laysan ducks, Laysan finches, Nihoa finches, Nihoa millerbirds, native plants and insects, and cultural and historical resources) are not impacted. Staff will also monitor for the accidental release of pollution and contaminants, and the accidental introduction and establishment of nonnative species to the Monument.

Permittees are responsible for acquiring and/or renewing any necessary State and Federal permits prior to beginning or continuing their project. In addition, the agencies commit to consultation under the Endangered Species Act, Marine Mammal Protection Act, as appropriate, prior to initiation of any action that may affect any marine mammal or Federally-listed species or designated critical habitat.

The Refuge Manager can suspend/modify conditions/terminate a project that is already permitted and in progress, should unacceptable impacts or issues arise or be noted.

All trash, human waste, etc., will be removed from the islands upon departure.

All persons traveling to the Refuge are provided cultural briefing information, as well as orientation materials and related information to minimize disturbance to wildlife ("wildlife viewing etiquette"). Specific restrictions (e.g., 150-foot minimum distance from seals, prohibition of access to heavily burrowed areas, etc.) are strictly enforced. The orientation materials include specific indicators of wildlife behavioral responses to disturbance, especially for the Hawaiian monk seal and green turtle, as well as appropriate visitor response to being approached by wildlife. The orientation also includes a visual demonstration of a 150-foot distance. The 150-foot distance is the minimum, however greater distances may be required depending upon the response of the wildlife. Information on the nesting locations of particularly rare species (e.g., white-tailed tropicbirds) may be withheld to protect these birds from disturbance.

Permittees would not be allowed to approach closer than 150 feet to Laysan duck wetlands.

Vessels involved in permitted activities would be required to return to dock at least 1 hour before sunset, which would also enhance boat operators' ability to avoid collisions with marine life. Permittees planning to engage in water-related activities during the albatross fledging season (June-July) would be thoroughly briefed on watching for shark activity, and water related activities are not permitted during peak shark foraging times (½-hour before dusk to ½-hour after sunrise).

To eliminate anchoring impacts on coral, boat operators would be required to anchor in known sand areas or tie up to a mooring buoy. Anchors will be lowered into place rather than tossed overboard to control placement.

If motorized boats are used, only four-stroke outboard motors would be allowed. These motors are cleaner-running and quieter than two-stroke motors and would not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals. No other loud sounds would be associated with this program.

Any alteration of the Refuge's natural or cultural resources through this use (including movement of stones on islands) would be approved and overseen by FWS personnel.

As part of their permit, users would be required to certify that their use of the Refuge and its natural and cultural resources, including any items collected from the Refuge, is of a noncommercial nature.

Justification:

This use is an important component of the Native Hawaiian culture, and Presidential Proclamation 8031 recognizes its significance and provided for this use when certain conditions are met. FWS possesses the resources to manage this use at the current levels.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

____X____ Mandatory 10-year reevaluation date (for non-wildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

References Cited:

Bejder, L., S. M. Dawson, and J. A. Harraway. 1999. Responses by Hector's dolphins to boats and swimmers in porpoise bay, New Zealand. 15(3):738-750.

Chesher, R. H. 1969. Destruction of Pacific corals by the sea star *Acanthaster planci*. Science 165(3890):280-283.

Executive Order 1019. 3 February 1909. Establishing the Hawaiian Islands Reservation.

Fowler, G.S. 1995. Ecotourism, field studies and stress: behavioral and hormonal responses of Magellanic penguins to nest site disturbance. Abstracts to Pacific Seabird Group Annual Meeting, 1995.

Gerrodette, T.G., and W.G. Gilmartin. 1990. Demographic consequences of changed pupping and hauling sites of the Hawaiian monk seal. Conservation Biology 4:423-430.

Hawkins, J. P., C. M. Roberts, T. V. T. Hof, K. D. Meyer, J. Tratalos, and C. Aldam. 1999. Effects of recreational scuba diving on Caribbean coral and fish communities. Conservation Biology 13(4):888-897.

Jungius, H. and U. Mirsch. 1979. Changes in heartbeats in nesting birds at Galapagos by human disturbance. Journal of Field Ornithology. 120:299-310.

Kenyon, K.W. 1972. Man verses the Monk Seal. Journal of Mammalogy 53:687-696.

Kitaysky, A., M. Benowitz-Fredericks, Z. Kitaiskaia, M. Shultz, and B. Zaun. 2003. Effects of tourist disturbance on stress physiology of wedge-tailed shearwaters (*Puffinus pacificus*) chicks at Kilauea Point National Wildlife Refuge, Kauai, Hawaii. Unpubl. refuge report.

Nimon, A.J., R.C. Schroter, and B. Stonehouse. 1995. Heart rate of disturbed penguins. Nature 374:415.

Presidential Proclamation 2416, 25 July 1940. Renaming the Hawaiian Islands Reservation as the Hawaiian Islands National Wildlife Refuge.

Presidential Proclamation 8031, 15 June 2006 (71 FR 36443) Establishing the Northwestern Hawaiian Islands as a marine national monument.

Presidential Proclamation 8112, 6 March 2007. Establishment of the Papahānaumokuākea Marine National Monument (72 FR 10031).

Ragen, T. 1997. Human Activities Affecting the Population Trends of the Hawaiian Monk Seal. Conservation of Long-Lived Marine Animals Conference. 24 August 1997; Monterey, CA.

Refuge Determination:

Refuge Manager
Approval**:** _____ Date_____
(Signature)

FWS Superintendent,
Papahānaumokuākea Marine National Monument

_____ Date:_____
(Signature)

Project Leader,
Hawaiian and Pacific
Islands NWRC _____Date_____
(Signature)

Concurrence:

Refuge Supervisor,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

Regional Chief,
National Wildlife
Refuge System _____Date_____
Pacific Region (Signature)

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FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Hawaiian Islands National Wildlife Refuge

Use: Commercial Photography, Videography, Filming, or Audio Recording

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?	✔	
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ✔ No ___

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate_____ **Appropriate**✔

Refuge Manager:_____ Date:_____

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor:_____ Date:_____

A compatibility determination is required before the use may be allowed.

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02/06

Compatibility Determination

Use: Commercial Photography, Videography, Filming, or Audio Recording

Refuge Name: Hawaiian Islands National Wildlife Refuge (NWR), Papahānaumokuākea Marine National Monument

City/County and State: City and County of Honolulu, State of Hawai‘i

Establishing and Acquisition Authority(ies):

The Hawaiian Islands Reservation was established by President Theodore Roosevelt through Executive Order (EO) 1019, dated February 3, 1909.

In 1940, President Franklin D. Roosevelt signed Presidential Proclamation (PP) 2416, which changed the name of the Reservation to the Hawaiian Islands NWR, but did not add to or otherwise modify the Reservation's purposes.

On June 15, 2006, President Bush signed PP 8031 making the Hawaiian Islands NWR part of a monument that became the Papahānaumokuākea Marine National Monument (Monument) on March 6, 2007 (PP 8112).

Refuge Purpose(s):

The purpose of the Hawaiian Islands Reservation is "…as a preserve and breeding ground for native birds…" (EO 1019).

The Monument covers a much larger area than the Refuge, but also includes the Refuge. The Monument's establishing purpose is "…protecting the objects described above (coral, fish, birds, marine mammals, and other flora and fauna), all lands and interest in lands owned or controlled by the Government of the United States…" (PP 8031).

Wilderness Management Objectives:

Portions of the Hawaiian Islands NWR were proposed for designation as wilderness under the Wilderness Act of 1964. Per FWS policy and Department of the Interior regulation, proposed wilderness is managed to preserve its wilderness character until such time as Congress takes action on the proposal and managed according to wilderness management objectives found in 6 Refuge Manual 8.3:

1. To manage the land to accomplish refuge purposes in such a way so as to preserve the wilderness resource for future benefit and enjoyment of the public; and
2. To provide opportunities for education, research, solitude, and recreation where these activities are compatible with refuge purposes.

National Wildlife Refuge System Mission:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. 668dd-668ee).

Description of Use(s):

Commercial photography, video, filming, and audio recording ("recording") are considered in this compatibility determination (CD). This use has occurred in the past (in recent years, 1-2 permits annually have been issued for this type of use on the Refuge) and future requests for this use are expected to grow. The use typically involves creating a documentary film, taking still photographs, or recording wildlife sounds for commercial purposes. Commercial "recording" activities not related to natural, historic, or cultural subjects are not covered under this CD (e.g., swimsuit calendar photography, filming a movie unrelated to the Refuge mission, etc.). For example, the permittee may wish to make a film on the variety of wildlife seen on the islands or on the life cycles of a specific animal or plant. After filming and editing, the permittee would attempt to sell the film to a commercial television station for viewing. People choose to engage in "recording" activities in the Hawaiian Islands NWR because of the pristine nature of the Refuge, and its exotic and approachable wildlife. Films, photographs, and other recordings made in this area are especially appealing to the general public because it exposes an exotic locale which is closed to general public access.

Photography, video, filming, and audio recording of a noncommercial nature are addressed under separate CDs (Environmental Education and Interpretation, and Wildlife Observation and Photography). Also, this CD does not apply to bona fide news media activities, which are authorized under Co-Trustee Conservation and Management permits.

Commercial photography, video, filming, and audio recording may be conducted on or around Refuge islands or waters within the areas of our jurisdiction. Although applications for this activity may be for any time during the year, some time restrictions may be required to limit disturbance. This may include such specifications as time of day and seasonal restrictions.

A specific example of where this CD might apply is included within the Monument Management Plan as:

1) Section 3.4.5, Activity CBO-2.3: Support other entities' efforts to broaden knowledge of and appreciation for Monument resources and management priorities.

The use may be conducted on foot, from the air, from boats and/or in the water using commercial recording equipment. Very specific conditions would be developed by the FWS to minimize or avoid adverse impacts to Monument resources and are listed under Stipulations Necessary to Ensure Compatibility in this document.

In order to ensure there are no negative impacts to the Refuge or Monument resources, the applicant would first have to obtain a Monument permit, which is reviewed and signed by all Co-Trustees. Additionally, when conducting actual onsite operations, the applicant would be accompanied by a FWS-approved guide to ensure compliance of the permit conditions and prevent any unforeseen negative impacts to the Refuge or Monument resources.

Availability of Resources:

At present the Refuge can only accommodate one or two commercial photography, video, filming, and audio recording operations within a given year. If the number of applicants begins to increase, additional staffing would be required. The FWS requires the permittee to offset any cost incurred by the Refuge. FWS has some facilities and equipment available for this use, such as limited lodging and motorboats. FWS is responsible for the costs of upkeep and replacement of these items.

Category and Itemization	One-time ($)	Annual ($/yr)
Administration and Management		$2,250
Maintenance		
Monitoring & Research		$1,750
Special equipment, facilities, or improvements		
Offsetting revenues		actual costs

The above annual cost reflects cost to manage the program and prevent impacts to the natural resources. Estimated costs were calculated using 5% of the base cost of a GS-5 refuge biological technician and a 5% cost of a GS-9 refuge manager assuming that this activity would use that "portion of a year" to administer. The one-time administration and monitoring cost reflects the approximate cost per commercial photography, video, filming, and audio recording operation incurred by the Refuge and the offsetting cost reflects the reimbursement provided by the permittee. The offsetting cost should always be equal to the Refuge-incurred cost and would come to the Refuge in the form of fees paid by the commercial photographers. These fees should at least equal our costs to administer the use, including any costs associated with facilities, equipment, supplies, and services.

Transportation costs to reach the Refuge are paid by the participant or covered by another agency.

Anticipated Impacts of the Use(s):

Possible impacts from this use include: (1) disturbance to nesting and resting seabirds and other migratory birds; (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green turtles (*Chelonia mydas*) swimming and feeding in the nearshore marine environment or resting on beaches; (3) disturbance to spinner dolphins (*Stenella longirostris*) swimming and feeding in the nearshore marine environment; (4) disturbance to fish, cetaceans, marine invertebrates, and corals; (5) disturbance to Laysan ducks (*Anas laysanensis*), Nihoa finches (*Telespiza ultima*), Nihoa millerbirds (*Acrocephalus familiaris kingi*), and Laysan finches (*Telespiza cantans*); (6) trampling of native plants and insects; (7) damage to corals; (8) accidental release of pollution and contaminants; and (9) the accidental introduction and establishment of nonnative species to the Monument. All recording activities would be designed and managed in a manner to eliminate or minimize these impacts. However, even with proper management and execution of a well planned project, certain behavioral responses in wildlife may occur that are not easily recognized by the casual observer. Some proposed activities will require further analysis and compliance by the agencies as more detailed information becomes available and specific plans are developed. These requirements may include additional analysis in accordance with NEPA, and consultation under ESA, Marine Mammal Protection Act, NHPA, and other relevant laws.

Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, Nimon et al., 1995 and Kataysky et al., 2003). Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. When participants are observing albatrosses, terns, boobies, Laysan ducks, or other species in the less visited areas, they would have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive. Kitaysky et al. (2003) showed that limited duration disturbance, however, has only minor, short-term effects. Observation periods for any particular bird or group of birds would be kept to 15 minutes or less for this reason. Observations occurring from a blind can continue for up to 1 hour. It is important to note that even wildlife photography by professionals or amateurs can often be disturbing depending on the manner in which it is pursued.

Human activities have played a major role in determining the status and trend of Hawaiian monk seals over the past two centuries (Ragen 1997). The historical record suggests that human access to the Northwestern Hawaiian Islands is increasing, and such activities may become a greater impediment to monk seal recovery if they are not limited to those compatible with wildlife conservation. From the 1960s to the 1990s, decreases in monk seal populations at several locations (French Frigate Shoals, Midway Atoll, and Kure Atoll) have been associated with human disturbance (Gerrodette 1990). Recreational beach activities caused monk seals to alter their pupping and hauling patterns, and survival of pups in suboptimal habitats was low, leading to gradual population declines (Kenyon 1972). Human activity and disturbance caused incredible declines at Midway Atoll (Kenyon 1972). Beach counts of monk seals at Midway Atoll averaged 56 animals in the late 1950s, but declined severely by the late 1960s with a single seal observed during an aerial survey in 1968. It is clear from these examples that monks seals are very sensitive to disturbance and proposed activities should be carefully monitored and, as appropriate, restricted so no further impacts to seals would occur.

Increased use of Refuge waters also increases the potential for introductions of nonnative species and interactions (some negative) by boats or snorkelers/divers with monk seals, sea turtles, spinner dolphins, cetaceans, and live corals. One accidental introduction of a nonnative species on a boat or dive equipment could devastate the Monument. The introduced sea star (*Acanthaster planci*) in Guam killed 1 km of coral in a month in a narrow fringing coral reef and 90% of the coral in a 2.5 year period along 38 km of Guam's coastline (Chesher 1969). Any action of pursuit or annoyance from boats potentially disturbs marine mammals in the wild by causing disruption of their behavioral patterns or displacement from essential habitat areas, especially if the cetaceans or seals are in a resting phase (Bejder et al. 1999). Snorkel or dive operations also include the added risk of damaging living coral on the Refuge (Hawkins et al. 1999). Improper boat operation could result in localized impacts to the coral reef from repeated anchoring, touching, standing, or other avoidable physical disturbance to the coral.

Due to the limited frequency of this activity, we do not expect any additional short-term, long-term, and/or cumulative and indirect/secondary impacts other than those normally associated with required existing FWS work. However, it is critical that all visitors follow all quarantine procedures to prevent the accidental introduction of nonnative species to the Monument. One invasive species has the potential to devastate the fragile ecosystem (Chesher 1969). It may be appropriate to set a limit to the number of participants allowed under this use even if staff are available to coordinate the activities. Proposed uses when transportation costs are not covered, quarantine procedures not followed, or there is an unnecessary risk to the natural and cultural resources of the Refuge and Monument would not be permitted.

Public Review and Comment:

This determination was issued for public review and comment as part of the Papahānaumokuākea Draft Monument Management Plan. The plan and associated compatibility determinations were also made available through printed copies upon request and through the Monument Web sites at http://www.fws.gov/pacificislands and http://hawaiireef.noaa.gov/. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended, and as determined by the Co-Trustees of the Monument. The Monument is of national interest; therefore, the availability of the Monument Management Plan (including the CDs) was advertised at the national level.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

GENERAL TERMS AND CONDITIONS:

Each permittee would be required to adhere to all general conditions specified by the Monument Co-Trustees in their joint permit (Attachment 1).

A more comprehensive list of Refuge and Monument conditions and restrictions is included in this CD and 50 CFR Part 27. Not all of these conditions and restrictions would apply to every use. The type of use and where the activity occurs would drive which are relevant (Attachment 2).

All persons participating in the travel to and from any of the islands must adhere to the "Special Conditions for Movement to and from Islands" which cover the quarantine requirements (Attachment 3).

SPECIFIC TERMS AND CONDITIONS:

All permit holders would be required to submit a report to the Refuge that summarizes their activities at the Refuge. The report would include at a minimum the following: title, fiscal year, progress, products and distribution, problems encountered, proposed resolution to problems, preparer, and date prepared.

All projects would be monitored by Refuge staff to ensure the use remains compatible and resources (which include but are not limited to: nesting and resting seabirds and other migratory birds, Hawaiian monk seals, green turtles, spinner dolphins, fish, cetaceans, marine invertebrates, corals, Laysan ducks, Laysan finches, Nihoa finches, Nihoa millerbirds, native plants and insects, and cultural and historical resources) are not impacted. Staff will also monitor for the accidental release of pollution and contaminants, and the accidental introduction and establishment of nonnative species to the Refuge.

Permittees are responsible for acquiring and/or renewing any necessary State and Federal permits prior to beginning or continuing their project. In addition, the agencies commit to consultation under the Endangered Species Act, Marine Mammal Protection Act, as appropriate, prior to initiation of any action that may affect any marine mammal or Federally-listed species or designated critical habitat.

The Refuge Manager can suspend/modify conditions/terminate a project that is already permitted and in progress, should unacceptable impacts or issues arise or be noted.

All persons arriving to the Refuge are provided orientation materials and related information to minimize disturbance to wildlife ("wildlife viewing etiquette"). Specific restrictions (e.g., 150-foot minimum distance from seals, prohibition of access to heavily burrowed areas, etc.) are strictly enforced. The orientation materials include specific indicators of wildlife behavioral responses to disturbance, especially for the Hawaiian monk seal and green turtle, as well as appropriate visitor response to being approached by wildlife. The orientation also includes a visual demonstration of a 150-foot distance. The 150-foot distance is the minimum, however greater distances may be required depending upon the response of the wildlife. Information on the nesting locations of particularly rare species (e.g., white-tailed tropicbirds) may be withheld to protect these birds from disturbance. All persons arriving to the Refuge are required to go through orientation immediately upon arrival.

Permittees would not be allowed to approach closer than 150 feet to Laysan duck seeps unless authorized to do so by FWS staff.

Vessels involved in permitted activities would be required to return to dock at least 1 hour before sunset, which would also enhance boat operators' ability to avoid collisions with marine life. Permittees planning to engage in water-related activities during the albatross fledging season (June-July) would be thoroughly briefed on watching for shark activity, and water related activities are not permitted during peak shark foraging times (½-hour before dusk to ½-hour after sunrise).

Power boat operators may slow to allow observation, photography, or other recording of approaching spinner dolphins, but would neither pursue the dolphins nor specifically seek them out. If dolphins are encountered during transit between two points, we would allow the boat to slow and/or stop for observation, but entering the water would not be allowed. Routes to and from snorkeling/dive sites would be plotted to avoid known resting areas of spinner dolphins in the lagoon, as well as preferred Hawaiian monk seal haulout, molting, and pupping sites.

To eliminate anchoring impacts on coral, boat operators would be required to anchor in known sand areas or tie up to a mooring buoy. Anchors will be lowered into place rather than tossed overboard to control placement.

Only four-stroke outboard motors would be used for boats. These motors are cleaner-running and quieter than two-stroke motors and would not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals. No other loud sounds would be associated with this program.

Permittee would be responsible to cover all Refuge costs associated with the recording activity.

Permittee would be required to be accompanied by FWS-approved guides.

Permittee would provide FWS and Co-Trustees with at least one free copy of all commercial products generated on the Refuge for noncommercial use promoting the Monument, Refuge, and the National Wildlife Refuge System.

All commercial films, books, and other recordings of images and sounds collected on the Refuge would need to reference the fact that they were collected on the Refuge and also state in the products that the Refuge is closed to general public use.

Justification:

Allowing commercial photography, video, filming, and audio recording as an economic wildlife-dependent use would contribute to the achievement of the Refuge purpose and the mission of the FWS. The products may reach groups of people that would not normally know about the Refuge. The services provided by commercial filmmakers are also beneficial to expand public appreciation for and understanding of unique wildlife, diverse native habitats, management programs, and the mission of the National Wildlife Refuge System.

Conditions imposed by the Refuge and Monument in their permits for photography, video, filming, and audio recording would ensure that these wildlife-dependent activities occur without adverse effects to Refuge resources or other permittees.

This proposed activity contributes to the mission of the FWS. In addition to reaching the general public through educational wildlife media, the end products may provide an educational opportunity to a much broader distribution of people who may not have the opportunity to visit and personally view these remote and very unique resources. The media products produced by these commercial operations would also be beneficial in promoting the mission of the National Wildlife Refuge System.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____X_____ Mandatory 10-year reevaluation date (for nonwildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

References Cited:

Bejder, L., S. M. Dawson, and J. A. Harraway. 1999. Responses by Hector's dolphins to boats and swimmers in porpoise bay, New Zealand. 15(3):738-750.

Chesher, R. H. 1969. Destruction of Pacific corals by the sea star *Acanthaster planci*. Science 165(3890):280-283.

Executive Order 1019. 3 February 1909. Establishing the Hawaiian Islands Reservation.

Fowler, G.S. 1995. Ecotourism, field studies and stress: behavioral and hormonal responses of Magellanic penguins to nest site disturbance. Abstracts to Pacific Seabird Group Annual Meeting, 1995.

Gerrodette, T.G., and W.G. Gilmartin. 1990. Demographic consequences of changed pupping and hauling sites of the Hawaiian monk seal. Conservation Biology 4:423-430.

Hawkins, J. P., C. M. Roberts, T. V. T. Hof, K. D. Meyer, J. Tratalos, and C. Aldam. 1999. Effects of recreational scuba diving on Caribbean coral and fish communities. Conservation Biology 13(4):888-897.

Jungius, H. and U. Mirsch. 1979. Changes in heartbeats in nesting birds at Galapagos by human disturbance. Journal of Field Ornithology. 120:299-310.

Kenyon, K.W. 1972. Man verses the Monk Seal. Journal of Mammalogy 53:687-696.

Kitaysky, A., M. Benowitz-Fredericks, Z. Kitaiskaia, M. Shultz, and B. Zaun. 2003. Effects of tourist disturbance on stress physiology of wedge-tailed shearwaters (*Puffinus pacificus*) chicks at Kilauea Point National Wildlife Refuge, Kauai, Hawaii. Unpubl. refuge report.

Nimon, A.J., R.C. Schroter, and B. Stonehouse. 1995. Heart rate of disturbed penguins. Nature 374:415.

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Presidential Proclamation 8031, 15 June 2006 (71 FR 36443) Establishing the Northwestern Hawaiian Islands as a marine national monument.

Presidential Proclamation 8112, 6 March 2007. Establishment of the Papahānaumokuākea Marine National Monument (72 FR 10031)

Ragen, T. 1997. Human Activities Affecting the Population Trends of the Hawaiian Monk Seal. Conservation of Long-Lived Marine Animals Conference. 24 August 1997; Monterey, CA.

Refuge Determination:

Refuge Manager
Approval**:** _____ Date:_____
(Signature)

FWS Superintendent,
Papahānaumokuākea Marine National Monument

_____ Date:_____
(Signature)

Project Leader,
Hawaiian and Pacific
Islands NWRC _____ Date_____
(Signature)

Concurrence:

Refuge Supervisor,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

Regional Chief,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Hawaiian Islands National Wildlife Refuge

Use: Sustenance Fishing

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?		✔
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?		✔
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ✔ No ___

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate ✔ **Appropriate**_____

Refuge Manager:_____ Date:_____

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor:_____ Date:_____

A compatibility determination is required before the use may be allowed.

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Finding of Appropriateness of a Refuge Use: Attachment 1

Use: Sustenance Fishing

Additional information regarding the U.S. Fish and Wildlife Service evaluation of proposed Sustenance Fishing at Hawaiian Islands National Wildlife Refuge, Papahānaumokuākea Marine National Monument.

(c) The use is not consistent with applicable Executive orders and Department and Service policies:

Presidential Proclamation 8031 states: "The Secretaries may permit sustenance fishing outside of any Special Preservation Area as a term or condition of any permit issued under this proclamation."

The Hawaiian Islands NWR is within Special Preservation Areas (SPAs) designated by Proclamation 8031. The authority to allow sustenance fishing within SPAs was not granted the Secretaries of Commerce and the Interior. Therefore, this proposed activity is not consistent with applicable Executive orders, etc., and is found Not Appropriate.

FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Midway Atoll National Wildlife Refuge

Use: Operations by Monument Co-Managing Agencies

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?	✔	
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ___ No ✔

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate_____ **Appropriate** ✔

Refuge Manager:_____ Date:_____

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor:_____ Date:_____

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

Compatibility Determination

Use: Operations of Monument Co-managing Agencies

Station Name: Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Papahānaumokuākea Marine National Monument

City/County and State: Midway Atoll is the penultimate western atoll in the Northwestern Hawaiian Islands, is considered an unincorporated, insular area of the United States (General Accounting Office 1997), and lies outside the State of Hawai'i

Establishing and Acquisition Authority(ies):

Midway Atoll National Wildlife Refuge (NWR) was established in 1988 as an overlay Refuge by a cooperative agreement with the U.S. Navy (Navy) under the authority of the Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act of 1934, and National Wildlife Refuge System Administration Act of 1966, as amended (U.S. Navy and U.S. Fish and Wildlife Service 1988). Under this agreement, administrative responsibility for the refuge was shared by the U.S. Fish and Wildlife Service (FWS) and the Navy. The Naval Air Facility at Midway was operationally closed in 1993. Facility cleanup was completed by June 30, 1997, when the Navy and its contractors departed. Jurisdiction and control for Midway Atoll were officially transferred from the Navy to the FWS under Executive Order (EO) 13022, signed by President Clinton on October 31, 1996, which superseded earlier orders that assigned responsibility for Midway to the Navy. Secretary of the Interior Babbitt signed Secretary's Order 3217 on September 13, 2000, designating Midway Atoll NWR concurrently as the Battle of Midway National Memorial. On June 15, 2006, President Bush signed Presidential Proclamation (PP) 8031 making Midway Atoll NWR part of a monument that became the Papahānaumokuākea Marine National Monument (Monument) on March 6, 2007 (PP 8112). Under PP 8031, Midway has unique authority and responsibility as a Special Management Area.

Refuge Purpose(s):

The following purposes were included in the cooperative agreement between the Navy and FWS (U.S. Navy and U.S. Fish and Wildlife Service 1988) under the Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act of 1934, and National Wildlife Refuge System Administration Act of 1966, as amended. Pertinent language in those statutes includes:

1. ". . . for the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the U.S. Fish and Wildlife Service, in performing its activities and services" (Fish and Wildlife Act of 1956).

2. ". . . shall be administered by the Secretary of the Interior directly in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon . . ." (Fish and Wildlife Coordination Act of 1934)

3. "…consolidate the authorities… for… the conservation of fish and wildlife...." (National Wildlife Refuge System Administration Act of 1966, as amended)

The following additional purposes were included in EO 13022, dated October 31, 1996, which transferred jurisdiction and control over the Midway Islands from the Navy to the U.S. Department of the Interior:

1. Maintaining and restoring biological diversity within the refuge;

2. Providing for the conservation and management of fish and wildlife and their habitats within the refuge;

3. Fulfilling the international treaty obligations of the United States with respect to fish and wildlife;

4. Providing opportunities for scientific research, environmental education, and compatible wildlife-dependent recreational activities; and

5. In a manner compatible with refuge purposes, recognizing and maintaining Midway's historic significance.

Additionally, PP 8031 established the Papahānaumokuākea Marine National Monument, which covers a much larger area than the Refuge, but also includes the Refuge. The Monument's establishing purpose is "…protecting the objects described above (coral, fish, birds, marine mammals, and other flora and fauna), all lands and interest in lands owned or controlled by the Government of the United States…".

National Wildlife Refuge System Mission:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. 668dd-668ee)).

Description of Use(s):

Papahānaumokuākea Marine National Monument is co-managed by FWS, the National Oceanic and Atmospheric Administration (NOAA) and the State of Hawai'i (State). Midway Atoll NWR is a part of the Monument. This compatibility determination (CD) covers joint operational activities within Midway Atoll NWR by NOAA and the State, which includes but is not limited to the joint use of facilities, small boats, vessels, and aircraft, and coordinated field activities. All activities covered under this CD are reviewed by the Co-Trustees through the Monument permitting process.

Some examples of this joint-use include, but are not limited to, NOAA and the State: 1) sharing and using FWS living facilities, 2) conducting monitoring (not research) of plants and animals (research is addressed in a separate CD), 3) using FWS docking or landing facilities for their vessels and aircraft, and FWS, NOAA, and the State: 4) jointly using airplanes and ships for transporting supplies.

More specific examples of where and under what conditions this CD would apply are listed in the Monument Management Plan under:

1) Section 3.3.1, Activity MD-1.1, Continue working with partners to remove marine debris in the Monument and reduce additional debris entering the Monument.
2) Section 3.2.1, Activity TES-1.2, Support and facilitate emergency response for monk seals.
3) Section 3.6.3, Activity CFO-6.2, Within 2 years, station additional vessels at Midway for use during the summer marine research field season.

Joint operations on Midway Atoll also are proposed within the Midway Atoll National Wildlife Refuge Conceptual Site Plan (see Appendix B).

This is not a wildlife dependent use as defined by the National Wildlife Refuge System Administration Act, as amended (16 U.S.C. 668dd-668ee).

Most of the activities would occur on Sand Island, but could occur on or in any of the lands and/or waters of Midway Atoll NWR.

These year-around, joint use and management activities occur throughout the Monument. This CD primarily covers facilities at Sand Island, use of small boats, vessels, and aircraft, and coordinated field activities within Midway Atoll NWR. By coordinating these field activities and sharing infrastructure and equipment, the Co-Trustees can ensure safe and efficient management and monitoring operations while avoiding or minimizing adverse impacts to the natural, cultural, and historic resources within the Monument. Current co-management uses include approximately 12 projects/programs, some of which are one-time or one-per-year events and others of which occur continuously, year-round. At any one time, these several projects/programs involve up to 15 people. Throughout the year, the number of people currently on the Refuge participating in this use averages 4-6, but could significantly increase in coming years.

A Monument permit for all these types of operational activities is issued by the Co-Trustees. The permit contains standard and specific operating requirements. The Monument Management Board reviews all proposed activities by FWS, NOAA, State, and agency partners, contractors, and cooperators to ensure the protection of the Monument's unique resources.

This activity/use is proposed because the Presidential Proclamation 8031 establishes a coordinated regime within the Northwestern Hawaiian Islands. This allows all Monument personnel from FWS, NOAA, and the State to work together, and share facilities, equipment, and management activities.

FWS has some facilities and equipment available for this use on Sand Island that includes office space, housing, motorboats, dive tanks, heavy equipment, harbor, piers, runway, dining hall, and tools. Users share the cost of maintenance and replacement of these items or supply their own for special operational needs.

Availability of Resources:

The availability of resources is not entirely applicable to this CD, because the three co-managing agencies generally share costs involved or exchange costs borne by one agency for in kind services. The FWS operates its stations under a full cost recovery requirement. Under situations where FWS costs are increased, such as travel to and onsite living on Sand Island, the FWS requires payment by the cooperating agency. A permanent operational presence of other agencies on Midway will increase annual maintenance, special equipment, facilities or improvement costs. Monument co-managing agencies will develop cooperating agreements that clearly identify the cost sharing arrangement s. Increases in these annual operating costs due to increased presence will be borne by the co-managing agencies with no additional cost borne by the FWS.

Transportation costs to reach the Refuge are paid for by the individual agency or exchanged for in kind service.

Category and Itemization	**One-time ($)**	**Annual ($/yr)**
Administration and Management		$6,800
Maintenance		NA
Monitoring & Research		$6,000
Special equipment, facilities or improvements		NA
Offsetting Revenues		$0

The numbers above reflect the current estimated costs. Estimated costs for Administration and Management and Monitoring and Research were calculated using 8% of the base cost of a GS-13 refuge manager and a GS-12 assistant refuge manager assuming those activities would use that estimated "portion of a year" to administer.

Anticipated Impacts of the Use(s):

Possible impacts from persons involved in operations by Monument co-managing agencies include: (1) disturbance to nesting and resting seabirds and other migratory birds; (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green turtles (*Chelonia mydas*) swimming and feeding in the nearshore marine environment or resting on beaches; (3) disturbance to spinner dolphins (*Stenella longirostris*) swimming and feeding in the nearshore marine environment; (4) disturbance to fish, cetaceans, marine invertebrates, and corals; (5) disturbance to Laysan ducks (*Anas laysanensis*); (6) trampling of native plants and insects; (7) damage to corals; (8) accidental release of pollution and contaminants; and (9) the accidental introduction and establishment of nonnative species to the Monument. All activities would be designed and managed in a manner to eliminate or minimize these impacts. Some proposed activities will require further analysis and compliance by the agencies as more detailed information becomes available and specific plans are developed. These requirements may include additional analysis in accordance with NEPA, and consultation under ESA, Marine Mammal Protection Act, NHPA, and other relevant laws.

Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, Nimon *et al.*, 1995 and Kataysky *et al.,* 2003). Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. When co-managers are observing and working in the vicinity of albatrosses, terns, boobies, Laysan ducks, or other species in the less visited areas, they would have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive. Kitaysky *et al.* (2003) showed that limited duration disturbance, however, has only minor, short-term effects. Contact periods for any particular bird or group of birds would be kept to 15 minutes or less for this reason. It is important to note that even wildlife photography by professionals or amateurs can often be disturbing depending on the manner in which it is pursued.

Human activities have played a major role in determining the status and trend of Hawaiian monk seals over the past two centuries (Ragen 1997). From the 1960s to the 1990s, decreases in monk seal populations at several locations (French Frigate Shoals, Midway Atoll, and Kure Atoll) have been associated with human disturbance (Gerrodette 1990). Recreational beach activities caused monk seals to alter their pupping and hauling patterns, and survival of pups in suboptimal habitats was low, leading to gradual population declines (Kenyon 1972). Human activity and disturbance caused incredible declines at Midway Atoll (Kenyon 1972). Beach counts of monk seals at Midway Atoll averaged 56 animals in the late 1950s, but declined severely by the late 1960s with a single seal observed during an aerial survey

in 1968. Monks seals are very sensitive to disturbance and proposed activities should be carefully reviewed and, as appropriate, restricted so no further impacts to seals would occur.

Increased use of Monument waters also increases the potential for introductions of nonnative species and interactions (some negative) by boats, kayaks, or snorkelers/divers with monk seals, sea turtles, spinner dolphins, cetaceans, and live corals. One accidental introduction of a nonnative species on a boat or dive equipment could devastate the Monument. The introduced sea star (*Acanthaster planci*) in Guam killed 1 km of coral in a month in a narrow fringing coral reef and 90% of the coral in a 2.5 year period along 38 km of Guam's coastline (Chesher 1969). Any action of pursuit or annoyance from boats potentially disturbs marine mammals in the wild by causing disruption of their behavioral patterns or displacement from essential habitat areas, especially if the cetaceans or seals are in a resting phase (Bejder et al. 1999). Snorkel or dive operations also include the added risk of damaging living coral on the Refuge (Hawkins et al. 1999). Improper boat operation could result in localized impacts to the coral reef from anchoring, touching, standing, or other avoidable physical disturbance to the coral.

Each activity by any of the co-managing agencies would be carefully reviewed to eliminate if possible and/or prevent any significant short-term, long-term or cumulative impacts. All proposals would have to go through the Monument permitting process, which requires review by the other Monument Co-Trustees. This high level of review would help ensure that impacts of any kind are carefully considered before any permit for co-managing agencies activities is issued.

Proposals that may have a negative impact to the Refuge and/or Monument natural, cultural, or historic resources would not be permitted.

Public Review and Comment:

This determination was issued for public review and comment as part of the Papahānaumokuākea Draft Monument Management Plan. The plan and associated compatibility determinations were also made available through printed copies upon request and through Monument Websites at http://www/fws/gov/pacificislands and http://hawaiireef.noaa.gov/. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended, and as determined by the Co-Trustees of the Monument. The Monument is of national interest, therefore, the availability of the MMP (including the CDs) was advertised at the national level.

Determination:

___ Use is Not Compatible

X Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

GENERAL TERMS AND CONDITIONS:

Each co-manager would be required to adhere to all general conditions specified by the Monument Co-Trustees in their joint permit (Attachment 1).

A more comprehensive list of Refuge and Monument conditions and restrictions is included in this CD and/or 50 CFR Part 27. Not all of these conditions and restrictions would apply to every use. Depending

upon the type of use and where the activity occurs would drive which are relevant (Attachment 2).

All persons participating in the travel to and from any of the islands in the Monument must adhere to the "Special Conditions for Movement to and from Islands," which cover the quarantine requirements (Attachment 3).

SPECIFIC TERMS AND CONDITIONS:

All projects would be monitored by Refuge staff to ensure the use remains compatible and natural, cultural, and historic resources (which include but are not limited to: nesting and resting seabirds and other migratory birds, Hawaiian monk seals, green turtles, spinner dolphins, fish, cetaceans, marine invertebrates, corals, Laysan ducks, native plants and insects, and cultural and historical resources) are not impacted. Staff will also monitor for the accidental release of pollution and contaminants, and the accidental introduction and establishment of nonnative species to the Monument.

If the proposed activities would impact or potentially impact Monument resources (habitat or wildlife), it must be demonstrated that the activities are essential, and the co-manager must identify the issues in advance of the impact. Highly intrusive or manipulative activities are generally not permitted in order to protect native bird and marine mammal populations.

Co-managers are responsible for acquiring and/or renewing any necessary State and Federal permits prior to beginning or continuing their project. In addition, the agencies commit to consultation under the Endangered Species Act, Marine Mammal Protection Act, as appropriate, prior to initiation of any action that may affect any marine mammal or Federally-listed species or designated critical habitat.

The Refuge Manager can suspend/modify conditions/terminate an activity that is already permitted and in progress on the Refuge, should unacceptable impacts or issues arise or be noted.

The beaches on Spit and Eastern Island are closed (unless special permission is granted) as well as the southern and western beaches on Sand Island. Power boats are not allowed to travel closer than 500 feet from these closed beaches, except for activities occurring on Eastern Island that would necessitate tying up to the pier.

Co-managers are provided cultural briefing information, as well as orientation materials and related information to minimize disturbance to wildlife ("wildlife viewing etiquette"). Specific restrictions (e.g., 150-foot minimum distance from seals, prohibition of access to heavily burrowed areas, etc.) are strictly enforced. The orientation materials include specific indicators of wildlife behavioral responses to disturbance, especially for the Hawaiian monk seal and green sea turtle, as well as appropriate visitor response to being approached by wildlife. The orientation also includes a visual demonstration of a 150-foot distance. The 150-foot distance is the minimum, however greater distances may be required depending upon the response of the wildlife. Information on the nesting locations of particularly rare species (e.g., white-tailed tropicbirds) may be withheld to protect these birds from disturbance. All Monument co-managers are required to go through orientation immediately upon arrival or early the next day in the case of an unusually late arrival.

Monument co-managers who desire access to areas not generally open to the public would be required to abide by more detailed access restrictions and regulations to protect wildlife. At the discretion of the Refuge Manager, FWS-approved guides may be assigned to accompany co-managers into particularly sensitive areas.

All trips to Eastern Island for activities would be closely supervised by FWS-approved guides. Boats would tether to either end of the 150-foot pier, and disembarking passengers would be briefed on proper behavior to minimize disturbance to Hawaiian monk seals or green turtles that may be present. During periods of intensive tern nesting, routes would be carefully selected to minimize disturbance. Co-managers would be advised to travel in single file in an expeditious manner through the colony. Photography would be allowed at the beginning and end of such a transit, not in the middle, to reduce the length of disturbance to the core nesting population. Restrictions on access to sensitive areas would be enforced. Spit Island would be off limits unless they accompany FWS-approved guides and have FWS authorization.

Co-managers would not be allowed to approach closer than 150 feet to Laysan duck seeps.

Vessels involved in activities would be required to return to dock at least 1 hour before sunset, which would also enhance boat operators' ability to avoid collisions with marine life. Within the inner harbor, boats must remain within speed limits of 10 knots. Co-managers planning to engage in water-related activities during the albatross fledging season (June-July) would be thoroughly briefed on watching for shark activity, and water related activities would not be permitted during peak shark foraging times (½-hour before dusk to ½-hour after sunrise).

Power boat operators may slow to allow observation of approaching spinner dolphins, but would neither pursue the dolphins nor specifically seek them out. If dolphins are encountered during transit between two points, we would allow the boat to slow and/or stop for observation, but entering the water would not be allowed. Routes to and from snorkeling/dive sites would be plotted to avoid known resting areas of spinner dolphins in the lagoon (Fig. 1), as well as preferred Hawaiian monk seal haulout, molting, and pupping sites.

To eliminate anchoring impacts on coral, boat operators would be required to anchor in known sand areas or tie up to a mooring buoy.

Co-managers and their luggage would go through an inspection for insects and plants prior to departing Honolulu, and again when leaving Midway to reduce the possibility of alien species introductions. Co-managers would be asked to clean their shoes and other clothing before coming to Midway through advance introductory materials. Anyone bringing their own snorkel or dive gear to Midway would be required to treat the gear to prevent the inadvertent introduction or transmission of alien species.

Only four-stroke outboard motors would be used for boats. These motors are cleaner-running and quieter than two-stroke motors and would not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals. No other loud sounds would be associated with this program.

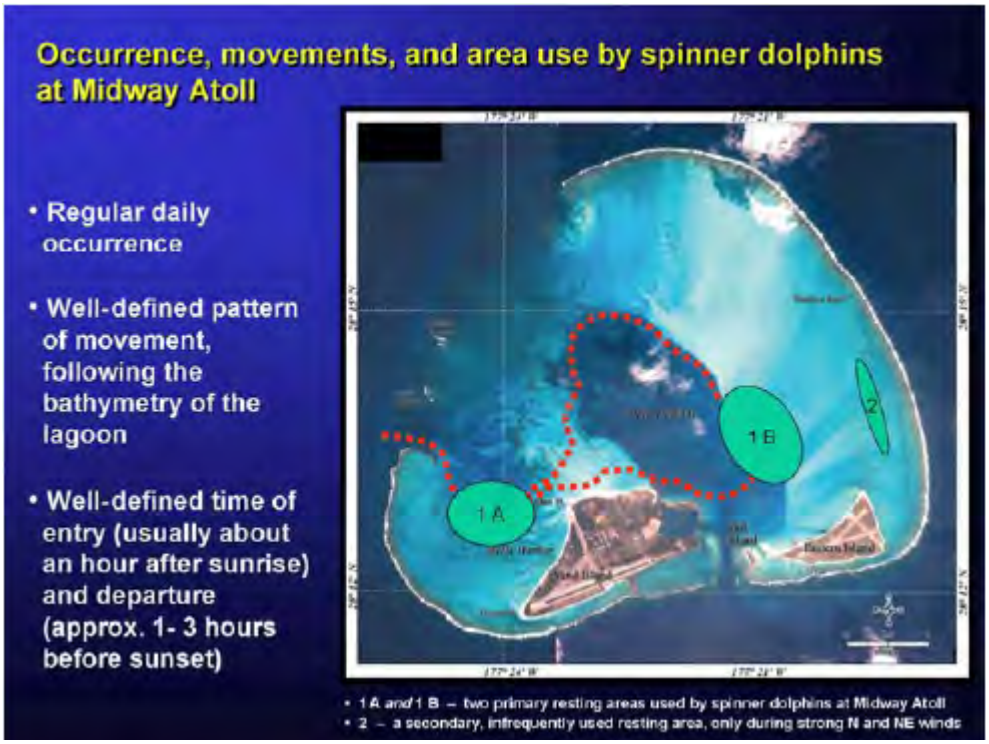

Figure 1. Occurrence, movements, and area use by Hawaiian spinner dolphins at Midway Atoll (courtesy of Dr. Leszek Karczmarkski)

A review of files documenting past violations of closed beaches and/or monk seal disturbance shows that many of the people had not received orientation to the refuge and closed areas. Strict compliance with the orientation policy would address many of those types of violations. Some of the documented violations were clearly due to poor or nonexistent signing. A new sign plan would be developed by Refuge staff and all signs put in place by 2009. Temporary signs may be used prior to that time. Activities may be temporarily or permanently halted for purposeful violations of closed beached and endangered species regulations.

Justification:

Presidential Proclamation 8031 establishes a coordinated management regime for Papahānaumokuākea Marine National Monument. This allows all Monument personnel from FWS, NOAA, and the State to work together, and share facilities, equipment, and management activities so the Monument's natural, cultural, and historic resources may be enjoyed and protected in perpetuity. The FWS, NOAA, and the State each have their own special expertise and experience and working together to achieve purposes of the Monument and the Refuge is cost-effective and produces synergistic benefits.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____X_____ Mandatory 10-year reevaluation date (for nonwildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

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U.S. Fish and Wildlife Service. 2000. Update to U.S. Fish and Wildlife Service Manual Chapter 2 on compatibility: Part 603 National Wildlife Refuge System uses. Washington, D.C.

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Refuge Determination:

Refuge Manager
Approval**:** _____ Date:_____
(Signature)

FWS Superintendent,
Papahānaumokuākea Marine National Monument

_____ Date:_____
(Signature)

Project Leader,
Hawaiian and Pacific
Islands NWRC _____Date_____
(Signature)

Concurrence:

Refuge Supervisor,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

Regional Chief,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Midway Atoll National Wildlife Refuge

Use: Research, Scientific Collecting, and Surveys

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?	✔	
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ___ No ✔

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate_____ **Appropriate**✔

Refuge Manager:_____ Date:_____

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor:_____ Date:_____

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

Compatibility Determination

Use: Research and Surveys

Station Name: Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Papahānaumokuākea Marine National Monument

City/County and State: Midway Atoll is the penultimate western atoll in the Northwestern Hawaiian Islands, is considered an unincorporated, insular area of the United States (General Accounting Office 1997), and lies outside the State of Hawai‘i

Establishing and Acquisition Authority(ies):

Midway Atoll National Wildlife Refuge (NWR) was established in 1988 as an overlay Refuge by a cooperative agreement with the U.S. Navy (Navy) under the authority of the Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act of 1934, and National Wildlife Refuge System Act of 1966 (U.S. Navy and U.S. Fish and Wildlife Service 1988). Under this agreement, administrative responsibility for the Refuge was shared by the U.S. Fish and Wildlife Service (FWS) and the Navy. The Naval Air Facility at Midway was operationally closed in 1993. Facility cleanup was completed by June 30, 1997, when the Navy and its contractors departed. Jurisdiction and control for Midway Atoll were officially transferred from the Navy to the FWS under Executive Order (EO) 13022, signed by President Clinton on October 31, 1996, which superseded earlier orders that assigned responsibility for Midway to the Navy. Secretary of the Interior Babbitt signed Secretary's Order (SO) 3217 on September 13, 2000, designating Midway Atoll NWR concurrently as the Battle of Midway National Memorial. On June 15, 2006, President Bush signed Presidential Proclamation (PP) 8031 making Midway Atoll NWR part of a monument that became the Papahānaumokuākea Marine National Monument (Monument) on March 6, 2007 (PP 8112). Under PP 8031, Midway has unique authority and responsibility as a Special Management Area.

Refuge Purpose(s):

The following purposes were included the cooperative agreement between the Navy and FWS (U.S. Navy and U.S. Fish and Wildlife Service 1988) under the Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act of 1934, and National Wildlife Refuge System Administration Act of 1966. Pertinent language in those statutes includes:

1. ". . . for the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the U.S. Fish and Wildlife Service, in performing its activities and services." (Fish and Wildlife Act of 1956)

2. ". . . shall be administered by the Secretary of the Interior directly in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon . . ." (Fish and Wildlife Coordination Act of 1934)

3. "…consolidate the authorities… for… the conservation of fish and wildlife...." (National Wildlife Refuge System Administration Act of 1966, as amended)

The following additional purposes were included in EO 13022, dated October 31, 1996, which transferred jurisdiction and control over the Midway Islands from the Navy to the U.S. Department of the Interior:

1. Maintaining and restoring biological diversity within the refuge;

2. Providing for the conservation and management of fish and wildlife and their habitats within the refuge;

3. Fulfilling the international treaty obligations of the United States with respect to fish and wildlife;

4. Providing opportunities for scientific research, environmental education, and compatible wildlife-dependent recreational activities; and

5. In a manner compatible with refuge purposes, recognizing and maintaining Midway's historic significance.

Additionally, PP 8031 established the Papahānaumokuākea Marine National Monument, which covers a much larger area than the Refuge, but also includes the Refuge. The Monument's establishing purpose is "…protecting the objects described above (coral, fish, birds, marine mammals, and other flora and fauna), all lands and interest in lands owned or controlled by the Government of the United States…."

National Wildlife Refuge System Mission:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. 668dd-668ee).

Description of Use(s):

When determined compatible on a refuge-specific basis, research, scientific collecting, and surveys (research) are allowable uses and are conducted on NWR lands and waters by independent researchers, partnering agencies, and educational groups. The FWS defines these uses as:

- Research: Planned, organized, and systematic investigation of a scientific nature.
- Scientific collecting: Gathering of refuge natural resources or cultural artifacts for scientific purposes.
- Surveys. Scientific inventory or monitoring.

The types of research vary greatly, but mostly revolve around birds, marine animals, sea turtles, coral reefs, the marine environment, fish population dynamics, marine debris, contaminants, habitat classification and restoration, and historic resources.

Presently at Midway Atoll 14 research projects are ongoing, which is representative of the number of projects that has occurred at year at Midway for the past 5 years. This number is expected to greatly increase in the next 10 years. Current research projects include but are not limited to coral reef assessment, fledgling albatross movements, Bonin petrel (*Pterodroma hypoleuca*) abundance and distribution, juvenile reef fish recruitment, radio wave analysis, greenhouse gas monitoring, shark movement, and marine debris deposition analysis. The number of researchers on the Refuge ranges from 0 to 10 people at one time.

More specific examples of where this CD might apply are included in the Monument Management Plan, which lists approximately 80 proposed actions that would generate a multitude of research projects in the future. These proposed actions fall under the following categories: Native Hawaiian culture and history, historic resources, maritime heritage, threatened and endangered species, migratory birds, habitat management and conservation, marine debris, alien species, and maritime transportation and aviation. Examples of such activities include:

1) Section 3.2.1, Activity TES-4.2, Conduct studies to examine the correlation between reproductive success and contaminant loads.
2) Section 3.2.2, Activity MTA-2.1, Conduct studies on potential aircraft and vessel hazards and impacts.

Research proposals may be for any time of the year and on any of the islands and/or surrounding waters within the Refuge. However, the Refuge may limit the time and location of research projects to ensure that negative impacts to NWR resources are avoided or limited.

Each research or survey project would undoubtedly have different protocols and methodologies; therefore, each study necessitates its own scientific review. Each research project would be carefully reviewed to prevent any significant short-term, long-term or cumulative impacts. New research requests would be evaluated by Refuge staff by comparing them to ongoing or recently completed research on the Refuge to determine if the species studied, methodologies used, or habitat type and locations may lead to undesirable cumulative impacts. All projects would be subjected to the Monument permitting process, in which the Refuge also participates. This high level of review would help ensure all levels and types of impacts are carefully considered before any permit for research is issued. Within the permit, conditions would be clearly defined so as to protect and conserve the existing natural, cultural, and historic resources found within the Monument. Standard and specific conditions are included in this CD under Stipulations Necessary to Ensure Compatibility.

This use has been primarily proposed because the collecting and analyzing scientific data is extremely valuable to the FWS for its ongoing management of the Refuge and Monument. The gathered information would also used by other scientists and teachers around the world. The published manuscripts from this research help to disseminate the FWS mission and the significance of the Monument to other researchers and the public.

The FWS has some facilities and equipment available for this use that include office space, housing, motorboats, dive tanks, and bird banding supplies. Users pay fees to use these facilities and equipment or they supply their own.

Availability of Resources:

Midway Atoll's extreme remoteness makes the operation and maintenance of its airfield, harbor, buildings, and infrastructure very costly for FWS. Therefore, appropriate fees would be charged for research projects occurring at Midway Atoll to help FWS defray their operational costs. A complete and updated fee schedule can be found at the refuge internet website at: http://midway.fws.gov.

The FWS has sufficient staffing and funding to administratively support and monitor research that is currently taking place. Any significant increase in the number of research projects would create a need for additional employees to oversee the administration and monitoring of the researchers and their projects.

Any significant additional cost to the Refuge caused by researchers must be offset by the sponsoring agency or organization.

Category and Itemization	**One-time ($)**	**Annual ($/yr)**
Administration and Management		$4,000
Maintenance		$10,000
Monitoring & Research		$8,000
Special equipment, facilities or improvements		$0
Offsetting revenues		Some fees would be collected from researchers

The numbers above reflect the current estimated costs. Estimated costs were calculated using 10 % of the base cost of a GS-11 refuge biologist and a 3 % cost of a GS-13 refuge manager assuming that this priority use would use that portion of a year to administer. Off-setting revenues are fees paid by researchers for their stay on Midway Atoll and obtaining a project permit. These fees include boat rentals, housing, a research/project fee as well as others, and would amount to approximately the cost of administering this use.

Permittees would pay the cost of their transportation to the Refuge.

Anticipated Impacts of the Use(s):

Possible impacts from this use include: (1) disturbance to nesting and resting seabirds and other migratory birds; (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green turtles (*Chelonia mydas*) swimming and feeding in the nearshore marine environment or resting on beaches; (3) disturbance to spinner dolphins (*Stenella longirostris*) swimming and feeding in the nearshore marine environment; (4) disturbance to fish, cetaceans, marine invertebrates, and corals; (5) disturbance to Laysan ducks (*Anas laysanensis*); (6) trampling of native plants and insects; (7) damage to corals; (8) accidental release of pollution and contaminants; and (9) the accidental introduction and establishment of nonnative species to the Monument. All research would be designed and managed in a fashion with the best intent to eliminate or minimize these impacts. However, even with proper management and execution of a well planned project, certain behavioral responses in wildlife may occur that are not easily recognized by the casual observer. Some proposed activities will require further analysis and compliance by the agencies as more detailed information becomes available and specific plans are developed. These requirements may include additional analysis in accordance with NEPA, and consultation under ESA, Marine Mammal Protection Act, NHPA, and other relevant laws.

Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, Nimon et al., 1995 and Kataysky et al., 2003). Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. When participants are observing albatrosses, terns, boobies, Laysan ducks, or other species in the less visited areas, they would have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive. Kitaysky et al. (2003) showed that limited duration disturbance, however, has only minor, short-term effects. Observation periods for any particular bird or group of birds would be kept to 15 minutes or less for this reason, unless there is a justified research

question to answer and the length of time is acceptable. Observations occurring at the FWS blind placed at the water catchment area can continue for up to 1 hour. It is important to note that even wildlife photography by professionals or amateurs can often be disturbing depending on the manner in which it is pursued.

Human activities have played a major role in determining the status and trend of Hawaiian monk seals over the past two centuries (Ragen 1997). The historical record suggests that human access to the Northwestern Hawaiian Islands is increasing, and such activities may become a greater impediment to monk seal recovery if they are not limited to those compatible with wildlife conservation. From the 1960s to the 1990s, decreases in monk seal populations at several locations (French Frigate Shoals, Midway Atoll, and Kure Atoll) have been associated with human disturbance (Gerrodette 1990). Recreational beach activities caused monk seals to alter their pupping and hauling patterns, and survival of pups in suboptimal habitats was low, leading to gradual population declines (Kenyon 1972). Human activity and disturbance caused incredible declines at Midway Atoll (Kenyon 1972). Beach counts of monk seals at Midway Atoll averaged 56 animals in the late 1950s, but declined severely by the late 1960s with a single seal observed during an aerial survey in 1968. It is clear from these examples that monks seals are very sensitive to disturbance and proposed activities should be carefully reviewed and, as appropriate, restricted so no further impacts to seals would occur.

Increased use of Refuge waters also increases the potential for introductions of nonnative species and interactions (some negative) by boats, kayaks, or snorkelers/divers with monk seals, sea turtles, spinner dolphins, cetaceans, and live corals. One accidental introduction of a nonnative species on a boat or dive equipment could devastate Midway Atoll. The introduced sea star (*Acanthaster planci*) in Guam killed 1 km of coral in a month in a narrow fringing coral reef and 90% of the coral in a 2.5 year period along 38 km of Guam's coastline (Chesher 1969). Any action of pursuit or annoyance from boats potentially disturbs marine mammals in the wild by causing disruption of their behavioral patterns or displacement from essential habitat areas, especially if the cetaceans or seals are in a resting phase (Bejder et al. 1999). Snorkel or dive operations also include the added risk of damaging living coral on the Refuge (Hawkins et al. 1999). Improper boat operation could result in localized impacts to the coral reef from repeated anchoring, touching, standing, or other avoidable physical disturbance to the coral.

Although a single research project for a single year may cause few, if any, negative resource impacts, it may in fact cause cumulative impacts over multiple years or when considered additively with all research projects in the Monument. Therefore, it is critical for Monument managers to examine all projects with a multi-year timeframe in mind and consider all research that is planned concurrently in the Monument before approval is granted. It may be appropriate to set a limit to the number of research projects occurring in a particular habitat or relative to a single species or species group, even if staff are available to coordinate the projects. Based on the shorter-term nature of the majority of the 14 research projects currently occurring at Midway, the probability of cumulative impacts is low.

Public Review and Comment:

This determination was issued for public review and comment as part of the Papahānaumokuākea Draft Monument Management Plan. The plan and associated compatibility determinations were also made available through printed copies upon request and through the Monument Websites at http://www.fws.gov/pacificislands and http://hawaiireef.noaa.gov/. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended and as determined by the Co-Trustees of the. The Monument is of national interest; therefore, the availability of the Draft Monument Management Plan (including the CDs) was advertised at the national level.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

GENERAL TERMS AND CONDITIONS:

Each permittee would be required to adhere to all general conditions specified by the Monument Co-Trustees in their joint permit (Attachment 1).

A more comprehensive list of Refuge and Monument conditions and restrictions is included in this CD and 50 CFR, Part 27. Not all of these conditions and restrictions would apply to every use. The type of use and where the activity occurs would drive which are relevant (Attachment 2).

All persons participating in the travel within the Monument to and from any of the islands must adhere to the "Special Conditions for Movement to and from Islands" which cover the quarantine requirements (Attachment 3).

SPECIFIC TERMS AND CONDITIONS:

All research permit holders would be required to submit an annual report to the Refuge that summaries their activities for a given year and a final report when the project is completed. The report would include at a minimum the following: study title, fiscal year, progress, important findings, problems encountered, proposed resolution to problems, disposition of any collected samples, preparer, and date prepared.

All projects would be monitored by Refuge staff to ensure the use remains compatible and resources (which include but are not limited to: nesting and resting seabirds and other migratory birds, Hawaiian monk seals, green turtles, spinner dolphins, fish, cetaceans, marine invertebrates, corals, Laysan ducks, native plants and insects, and historical resources) are not impacted. Staff will also monitor for the accidental release of pollution and contaminants, and the accidental introduction and establishment of nonnative species to the Refuge.

If the proposed research methods would impact or potentially impact Refuge resources (habitat or wildlife), it must be demonstrated that the research is essential (i.e., critical to survival of a species; Refuge islands provide only or critical habitat for a species; or assessment and/or restoration after cataclysmic events), and the researcher must identify the issues in advance of the impact. Highly intrusive or manipulative research is generally not permitted in order to protect native bird and marine mammal populations.

Researchers are responsible for acquiring and/or renewing any necessary State and Federal permits prior to beginning or continuing their project. In addition, the agencies commit to consultation under the Endangered Species Act, Marine Mammal Protection Act, as appropriate, prior to initiation of any action that may affect any marine mammal or Federally-listed species or designated critical habitat.

Researchers will adhere to current species protocols for data collection.

The Refuge Manager can suspend/modify conditions/terminate on-refuge research that is already permitted and in progress, should unacceptable impacts or issues arise or be noted.

The beaches on Spit and Eastern Island would be closed to researchers (unless special permission is granted) as well as the southern and western beaches on Sand Island. Power boats would not be allowed to travel closer than 500 feet from these closed beaches, except to tie up to the pier on Eastern Island.

Visitors, researchers, and residents are provided orientation materials and related information to minimize disturbance to wildlife ("wildlife viewing etiquette"). Specific restrictions (e.g., 150-foot minimum distance from seals, prohibition of access to heavily burrowed areas, etc.) are strictly enforced. The orientation materials include specific indicators of wildlife behavioral responses to disturbance, especially for the Hawaiian monk seal and green turtle, as well as appropriate visitor response to being approached by wildlife. The orientation also includes a visual demonstration of a 150-foot distance. The 150-foot distance is the minimum, however greater distances may be required depending upon the response of the wildlife. Information on the nesting locations of particularly rare species (e.g., white-tailed tropicbirds) may be withheld to protect these birds from disturbance. All visitors, researchers, and new residents are required to go through orientation immediately upon arrival or early the next day in the case of an unusually late arrival.

Researchers who desire access to areas not generally opens to the public would be required to obtain the appropriate Monument permit. These permits stipulate more detailed access restrictions and regulations to protect wildlife. At the discretion of the Refuge Manager, FWS-approved guides may be assigned to accompany researchers into particularly sensitive areas. Additional fees (approximately equal to the actual cost to the Refuge) would be charged for such special services.

All trips to Eastern Island for research would be closely supervised by FWS-approved staff and/or guides. Boats would tether to either end of the 150-foot pier, and disembarking passengers would be briefed on proper behavior to minimize disturbance to Hawaiian monk seals or green turtles that may be present. During periods of intensive tern nesting, routes would be carefully selected to minimize disturbance. Visitors and researchers would be advised to travel in single file in an expeditious manner through the colony. Photography would be allowed at the beginning and end of such a transit, not in the middle, to reduce the length of disturbance to the core nesting population. Restrictions on access to sensitive areas would be enforced. Spit Island would be off limits for researchers unless they accompany FWS approved staff and/or guides or have FWS authorization.

Visitors and researchers would not be allowed to approach closer than 150 feet to Laysan duck seeps. The blind at the water catchment basin would allow people to see the species without disturbing them.

Vessels involved in research activities would be required to return to dock at least 1 hour before sunset, which would also enhance boat operators' ability to avoid collisions with marine life. Within the inner harbor, boats must remain within speed limits of 10 knots. Visitors and researchers planning to engage in water-related activities during the albatross fledging season (June-July) would be thoroughly briefed on watching for shark activity, and water related activities are not permitted during peak shark foraging times (½-hour before dusk to ½-hour after sunrise).

Power boat operators may slow to allow visitor and researcher observation of approaching spinner dolphins, but would neither pursue the dolphins nor specifically seek them out. If dolphins are encountered during transit between two points, we would allow the boat to slow and/or stop for visitor and researcher observation, but entering the water would not be allowed. Routes to and from snorkeling/dive sites would be plotted to avoid known resting areas of spinner dolphins in the lagoon (Fig. 1), as well as preferred Hawaiian monk seal haulout, molting, and pupping sites.

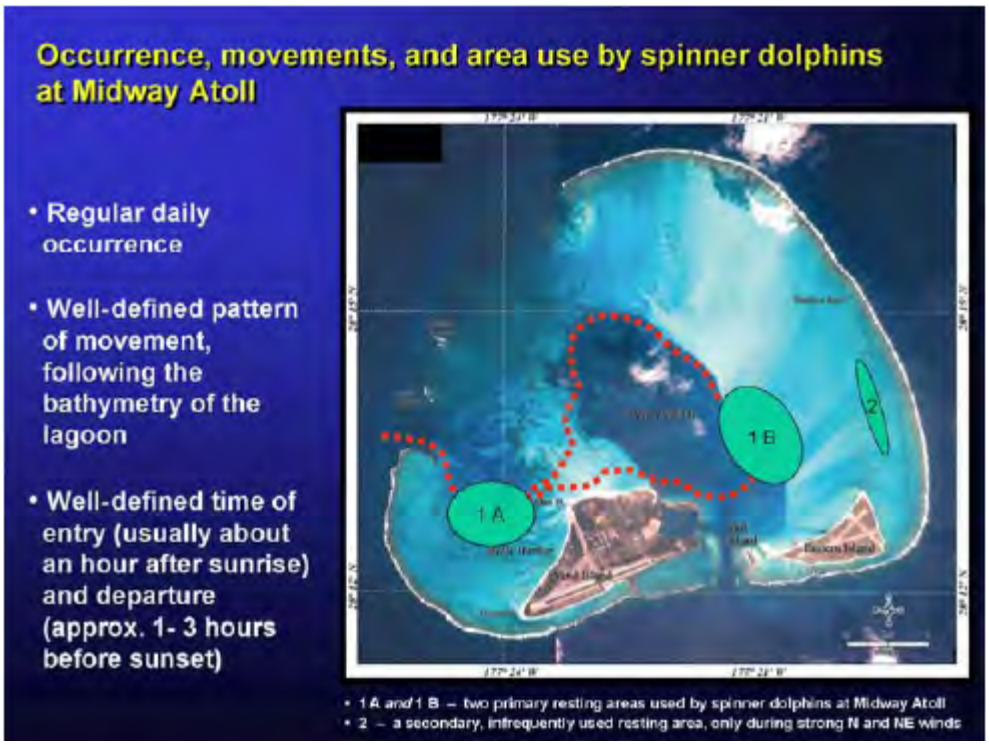

Figure 1. Occurrence, movements, and area use by Hawaiian spinner dolphins at Midway Atoll (courtesy of Dr. Leszek Karczmarkski)

To eliminate anchoring impacts on coral, boat operators would be required to anchor in known sand areas or tie up to a mooring buoy.

Only four-stroke outboard motors would be used for visitor and researcher boats. These motors are cleaner-running and quieter than two-stroke motors and would not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals. No other loud sounds would be associated with this program.

Power boats taking visitors and researchers to Eastern Island or snorkeling or diving may encounter spinner dolphins or, less frequently, green sea turtles while traversing the lagoon. Hawaiian monk seals are only rarely observed swimming in the lagoon. Boat operators would be fully briefed on known resting areas of spinner dolphins in the lagoon (Figure 1.1 above) and routes to and from snorkel and dive sites would be plotted to avoid these areas as well as preferred Hawaiian monk seal haulout, molting, and pupping sites.

Visitors, researchers, and their luggage would go through an inspection for insects and plants prior to departing Honolulu, and again when leaving Midway to reduce the possibility of alien species introductions. Visitors and researchers would be asked to clean their shoes and other clothing before coming to Midway through advance introductory materials. Anyone bringing their own snorkel or dive gear to Midway would be required to treat the gear to prevent the inadvertent introduction or transmission of alien species.

A review of files documenting past visitor/researcher violations of closed beaches and/or monk seal disturbance shows that many of the people had not received orientation to the Refuge and closed areas.

Strict compliance with the orientation policy would address many of those types of violations. Some of the documented violations were clearly due to poor or nonexistent signing. A new sign plan will be developed by Refuge staff and all signs put in place by 2009. Temporary signs may be used prior to that time. Research permits may be temporarily or permanently withdrawn for purposeful violations of closed beached and endangered species regulations.

All publications would need to reference the fact that research took place on the Refuge.

Justification:

Research in the Monument is inherently valuable to the FWS, since it is intended to expand the knowledge base of those who are given the responsibility of managing the resources found within. This is particularly true in this case where many of the resources remain in pristine condition and detailed information is lacking from a portion of these species. In many cases, if it were not for the Refuges providing access to the lands and waters along with some support, the research would never take place and less scientific information would be available to FWS to aid in managing and conserving Midway's and the Monument's resources.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____X_____ Mandatory 10-year reevaluation date (for non-wildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

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U.S. Fish and Wildlife Service. 2000. Update to U.S. Fish and Wildlife Service Manual Chapter 2 on compatibility: Part 603 National Wildlife Refuge System uses. Washington, D.C.

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Refuge Determination:

Refuge Manager
Approval**:** _____ Date:_____
(Signature)

FWS Superintendent,
Papahānaumokuākea Marine National Monument

_____ Date:_____
(Signature)

Project Leader,
Hawaiian and Pacific
Islands NWRC _____Date_____
(Signature)

Concurrence:

Refuge Supervisor
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

Regional Chief,
National Wildlife
Refuge System _____Date_____
Pacific Region (Signature)

FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Midway Atoll National Wildlife Refuge

Use: Cultural Resource Activities and Practices

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?		✔
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?	✔	
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ___ No ✔

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate_____ **Appropriate** ✔

Refuge Manager:_____ Date:_____

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor:_____ Date:_____

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

Finding of Appropriateness of a Refuge Use: Attachment 1

Use: Cultural Resource Activities and Practices

Additional information regarding the U.S. Fish and Wildlife Service evaluation of proposed Cultural Resource Activities and Practices at Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Papahānaumokuākea Marine National Monument.

d. The activity is not consistent with public safety. Since the activity may have failed to meet this requirement and consistent with relevant policy (603 FW 1.11 B.), the Refuge has completed an "Exceptional or Unique Circumstances Analysis" (see below).

Exceptional or Unique Circumstances Analysis for Cultural Resource Activities and Practices at Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Papahānaumokuākea Marine National Monument (603 FW 1.11 B.).

The "Finding of Appropriateness of a Refuge Use" determination revealed that proposed Cultural Resources Activities and Practices may not be consistent with public safety. Despite the possibility of not meeting this requirement and consistent with relevant policy (603 FW 1.11 B.), the FWS has made a determination that the use is appropriate for the following reasons.

- The use would only be allowed if it were also determined compatible.
- This use is an important component of the Native Hawaiian culture and Proclamation 8031 recognizes its significance and provided for this use when certain conditions are met. The FWS possesses the resources to manage this use at the current levels.
- One or more support vessels would accompany Hawaiian sailing canoes during their voyages for safety.

Compatibility Determination

Use: Cultural Resource Activities and Practices

Station Name: Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Papahānaumokuākea Marine National Monument

City/County and State: Midway Atoll is the penultimate western atoll in the Northwestern Hawaiian Islands, is considered an unincorporated, insular area of the United States (General Accounting Office 1997), and lies outside the State of Hawai‘i

Establishing and Acquisition Authority(ies):

Midway Atoll National Wildlife Refuge (NWR) was established in 1988 as an overlay Refuge by a cooperative agreement with the U.S. Navy (Navy) under the authority of the Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act of 1934, and National Wildlife Refuge System Act of 1966 (U.S. Navy and U.S. Fish and Wildlife Service 1988). Under this agreement, administrative responsibility for the Refuge was shared by the U.S. Fish and Wildlife Service (FWS) and the Navy. The Naval Air Facility at Midway was operationally closed in 1993. Facility cleanup was completed by June 30, 1997, when the Navy and its contractors departed. Jurisdiction and control for Midway Atoll were officially transferred from the Navy to the FWS under Executive Order (EO) 13022, signed by President Clinton on October 31, 1996, which superseded earlier orders that assigned responsibility for Midway to the Navy. Secretary of the Interior Babbitt signed Secretary's Order (SO) 3217 on September 13, 2000, designating Midway Atoll NWR concurrently as the Battle of Midway National Memorial. On June 15, 2006, President Bush signed Presidential Proclamation (PP) 8031 making Midway Atoll NWR part of a monument that became the Papahānaumokuākea Marine National Monument (Monument) on March 6, 2007 (PP 8112). Under PP 8031, Midway has unique authority and responsibility as a Special Management Area.

Refuge Purpose(s):

The following purposes were included in the cooperative agreement between the Navy and FWS (U.S. Navy and U.S. Fish and Wildlife Service 1988) under the Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act of 1934, and National Wildlife Refuge System Administration Act of 1966. Pertinent language in those statutes includes:

1. ". . . for the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the U.S. Fish and Wildlife Service, in performing its activities and services." (Fish and Wildlife Act of 1956)

2. ". . . shall be administered by the Secretary of the Interior directly in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon . . ." (Fish and Wildlife Coordination Act of 1934)

3. "…consolidate the authorities… for… the conservation of fish and wildlife...." (National Wildlife Refuge System Administration Act of 1966, as amended)

The following additional purposes were included in EO 13022, dated October 31, 1996, which transferred jurisdiction and control over the Midway Islands from the Navy to the U.S. Department of the Interior:

1. Maintaining and restoring biological diversity within the refuge;

2. Providing for the conservation and management of fish and wildlife and their habitats within the refuge;

3. Fulfilling the international treaty obligations of the United States with respect to fish and wildlife;

4. Providing opportunities for scientific research, environmental education, and compatible wildlife-dependent recreational activities; and

5. In a manner compatible with refuge purposes, recognizing and maintaining Midway's historic significance.

Additionally, PP 8031 established the Papahānaumokuākea Marine National Monument, which covers a much larger area than the Refuge, but also includes the Refuge. The Monument's establishing purpose is "…protecting the objects described above (coral, fish, birds, marine mammals, and other flora and fauna), all lands and interest in lands owned or controlled by the Government of the United States…."

National Wildlife Refuge System Mission:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. 668dd-668ee).

Description of Use(s):

Presidential Proclamation 8031 defines Native Hawaiian Practices as "…cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment, and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of Monument resources for direct personal consumption while in the monument."

Cultural resource activities and practices are a means to honor and continue the traditional knowledge and practices that are vital to the Native Hawaiian community. They continue to remind and teach the Native Hawaiian connections and relationships that ancestors have passed down from generation to generation.

Activities could involve, but are not limited to, voyaging by traditional sailing canoes with one or more support vessels to one or more of the islands within the Monument. The permittees would explore where ancestors traveled, teach others the Native Hawaiian culture and history, practice living and traveling as ancestors did, and make a spiritual connection with nature and the ancestors. The use may include overnight visits on some islands, sailing by canoe to the islands, celestial navigation, spiritual ceremonies, and presentation of offerings. The use may be conducted at any time during the year.

More specific examples of where this CD might apply are listed in the Monument Management Plan under:

1) Section 3.1.2, Activity NHCH-2.3, Facilitate field research and cultural education opportunities annually during the field season.

2) Section 3.1.2, Activity NHCH-2.6, Support Native Hawaiian cultural accesses to assure cultural research needs are met.

The study and use of native fish, wildlife, plants, and their habitats by Native Hawaiians is integral to their cultural practices. However this activity is not a wildlife-dependent use as defined by the National Wildlife Refuge System Administration Act, as amended of 1997.

This activity could include fishing and gathering of renewable natural resources for ceremonial, religious, nutritional, and other traditional cultural purposes. Resources of interest may include, but are not limited to, shed feathers, fish, shells, or salt. Gathering of resources of interest may be requested in Native Hawaiian Practices Permit applications and considered by Monument managers on a case-by-case basis. Approval of these requests must include, but are not limited to, consideration of surplus populations available for harvest; maintenance of biological integrity and diversity; maintenance of self-sustaining populations; permittee possession of other necessary permits (e.g., for migratory birds), etc.

Since the establishment of the Monument, no Native Hawaiian Practices Permit has been issued for Midway Atoll.

Native Hawaiian practitioners must first apply for and receive a permit from the Monument. After issuance, the practitioners would normally travel to Midway by boat or chartered aircraft. If the permittees are authorized to go into areas closed to public uses, an FWS-approved guide would accompany the parties to ensure the activity is compatible and not impacting other Refuge or Monument resources.

The FWS has some facilities and equipment available for this use, which include meeting room space, housing, motorboats, and tools. Users pay fees to use these facilities and equipment or they supply their own. These facilities and equipment are used and maintained for the FWS and other visitor programs in addition to this proposed use.

Availability of Resources:

No funding presently exists specifically for this use. However, the occurrence of this activity is infrequent, thus the costs to the Refuge are minimal. The issuance of the permit and the FWS-approved guide for the cultural group account for the major costs of the use.

Category and Itemization	**One-time ($)**	**Annual ($/yr)**
Administration and Management		$1,700
Maintenance		$2,000
Monitoring		$1,300
Special equipment, facilities or improvements		$2,000
Offsetting revenues		$7,000

The numbers above reflect the current estimated costs. Estimated costs were calculated using 2% of the base cost of a GS-11 wildlife biologist and a 2% cost of a GS-13 refuge manager assuming that this priority use would use that portion of a year to administer. Off-setting revenues are fees paid by permittees for their stay on Midway Atoll and obtaining a project permit. These fees include boat rentals, housing, a research/project fee as well as others, and would amount to approximately the cost of administering this use. Annual offsetting revenues would be approximately equal to the annual FWS cost of this program.

Permittees would pay the cost of their transportation to the Refuge.

Anticipated Impacts of the Use(s):

Short-term impacts should be very minimal since the applicant must follow very strict permit regulations and have a FWS-approved guide if entering a closed area. Some minimal disturbance of wildlife may occur from the parties entering and leaving the islands.

Possible impacts from this use include: (1) disturbance to nesting and resting seabirds and other migratory birds; (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green turtles (*Chelonia mydas*) swimming and feeding in the nearshore marine environment or resting on beaches; (3) disturbance to spinner dolphins (*Stenella longirostris*) swimming and feeding in the nearshore marine environment; (4) disturbance to fish, cetaceans, marine invertebrates, and corals; (5) disturbance to Laysan ducks (*Anas laysanensis*); (6) trampling of native plants and insects; (7) damage to corals; (8) accidental release of pollution and contaminants; and (9) the accidental introduction and establishment of nonnative species to the Monument. All cultural activities would be designed and managed in a fashion with the best intent to eliminate or minimize these impacts. However, even with proper management and execution of a well planned project, certain behavioral responses in wildlife may occur that are not easily recognized by the casual observer. Some proposed activities will require further analysis and compliance by the agencies as more detailed information becomes available and specific plans are developed. These requirements may include additional analysis in accordance with NEPA, and consultation under ESA, Marine Mammal Protection Act, NHPA, and other relevant laws.

Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, Nimon et al., 1995 and Kataysky et al., 2003). Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. When participants are observing albatrosses, terns, boobies, Laysan ducks, or other species in the less visited areas, they would have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive. Kitaysky et al. (2003) showed that limited duration disturbance, however, has only minor, short-term effects. Observation periods for any particular bird or group of birds would be kept to 15 minutes or less for this reason.

Human activities have played a major role in determining the status and trend of Hawaiian monk seals over the past two centuries (Ragen 1997). From the 1960s to the 1990s, decreases in monk seal populations at several locations (French Frigate Shoals, Midway Atoll, and Kure Atoll) have been associated with human disturbance (Gerrodette 1990). Recreational beach activities caused monk seals to alter their pupping and hauling patterns, and survival of pups in suboptimal habitats was low, leading to gradual population declines (Kenyon 1972). Human activity and disturbance caused incredible declines at Midway Atoll (Kenyon 1972). Beach counts of monk seals at Midway Atoll averaged 56 animals in the late 1950s, but declined severely by the late 1960s with a single seal observed during an aerial survey in 1968. Monks seals are very sensitive to disturbance and proposed activities should be carefully reviewed and, as appropriate, restricted so no further impacts to seals would occur.

Increased use of Monument waters also increases the potential for introductions of nonnative species and interactions (some negative) by boats, kayaks, or snorkelers/divers with monk seals, sea turtles, spinner dolphins, cetaceans, and live corals. One accidental introduction of a nonnative species on a boat or dive equipment could devastate the Monument. The introduced sea star (*Acanthaster planci*) in Guam killed 1 km of coral in a month in a narrow fringing coral reef and 90% of the coral in a 2.5 year period along 38 km of Guam's coastline (Chesher 1969). Any action of pursuit or annoyance from boats potentially

disturbs marine mammals in the wild by causing disruption of their behavioral patterns or displacement from essential habitat areas, especially if the cetaceans or seals are in a resting phase (Bejder et al. 1999). Snorkel or dive operations also include the added risk of damaging living coral in the Refuge (Hawkins et al. 1999). Improper boat operation could result in localized impacts to the coral reef from anchoring, touching, standing, or other avoidable physical disturbance to the coral.

Due to the very limited nature of this activity (i.e., less than 1 week), we do not expect any additional short-term, long-term, and/or cumulative and indirect/secondary impacts other than those normally associated with required existing FWS work. However, it is critical that all visitors follow all quarantine procedures to prevent the accidental introduction of nonnative species to the Monument. One invasive species has the potential to devastate the fragile ecosystem (Chesher 1969). It may be appropriate to set a limit to the number of participants allowed under this use even if staff are available to coordinate the activities. Proposed uses when transportation costs are not covered, quarantine procedures not followed, or there is an unnecessary risk to the natural and cultural resources of the Monument would not be permitted.

Public Review and Comment:

This determination was issued for public review and comment as part of the Papahānaumokuākea Draft Monument Management Plan. The plan and associated compatibility determinations were also made available through printed copies upon request and through the Monument Websites at http://www/fws/gov/pacificislands and http://hawaiireef.noaa.gov/. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended and as determined by the Co-Trustees of the Monument. The Monument is of national interest; therefore, the availability of the Draft Monument Management Plan (including the CDs) was advertised at the national level.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

GENERAL TERMS AND CONDITIONS:

Each permittee would be required to adhere to all general conditions specified by the Monument Co-Trustees in their joint permit (Attachment 1).

A more comprehensive list of Refuge and Monument conditions and restrictions is included in this CD and/or 50 CFR Part 27. Not all of these conditions and restrictions would apply to every use. The type of use and where the activity occurs would drive which are relevant (Attachment 2).

All persons participating in the travel within the Monument to and from Midway Atoll must adhere to the "Special Conditions for Movement to and from Islands" which cover the quarantine requirements (Attachment 3).

SPECIFIC TERMS AND CONDITIONS:

All activities would be monitored by Refuge staff to ensure the use remains compatible and natural, cultural and historic resources (which include but are not limited to: nesting and resting seabirds and other migratory birds, Hawaiian monk seals, green turtles, spinner dolphins, fish, cetaceans, marine invertebrates, corals, Laysan ducks, native plants and insects, and cultural and historical resources) are not impacted. Staff will also monitor for the accidental release of pollution and contaminants, and the accidental introduction and establishment of nonnative species to the NWR.

Permittees are responsible for acquiring and/or renewing any necessary State and Federal permits prior to beginning or continuing their project/use. In addition, the agencies commit to consultation under the Endangered Species Act, Marine Mammal Protection Act, as appropriate, prior to initiation of any action that may affect any marine mammal or Federally-listed species or designated critical habitat.

The Refuge Manager can suspend/modify conditions/terminate on-refuge activities that are already permitted and in progress, should unacceptable impacts or issues arise or be noted.

The beaches on Spit and Eastern Island would be closed to permittees (unless special permission is granted) as well as the southern and western beaches on Sand Island. Power boats would not be allowed to travel closer than 500 feet from these closed beaches, except for guided tours to tie up to the pier on Eastern Island.

Persons desiring access for cultural purposes to areas not generally open to the public would be required to obtain a Native Hawaiian Practices Permit from the Monument. These permit applications are reviewed by select cultural practitioners or cultural resource managers to ensure the proposed activities meet the findings outlined in the Proclamation. Permits issued may stipulate more detailed access restrictions and regulations to protect wildlife. At the discretion of the Refuge Manager, FWS-approved guides may be assigned to accompany permittees into particularly sensitive areas. Additional fees (approximately equal to the actual cost to the Refuge) may be charged for such special services.

Visitors, permittees, and residents are provided cultural briefing information, as well as orientation materials and related information to minimize disturbance to wildlife ("wildlife viewing etiquette"). Specific restrictions (e.g., 150-foot minimum distance from seals, prohibition of access to heavily burrowed areas, etc.) are strictly enforced. The orientation materials include specific indicators of wildlife behavioral responses to disturbance, especially for the Hawaiian monk seal and green turtle, as well as appropriate visitor response to being approached by wildlife. The orientation also includes a visual demonstration of a 150-foot distance. The 150-foot distance is the minimum, however greater distances may be required depending upon the response of the wildlife. Information on the nesting locations of particularly rare species (e.g., white-tailed tropicbirds) may be withheld to protect these birds from disturbance. All visitors, permittees, and new residents are required to go through orientation immediately upon arrival or early the next day in the case of an unusually late arrival.

Visitors and permittees would not be allowed to approach closer than 150 feet to Laysan duck wetlands. The blind at the water catchment basin would allow people to see the species without disturbing them.

Vessels involved in permitted activities would be required to return to dock at least 1 hour before sunset, which would also enhance boat operators' ability to avoid collisions with marine life. Within the inner harbor, boats must remain within speed limits of 10 knots.

Visitors and permittees planning to engage in water-related activities during the albatross fledging season (June-July) would be thoroughly briefed on watching for shark activity, and water related activities are not permitted during peak shark foraging times (½-hour before dusk to ½-hour after sunrise).

Power boat operators may slow to allow visitor and permittee observation of approaching spinner dolphins, but would neither pursue the dolphins nor specifically seek them out. If dolphins are encountered during transit between two points, we would allow the boat to slow and/or stop for visitor and permittee observation, but entering the water would not be allowed. Routes to and from snorkeling/dive sites would be plotted to avoid known resting areas of spinner dolphins in the lagoon (Fig. 1), as well as preferred Hawaiian monk seal haulout, molting, and pupping sites.

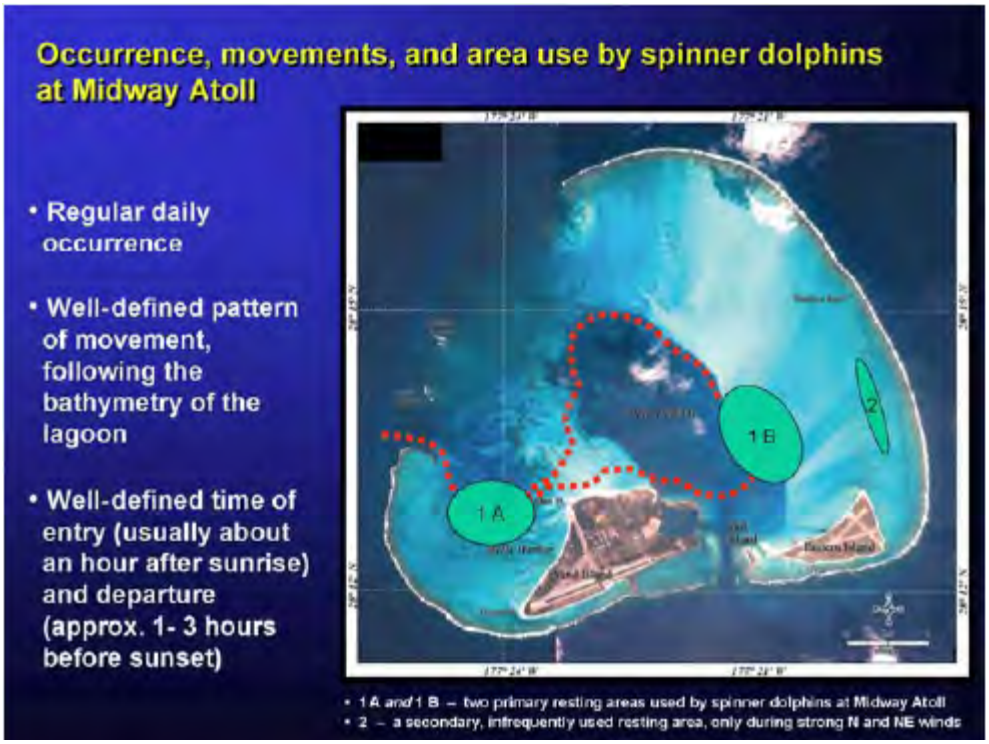

Figure 1. Occurrence, movements, and area use by Hawaiian spinner dolphins at Midway Atoll (courtesy of Dr. Leszek Karczmarkski)

To eliminate anchoring impacts on coral, boat operators would be required to anchor in known sand areas or tie up to a mooring buoy.

Only four-stroke outboard motors would be used for visitor and permittee boats. These motors are cleaner-running and quieter than two-stroke motors and would not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals. No other loud sounds would be associated with this program.

Power boats taking visitors and permittees to Eastern Island or snorkeling or diving may encounter spinner dolphins or, less frequently, green sea turtles while traversing the lagoon. Hawaiian monk seals are only rarely observed swimming in the lagoon. Boat operators would be fully briefed on known resting areas of spinner dolphins in the lagoon (Figure 1.1 above) and routes to and from snorkel and dive sites would be plotted to avoid these areas as well as preferred Hawaiian monk seal haulout, molting, and pupping sites.

A review of files documenting past visitor/permittee violations of closed beaches and/or monk seal disturbance shows that many of the people had not received orientation to the refuge and closed areas. Strict compliance with the orientation policy would address many of those types of violations. Some of the documented violations were clearly due to poor or nonexistent signing. A new sign plan would be developed by Refuge staff and all signs put in place by 2009. Temporary signs may be used prior to that time. Permits may be temporarily or permanently withdrawn for purposeful violations of closed beached and endangered species regulations.

Visitors, permittees, and their luggage would go through an inspection for insects and plants prior to departing Honolulu and again when leaving Midway to reduce the possibility of alien species introductions. Visitors and permittees would be asked to clean their shoes and other clothing before coming to Midway through advance introductory materials. Anyone bringing their own snorkel or dive gear to Midway would be required to treat the gear to prevent the inadvertent introduction or transmission of alien species.

Any proposed alteration of the Refuge's natural or cultural resources through this use would be approved and overseen by FWS personnel.

As part of their permit, users would be required to certify that their use of the Refuge and its natural and cultural resources, including any items collected from the Refuge, is of a noncommercial nature.

Justification:

This use is an important component of the Native Hawaiian culture, and Presidential Proclamation 8031 recognizes its significance and provided for this use when certain conditions are met. The FWS possesses the resources to manage this use at the current levels.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

____X____ Mandatory 10-year reevaluation date (for non-wildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

References Cited:

Bejder, L., S. M. Dawson, and J. A. Harraway. 1999. Responses by Hector's dolphins to boats and swimmers in porpoise bay, New Zealand. 15(3):738-750.

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General Accounting Office. 1997. U.S. Insular Areas. Report to the Chairmen, Committee on Resources, House of Representatives. Washington, D.C.

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Hawkins, J. P., C. M. Roberts, T. V. T. Hof, K. D. Meyer, J. Tratalos, and C. Aldam. 1999. Effects of recreational scuba diving on Caribbean coral and fish communities. Conservation Biology 13(4):888-897.

Jungius, H. and U. Mirsch. 1979. Changes in heartbeats in nesting birds at Galapagos by human disturbance. Journal of Field Ornithology. 120:299-310.

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Presidential Proclamation 8031, 15 June 2006 (71 FR 36443) Establishing the Northwestern Hawaiian Islands as a marine national monument.

Presidential Proclamation 8112, 6 March 2007. Establishment of the Papahānaumokuākea Marine National Monument (72 FR 10031).

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Secretarial Order (Department of the Interior) 3217. 13 September 2000. Designation of the Battle of Midway National Memorial (67 FR 743 7 January 2002).

U.S. Fish and Wildlife Service. 2000. Update to U.S. Fish and Wildlife Service Manual Chapter 2 on compatibility: Part 603 National Wildlife Refuge System uses. Washington, D.C.

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Refuge Determination:

Refuge Manager
Approval**:** _____ Date_____
(Signature)

FWS Superintendent,
Papahānaumokuākea Marine National Monument

_____ Date:_____
(Signature)

Project Leader
Hawaiian and Pacific
Islands NWRC _____Date_____
(Signature)

Concurrence:

Refuge Supervisor,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

Regional Chief,
National Wildlife
Refuge System _____Date_____
Pacific Region (Signature)

FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Midway Atoll National Wildlife Refuge

Use: Commercial Photography, Videography, Filming, or Audio Recording

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?	✔	
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ___ No ✔

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate_____ **Appropriate** ✔

Refuge Manager:_____ Date:_____

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor:_____ Date:_____

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

Compatibility Determination

Use: Commercial Photography, Videography, Filming, or Audio Recording

Station Name: Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Papahānaumokuākea Marine National Monument

City/County and State: Midway Atoll is the penultimate western atoll in the Northwestern Hawaiian Islands, is considered an unincorporated, insular area of the United States (General Accounting Office 1997), and lies outside the State of Hawai‘i

Establishing and Acquisition Authority(ies):

Midway Atoll National Wildlife Refuge (NWR) was established in 1988 as an overlay Refuge by a cooperative agreement with the U.S. Navy (Navy) under the authority of the Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act of 1934, and National Wildlife Refuge System Administration Act of 1966 (U.S. Navy and U.S. Fish and Wildlife Service 1988). Under this agreement, administrative responsibility for the Refuge was shared by the U.S. Fish and Wildlife Service (FWS) and the Navy. The Naval Air Facility at Midway was operationally closed in 1993. Facility cleanup was completed by June 30, 1997, when the Navy and its contractors departed. Jurisdiction and control for Midway Atoll were officially transferred from the Navy to the FWS under Executive Order (EO) 13022, signed by President Clinton on October 31, 1996, which superseded earlier orders that assigned responsibility for Midway to the Navy. Secretary of the Interior Babbitt signed Secretary's Order (SO) 3217 on September 13, 2000, designating Midway Atoll NWR concurrently as the Battle of Midway National Memorial. On June 15, 2006, President Bush signed Presidential Proclamation (PP) 8031 making Midway Atoll NWR part of a monument that became the Papahānaumokuākea Marine National Monument (Monument) on March 6, 2007 (PP 8112). Under PP 8031, Midway has unique authority and responsibility as a Special Management Area.

Refuge Purpose(s):

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1. ". . . for the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the U.S. Fish and Wildlife Service, in performing its activities and services" (Fish and Wildlife Act of 1956).

2. ". . . shall be administered by the Secretary of the Interior directly in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon . . ." (Fish and Wildlife Coordination Act of 1934).

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3. Fulfilling the international treaty obligations of the United States with respect to fish and wildlife;

4. Providing opportunities for scientific research, environmental education, and compatible wildlife-dependent recreational activities; and

5. In a manner compatible with refuge purposes, recognizing and maintaining Midway's historic significance.

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National Wildlife Refuge System Mission:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. 668dd-668ee).

Description of Use(s):

Commercial photography, videography, filming, and audio recording ("recording") are considered a commercial use in this compatibility determination (CD). These activities for noncommercial purposes are considered under separate CDs (Environmental Education and Interpretation, and Wildlife Observation and Photography). Additionally, this CD does not apply to bona fide news media activities, which are authorized under Co-Trustee Conservation and Management permits.

Commercial recording typically involves creating a documentary film, taking still photographs, or recording wildlife sounds that are intended to be or could be sold for income or revenue or traded for goods or services. Commercial "recording" of natural, historic, or cultural subjects are covered under this CD. An example of a covered activity would be a permittee who wishes to make a film on the variety of wildlife seen on the islands or on the life cycles of a specific animal or plant. After filming and editing, the permittee would attempt to sell the film to a commercial television station for viewing.

Commercial "recording" activities not related to natural, historic, or cultural subjects <u>are not</u> covered under this CD (e.g., swimsuit calendar photography, filming a movie unrelated to the Refuge mission, etc.).

Commercial recording activities may be conducted on or around Refuge islands or waters. Although applications for this activity may be for any time during the year, some time restrictions may be required to limit disturbance. This may include such things as time of day and seasonal restrictions.

More specific examples of where this CD might apply are listed in the Monument Management Plan as:

1) Section 3.4.5, Activity CBO-2.3: Support other entities' efforts to broaden knowledge of and appreciation for Monument resources and management priorities.

The use may be conducted on foot, from the air, from boats and/or in the water using commercial recording equipment. Very specific conditions would be developed by FWS to minimize or avoid adverse impacts to Monument resources and are listed under Stipulations Necessary to Ensure Compatibility in this document.

In order to ensure there are no negative impacts to the Refuge or Monument resources, the applicant would first have to obtain a Monument permit, which is reviewed and signed by all Co-Trustees. Additionally, when conducting actual onsite operations in areas not open to the public, the applicant would be accompanied by a FWS-approved guide to ensure compliance of the permit conditions and prevent any unforeseen negative impacts to the Refuge or Monument resources.

Due of its commercial nature, this use is not a "wildlife-dependent public use" as defined by the National Wildlife Refuge System Administration Act of 1966, as amended. Therefore, it does not enjoy the special consideration in planning and management accorded those six wildlife-dependent uses.

From 2002 to 2007, Midway Atoll has averaged approximately two groups consisting of 2-6 people participating in this use.

This use is being proposed at Midway Atoll NWR because of the pristine nature of the Refuge and its abundance and diversity of wildlife and plants. Films, photographs, and other recordings made in this area are especially appealing to the general public, because they explore, explain, and share an exotic locale that is difficult to visit in person.

Availability of Resources:

At present the Refuge can accommodate the relatively small numbers (two groups of 2-6 people) of commercial photography, videography, filming, and audio recording operations within a given year. If the number of applicants begins to increase significantly, additional staffing would be required. The FWS has some facilities and equipment available for this use, which include meeting room space, housing, motorboats, and tools. Users pay fees to use these facilities and equipment or they supply their own.

Category and Itemization	**One-time ($)**	**Annual ($/yr)**
Administration and Management		$3,000
Maintenance		
Monitoring		$2,000
Special equipment, facilities or improvements		
Offsetting revenues		actual costs

The above annual cost reflects cost to manage the program and prevent impacts to the natural resources. Estimated costs were calculated using 3% of the base cost of a GS-13 refuge manager and a 3% cost of a GS-11 wildlife biologist assuming that this activity would use that "portion of a year" to administer. The one-time administration and monitoring cost reflects the approximate cost per commercial photography, videography, filming, and audio recording operation incurred by the Refuge and the offsetting cost reflects the reimbursement provided by the permittee. The offsetting cost should always be equal to the

Refuge-incurred cost and would come to the Refuge in the form of fees paid by the commercial photographers. These fees must at least equal our costs to administer the use, including any costs associated with facilities, equipment, supplies, and services.

Transportation costs to reach the Refuge are paid for by the participant or covered by another agency.

Anticipated Impacts of the Use(s):

Possible impacts from this use include: (1) disturbance to nesting and resting seabirds and other migratory birds; (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green turtles (*Chelonia mydas*) swimming and feeding in the nearshore marine environment or resting on beaches; (3) disturbance to spinner dolphins (*Stenella longirostris*) swimming and feeding in the nearshore marine environment; (4) disturbance to fish, cetaceans, marine invertebrates, and corals; (5) disturbance to Laysan ducks (*Anas laysanensis*); (6) trampling of native plants and insects; (7) damage to corals; (8) accidental release of pollution and contaminants; and (9) the accidental introduction and establishment of nonnative species to the Monument. All recording activities would be designed and managed in a manner to eliminate or minimize these impacts. However, even with proper management and execution of a well planned project, certain behavioral responses in wildlife may occur that are not easily recognized by the casual observer. Some proposed activities will require further analysis and compliance by the agencies as more detailed information becomes available and specific plans are developed. These requirements may include additional analysis in accordance with NEPA, and consultation under ESA, Marine Mammal Protection Act, NHPA, and other relevant laws.

Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, Nimon et al., 1995 and Kataysky et al., 2003). Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. When participants are observing albatrosses, terns, boobies, Laysan ducks, or other species in the less visited areas, they would have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive. Kitaysky et al. (2003) showed that limited duration disturbance, however, has only minor, short-term effects. Observation periods for any particular bird or group of birds would be kept to 15 minutes or less for this reason. Observations occurring from a blind can continue for up to 1 hour. It is important to note that even wildlife photography by professionals or amateurs can often be disturbing depending on the manner in which it is pursued.

Human activities have played a major role in determining the status and trend of Hawaiian monk seals over the past two centuries (Ragen 1997). The historical record suggests that human access to the Northwestern Hawaiian Islands is increasing, and such activities may become a greater impediment to monk seal recovery if they are not limited to those compatible with wildlife conservation. From the 1960s to the 1990s, decreases in monk seal populations at several locations (French Frigate Shoals, Midway Atoll, and Kure Atoll) have been associated with human disturbance (Gerrodette 1990). Recreational beach activities caused monk seals to alter their pupping and hauling patterns, and survival of pups in suboptimal habitats was low, leading to gradual population declines (Kenyon 1972). Prior to its establishment and management as a national wildlife refuge, activity and disturbance caused incredible declines at Midway Atoll (Kenyon 1972). Beach counts of monk seals at Midway Atoll averaged 56 animals in the late 1950s, but declined severely by the late 1960s with a single seal observed during an aerial survey in 1968. It is clear from these examples that monks seals are very sensitive to disturbance and proposed activities should be carefully reviewed and, as appropriate, restricted so no further impacts to seals would occur.

Increased use of Refuge waters also increases the potential for introductions of nonnative species and interactions (some negative) by boats, kayaks, or snorkelers/divers with monk seals, sea turtles, spinner dolphins, cetaceans, and live corals. One accidental introduction of a nonnative species on a boat or dive equipment could devastate the Monument. The introduced sea star (*Acanthaster planci*) in Guam killed 1 km of coral in a month in a narrow fringing coral reef and 90% of the coral in a 2.5 year period along 38 km of Guam's coastline (Chesher 1969). Any action of pursuit or annoyance from boats potentially disturbs marine mammals in the wild by causing disruption of their behavioral patterns or displacement from essential habitat areas, especially if the cetaceans or seals are in a resting phase (Bejder et al. 1999). Snorkel or dive operations also include the added risk of damaging living coral on the Refuge (Hawkins et al. 1999). Improper boat operation could result in localized impacts to the coral reef from repeated anchoring, touching, standing, or other avoidable physical disturbance to the coral.

Due to the very limited nature of this activity, we do not expect any additional short-term, long-term, and/or cumulative and indirect/secondary impacts other than those normally associated with required existing FWS work. However, it is critical that all visitors follow all quarantine procedures to prevent the accidental introduction of nonnative species to the Monument. One invasive species has the potential to devastate the fragile ecosystem (Chesher 1969). It may be appropriate to set a limit on the number of participants allowed under this use even if staff are available to coordinate the activities. Proposed uses when transportation costs are not covered, quarantine procedures not followed, or there is an unnecessary risk to the natural and cultural resources of the Refuge and Monument would not be permitted.

Public Review and Comment:

This determination was issued for public review and comment as part of the Papahānaumokuākea Draft Monument Management Plan. The plan and associated compatibility determinations were also made available through printed copies upon request and through Monument Web sites at http://www.fws.gov/pacificislands and http://hawaiireef.noaa.gov/. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended, and as determined by the Co-Trustees of the Monument. The Monument is of national interest; therefore, the availability of the Monument Management Plan (including the CDs) was advertised at the national level.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

GENERAL TERMS AND CONDITIONS:

Each permittee would be required to adhere to all general conditions specified by the Monument Co-Trustees in their joint permit (Attachment 1).

A more comprehensive list of Refuge and Monument conditions and restrictions is included in this CD and 50 CFR, Part 27. Not all of these conditions and restrictions would apply to every use. Depending upon the type of use and where the activity occurs would drive which are relevant (Attachment 2).

All persons participating in the travel to and from any of the islands must adhere to the "Special Conditions for Movement to and from Islands" which cover the quarantine requirements (Attachment 3).

SPECIFIC TERMS AND CONDITIONS:

All permit holders would be required to submit a report to the Refuge that summarizes their activities at the Refuge. The report would include at a minimum the following: title, fiscal year, progress, products and distribution, problems encountered, proposed resolution to problems, preparer, and date prepared.

All projects would be monitored by Refuge staff to ensure the use remains compatible and resources (which include but are not limited to nesting and resting seabirds and other migratory birds, Hawaiian monk seals, green turtles, spinner dolphins, fish, cetaceans, marine invertebrates, corals, Laysan ducks, native plants and insects, and cultural and historical resources) are not adversely impacted. Staff will also monitor for the accidental release of pollution and contaminants, and the accidental introduction and establishment of nonnative species to the Refuge.

Permittees are responsible for acquiring and/or renewing any necessary State and Federal permits prior to beginning or continuing their project. In addition, the agencies commit to consultation under the Endangered Species Act, Marine Mammal Protection Act, as appropriate, prior to initiation of any action that may affect any marine mammal or Federally-listed species or designated critical habitat.

The Refuge Manager can suspend/modify conditions/terminate activities that are already permitted and in progress on the Refuge should unacceptable impacts or issues arise or be noted.

The beaches on Spit and Eastern Island are closed to permittees (unless special permission is granted) as well as the southern and western beaches on Sand Island. Power boats are not allowed to travel closer than 500 feet from these closed beaches, except for guided tours to tie up to the pier on Eastern Island.

Visitors, permittees, and residents are provided orientation materials and related information to minimize disturbance to wildlife ("wildlife viewing etiquette"). Specific restrictions (e.g., 150-foot minimum distance from seals, prohibition of access to heavily burrowed areas, etc.) are strictly enforced. The orientation materials include specific indicators of wildlife behavioral responses to disturbance, especially for the Hawaiian monk seal and green sea turtle, as well as appropriate visitor response to being approached by wildlife. The orientation also includes a visual demonstration of a 150-foot distance. The 150-foot distance is the minimum, however greater distances may be required depending upon the response of the wildlife. Information on the nesting locations of particularly rare species (e.g., white-tailed tropicbirds) may be withheld to protect these birds from disturbance. All visitors, permittees, and new residents are required to go through orientation immediately upon arrival or early the next day in the case of an unusually late arrival.

Permittees who desire access to areas not generally open to the public would be accompanied by FWS-approved guides into particularly sensitive areas. Additional fees (approximately equal to the actual cost to the Refuge) would be charged for such special services.

All trips to Eastern Island would be closely supervised by FWS-approved guides. Boats would tether to either end of the 150-foot pier, and disembarking passengers would be briefed on proper behavior to minimize disturbance to Hawaiian monk seals or green sea turtles that may be present. During periods of intensive tern nesting, routes would be carefully selected to minimize disturbance. Permittees would be advised to travel in single file in an expeditious manner through the colony. Photography would be allowed at the beginning and end of such a transit, not in the middle, to reduce the length of disturbance to the core nesting population. Restrictions on access to sensitive areas would be enforced. Spit Island is off limits for permittees unless they accompany FWS-approved guides or have FWS authorization.

Permittees would not be allowed to approach closer than 150 feet to Laysan duck seeps unless authorized to do so by FWS staff. The blind at the water catchment basin would allow people to photograph the species without disturbing them.

Vessels involved in activities would be required to return to dock at least 1 hour before sunset, which would also enhance boat operators' ability to avoid collisions with marine life. Within the inner harbor, boats must remain within speed limits of 10 knots.

Permittees planning to engage in water-related activities during the albatross fledging season (June-July) would be thoroughly briefed on watching for shark activity, and water related activities are not permitted during peak shark foraging times (½-hour before dusk to ½-hour after sunrise).

Power boat operators may slow to allow permittee observation of approaching spinner dolphins, but would neither pursue the dolphins nor specifically seek them out. If dolphins are encountered during transit between two points, we would allow the boat to slow and/or stop for permittee observation, but entering the water would not be allowed. Routes to and from snorkeling/dive sites would be plotted to avoid known resting areas of spinner dolphins in the lagoon (Fig. 1), as well as preferred Hawaiian monk seal haulout, molting, and pupping sites. The only exception to this rule would be if the commercial photographer obtained the appropriate permits from the National Oceanic and Atmospheric Administration (NOAA) to specifically film cetaceans, seals, and turtles.

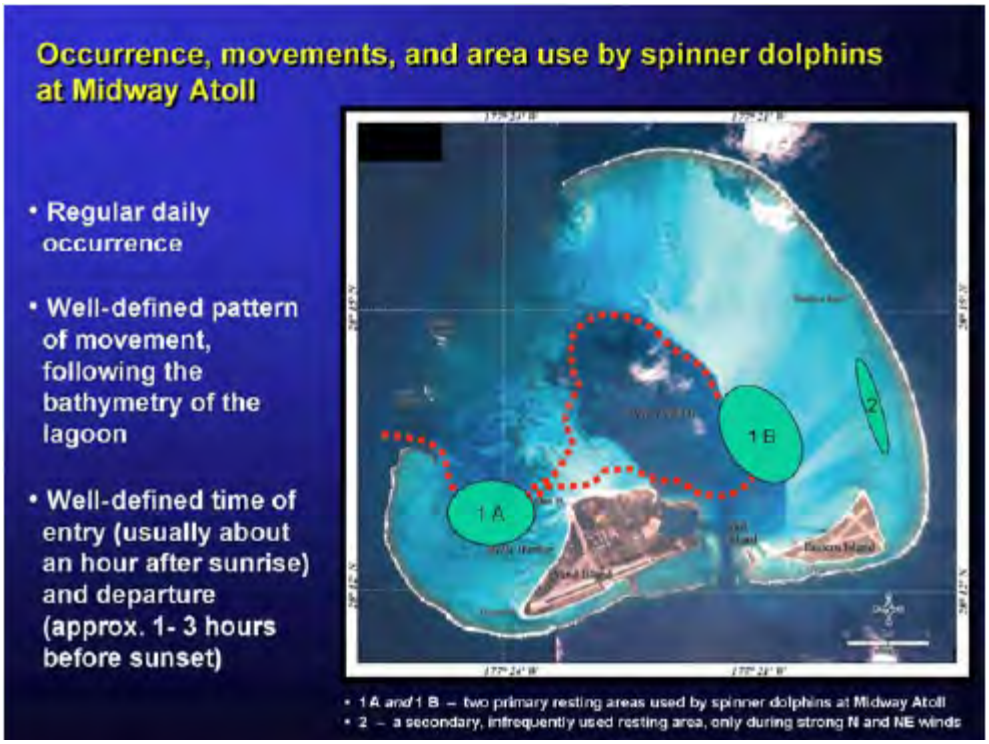

Figure 1. Occurrence, movements, and area use by Hawaiian spinner dolphins at Midway Atoll (courtesy of Dr. Leszek Karczmarkski)

To eliminate anchoring impacts on coral, boat operators would be required to anchor in known sand areas or tie up to a mooring buoy.

Only four-stroke outboard motors would be used for permittee boats. These motors are cleaner-running and quieter than two-stroke motors and would not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals. No other loud sounds would be associated with this program.

Power boats taking permittees to Eastern Island or snorkeling or diving may encounter spinner dolphins or, less frequently, green turtles while traversing the lagoon. Hawaiian monk seals are only rarely observed swimming in the lagoon. Boat operators would be fully briefed on known resting areas of spinner dolphins in the lagoon (Figure 1.1 above) and routes to and from snorkel and dive sites would be plotted to avoid these areas as well as preferred Hawaiian monk seal haulout, molting, and pupping sites.

Permittees and their luggage would go through an inspection for insects and plants prior to departing Honolulu, and again when leaving Midway to reduce the possibility of alien species introductions. Permittees would be asked to clean their shoes and other clothing before coming to Midway through advance introductory materials. Anyone bringing their own snorkel or dive gear to Midway would be required to treat the gear to prevent the inadvertent introduction or transmission of alien species.

A review of files documenting past visitor/permittee violations of closed beaches and/or monk seal disturbance shows that many of the people had not received orientation to the Refuge and closed areas. Strict compliance with the orientation policy would address many of those types of violations. Some of the documented violations were clearly due to poor or nonexistent signing. A new sign plan would be developed by refuge staff and all signs put in place in 2008. Temporary signs may be used prior to that time. Permits may be temporarily or permanently withdrawn for purposeful violations of closed beaches and endangered species regulations.

All commercial films, books, and other recordings of images and sounds collected on the Refuge would need to reference the fact that they were collected on the Refuge.

Permittee would provide FWS and Co-Trustees with at least one free copy of all commercial products generated on the Refuge for noncommercial use promoting the Monument, Refuge, and the National Wildlife Refuge System.

Justification:

Allowing commercial photography, videography, filming, and audio recording on the Refuge would contribute to the achievement of the Refuge purpose and the mission of the FWS. The products may reach groups of people who would not normally know about the Refuge. The services provided by commercial filmmakers are also beneficial to expand public appreciation and understanding of unique wildlife, diverse native habitats, and the mission of the National Wildlife Refuge System.

Conditions imposed by the Refuge and Monument in their permits for photography, videography, filming, and audio recording would ensure that these activities occur without adverse effects to Refuge resources or other permittees.

This proposed activity contributes to the mission of the FWS. In addition to reaching the general public through educational wildlife media, the end products may provide an educational opportunity to a much broader distribution of people who may not have the opportunity to view these remote and very unique resources. The products produced by these commercial operations would also be beneficial in promoting the mission of the National Wildlife Refuge System.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____X_____ Mandatory 10-year reevaluation date (for nonwildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

References Cited:

Bejder, L., S. M. Dawson, and J. A. Harraway. 1999. Responses by Hector's dolphins to boats and swimmers in porpoise bay, New Zealand. 15(3):738-750.

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Fowler, G.S. 1995. Ecotourism, field studies and stress: behavioral and hormonal responses of Magellanic penguins to nest site disturbance. Abstracts to Pacific Seabird Group Annual Meeting, 1995.

Gerrodette, T.G., and W.G. Gilmartin. 1990. Demographic consequences of changed pupping and hauling sites of the Hawaiian monk seal. Conservation Biology 4:423-430.

Hawkins, J. P., C. M. Roberts, T. V. T. Hof, K. D. Meyer, J. Tratalos, and C. Aldam. 1999. Effects of recreational scuba diving on Caribbean coral and fish communities. Conservation Biology 13(4):888-897.

Jungius, H. and U. Mirsch. 1979. Changes in heartbeats in nesting birds at Galapagos by human disturbance. Journal of Field Ornithology. 120:299-310.

Kenyon, K.W. 1972. Man verses the Monk Seal. Journal of Mammalogy 53:687-696.

Kitaysky, A., M. Benowitz-Fredericks, Z. Kitaiskaia, M. Shultz, and B. Zaun. 2003. Effects of tourist disturbance on stress physiology of wedge-tailed shearwaters (*Puffinus pacificus*) chicks at Kilauea Point National Wildlife Refuge, Kauai, Hawaii. Unpubl. refuge report.

Nimon, A.J., R.C. Schroter, and B. Stonehouse. 1995. Heart rate of disturbed penguins. Nature 374:415.

Presidential Proclamation 8031, 15 June 2006 (71 FR 36443) Establishing the Northwestern Hawaiian Islands as a marine national monument.

Presidential Proclamation 8112, 6 March 2007. Establishment of the Papahānaumokuākea Marine National Monument (72 FR 10031).

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Refuge Determination:

Refuge Manager
Approval**:** _____ Date:_____
(Signature)

FWS Superintendent,
Papahānaumokuākea Marine National Monument

_____ Date:_____
(Signature)

Project Leader,
Hawaiian and Pacific
Islands NWRC _____Date_____
(Signature)

Concurrence:

Refuge Supervisor,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

Regional Chief,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Midway Atoll National Wildlife Refuge

Use: Sustenance Fishing

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?		✔
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ___ No ✔

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate_____ **Appropriate** ✔

Refuge Manager:_____ Date:_____

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor:_____ Date:_____

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

Finding of Appropriateness of a Refuge Use: Attachment 1

Use: Sustenance Fishing

Additional information regarding the U.S. Fish and Wildlife Service evaluation of proposed Sustenance Fishing at Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Papahānaumokuākea Marine National Monument.

i. The project does not contribute to the public's understanding and appreciation of the Refuge's natural or cultural resources and is not beneficial to the Refuge's natural or cultural resources. Since the activity has failed to meet this requirement, consistent with relevant policy (603 FW 1.11 B.) the Refuge has completed an "Exceptional or Unique Circumstances Analysis" (see below).

Exceptional or Unique Circumstances Analysis for Sustenance Fishing at Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Papahānaumokuākea Marine National Monument (603 FW 1.11 B.).

The "Finding of Appropriateness of a Refuge Use" determination revealed that proposed Sustenance Fishing would not contribute to the public's understanding and appreciation of the Refuge's natural or cultural resources and would not be beneficial to the Refuge's natural or cultural resources. However, following the Refuge conditions for compatibility will establish that sustenance fishing will also not materially detract from these resources or the public's understanding and appreciation of them. Despite not meeting this requirement and consistent with relevant policy (603 FW 1.11 B.), the Refuge has made a determination that the use is appropriate for the following reasons.

- The use would not measurably harm cultural resources or populations of fish, wildlife, plants, or their habitats on the Refuge.
- The use would not adversely impact the public's understanding and appreciation of the Refuge's natural or cultural resources. For those members of the public participating in the use incidental to a permit to conduct another activity, understanding and appreciation would increase.
- The use would only be allowed if it were also determined compatible.
- Resuming sustenance fishing at Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Papahānaumokuākea Marine National Monument would enhance the quality of life for Monument employees and other permittees, many of whom are stationed at this remote location or on a vessel for extended periods of time, by providing fresh food at substantial savings to the Government.
- Sustenance fishing is recognized as part of the culture and practices of Native Hawaiians and is allowed under Presidential Proclamation 8031.
- Presidential Proclamation 8031 allows the Secretaries of the Interior and Commerce to issue permits for a variety of activities, including sustenance fishing incidental to other permitted activities.

Compatibility Determination

Use: Sustenance Fishing

Refuge Name: Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Papahānaumokuākea Marine National Monument

City/County and State: Midway Atoll is the penultimate western atoll in the Northwestern Hawaiian Islands, is considered an unincorporated, insular area of the United States (General Accounting Office 1997), and lies outside the State of Hawai‘i

Establishing and Acquisition Authority(ies):

Midway Atoll National Wildlife Refuge (NWR) was established in 1988 as an overlay Refuge by a cooperative agreement with the U.S. Navy (Navy) under the authority of the Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act of 1934, and National Wildlife Refuge System Administration Act of 1966, as amended (U.S. Navy and U.S. Fish and Wildlife Service 1988). Under this agreement, administrative responsibility for the Refuge was shared by the U.S. Fish and Wildlife Service (FWS) and the Navy. The Naval Air Facility at Midway was operationally closed in 1993. Facility cleanup was completed by June 30, 1997, when the Navy and its contractors departed. Jurisdiction and control for Midway Atoll were officially transferred from the Navy to the FWS under Executive Order (EO) 13022, signed by President Clinton on October 31, 1996, which superseded earlier orders that assigned responsibility for Midway to the Navy. Secretary of the Interior Babbitt signed Secretary's Order (SO) 3217 on September 13, 2000, designating Midway Atoll NWR concurrently as the Battle of Midway National Memorial. On June 15, 2006, President Bush signed Presidential Proclamation (PP) 8031 making Midway Atoll NWR part of a monument that became the Papahānaumokuākea Marine National Monument (Monument) on March 6, 2007 (PP 8112). Under PP 8031, Midway has unique authority and responsibility as a Monument Special Management Area.

Refuge Purpose(s):

The following purposes were included in the cooperative agreement between the Navy and FWS (U.S. Navy and U.S. Fish and Wildlife Service 1988) under the Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act of 1934, and National Wildlife Refuge System Administration Act of 1966. Pertinent language in those statutes includes:

1. ". . . for the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the U.S. Fish and Wildlife Service, in performing its activities and services." (Fish and Wildlife Act of 1956)

2. ". . . shall be administered by the Secretary of the Interior directly in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon . . . ." (Fish and Wildlife Coordination Act of 1934)

3. "…consolidate the authorities… for… the conservation of fish and wildlife. . . ." (National Wildlife Refuge System Administration Act of 1966)

The following additional purposes were included in EO 13022, dated October 31, 1996, which transferred jurisdiction and control over the Midway Islands from the Navy to the U.S. Department of the Interior:

1. Maintaining and restoring biological diversity within the refuge;

2. Providing for the conservation and management of fish and wildlife and their habitats within the refuge;

3. Fulfilling the international treaty obligations of the United States with respect to fish and wildlife;

4. Providing opportunities for scientific research, environmental education, and compatible wildlife-dependent recreational activities; and

5. In a manner compatible with refuge purposes, recognizing and maintaining Midway's historic significance.

Additionally, PP 8031 established the Papahānaumokuākea Marine National Monument, which covers a much larger area than the Refuge, but also includes the Refuge. The Monument establishing purpose is ". . . protecting the objects described above (coral, fish, birds, marine mammals, and other flora and fauna), all lands and interest in lands owned or controlled by the Government of the United States. . . ."

National Wildlife Refuge System Mission:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (National Wildlife Refuge System Administration Act of 1966, as amended (NWRS Administration Act, 16 U.S.C. 668dd-668ee)).

Description of Use(s):

Presidential Proclamation 8031allows the Secretaries of the Interior and Commerce to issue permits for a variety of activities, for which sustenance fishing may be incidental. This compatibility determination (CD) was prepared to address and evaluate this type of fishing in the Monument at Midway Atoll NWR. Parts of the Proclamation applicable to this evaluation include the following:

> "The Secretaries, in their discretion, may issue a permit under this proclamation if the Secretaries find that the activity: (i) is research designed to further understanding of monument resources and qualities; (ii) will further the educational value of the monument; (iii) will assist in the conservation and management of the monument; (iv) will allow Native Hawaiian practices; (v) will allow a special ocean use; or (vi) will allow recreation activities."
>
> "Sustenance fishing means fishing for bottomfish or pelagic species that are consumed within the monument, and is incidental to an activity permitted under this proclamation. The Secretaries may permit sustenance fishing outside of any Special Preservation Area as a term or condition of any permit issued under this proclamation. The Secretaries may not permit sustenance fishing in the Midway Atoll Special Management Area unless the activity has been determined by the Director of the United States Fish and Wildlife Service or his or her designee to be compatible with the purposes for which the Midway Atoll National Wildlife Refuge was established. Sustenance fishing must be conducted in a manner compatible with this proclamation, including considering the extent to which the conduct of the activity may diminish monument resources, qualities, and ecological integrity, as well as any indirect, secondary, or cumulative effects of the activity and the duration of such effects. The Secretaries would develop procedures for systematic reporting of sustenance fishing."

The FWS proposes to allow limited sustenance fishing to occur in pelagic (greater than 200 foot depth) waters of the Midway Atoll NWR. Fishing would be primarily for tunas (*Thunnus* spp., *Katsuwonus* spp.), wahoo (*Coryphaena bippurus*), and mahimahi (*Acanthocybium solandri*). The Refuge Manager would allow limited numbers of these fish to be caught for consumption within the Midway Atoll NWR.

Reef fish occur within or near the coral reef system within the Monument and many contain ciguatoxin, which can be dangerous or lethal if consumed by humans. Ciguatoxins are caused by the presence of certain microplankton or dinoflagellates naturally present in the marine ecosystem which bioaccumulate in some reef fish (Center for Disease Control and Prevention 2008). Ciguatera is defined as seafood poisoning due to ciguatoxin, a toxin acquired by eating fish that have consumed these microplankton or dinoflagellates, or fish that have consumed other fish that have become toxic. When humans eat these fish, they suffer seafood poisoning. Therefore, the only type fish suitable for consumption purposes are open-ocean or pelagic fish.

Fishing for bottomfish is allowable under PP 8031. However, due to the depressed populations of bottomfish species (NMFS 2006; Heinemann et al 2005), indicators that food limitation may be a factor in survival of endangered Hawaiian monk seals (Antonelis et al 2004, p. 82), and the potential for direct (harmful) interactions between seals and bottomfish fishing gear; fishing for bottomfish is not deemed biologically compatible at this time. As with many reef fish, bottomfish including some grouper and snapper may also contain ciguatoxin and be poisonous to humans if consumed (Center for Disease Control and Prevention 2008). Therefore the remainder of this CD discusses sustenance fishing for pelagic species only.

This CD discerns two basic groups conducting sustenance fishing for pelagics incidental to their permitted activity. The first is Co-Trustee agency personnel, volunteers, and contractors conducting sustenance fishing incidental to their Conservation and Management Permit. This includes land-based as well as ship-based personnel aboard vessels such as NOAA's *Hi'ialakai*. The second group is permittees operating under one of the five remaining permit types, specifically authorized to conduct sustenance fishing incidental to their primary permit activity. These non-Co-Trustee permittees could include, but are not limited to, both land- and vessel-based researchers, Native Hawaiian practitioners, and environmental educators. Except as noted, conditions and stipulations contained herein apply to both general groups.

Fish would be caught by stiff rod and reel or hand lines and surface trolling a lure (e.g., composed of a jet head, squid squirt, leader) and hook. The lures would be trolled at a boat speed of greater than 7 knots to eliminate the possibility that seabirds would chase after the lure and become hooked. Retrieval will be rapid to avoid losing a fish to a shark and also hooking it in the process. For this reason, a simple hand line made of at least 150-lb test line or greater with a shock chord (e.g., surgical tubing to absorb the energy of the initial fish strike and to indicate that a fish is hooked) is effective and would not allow the fish to take additional line out. Fish would be "muscled" immediately to the boat to lessen shark bycatch. Fish would be bled into a container and iced immediately (but not frozen) to keep the meat fresh.

For Co-Trustee agency personnel, authorization for sustenance fishing within the Monument is given to the Co-Trustee agencies through an annual Conservation and Management Permit. Therefore, sustenance fishing will be limited to those persons whose work and presence at Midway are authorized by that permit. On land, this generally includes FWS, NOAA and State personnel; long-term volunteers, and contractors. All fishing will be conducted from a federally owned, shore-based, power boat operated by an agency-certified boat operator (e.g., for the Department of the Interior, this is the Motorboat Operator Certification Course in accordance with 485 DM 22). For the FWS, the boat operator and anglers will be required to be off-duty in order to participate in this activity. Anglers will troll for pelagic fish with lures

as described previously. All fishing will be conducted for sustenance of the island community at the common table (i.e., the Midway galley called the "Clipper House"). Government vessel-based agency employees, volunteers, and contractors may fish for sustenance in accordance with their permit from their vessel in compliance with the conditions of this CD for the vessel's common table.

Other island-based permittees who have sustenance fishing listed in their Monument permit as an incidental activity and have access to a private vessel may also be allowed to sustenance fish to provide food for the island's population. Refuge visitors or other agency personnel who arrive via their own vessel and who have a valid Monument permit that authorizes sustenance fishing will also be allowed to fish subject to notification of their intent to the Refuge Manager and their willingness to comply with Refuge regulations and stipulations as described herein. Unless specifically authorized through their permit, other visitors to Midway (including recreational visitors) are not authorized to conduct sustenance fishing as an incidental activity.

All permittees engaged in sustenance fishing may only catch fish in quantities needed for immediate consumption within the Monument; such that fish will be consumed the same day as caught or refrigerated and eaten within 2 days of take. The intent of sustenance fishing under this CD is to provide fresh food for the common table (e.g., the Clipper House). Therefore, no fish taken under this permit will be frozen for later consumption, and the quantity of fish taken will not exceed what can be consumed by island residents or vessel occupants within that 2-day period. Although a limit on the *number* of fish allowed is stipulated here, if sufficient *poundage* of fish is caught to provide for the common table before the number limit of fish is reached; fishing will cease. An estimate of 50 lbs per fish was used in Figures 1 and 2, below, although the average fish caught by FWS personnel at Midway Atoll NWR in the past was usually only 25 lbs. This conservative estimate is used to favor the continued sustainability and therefore continued compatibility of sustenance fishing.

For Co-Trustee agency personnel, the use would include 26 boat trips each year based out of Midway Atoll, and the NOAA ships *Oscar Elton Sette* and *Hi'ialakai* deploying 2-4 lines as they transit between research sites within the Monument (approximately 10 transit days at Midway each year). Shore-based boats are limited to 6 people or fewer aboard by the maximum number of trolling lines that can simultaneously be deployed from the stern of a small boat plus a boat operator and lookout, as well as reduce the possibility of multiple fish being simultaneously hooked and inadvertently exceeding the daily limit of fish. No data exists for past sustenance fishing effort or catch by other permittees, therefore, an estimate of up to 15 private vessels (e.g., sailboats) and 5 contract vessels (e.g., barges) may troll for fish enroute to or from Midway, but within Midway's waters, each year. This estimate of private vessel requests may have to be adjusted based on actual experience over the next few years as the actual demand for sustenance fishing is established. We have no past experience of sustenance fishing from cruise ships, and as such, this use is not considered here.

Collectively we will control the take of no more than 300 fish per year from Midway's waters (208 to island residents and up to 92 more for vessel-based sustenance fishing). Conservatively this may equate to 15,000 pounds of fish, or 6.8 t. Based on actual experience, poundage would likely be half this estimate. This represents approximately 0.06% of the total catch of the three types of fish considered in this CD landed in 2003 by commercial fishers in both the main Hawaiian Islands and NWHI (WPFMC 2005b).

Availability of Resources:

For the FWS, this activity occurs during nonworking hours and constitutes a very small portion of FWS staff time. The major cost of this activity is maintenance of FWS vessels, supplying fuel, monitoring the activity, and reporting catches.

Category and Itemization	One time ($)	Annual ($/yr)
Administration and Management		$1,700
Maintenance		$3,000
Monitoring		$2,600
Boat Fuel		$1,950
Offsetting revenues (estimated)		$30,000

The numbers above reflect the current estimated costs. Estimated costs were calculated using 2% of the base cost of a GS-13 refuge manager and 4% of the base cost of a GS-11 wildlife biologist assuming that activity would use that estimated "portion of a year" to administer. Maintenance would consist of routine maintenance on the powerboats. Fuel would consist of approximately 15 gallons (at $5 per gallon) of gasoline per fishing trip with approximately one trip occurring every 2 weeks. Monitoring will consist primarily of staff time needed to collect, total, and transmit catch data in the required Monument permit reports and consult with NOAA Fisheries experts. Additional monitoring time will also be required for Refuge staff to conduct literature searches and/or correspond with researchers to stay current with available scientific data and opinion regarding populations of pelagic fish species in the North Pacific. The cost of shipping fresh fish to Midway (i.e., by air, not vessel) is approximately $9 per pound. The value of fresh fish caught between June 2006 and February 2007 (9 months) (50 fish at approximately 50 lbs each, see Fig. 1) was approximately $22,500, or $30,000 per year. Using a more precise estimate of only 25 lbs per fish, this still yields an offsetting savings to the Government of $15,000.

Anticipated Impacts of the Use(s):

Possible impacts from persons involved in sustenance fishing include: (1) disturbance to flying, foraging, and resting seabirds and other migratory birds on the open ocean; (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green turtles (*Chelonia mydas*) swimming, feeding, and resting in the open-ocean marine environment; (3) disturbance to spinner dolphins (*Stenella longirostris*) swimming, feeding, and resting in the open-ocean marine environment; (4) disturbance to fish, sharks, cetaceans, and marine invertebrates; (5) accidental release of pollution and contaminants; and (6) the accidental introduction and establishment of nonnative species to the Monument. All sustenance fishing would be designed and managed in a manner to eliminate or minimize these impacts. However, even with proper management and execution of a well planned activity, certain behavioral responses in wildlife may occur that are not easily recognized by the casual observer. Some proposed activities will require further analysis and compliance by the agencies as more detailed information becomes available and specific plans are developed. These requirements may include additional analysis in accordance with NEPA, and consultation under ESA, Marine Mammal Protection Act, NHPA, and other relevant laws.

Seabirds
Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, Nimon et al., 1995 and Kataysky et al., 2003). Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. When permittees are fishing near albatrosses, terns, boobies, or other species, they would have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive. Kitaysky et al. (2003) showed that limited duration disturbance, however, has only minor, short-term effects. Trolling speeds would be maintained at a speed of greater than 7 knots to eliminate the risk of hooking seabirds and boats would steer around groups of fishing seabirds rather than navigating through them.

Hawaiian monk seals
Human activities have played a major role in determining the status and trend of Hawaiian monk seals over the past two centuries (Ragen 1997). From the 1960s to the 1990s, decreases in monk seal populations at several locations (French Frigate Shoals, Midway Atoll, and Kure Atoll) have been associated with human disturbance (Gerrodette 1990). Human activity and disturbance caused incredible declines at Midway Atoll (Kenyon 1972). Beach counts of monk seals at Midway Atoll averaged 56 animals in the late 1950s, but declined severely by the late 1960s with a single seal observed during an aerial survey in 1968. However, interactions between small boats operating in the open ocean and monk seals are very rare. In that rare instance where a passing boat operates near a swimming monk seal, the operator will be instructed to change course away from the seal and leave the area in which the seal is swimming. Any such instances are expected to produce only very short, minimal impacts to monk seals with no cumulative impacts.

Invasive species
Increased use of waters also increases the potential for introductions of nonnative species and interactions (some negative) by ships, boats, or fishermen. One accidental introduction of a nonnative species on a boat or fishing equipment could devastate the Monument. The introduced sea star (*Acanthaster planci*) in Guam killed 1 km of coral in a month in a narrow fringing coral reef and 90% of the coral in a 2.5-year period along 38 km of Guam's coastline (Chesher 1969). Refuge small boats involved in sustenance fishing do not leave Midway waters and therefore have no chance to accumulate and subsequently disperse nonnative species, although care is taken not to further distribute nonnative species from one site to another within the atoll. Visiting ships and boats must meet Monument requirements for hull inspection and cleaning so the chances of introductions coming from those vessels are small.

Fish
Many pelagic fish considered in this CD for sustenance fishing (including tunas) have high fecundity, with females spawning several million eggs per year. Age and size at first maturity are variable. Skipjack are generally 18 inches at 5 years. Tuna species considered here have high levels of absolute recruitment (WPFMC 2005a). The population dynamics of many pelagic species differ and, as such, affect the impacts of catch. Skipjack tuna, for example, are short lived and fast growing, with high natural mortality and a large standing stock size. These characteristics suggest moderate levels of fishing can be sustained without materially detracting from the population. Likewise, yellowfin tuna are fast growing but they live longer and have more moderate natural mortality and smaller standing stock (WPRFC 2005a).

A 2003 report on commercial fisheries in the main and NWHI documents that long-line, handline, and pole and line fishing landed more than 10,250 t of tuna species (primarily bigeye and yellowfin), 600 t of *Coryphaena* (mahimahi), and 450 t of *Acanthocybium (*ono) (WPFMC 2005b). The annual catch of these pelagic fish probably depends on overall abundance, but the availability of fish to Hawai‘i's pelagic fisheries is also highly seasonal (Yoshida 1974), suggesting that highly mobile pelagic fish change their distribution in response to environmental conditions (Mendelssohn and Roy 1986) or to enter different areas for reproduction.

Of sustenance catches, staff fishing aboard NOAA vessels in the Monument caught a total of 130 fish in 2007, 95% of which were pelagic (Fig. 1). No weights were taken on the fish, but catch weight was estimated at 6,500 lbs or 2.95 t (Fig. 1).

By policy FWS staff stationed in the Hawaiian Islands NWR conducted no fishing in 2007 and have not done so for at least the 6 years. The FWS staff based at Midway Atoll NWR engaged in sustenance fishing aboard FWS vessels in the Monument caught at total of 50 fish from June 2006 to February 2007

(9 months, including the most fishing productive summer months), all of which were pelagic. No weights were taken on the fish, but catch weight was estimated at 2,500 lbs or 1.13 t (Fig. 2). By policy FWS sustenance fishing at Midway Atoll has not occurred since February 2007. Obtaining actual weights will be required as part of any future sustenance fishing and subsequent reporting requirements.

Based on fishing reports from FWS and NOAA, a relatively low number of fish have been extracted from the Monument in recent times. If these trends continue at these levels, it appears as though sustenance pelagic fishing would not materially detract from the populations of these fish occurring in the Monument. At this time, data are not available for the last 5-10 years to see how recent catches compare to the past. No data are available on fishing effort, number of sharks caught, and bycatch.

Species	Common Name	Local Name	No. Caught	Year
Acanthocybium solandri	Wahoo	Ono	55	2007
Thunnus spp. (obesus + albacares)	Tuna	‘Ahi	55	2007
Euthynnus affinis	Makeral Tuna	Kavakava	9	2007
Thunnus albacares	Yellofin Tuna	Yellowfin ‘Ahi	5	2007
Aprion virescens	Green jobfish	Uku	3	2007
Pristipomoides sieboldii	Lavender jobfish	Kalikali	1	2007
undetermined		Red Taka	1	2007
undetermined		Pupu	1	2007

Figure 1. Fish caught (scientific name, common name, local name) by the NOAA vessels in the entire Monument during 2007 under sustenance fishing (NOAA unpub. data). Weights were not taken on these fish, so a liberal average weight of 50 lbs was applied to estimate total weight of the fish at (130 x 50 lbs): 6,500 lbs or 2.95 t.

Species	Common Name	Local Name	No. Caught	Year
Acanthocybium solandri	Wahoo	Ono	13	2006 - 2007
Thunnus spp. (obesus + albacares)	Tuna	‘Ahi	15	2006 - 2007
Euthynnus affinis	Makeral Tuna	Kavakava	5	2006 - 2007
Thunnus albacares	Yellofin Tuna	Yellowfin ‘Ahi	17	2006 - 2007

Figure 2. Fish caught (scientific name, common name, local name) by shore-based FWS vessels from sustenance fishing in the Midway Atoll NWR from June 2006 to February 2007 (FWS unpub. data). Weights were not available for these fish, so a liberal average weight of 50 lbs was applied to estimate total weight of the fish at (50 x 50 lbs): 2,500 lbs or 1.13 t.

The number of persons presently engaged in this activity is limited, and the catch is insignificant when compared to the quantity of fish landed prior to Monument establishment, and the relative fishing area compared to the size of the Monument. All catch data will be annually summarized and reported to Monument managers to determine if catch levels are acceptable and the activity remains compatible. No short-term impacts from this activity are anticipated. Summarized yearly catch data (including accidental catch of or interactions with seabirds, seals, turtles, sharks, and nontarget fish) will be used by Monument managers to evaluate continuation of this activity.

Public Review and Comment

This determination was issued for public review and comment as part of the Papahānaumokuākea Draft Monument Management Plan. The plan and associated compatibility determinations were also made available through printed copies upon request and through Monument Web sites at http://www.fws.gov/pacificlsands and http://hawaiireef.noaa.gov/. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended, and as determined by the Co-Trustees of the Monument. The Monument is of national interest, therefore, the availability of the draft Monument Management Plan (including the CDs) was advertised at the national level.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

GENERAL TERMS AND CONDITIONS:

Each permittee would be required to adhere to all general conditions specified by the Monument Co-Trustees in their joint permit (Attachment 1).

A more comprehensive list of Refuge and Monument conditions and restrictions is included in this CD and 50 CFR Part 27. Not all of these conditions and restrictions would apply to every use. Depending upon the type of use and where the activity occurs would drive which are relevant (Attachment 2).

All persons participating in the travel to and from any of the islands must adhere to the "Special Conditions for Movement to and from Islands" which cover quarantine requirements (Attachment 3).

SPECIFIC TERMS AND CONDITIONS:

Reporting requirements: For island residents, fish catch (including species, weights, lengths, and GPS location of catch), fishing effort, bycatch (including accidental catch of or interactions with seabirds, seals, turtles, sharks, and nontarget fish), and date of activity will be recorded after each trip and filed in the Refuge office. Vessel based permittees engaged in sustenance fishing will report fish catch (including species, weights, lengths, and GPS location of catch), fishing effort, bycatch (including accidental catch of or interactions with seabirds, seals, turtles, sharks, and nontarget fish), and date of the activity to the Refuge Manager on a trip by trip basis. All catch data will be annually summarized and reported to Monument managers to determine if catch levels are acceptable and the activity remains compatible. All sustenance fishing would be monitored by Refuge staff to ensure the use remains compatible and resources are not impacted. Such monitoring would include but is not limited to: (1) disturbance to flying, foraging, and resting seabirds and other migratory birds on the open ocean; (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green turtles (*Chelonia mydas*) swimming, feeding, and resting in the open-ocean marine environment; (3) disturbance to spinner dolphins (*Stenella longirostris*); (4) disturbance to fish, sharks, cetaceans, and marine invertebrates; (5) accidental release of pollution and contaminants; and (6) the accidental introduction and establishment of nonnative species to the Monument.

Sustenance fishing limits for Midway Atoll residents will be set at no more than 6 fish per day and 208 fish per year, taken on no more than 26 boat trips (with 6 people or fewer aboard). Although a limit on the number of fish allowed is stipulated here, if sufficient poundage of fish is caught to provide for the common table before the number limit of fish is reached; fishing will cease. The annual take limit will ensure that the total take does not exceed an annual average of four fish taken per week. The daily catch limit for Midway residents under this determination is based on the estimated amount that can be reasonably consumed by island residents within 2 days. The Co-Trustee vessels fishing in Midway's waters will also be limited to the number of fish or poundage needed to provide fresh fish for all personnel onboard the ship on that day. Up to 15 private vessels (e.g., sailboats) and 5 contract vessels (e.g., barges) may troll for fish, if authorized, en route to or from Midway, but within Midway waters, each year. Vessel-based sustenance will not take more than 4 fish per day total, up to 92 per year. Sustenance fishing will be conducted from ships by deploying 2- 4 lines as they transit Midway's pelagic waters. Collectively there will be no more than 300 fish taken for sustenance per year from Midway's waters (208 to island residents and up to 92 more for vessel-based sustenance fishing). Conservatively this may equate to 15,000 pounds of fish, or 6.8 t.

Lures will be trolled at a speed of at least 7 knots to prevent hooking albatrosses, boobies, and other seabirds that follow fishing boats. Seabirds are able to ingest lures trolled at slower speeds. Squid, fish, and other animal products would not be allowed for fishing – only artificial bait.

To avoid hooking sharks, predatory reef fish (i.e., giant trevally or white ulua (*Caranx ignobilis*), monk seals, and other nontarget species, only artificial lures will be used and trolling will occur in a water depth of at least 200 feet. Caught fish will be bled so the blood does not enter the ocean and attract sharks during the fishing activity.

In an effort to prevent sharks from eating a hooked fish and also becoming hooked, fish will be brought into the boat as quickly as possible using hand lines or stiff rods with heavy test line (> 150 lbs) set with a heavy drag.

Fishing for bottomfish is not allowed.

All fishing gear will be cleaned using a mild bleach solution before use in the Monument and must also be cleaned according to quarantine procedures (Attachment 3). The bleach solution would be disposed of properly.

Fishing boats are required to navigate around aggregations of foraging (fishing) or resting seabirds, rather than navigate through them.

All fish other than common pelagic fish such as tuna species ('ahi) (*Thunnus* spp., *Katsuwonus* spp.), mahimahi (*Coryphaena bippurus*), and wahoo (ono) (*Acanthocybium solandri*) will be released unharmed.

Permittees engaged in sustenance fishing may only catch fish in a quantity needed for consumption within the Monument. Fish caught by island residents are for consumption by island residents at the common table (i.e., Clipper House). Fish caught by vessel-borne permittees are for consumption by the vessel occupants at the common table.

Island-based vessels involved in fishing are required to return to dock at least 1 hour before sunset, which enhances boat operators' ability to avoid collisions with marine life.

Power boat operators may slow to allow permittee observation of approaching spinner dolphins, but would neither pursue the dolphins nor specifically seek them out.

Only four-stroke outboard motors would be used for permittee boats. These motors are cleaner-running and quieter than two-stroke motors and would not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals. No other loud sounds would be associated with this program.

Justification:

Proclamation 8031 bans most resource extraction but allows the Secretaries to permit sustenance fishing incidental to other permitted activities.

Sustenance fishing will enhance the quality of life for Refuge employees, contractors, volunteers, and other permittees, many of whom are stationed in remote locations and/or on a vessel for extended periods of time. It will also provide a source for fresh fish that is difficult and expensive to transport from commercial sources in Honolulu due to logistical limitations. Sustenance fishing is recognized as part of the culture and practices of Native Hawaiians and is allowed under Proclamation 8031.

Sustenance fishing for pelagic fish has limited impact on the Monument's natural resources with the following guidelines: using artificial lures; trolling at higher speeds in deep water; landing fish quickly; limiting the catch; not removing fish from the Monument; not allowing fishing for bottomfish; keeping only common pelagic fish such as tuna species, mahimahi, and wahoo; and monitoring the impacts and recording catch, fishing effort, and bycatch.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____X_____ Mandatory 10-year reevaluation date (for non-wildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

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Refuge Determination:

Refuge Manager
Approval**:** _____ Date_____
(Signature)

FWS Superintendent,
Papahānaumokuākea Marine National Monument

_____ Date:_____
(Signature)

Project Leader,
Hawaiian and Pacific
Islands NWRC _____Date_____
(Signature)

Concurrence:

Refuge Supervisor,
National Wildlife
Refuge System
Pacific Region _____Date_____
(Signature)

Regional Chief,
National Wildlife
Refuge System _____Date_____
Pacific Region (Signature)

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Attachment 1: General Terms and Conditions of a Papahānaumokuākea Marine National Monument Permit

GENERAL TERMS AND CONDITIONS:
In accordance with the Proclamation and applicable regulations, the permitted activities listed above are subject to the following general terms and conditions:

1. The permittee must sign and date this permit on the appropriate line below. Once signed and dated, the permittee must provide a signed original copy to the Monument official identified below. The permit becomes valid on the date the last Monument official signs the permit and shall remain valid for not more than one (1) year from that date.

   Permit Coordinator
   Papahānaumokuākea
   Marine National Monument
   6600 Kalaniana‘ole Hwy. Suite 300
   Honolulu, HI 96825

2. This permit is neither transferable nor assignable and must be carried by the permittee while engaging in any activity authorized by this permit. All other persons entering the Monument under the authority of this permit must provide the name of the permittee or the permit number to any authorized enforcement or management personnel upon request.

3. This permit may only be modified by written amendment approved by the Co-Trustees. Modifications to this permit must be requested in the same manner as the original request was made. Any modifications requested by the permittee, such as adding or changing personnel to be covered by the permit or to change the activities that are allowed, must be made in writing.

4. This permit is subject to suspension, modification, non-renewal, or revocation for violation of the Proclamation, implementing regulations, or any term or condition of the permit. Any verbal notification of a violation from an authorized Monument representative may require immediate cessation of activities within the Monument. The issuance of a permit shall not constitute a vested or property right to receive additional or future permits. This permit may, in the sole discretion of the Co-Trustees, be renewed or reissued. However, there is no right to a renewal or re-issuance of a permit. Failure to fulfill permit requirements may affect consideration of future permit applications.

5. Permit terms and conditions shall be treated as severable from all other terms and conditions contained in this or any other ancillary permit. In the event that any provision of this permit is found or declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms or conditions of this permit.

6. This permit does not relieve the permittee of responsibility to comply with all federal, state and local laws and regulations. Activities under this permit may be conducted only after any other permits or authorizations necessary to conduct the activities have been obtained.

7. The permittee may be held liable for the actions of all persons entering the Monument under the authority of this permit.

8. All persons entering the Monument under the authority of this permit are considered under the supervision of the permittee and may be liable in addition to the permittee for any violation of this permit, the Proclamation and implementing regulations in conjunction with this permit. The permittee must ensure that all such persons have been fully informed of the permit terms and conditions prior to entry into the Monument. Each such person must provide written acknowledgment to the permittee, prior to entry into the Monument, that he/she has received a copy of the permit, agrees to abide by all applicable terms and conditions, and may be liable for violations of the permit. The permittee shall maintain all signed acknowledgments and submit them with the summary report described in General Condition #22.b.

9. Notification of entry into the Monument must be provided at least 72 hours, but no longer than one month, prior to the entry date. Any updates to the list of personnel must also be provided at least 72 hours before entering the Monument. Notification of departure from the Monument must be provided within 12 hours of leaving the Monument. Notification may be made via e-mail, or telephone by contacting: E-mail: nwhi.notifications@noaa.gov; Telephone: 1-866-478-6944; or 1-808-395-6944. No other methods of notification will be considered valid.

10. The permittee and any person entering the Monument under the authority of this permit shall, before entering the Monument, attend a cultural briefing or view designated cultural informational materials on Papahānaumokuākea regarding the region's cultural significance and Native Hawaiians' spiritual and genealogical connection to the natural and cultural resources. Persons entering the Monument at Midway Atoll may satisfy this requirement upon arrival.

11. All vessels (including tenders and dive boats), engines and anchor lines shall be free of introduced species prior to entry into the Monument. To ensure this, all vessels, engines and anchor lines shall be inspected for potential introduced species prior to departing the last port before entering the Monument. No later than 24 hours prior to entry, the permittee shall provide the Monument Permit Coordinator with a report prepared by the individual conducting the inspection that: a) sets forth when and where the inspection occurred; b) identifies any introduced species observed, including where found; c) summarizes efforts to remove any species observed; and d) certifies the vessel as free of all introduced species. The Monument Permit Coordinator shall review the report and, based on the review, may delay the entry into the Monument until all concerns identified by the Monument Permit Coordinator have been addressed.

12. All hazardous materials, biohazards and sharps, must be pre-approved by the Co-Trustees. For purposes of this permit, "hazardous material" has the same meaning as the definition found at 49 CFR §105.5 (U.S. Department of Transportation). All hazardous materials, biohazards and sharps must be stored, used, and disposed of according to applicable laws and Monument-approved protocols. The permittee, or a designated individual entering the Monument under the authority of this permit must be properly trained in the use and disposal of all such materials proposed. Proof of appropriate training may be required by the Co-Trustees. No such material may be left in the Monument after the departure of the permittee unless it has been previously approved by Monument staff. Immediately after the project is complete the permittee must remove all such materials from the Monument. The permittee will be responsible for all costs associated with use, storage, transport, training, disposal, or HazMat response for these materials.

13. All equipment or supplies brought into the Monument, or structures of any kind built in the Monument by the permittee are the responsibility of the permittee. All materials that are brought to the Monument by the permittee must be removed by the permittee except as otherwise permitted. Any permanent structures, equipment, or supplies that require maintenance, are

determined to be unserviceable, or are a safety hazard, must be immediately repaired or removed from the Monument by the permittee. No structures, equipment, or supplies may be left in the Monument following the completion of the project except as listed in the permit.

14. If Monument staff are present at the field site, the permittee must meet with them before beginning permitted activities. Even with a valid permit, authorized Monument staff may prohibit entry into any location(s) within the Monument as they may deem appropriate to conserve or manage resources, particularly in areas where cumulative impacts of permitted activities are concentrated.

15. In order to facilitate monitoring and compliance, any person entering the Monument under the authority of this permit, including assistants and ship's crew shall, upon request by authorized Monument enforcement personnel, promptly: a) allow access to and inspection of any vessel or facility used to carry out permit activities; b) produce for inspection any sample, record, or document related to permit activities, including data, logs, photos, and other documentation obtained under, or required by, this permit; and c) allow inspection on board the vessel or at the permittee's premises of all organisms, parts of organisms, and other samples collected under this permit.

16. It is prohibited to possess or consume alcohol in the Hawaiian Islands National Wildlife Refuge in accordance with refuge regulations. Any violations will result in immediate removal of the offender from the Monument at the individual's own cost. Offenders may not be readmitted to the Monument.

17. All persons entering the Monument under the authority of this permit are responsible for the cost of removing themselves from the Monument at the conclusion of the term of the permit or upon revocation or suspension of the permit. All such persons are also responsible for the cost of removing themselves from the Monument in the event of a necessary medical evacuation, emergency evacuation, including weather, or for the cost of any necessary search and rescue operation.

18. Except as expressly required by applicable law, the Co-Trustees are not liable for any damages to equipment or injuries to the permittee and persons entering the Monument under the authority of this permit. The permittee and any person entering the Monument under the authority of this permit shall release, indemnify, and hold harmless the National Oceanic and Atmospheric Administration, the Department of Commerce, the U.S. Fish and Wildlife Service, the Department of the Interior, the United States Government, the State of Hawai'i, and their respective employees and agents acting within the scope of their duties from and against any claims, demands, actions, liens, rights, subrogated or contribution interests, debts, liabilities, judgments, costs, and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon the issuance of this permit or the entry into or habitation upon the Monument or as the result of any action of the permittee or persons participating in the activity authorized by this permit. In the event that a government employee, acting in his official capacity, is the permittee, or is entering the Monument under the authority of this permit, then he shall be subject to all applicable federal and State laws that pertain to claims by or against him predicated upon the issuance of this permit or entry into or habitation upon the Monument.

19. Monument managers or their designees may verbally require the permittee to modify or cease activities not identified in this permit if, in the opinion of the managers or designees, such action is necessary to limit disturbance to or protect Monument resources, to protect government equipment, or to ensure the safety of personnel. After providing such verbal instructions, the

managers or designees will provide the permittee with a written modification, suspension or revocation to this permit at the earliest practicable opportunity. The failure to follow verbal instructions or modified permit terms, or to cease activities upon suspension or revocation of this permit, may constitute a violation of this permit, the Proclamation, the regulations, or other applicable law.

20. Disturbance of any cultural or historic property, including but not limited to Native Hawaiian cultural sites, burials, archaeological deposits, and WWII structures and features, such as stone walls and mounds, stone uprights, bunkers, batteries, camp sites, hospitals, housing areas, and radio towers; or the disturbance or collection of any historic or cultural materials and artifacts, including but not limited to bottles, dishes, cartridges, hospital materials, carvings, human remains, or Native Hawaiian bone or stone implements, found within the Monument, including the sale or trade in such items, is prohibited.

21. All Monument resources within the jurisdiction of the State of Hawai‘i are held in trust under the Hawai‘i State Constitution, Article XI, Sec. 1. The State of Hawai‘i and the Government of the United States reserve ownership or control, as the case may be, of Monument resources, both living and nonliving, that may be taken or derived from those found in the Monument.

22. The permittee must satisfy the following reporting requirements:

    a. For activities on State lands or within State waters, the permittee must submit a monthly report on the specified form.

    b. The permittee must maintain a cruise log including, but not limited to: anchoring locations and small boat dive locations. The log must contain a description of cruise activities and the geographic locations of those activities. Within thirty (30) days after the end of the cruise or the expiration date of this permit, the permittee must submit the cruise log and a summary report of activities conducted under this permit. The permittee having authority over the vessel must maintain a vessel discharge log, which must be submitted with the cruise log.

    c. Annual Report. The comprehensive annual report is a summary of all activities undertaken, including but not limited to: dates of all arrivals and departures from islands and atolls within the Monument, names of all persons involved in permitted activities, details of all specimens collected, handled, etc., any other pertinent information, GPS locations of all samples collected, transects, etc., results of work to date, copy of all data collected, and a proposed schedule of publication or production of final work. The report shall include a concise summary or abstract for use in Monument reports. Two hard copies and one electronic copy (Microsoft Word preferred, but not required), must be submitted to the Co-Trustees. The annual report is due by the end of the second week of January of the calendar year that follows the year that the permit was in effect or before a new permit is issued, whichever comes first. Subsequent annual reports are required each year until all data collected under research permits are fully analyzed.

    d. The permittee must debrief the Co-Trustees following the completion of all activities in the Monument covered under this permit. The permittee must schedule the debriefing upon submitting the annual report.

e. The permittee must submit two copies of any article, publication, or other product created as a result of the information gained or work completed under this permit, including materials generated at any time in the future following expiration of this permit.

f. Any publications and/or reports resulting from activities conducted under the authority of this permit must include the notation that the activity was conducted under permit number PMNM-200x-xxx. This requirement does not apply to publications or reports produced by the news media.

g. All required submissions (including plans, logs, reports, and publications) shall be provided to the Monument official at the address indicated in General Condition #1.

23. All data acquired or created in conjunction with this permit will be submitted with the summary report, and annual report. Photographic and video material is considered data. The permittee retains ownership of any data, (including but not limited to any photographic or video material), derivative analyses, or other work product, or other copyrightable works, but the Federal Government and the State of Hawai‘i retain a lifetime, non-exclusive, worldwide, royalty-free license to use the same for government purposes, including copying and redissemination, and making derivative works. The permittee will receive acknowledgment as to its ownership of the data in all future use. This requirement does not apply to data acquired or created by the news media.

24. Because photographic or video material that is created for personal use (i.e., not specifically acquired or created in conjunction with this permit) could unintentionally collect data that is also valuable for management purposes, the Co-Trustees reserve the right to request copies of any such material and the permittee agrees to provide a copy of such material within a reasonable time. The Co-Trustees may use such material for management purposes.

25. Any question of interpretation of any term or condition of this permit will be resolved by the Co-Trustees.

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Attachment 2: Refuge and Monument Conditions and Restrictions

- When replacing collected organisms into the ecosystem, they must be released as near as possible to the collection location. Precautions must be taken at every step in their handling to minimize harm and prevent mortality.
- Algae collected as bycatch in traps or other collecting equipment must be frozen as soon as possible for the purpose of transport to the main Hawaiian Islands.
- Collecting and sampling equipment must be deployed in low relief pavement or on sandy substrate where corals are known to be absent.
- Permittee is required to be accompanied by a U.S. Fish and Wildlife Service representative for the purpose of escorting all authorized personnel named on this permit on XX Island. This Monument representative will provide on-site real-time natural, cultural, and historic resource protection and disturbance prevention training and guidance.
- All scientific fishing gear must be checked at least at 4-hour intervals during daylight hours.
- Placement of equipment in waters greater than 100 meters deep must occur in locations determined to be flat, sandy substrate using multibeam bathymetry (if available).
- Swimming, SCUBA, and snorkeling are allowed only for vessel maintenance, emergency operations, and non-recreational support of vessel and research activities.
- The permittee must track all sustenance or subsistence fishing conducted in Monument waters outside of Special Preservation Areas. Permittee must also provide data as requested in the Monument Sustenance Fishing Data Sheet (attached) within 30 day of expiration of this permit.
- Permittee is required to work in conjunction with the U.S. Fish and Wildlife Service, Hawaiian Islands National Wildlife Refuge regarding any arrangements to visit Nihoa Island, Necker Island, the islands of French Frigate Shoals, Gardner Pinnacles, Laysan Island, Lisianski Island, and the islands of Pearl and Hermes Atoll respectively.
- Drifter buoys deployed and debris upon which they are attached that subsequently become fouled on the reefs of the Papahānaumokuākea Marine National Monument must be retrieved.
- All organisms in or on collection devices shall be removed, documented, photographed, labeled, and preserved prior to leaving the Monument.
- Any permanent or semi-permanent installation on the sea floor must be located on sandy substrate only.
- All samples and specimens must be dead during transport within and outside of the Monument.
- This permit does not allow access to emergent land except at XX island.
- Permittee must take every precaution to minimize the impact to surrounding nests and birds when working within the seabird colonies.
- This permit is not to be used for nor does it authorize the sale of collected organisms. Under this permit, the authorized research activities must be for noncommercial purposes not involving the use or sale of any organism, by-products, or materials collected within the Monument for obtaining patent or intellectual property rights.
- The permittee and those working under the authority of this permit must be familiar with the "Marine Wildlife Viewing Guidelines," accessible at NOAA's National Marine Fisheries Service website: http://www.fpir.noaa.gov/PRD/prd_laws_policies_guidelines1.html

- If there is any Hawaiian monk seal or any other protected species in the area when performing any permitted activity, the activity shall cease until the animal(s) depart the area.
- Permittee must adhere to Papahānaumokuākea Marine National Monument Special Conditions and Rules for Moving Between Islands and Atolls and Packing for Field Camps attached to this permit.
- All insects must be dead before departure from the Monument.
- Permittee must carefully evaluate each bird to ensure each individual is healthy prior to the fixation of satellite tags and collection of blood as stated in the permitted activities above.
- The permittee will implement the "Best Practices for Minimizing the Impact of Artificial Light on Sea Turtles" Pacific Islands regional Office, NOAA National Marine Fisheries service, Rev. Nov. 9, 2007, as applicable. See the attached document.
- The taking of any animal, vegetable, or mineral matter, except as authorized in the permit is prohibited on all refuge lands and waters. Beach combing or removal of flotsam from the beaches (including Japanese floats) is not allowed within the boundaries of the refuge without permission from the Superintendent.
- Entry in to the seabird colonies is prohibited unless expressly authorized by permit. Care must be taken to minimize disturbance to nesting birds and their habitat to avoid nest burrow cave-ins.
- Artificial light sources must be reduced at night to prevent disorienting seabirds and turtles.
- On-site refuge staff have the authority to regulate and restrict activities more stringently than defined in a permit if, in their opinion, such action is necessary to limit disturbance to wildlife, to protect government equipment, or to insure the safety of personnel.
- There will be no tolerance of any intentional disturbance to wildlife of any kind. If intentional disturbance is witnessed by Service staff, the individual(s) may be removed from the Refuge immediately at the Service staff's discretion. All costs of personnel transfer from the Refuge will be the responsibility of the Permittee.
- Disturbance to sea turtles and monk seals must be avoided. Minimum distances of 150 feet from all monk seals and sea turtles, and 300 feet from female seals with pups must be maintained. No harassment of any kind will be tolerated.
- Divers must be responsible by making sure your equipment is secured, you are weighted properly, check the water for submerged coral before exiting boats, and be careful not to touch or stand on living coral or other biota unless specifically permitted to do so.
- Disturbance or collection of archaeological materials such as bottles, dishes, cartridge cases, hospital materials, carvings, and human remains is strictly prohibited. However, the Service does recognize some of the native Hawaiian cultural/spiritual practices may involve moving stones which would not be considered disturbance.
- Prior to any ship or barge entering the Refuge, the hull must be inspected for fouling marine organisms. Any vessel found to have a fouled hull will be required to have the entire hull cleaned. Re-inspection of the cleaned hull before the vessel is allowed to enter the Refuges. All expenses relating to inspections and cleaning will be the responsibility of the Permittee. Results of all hull inspections must be submitted to the Refuge Manager prior to the vessel departure from Honolulu. Following the initial hull inspections, follow up inspections will be required once per year at a minimum for all vessels that will be operating within the Refuges of the Pacific Remote Islands NWR Complex.
- No discharge of ballast water will be allowed by any vessel within Refuge boundaries.

- No discharge of sewage, gray water, bilge water, trash or waste of any kind will be allowed by any vessel within Refuge boundaries.
- Small boat traffic within the Refuge is only permitted between 30 minutes after sunrise and one hour before sunset.
- If boating near shore or any emergent land, small boats must be kept a minimum distances of 150 feet from all monk seals and sea turtles, and 300 feet from female seals with pups that may be on shore. If a small boat is anchored in the water and a seal or turtle approaches the boat, passengers in the boat must remain in the boat, and the boat must remain anchored with its engine turned off until the animal leaves the area.
- All materials that are brought to the Refuge by the Permittee that become waste must be removed by the Permittee.
- Power boat operators may slow to allow observation of approaching dolphins and cetaceans, but will neither pursue them nor specifically seek them out. If cetaceans are encountered during transit between two points, FWS will allow the boat to slow and/or stop for observation, but entering the water will not be allowed.
- To eliminate anchoring impacts on coral, boat operators will anchor in sandy substrate only. Anchors will be lowered into place rather than tossed overboard.
- Snorkeling will be limited to persons accompanying Service staff during normal research and management activities and under no circumstances will it be allowed for solely recreational purposes.
- Only four-stroke outboard motors will be used for small boat operations. These motors are quieter than two-stroke motors and will not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals and have fewer emissions. No other loud sounds will be associated with this activity.
- Under no circumstances will Service employees or other Permittees disturb any native Hawaiian cultural sites.
- Photography of native Hawaiian iwi (bones, remains) is strictly prohibited at all times.
- Any sustenance fishing may be included as part of an existing permit for onsite activities, vessels, and boats passing through Monument waters or for native Hawaiian practitioners.
- The permit will limit both the kind and amount of fish available for taking
- In the event a determination is made that the activity is negatively influencing Monument resources, sustenance fishing will cease immediately until further regulations can be developed.
- Any onsite environmental education will be closely supervised by Service staff.
- Any students will be subject to the same restrictions (e.g., beach closures, distance limitations from wildlife, etc.) as other visitors.
- No more than 12 people will be led at one time on guided walks.
- All visitors will attend an orientation upon (or before) arrival and be given appropriate narrative and graphic material to clearly indicate which areas are open for public use and to clarify regulations in force to protect wildlife and habitat.
- Signing along trails will identify approved areas for beach access, wildlife observation, etc. Refuge staff will monitor public use to assess and respond to incidents of noncompliance with refuge

regulations. Vegetative screening will be used to ensure that visitors do not walk off trails. (This would occur if a much larger program were developed as a result of increased funding and staff.)

- "Field talks" will be located outside, on roads or trails along the edge of nesting seabird colonies or at a safe distance from other wildlife species. Only trained Service staff conducting the talk will be entering nesting colonies for brief periods.
- Interpreters will clearly explain the rationale for access restrictions and the action that will be taken to enforce regulations.
- Any spiritual or cultural offerings must be in compliance with the refuge quarantine requirements. This will make most plant materials unsuitable, although some salt free of organisms and their reproductive bodies may be suitable.

Attachment 3: Papahānaumokuākea Marine National Monument Special Conditions and Rules for Moving Between Islands and Atolls and Packing for Field Camps, June 2007

The islands and atolls of Papahānaumokuākea Marine National Monument (Monument) and the Hawaiian Islands National Wildlife Refuge are special places providing habitat for many rare, endemic plants and animals. Many of these species are formally listed as Endangered under the Endangered Species Act. Endemic plants and insects, and the predators they support, are especially vulnerable to the introduction of competing or consuming species. Such introductions may cause the extinction of island and reef endemics, or even the destruction of entire island or reef ecological communities. Notable local examples include: the introduction of rabbits to Laysan Island in 1902 which caused the extinction of numerous plant and insect species, and 3 endemic landbird species; the introduction of rats to many Pacific Islands causing the elimination of many burrowing seabird colonies; the introduction of the annual grass, sandbur, to Laysan Island where it has crowded out native bunch grass thus, eliminating nesting habitat for the Endangered Laysan finch; and, the introduction and proliferation of numerous ant species throughout the Pacific Islands to the widespread detriment of endemic plant and insect species.

Several of the islands within the Monument are especially pristine, and as a result are rich in rare and special plants and animals. Nihoa Island has at least 17 endemic and rare insect species, 5 Endangered plants and 2 Endangered birds. Necker Island has Endangered plants and 11 endemic insects. Laysan Island has Endangered plants, 9 endemic arthropods and the Endangered Laysan finch and Laysan duck. Other islands in the Monument such as Lisianski, and islets in Atolls such as Pearl and Hermes Reef and French Frigate Shoals provide homes for a variety of endemic and/or endangered species and require special protection from alien species.

Other Pacific Island such as Kure and the "high islands" (Oahu, Hawaii, Maui, Kauai, etc.) as well as, certain islands within Midway Atoll, Pearl and Hermes Reef and French Frigate Shoals have plants and/or animals that are of high risk for introduction to the relatively pristine islands discussed above. Of special concerns are snakes, rats, cats, dogs, ants and a variety of other insect and plant species. Harmful plant species of highest concern that we know of are *Verbesina encelioides, Cenchrus echinatus, and Setaria verticillata.*

The Co-trustees are responsible for the management and protection of the islands, reefs and wildlife of the Monument. No one is permitted to set foot within the Monument without the express permission of the Co-trustees through the permitting process. Because of the above concerns, the following restrictions on the movement of personnel and materials throughout the Monument exist.

The following conditions and rules apply to the all islands within the Monument with the exception of those at French Frigate Shoals and Midway Atoll:

Definitions:
"**new**" means off the shelf and never used anywhere but the island in question.
"**clothing**" is all apparel , shoes, socks, over and under garments.
"**soft gear**" is all gear such as daypacks, fannypacks, packing foam or similar material, camera bags, camera/binocular straps, microphone covers, nets, holding or weighing bags, bedding, tents, luggage, or any fabric, fiber, paper or material capable of harboring seeds or insects.

1. Any personnel who will be landing boats, and staying within the boats, at any island should have clean clothes and shoes.

2. Any personnel going ashore at any island and moving inshore from the immediate area in which waves are breaking, or beyond the intertidal area, at the time of landing must have new footwear, new or island specific clothes and new or island specific soft gear. All must be frozen for at least 48 hours prior to landing.

3. Any personnel entering any vegetated area, regardless of how sparse the vegetation, must have new footwear, new clothes and new soft gear all frozen for at least 48 hours prior to landing.

4. To avoid transport of seeds from within small boats the following protocol should be followed. For islands with safe or sandy landing conditions, one should keep quarantine shoes/socks inside quarantine containers until the island is reached. One should go ashore bare foot, and then don the quarantine shoes. Non quarantine shoes should be removed in the small boat, put into a bucket or some kind of sealed container, and left enclosed in that container until the person departs the island. The sealed container, if clean on the outside, may go ashore, but should not be opened ashore. For landings which are rocky, rough, and relatively unsafe (such as Necker and Nihoa) for safety reasons, quarantine shoes should be donned when inside the small boats, but care should be taken to look for seeds and insects which may be in the small boat.

5. Soft gear may not be moved between islands. Hard gear must be thoroughly cleaned and frozen for at least 48 hours between islands.

6. During transit, clothing and gear coming off Kure, Midway, or any islet of French Frigate Shoals must be carefully sequestered to avoid contamination of gear bound for cleaner islands. Special care must be taken to avoid contaminating gear storage areas and quarters aboard transporting vessels with seeds or insects from these islands.

7. Regardless of origin or destination, inspect and clean all equipment, supplies, etc., just prior to any trip to the Monument. Carefully clean all clothing, footwear and softgear following use to minimize risk of cross contamination of materials between islands.

8. Pack supplies in plastic buckets with fitted lids or other sealable metal or plastic containers since they can be thoroughly cleaned inside and out. **Cardboard is not permitted on islands.** Cardboard boxes disintegrate in a short time and harbor seeds, animals, etc., which cannot be easily found or removed. **Wood is not permitted unless sealed (painted or varnished) on all surfaces and frozen for 48 hours.**

   Wooden boxes can also harbor insects and seeds and therefore are only allowed if well constructed (tight fitting seams are required). All wood must be treated, and inside and outside surfaces must be painted or varnished to provide a smooth, cleanable finish that seals all holes.

9. Freeze or tarp and fumigate then seal all equipment (clothes, books, tents, everything) just prior to departure. Food and cooking items need not be fumigated but should be cleaned and frozen, if freezable. Cameras, binoculars, radios, and other electronic equipment must be thoroughly cleaned, including internal inspection whenever possible, but do not need to be frozen or fumigated. Such equipment can only be packed in wooden crates if treated as in #2 above. Any containers must contain new, clean packing materials and be frozen or fumigated.

10. At present, Tern Island is the singular exception to the above rule, having less stringent rules due to the large number of previously established alien species. Careful inspection of all materials and containers is still required. However, it is acceptable to use wooden and cardboard containers for transporting supplies to Tem Island. Also, there is no requirement for freezing or fumigating

items disembarked at Tem. Although requirements for Tem Island are more lax, the Refuge is still concerned about the possibilities of new introductions. Do not wear clothing to Tern Island that has been worn at Pearl and Hermes, Midway Atoll or Kure Atoll.

Additional Special Conditions for Travel to Nihoa and Necker (Mokumanamana) Islands:
Nihoa and Necker are the most pristine locations in the Monument. Nihoa is home to the highest number of federally listed endangered species in the Monument. Many areas of these small rugged islands are inaccessible. Introduction of any alien species could have disastrous results in a very short time. It would be almost impossible to mount any kind of control or eradication program on these islands should an alien species become established. Because of these reasons, access to Nihoa and Necker are strictly limited, and rules governing entry are more stringent.

1. Access to Nihoa and Necker by permittees will only be allowed under the accompaniment and supervision of a U.S. Fish and Wildlife Service (USFWS) Representative. The representative, who shall be appointed by the U.S. Fish and Wildlife Service Monument Manager will work with permittees to assure careful compliance with all rules for inspection, handling and preparation of equipment. The USFWS Representative will have the authority to control and limit access to various parts of the island to protect animals, plants and archaeological sites, especially endangered species. The USFWS Representative will have the authority to disallow access to the island, or order an immediate departure from the island if conditions for working on the island are not met or are violated in some way.

2. All field equipment made out of fabric material or wood must be new, and never previously used in the Northwestern or main Hawaiian Islands. Equipment previously purchased or made for use on Nihoa and Necker that has been carefully sealed and stored while away from Nihoa and Necker, and not used elsewhere, may also be brought onto the island. Rules for freezing and/or fumigating are as described for other sites in the Monument (see above).

3. Clothing, footwear (shoes, slippers, socks, etc.), daypacks (soft gear) must be new, unused, or previously only used on Nihoa (or Necker) and carefully sealed and stored while off of the island. Hard gear such as camera, and equipment must be thoroughly cleaned and inspected.

Additional Special Conditions for Travel Within Pearl and Hermes Atoll:
In recent years *Verbesina encelioides* has been introduced to Southeast Island within Pearl and Hermes Atoll. This noxious weed has taken over a large portion of the island. To prevent the further spread of this weed to the other islets within this atoll the following precaution must be taken:

1. Every person should have one set of quarantine gear and clothing for Southeast Island and one set of quarantine gear and clothing for all other islets in the atoll. For instance the same clothing, and if needed camping gear, may be used at north and seal kittery, but anything used at southeast needs to stay off all other islets in the atoll. Do not use the outer islet clothing and gear on Southeast Island.

2. Carefully inspect small boats and their associated equipment when traveling between islets at Pearl and Hermes Atoll. Since folks likely take one anchor ashore and put one anchor in the water there is potential for seed dispersal on anchor lines as well as from within the small boats. This needs to be watched very carefully.

Additional Special Conditions for Food:

Fresh foods such as fruits, vegetables, leafy vegetables and tubers are not permitted on quarantine enforced islands (Necker, Nihoa, Laysan, Garner Pinnacles, Lisianski and Pearl and Hermes Reef). Concern is not only that certain species such as tomatoes could easily become established but that decomposing organic waste can also harbor microbes and insects and can act as an introduction vector. Soil can contain many seeds, eggs, larvae, etc., and cannot be transported to or between islands.

All other food that can be safely frozen (this does not apply to food in cans or glass jars) must be packaged in air tight containers just as all other gear and frozen for 48 hours.

The following Compatibility Determinations were completed and approved in May 2007 as part of the Midway Atoll Interim Visitor Services Plan.

They remain valid until their specified re-evaluation date.

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Compatibility Determination

Use: Wildlife Observation and Photography

Refuge Name: Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial

City/County and State: Midway Atoll is the penultimate western atoll in the Northwestern Hawaiian Islands, is an unincorporated territory of the United States, and lies outside the State of Hawaii.

Establishing and Acquisition Authority(ies):

Midway Atoll National Wildlife Refuge (NWR) was established in 1988 as an overlay NWR under a cooperative agreement with the U.S. Navy. Under this agreement, administrative responsibility for the refuge was shared by the U.S. Fish and Wildlife Service (FWS) and the U.S. Navy (Navy). The Naval Air Facility at Midway was operationally closed in 1993. Facility cleanup was completed by June 30, 1997, when the Navy and its contractors departed. Custody and accountability for Midway Atoll were officially transferred from the Navy to the FWS in May 1996. Executive Order 13022, signed by President Clinton on October 31, 1996, superseded earlier orders that assigned responsibility for Midway to the Navy. Secretary of the Interior Babbitt signed Secretary's Order 3217 on September 13, 2000, designating Midway Atoll NWR concurrently as the Battle of Midway National Memorial. On June 15, 2006, President Bush signed Presidential Proclamation 8031 making Midway Atoll NWR part of the newly established Papahānaumokuākea Marine National Monument. Under that Proclamation, Midway has unique authority and responsibility as a Special Management Area.

Refuge Purpose(s):

Midway Atoll NWR was established pursuant to the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act of 1934. Pertinent language in those statutes includes:

1. ". . . for the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the U.S. Fish and Wildlife Service, in performing its activities and services." (Fish and Wildlife Act of 1956)

2. ". . . shall be administered by the Secretary of the Interior directly in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon . . ." (Fish and Wildlife Coordination Act of 1934).

The following purposes were included in Executive Order 13022, dated October 31, 1996, which transferred jurisdiction and control over the Midway Islands from the Navy to the Department of the Interior:

1. Maintaining and restoring biological diversity within the refuge;

2. Providing for the conservation and management of fish and wildlife and their habitats within the refuge;

3. Fulfilling the international treaty obligations of the United States with respect to fish and wildlife;

4. Providing opportunities for scientific research, environmental education, and compatible wildlife-dependent recreational activities; and

5. In a manner compatible with refuge purposes, recognizing and maintaining Midway's historic significance.

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System is:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. (National Wildlife Refuge System Administration Act of 1966, as amended [16 U.S.C. 668dd-668ee.])

Description of Use(s):

Compatible wildlife observation and photography are priority general public uses as designated in the National Wildlife Refuge System Improvement Act of 1997. As such, most refuges, including Midway Atoll, seek means to allow these uses in an appropriate and compatible manner.

The abundance of wildlife at Midway Atoll will allow the public endless opportunities to observe and photograph many different species in their natural habitat. The seasonal activity of species such as the Laysan albatross may drive increased visitor interest during certain seasons. However, the diversity of fauna and flora, both marine and terrestrial, should encourage year- round public access.

On Sand Island, land-based observation and photography are enabled by trails, access to open beach areas, and observation towers. A stationary wildlife viewing blind will be erected to facilitate viewing Laysan ducks and migratory birds. Additional native vegetation will be added near Turtle Beach to serve as an observational screen. The possibility of a portable viewing blind for other species remains open for future visitor use.

On Eastern Island, wildlife observation and photography will occur under the guidance of FWS-approved staff during walking tours of the island. Due to the sensitive nature of species such as sooty and gray-backed terns, red-footed boobies, and short-tailed albatross, tours of Eastern Island will be limited in duration and frequency.

On land, most wildlife observation and photography would be conducted on foot, by bicycle, or by golf cart. Means to observe marine wildlife species will include snorkel, diving, kayak, and power boat. Snorkel and diving observational tours will be led by experienced FWS-approved staff and/or guides under tightly controlled group tours to specific locations. These locations will include known reef locations with safe swimming conditions, interesting coral formations, and abundant reef fish, but not sites of particular importance to endangered Hawaiian monk seals or threatened Hawaiian green sea turtles. Known shallow depth submerged artifacts such as World War II-era aircraft or vessels may be included as dive sites as they typically harbor abundant reef fish. Kayak tours will also be led by qualified personnel with groups limited to six kayaks or fewer traveling to specific locations. Wildlife observation from power boats will only be opportunistic as the boats are used to ferry visitors to and from snorkel/dive locations or Eastern Island. This will be the most frequent means for visitors to observe spinner dolphins. Hawaiian monk seals and Hawaiian green sea turtles may also be observed on refuge beaches where they frequently haul out to rest.

Availability of Resources:

Current refuge staffing is not adequate to properly run a quality visitor program. For Fiscal Year 2007 it is anticipated that the refuge will add at least one refuge ranger on-island to work with visitors. Additional staff support will be provided by the Hawaiian and Pacific Islands NWR Complex for periods of peak visitor use. To properly support the full visitor program envisioned in 2008 and beyond, two additional visitor services specialists and a law enforcement officer will be required in addition to increased staffing needs by the refuge infrastructure support contractor. Certain refuge infrastructure improvements will also be needed to support the visitor program. These will include improved signing, larger and safer boats, on-island transportation (bicycles or golf carts), and kayaks.

Midway Atoll NWR has been charged by Congress and the FWS with developing a visitor program that is self-sustaining financially. To help us meet this goal Congress has also given the refuge receipts authority, which allows the refuge to keep reasonable fees collected for services provided at Midway Atoll. These fees will be used to offset costs of implementing the visitor services program. Estimated costs for implementation of this use and off-setting income are shown below:

Category and Itemization	**One-time ($)**	**Annual ($/yr)**
Administration and Management		$17,740
Maintenance		1,000
Monitoring		
Special equipment, facilities or improvements	$8,000	1,000
Offsetting revenues		$165,000

Estimated costs were calculated using 35% of the base cost of a GS-7 refuge ranger assuming that this priority use would use that portion of a year to administer. Off-setting revenues are fees paid by visitors for their stay on Midway Atoll.

Anticipated Impacts of the Use(s):

Possible impacts from visitors involved in wildlife observation and/or photography include (1) disturbance to nesting seabirds, (2) disturbance to Hawaiian monk seals (*Monachus schauinslandi*) and/or green sea turtles (*Chelonia mydas*) swimming or resting on beaches, (3) disturbance to spinner dolphins (*Stenella longirostris*), and (4) disturbance to fish and marine invertebrates. Visitor programs will be designed and managed to eliminate or minimize these impacts. However, even with proper management and execution of a well run program, certain behavioral responses in wildlife may occur that are not easily observable.

Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, Nimon *et al.* 1995 and Kataysky *et al*, 2003). Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. Albatrosses in the developed part of Sand Island are clearly acclimated to the presence of people but may still have elevated stress hormone levels. When visitors are observing albatrosses, terns, boobies, Laysan ducks, or other species in the less visited areas, they will have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive. Studies have shown (Kitaysky, *et al*, 2003) that limited duration disturbance, however, has only minor, short term effects. Observation periods for any particular bird or group of birds away from the town area of Sand

Island will be kept to 15 minutes or less for this reason. Observance of the rare short-tailed albatross, for example, will be managed under this guideline.

Increased use of refuge waters also increases the potential for interaction/disturbance by boats, kayaks, or snorkelers/divers with monk seals, sea turtles, and spinner dolphins. Any action of pursuit or annoyance from boats potentially disturbs marine mammals in the wild by causing disruption of their behavioral patterns or displacement from essential habitat areas, especially if the dolphins or seals are in a rest phase. Snorkel or dive operations also include the added risk of damage to living coral on the refuge. Improper boat operation or visitor behavior could result in localized impacts to the coral reef from repeated anchoring, touching, standing, or other avoidable physical disturbance to the coral.

Public Review and Comment:

This determination was issued for public review and comment as part of the Draft Interim Visitor Services Plan from the period of December 8, 2006 through February 6, 2007. The plan and associated compatibility determinations were made available through printed copies upon request and through the FWS Website at http://www.fws.gov/midway. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended.

Determination:

___ Use is Not Compatible

X Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

- The beaches on Spit and Eastern Island will be closed to visitors as well as the southern and western beaches on Sand Island (see Figure 3.1.1 in the interim visitor services plan). Power boats will not be allowed to travel closer than 500 feet from these closed beaches, except for guided tours to tie up to the pier on Eastern Island (see Figure 3.1.2). Guided kayak tours may only travel more than 150 feet from closed beaches from Rusty Bucket counterclockwise to Frigate Point as described in the interim visitor services plan.
- Visitors and residents are provided orientation materials and related information to minimize disturbance to wildlife ("wildlife viewing etiquette"). Specific restrictions (e.g., 150-foot approach distance for seals, prohibition of access to heavily burrowed areas, etc.) are strictly enforced. The orientation materials include specific indicators of wildlife behavioral responses to disturbance, especially for the Hawaiian monk seal and green sea turtle, as well as appropriate visitor response to being approached by wildlife. The orientation also includes a visual demonstration of a 150-foot distance. Information on the nesting locations of particularly rare species (e.g., white-tailed tropicbirds) may be withheld to protect these birds from disturbance. All visitors and new residents are required to go through orientation immediately upon arrival or early the next day in the case of an unusually late arrival.
- Professional photographers who desire access to areas not generally open to the public will be required to obtain the appropriate monument permit type (i.e., education or special ocean use). These permits stipulate more detailed access restrictions and regulations to protect wildlife. At the discretion of the refuge manager, FWS-approved staff and/or guides may be assigned to accompany professional photographers into particularly sensitive areas.

- All trips to Eastern Island for wildlife observation and/or photography will be closely supervised by FWS-approved staff and/or guides. Visitor tours of Eastern Island will be offered no more than once a week, unless specifically authorized by the refuge manager, and generally will be completed within a 3-hour period. Boats will tether to either end of the 150-foot pier, and disembarking passengers will be briefed on proper behavior to minimize disturbance to Hawaiian monk seals or green sea turtles that may be present. During periods of intensive tern nesting, routes will be carefully selected to minimize disturbance. Visitors will be advised to travel in single file in an expeditious manner through the colony. Photography will be allowed at the beginning and end of such a transit, not in the middle, to reduce the length of disturbance to the core nesting population. Restrictions on access to sensitive areas will be enforced. Spit Island will be off limits for wildlife observers and photographers unless they accompany FWS-approved staff and/or guides or permitted researchers during authorized project visits.
- Visitors will not be allowed to approach closer than 150 feet to Laysan duck seeps. The blind at the water catchment basin will allow visitors to see the species without disturbing the birds.
- Guided kayaking tours will be closely supervised by FWS-approved staff and/or guides. Buffer zones using the NOAA Watchable Wildlife suggested distance of 150 feet will be enforced as well as closures of selected lagoon areas to minimize disturbance of marine life, for example, a monk seal with pup. Visitors will be advised of proper actions to avoid disturbance and specific indicators of wildlife behavioral responses to disturbance, and all tours will follow planned routes designed to minimize disturbance and avoid sensitive areas. Kayak guides will be trained at estimating the 150-foot distance and will be responsible for keeping the entire group together. Since West Beach is a known pupping area, the buffer zone around known mother/pup pairs will be increased to 500 feet during the entire time the pair is on the beach. The NOAA-Fisheries seal biologist on Midway will keep refuge staff informed of new mother/pup pairs and their known locations. No kayaking will be allowed near Eastern or Spit Islands.
- Vessels involved in visitor activities will be required to return to dock at least 1 hour before sunset, which will also enhance boat operators' ability to avoid collisions with marine life. Within the inner harbor, boats must remain within speed limits of 10 knots. Visitors planning to engage in water-related activities during the albatross fledging season (June-July) will be thoroughly briefed on watching for shark activity, and water-related activities are not permitted during peak shark foraging times (½ hour before dusk to ½ hour after sunrise).
- Power boat operators may slow to allow visitor observation of approaching spinner dolphins, but will neither pursue the dolphins nor specifically seek them out. If dolphins are encountered during transit between two points, we will allow the boat to slow and/or stop for visitor observation, but entering the water will not be allowed. Routes to and from snorkeling/dive sites will be plotted to avoid known resting areas of spinner dolphins in the lagoon (see figure 1.1 below), as well as preferred Hawaiian monk seal haulout, molting, and pupping sites .

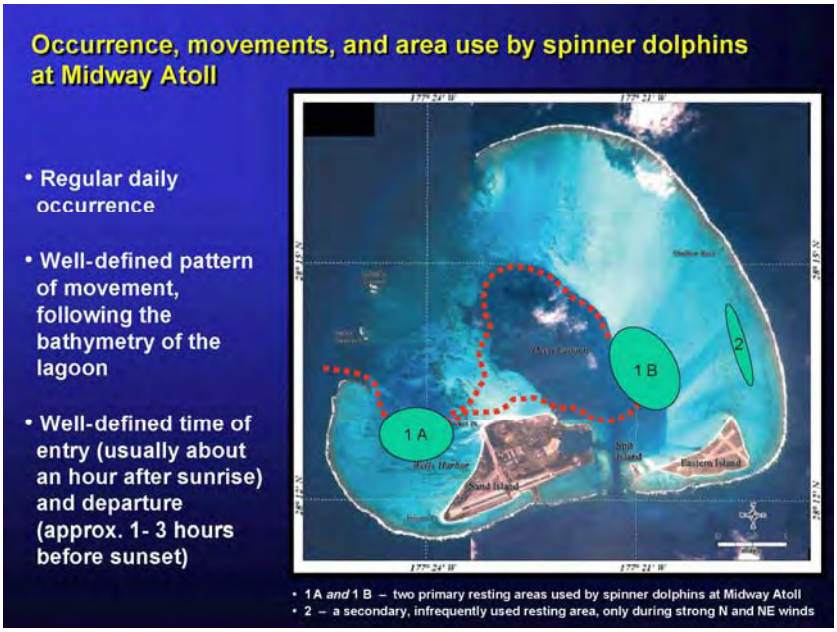

Figure 1.1. Occurrence, movements, and area use by Hawaiian spinner dolphins at Midway Atoll (courtesy of Dr. Leszek Karczmarkski)

- To eliminate anchoring impacts on coral, boat operators will be required to anchor in known sand areas. If a selected visitor use area has no suitable sand for anchoring, then a mooring buoy will be set in a manner to prevent the boat from damaging any living or dead coral.
- Snorkel trips will be limited to eight persons per guide and dive trips to six persons per guide. This will help ensure that the group stays together for safety reasons and to prevent visitors from straying into sensitive areas, approaching swimming monk seals, or damaging coral.
- Visitors and their luggage will go through an inspection for insects and plants prior to departing Honolulu, and again when leaving Midway to reduce the possibility of alien species introductions. Visitors will be asked to clean their shoes and other clothing before coming to Midway through advance introductory materials. Anyone bringing their own snorkel or dive gear to Midway will be required to treat the gear to prevent the inadvertent introduction or transmission of alien species (see Appendix _ for protocol).
- Only four-stroke outboard motors will be used for visitor program boats. These motors are quieter than two-stroke motors and will not exceed the Level A or Level B acoustic threshold for disturbance to marine mammals. No other loud sounds will be associated with this program.
- Power boats taking visitors to Eastern Island or snorkeling or diving may encounter spinner dolphins or, less frequently, green sea turtles while traversing the lagoon. Hawaiian monk seals are only rarely observed swimming in the lagoon. Boat operators will be fully briefed on known resting areas of spinner dolphins in the lagoon (Figure 1.1 above) and routes to and from snorkel and dive sites will be plotted to avoid these areas as well as preferred Hawaiian monk seal haulout, molting, and pupping sites .
- Refuge biological staff will work with the NMFS seal biologist stationed on Midway to develop a monitoring plan to assess impacts to Hawaiian monk seals from the visitor program. This plan will be based on the existing data set of seal sightings on Sand Island over the past 10 years and available for public review. This monitoring plan will be drafted after approval of the Midway

Atoll Interim Visitor Services Plan but prior to implementation of the full scale visitor services program. Long term trend analysis of use of the Sand Island beaches by monk seals should allow the biologists to determine if there is a noticeable change (geographic shift or decrease) in seal beach use over time.

- A review of files documenting past visitor violations of closed beaches and/or monk seal disturbance shows that many of the people had not received orientation to the refuge and closed areas. Strict compliance with the orientation policy will address many of those types of violations in the planned visitor program. Some of the documented violations were clearly due to poor or nonexistent signing. A new sign plan will be developed by refuge staff and all signs put in place in 2008. Temporary signs may be used prior to that time. However, records also clearly show the need for a law enforcement officer who works in the field ensuring that refuge regulations are enforced. An officer will be stationed at Midway prior to implementation of the full scale visitor program. Prior to that time, law enforcement needs will be met through periodic use of officers on short-term details. Documented violations that occur during periods without an officer in place will be handled through an affidavit process by which the officer is provided specific details of the incident that are legally adequate for issuance of a Notice of Violation.

Justification:

Wildlife observation and photography are priority public uses of the National Wildlife Refuge System, and Midway Atoll NWR provides unique wildlife observation opportunities, not possible elsewhere in the United States.

Mandatory 10- or 15-year Reevaluation Date:

_____X_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____ Mandatory 10-year reevaluation date (for non-wildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

References Cited:

Fowler, G.S. 1995. Ecotourism, field studies and stress: behavioral and hormonal responses of Magellanic penguins to nest site disturbance. Abstracts to Pacific Seabird Group Annual Meeting, 1995.

Jungius, H. and U. Mirsch. 1979. Changes in heartbeats in nesting birds at Galapagos by human disturbance. J. Orn. 120:299-310.

Kitaysky, A., M. Benowitz-Fredericks, Z. Kitaiskaia, M. Shultz, and B. Zaun. 2003. Effects of tourist disturbance on stress physiology of wedge-tailed shearwaters (*Puffinus pacificus*) chicks at Kilauea Point National Wildlife Refuge, Kauai, Hawaii. Unpubl. refuge report.

Nimon, A.J., R.C. Schroter, and B. Stonehouse. 1995. Heart rate of disturbed penguins. Nature 374:415.

Refuge Determination:

Refuge Manager Approval: Barry Christenson (Signature) Date: 5/21/07

Project Leader, Hawaiian and Pacific Islands NWRC: Barry W. Stieglitz (Signature) Date 5/21/07

Concurrence:

Refuge Supervisor National Wildlife Refuge System Pacific Region: Laurel G. Kamaka (Signature) Date 5/23/07

Regional Chief, National Wildlife Refuge System: Carolyn A. Bohan (Signature) Date 5/22/07

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Compatibility Determination

Use: Environmental Education and Interpretation

Station Name: Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial

City/County and State: Midway Atoll is the penultimate western atoll in the Northwestern Hawaiian Islands, is an unincorporated territory of the United States, and lies outside the State of Hawaii.

Establishing and Acquisition Authority(ies):

Midway Atoll NWR (NWR) was established in 1988 as an overlay NWR under a cooperative agreement with the U.S. Navy. Under this agreement, administrative responsibility for the refuge was shared by the U.S. Fish and Wildlife Service (FWS) and the Navy. The Naval Air Facility at Midway was operationally closed in 1993. Facility cleanup was completed by June 30, 1997, when the Navy and its contractors departed. Custody and accountability for Midway Atoll were officially transferred from the Navy to the FWS in May 1996. Executive Order 13022, signed by President Clinton on October 31, 1996, superseded earlier orders that assigned responsibility for Midway to the Navy. Secretary of the Interior Babbitt signed Secretary's Order 3217 on September 13, 2000, designating Midway Atoll NWR concurrently as the Battle of Midway National Memorial. On June 15, 2006, President Bush signed Presidential Proclamation 8031 making Midway Atoll NWR part of the newly established Papahānaumokuākea Marine National Monument. Under that Proclamation, Midway has unique authority and responsibility as a Special Management Area.

Refuge Purpose(s):

Midway Atoll NWR was established pursuant to the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act of 1934. Pertinent language in those statutes includes:

1. ". . . for the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the U.S. Fish and Wildlife Service, in performing its activities and services." (Fish and Wildlife Act of 1956)

2. ". . . shall be administered by the Secretary of the Interior directly in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon . . ." (Fish and Wildlife Coordination Act of 1934).

The following additional purposes were included in Executive Order 13022, dated October 31, 1996, which transferred jurisdiction and control over the Midway Islands from the U.S. Navy to the U.S. Department of the Interior:

1. Maintaining and restoring biological diversity within the refuge;

2. Providing for the conservation and management of fish and wildlife and their habitats within the refuge;

3. Fulfilling the international treaty obligations of the United States with respect to fish and wildlife;

4. Providing opportunities for scientific research, environmental education, and compatible wildlife-dependent recreational activities; and

5. In a manner compatible with refuge purposes, recognizing and maintaining Midway's historic significance.

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System is:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. (16 U.S.C. 668dd et seq.)

Description of Use(s):

Both environmental education and interpretation strive to convey an understanding and appreciation of refuge resources and the issues that affect them. For this reason these two uses have been combined in one compatibility determination.

Due to Midway's remote location and limited accessibility, onsite environmental education programs will be limited. However, with new technology, we will be able to offer offsite programs through satellite transmissions to schools around the world. Recognizing the role of teachers and educators in conveying environmental education to their students, refuge staff and partners will develop biennial teachers' workshops to be held on Midway. These workshops will be linked to existing curriculums such as Navigating Change. Refuge staff will also facilitate opportunities for cooperative organizations to conduct college level courses or informal education camps on Midway.

Interpretation of the natural and historic resources on Midway Atoll NWR and cultural resources of the Northwestern Hawaiian Islands will take many forms, including (1) guided walks and bicycle tours with FWS interpreters, (2) self-guided interpretive walks to selected historical sites, (3) regularly scheduled "field talks" with FWS interpreters or cooperators who will demonstrate research techniques or natural history phenomena (e.g., evening petrel flights), and (4) indoor evening programs on various topics relative to Midway's cultural, historic, and natural history. Visitors will also be able to participate on scheduled 3-hour field trips to Eastern Island, where they will be led on guided walks by FWS-approved staff and/or guides.

Visitors will be encouraged to come to the visitor center for further interpretation of refuge resources, environmental issues, and the Battle of Midway National Memorial. New exhibits will be developed that highlight the new Papahānaumokuākea Marine National Monument.

This use also includes visitors who arrive via cruise ship and are led on 2-hour interpretive tours by FWS-approved staff and/or guides.

Availability of Resources:

Current refuge staffing is not adequate to properly run a quality visitor program. For Fiscal Year 2007 it is anticipated that the refuge will add at least one refuge ranger on-island to work with visitors. Additional staff support will be provided by the Hawaiian and Pacific Islands NWR Complex for periods of peak visitor use. To properly support the full visitor program envisioned in 2008 and beyond, two

additional visitor services specialists and a law enforcement officer will be required in addition to increased staffing needs by the refuge infrastructure support contractor. Certain refuge infrastructure improvements will also be needed to support the visitor program. These will include improved signing, larger and safer boats, on-island transportation (bicycles or golf carts), and kayaks.

Midway Atoll NWR has been charged by Congress and FWS with developing a visitor program that is self-sustaining financially. To help us meet this goal Congress has also given the refuge receipts authority, which allows the refuge to keep reasonable fees collected for services provided at Midway Atoll. These fees will be used to offset costs of implementing the visitor services program.

Category and Itemization	**One time ($)**	**Annual ($/yr)**
Administration and Management		$ 17,140
Maintenance		1,000
Monitoring		
Special equipment, facilities or improvements	30,000	2,000
Offsetting revenues	$165,000	$165,000

Estimated costs were calculated using 35% of the base cost of a GS-7 refuge ranger assuming that this priority use would use that portion of a year to administer. Off-setting revenues are fees paid by visitors for their stay on Midway. Monitoring of impacts would be completed by the refuge ranger as part of their time committed to this use.

Anticipated Impacts of the Use(s):

Environmental Education

Impacts from visitors attending scheduled workshops and participating in walking or biking interpretive tours or self-guided tours on Sand Island will be minimal. All of these activities will occur on hard surfaced roads with very limited wildlife disturbance.

Minimal to no impact on refuge resources is anticipated from offsite programs, since educational demonstrations will be conducted or supervised by trained FWS-approved staff and/or guides.

Interpretation

Minimal impact to refuge resources is anticipated as described in the above "guided walks and bicycle tours" section. Additional potential impact to nesting seabirds, monk seals, and green sea turtles may occur if visitors and residents wander off self-guided interpretive walks. Impacts include destroying nesting burrows of Bonin petrels or wedge-tailed shearwaters; injuring or killing an egg, chick, or adult by stepping on a bird or nest; decreasing nesting success of breeding birds; or disturbing or deterring a resting monk seal or green sea turtle from a preferred haulout, molting, or pupping location. Studies conducted in seabird colonies with ecotourism operations have documented that birds located away from frequently visited areas react strongly to any human activity. Birds were observed to habituate to high levels of constant visitation, but not to less constant (although regular) visitation (Fowler 1995). Therefore, birds located far from trails are most likely to be disturbed from wandering visitors or residents. Monk seal research has documented that pregnant females would abandon preferred pupping locations due to human disturbance (Kenyon 1972).

Cruise ships that visit Midway Atoll are required to stay outside the harbor entrance channel and to ferry their passengers to shore via ship's tenders. Possible damage to coral could occur if the ship anchored in shallow water or drifted into coral areas. Additional damage could occur from discharge of gray or black water from the ship during the anchorage period at Midway.

Regularly scheduled "field talks" at selected locations by FWS-approved staff and/or guides

Minimal to no anticipated impacts on refuge resources are associated with regularly scheduled "field talks." Talks will be located near seabird colonies, but leaders and participants will not enter into the main area of the colony for these talks. Keeping the group at the edge of the colony will limit stress to the few birds actually closest to the group. Studies have shown that birds can adapt to repeated disturbance, so selection of an area where the birds are regularly passed by residents and visitors on town roads will minimize the impact of this activity.

Potential impacts include brief disturbance to nesting seabirds. Only trained FWS-approved staff and/or guides conducting the talk will be entering nesting colonies for brief periods.

Evening programs at various indoor locations

No anticipated impacts are anticipated due to indoor locations.

Eastern Island tours

Minimal impacts include disturbance to nesting birds (primarily Laysan and black-footed albatrosses (*Diomedea immutabilis* and *Diomedea nigripes*, respectively), and sooty and gray-backed terns (*Sterna fuscata* and *Sterna lunata*, respectively)) along tour routes. Tours will be restricted to the historic runways, limiting the disturbance to shrub and burrow nesters such as the red-footed booby (*Sula sula*), great frigatebird (*Fregata minor*), and Christmas shearwater (*Puffinus nativitatis*). During the sooty tern nesting season, tours will be adjusted as needed to minimize disturbance to nesting sooty terns on runways. Visitors will be advised to travel in single file in an expeditious manner through the colony. Photography will be allowed at the beginning and end of such a transit, not in the middle, to reduce the length of disturbance to the core nesting population.

Impacts will also be associated with the increased number of boat landings on the island. Boat landings (boat and people noise) may occasionally disturb resting endangered Hawaiian monk seals and threatened green sea turtles on Eastern Island beaches as well as those that are prospecting safe haulout locations (Kenyon 1972). All trips to Eastern Island will be closely supervised by FWS-approved staff and/or guides. Visitor tours of Eastern Island will be offered no more than once a week, unless specifically authorized by the refuge manager, and generally will be completed within a 3-hour period. Boats will tether to either end of the 150-foot pier, and disembarking passengers will be briefed on proper behavior to minimize disturbance to Hawaiian monk seals or green sea turtles that may be present.

Public Review and Comment:

This determination was issued for public review and comment as part of the Draft Interim Visitor Services Plan from the period of December 8, 2006, through February 6, 2007. The plan and associated compatibility determinations were made available through printed copies upon request and through the FWS Website at http://www.fws.gov/midway. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

- All onsite environmental education will be closely supervised by FWS-approved staff and/or guides, as well as by accompanying teachers.
- All students will be subject to the same restrictions (e.g., beach closures, distances from monk seals, etc.) as other visitors.
- All guided Sand Island tours will be led by FWS-approved staff and/or guides and will be adjusted on the spot to avoid disturbance of Hawaiian monk seals and green sea turtles and to minimize conflicts with nesting seabirds.
- No more than 25 people will be led at one time on guided walks and bicycle tours. Tour groups from cruise ships, which walk along paved roads with clear markings and tour guides to ensure the group remains together, may exceed this number, up to a total of 50 people per group.
- All visitors will attend an orientation upon (or before) arrival and be given appropriate narrative and graphic material to clearly indicate which areas are open for public use and to clarify regulations in force to protect wildlife and habitat. Cruise ship visitors receive an orientation from a FWS-approved staff and/or guides onboard ship or by handouts specific to their visit to Midway Atoll.
- Signing along self-guided trails will identify approved areas for beach access, wildlife observation, etc. Monument staff will monitor public use to assess and respond to incidents of noncompliance with refuge regulations. Vegetative screening will be used to ensure that visitors do not walk off trails.
- "Field talks" will be located outside, on roads or trails along the edge of nesting seabird colonies or at a safe distance from other wildlife species. Only trained FWS-approved staff and/or guides conducting the talk will be entering nesting colonies for brief periods.
- Interpreters will clearly explain the rationale for access restrictions and the actions that will be taken to enforce regulations.
- The frequency, duration, and route of guided Eastern Island tours will be modified, as needed, to avoid disturbance to Hawaiian monk seals and green sea turtles and to minimize disturbance to seabirds.
- Cruise ships will be given a specific location for safe anchorage outside the channel entrance. FWS personnel will work with NOAA to identify the best location for this anchorage prior to the first cruise ship arrival under the new monument regulations.
- Cruise ships will be prohibited from discharging of any gray or black water during their anchorage period and for the entire period they are within monument waters, in accordance with their monument permit conditions. They will be advised of this requirement during event

planning and reminded again just prior to arrival. Any detected violation of this requirement will be cause for barring of this cruise line from any future stops at Midway Atoll NWR and will be pursued as a violation of monument regulations. Refuge staff will seek assistance from NOAA to use currently available sonar or other technology to assess the suitability for anchoring cruise ships just out from the harbor channel entrance. Sites determined to be suitable will be marked by GPS and that site transmitted to visiting ships. Cruise ships will also be advised that due to possible impacts to monk seals and sea turtles, the speed limit for their tenders within the harbor is 10 knots.

- Due to concern over the introduction of invasive marine species into Midway Atoll and the monument, all cruise ships and sailboats must meet the hull inspection requirements required under Presidential Proclamation 8031..

Justification:

Midway Atoll NWR provides unique educational opportunities, not found elsewhere in the United States. Compatible environmental education and interpretation are priority general public uses of the National Wildlife Refuge System as designated in the National Wildlife Refuge System Improvement Act of 1997.

References Cited:

Kenyon, K.W. 1976. Man versus the monk seal. J. of Mammal. 53(4):687-696.

Fowler,G.S. 1995. Ecotourism, field studies and stress: behavioral and hormonal responses of Magellanic penguins to nest site disturbance. Abstracts to Pacific Seabird Group Annual Meeting, 1995.

Mandatory 10- or 15-year Reevaluation Date:

_____X_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____ Mandatory 10-year reevaluation date (for nonwildlife-dependent public uses

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

Refuge Determination:

Refuge Manager Approval: Barry Christenson (Signature) Date: 5/21/07

Project Leader, Hawaiian and Pacific Islands NWRC: Barry W. Stieglitz (Signature) Date 5/21/07

Concurrence:

Refuge Supervisor National Wildlife Refuge System Pacific Region: Lawrence W. Cowen (Signature) Date 5/23/07

Regional Chief, National Wildlife Refuge System: Carolyn A. Bohan (Signature) Date 5/23/07

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FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Midway Atoll National Wildlife Refuge/Battle of Midway National Mem.

Use: Participatory Research

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?	✔	
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ✔ No ___

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate____ Appropriate ✔

Refuge Manager: Barry Christenson Date: May 14, 2007

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor: Date: May 14, 2007

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

FINDING OF APPROPRIATENESS OF A REFUGE USE; ATTACHMENT 1

USE: Participatory Research

Supplemental information for Decision Criteria (e) and (i):

(e) Is the use consistent with goals and objectives in an approved management plan or other document?

Involving visitors in hands-on habitat and historic restoration projects and limited wildlife monitoring activities is consistent with the draft goals and objectives identified in the Midway Atoll Interim Visitor Services Plan, as well as the purposes of the refuge and the mission of the National Wildlife Refuge System. Refuges are encouraged to use volunteers in accordance with FWS policy (150 FW 1.4):

- To provide people with opportunities to assist us in the accomplishment of our mission by contributing to the preservation and conservation of our natural and cultural resources.
- To enhance our performance through the creativity and innovations, labor, and expertise contributed by volunteers.
- To provide opportunities for students and others to gain experience in areas of interest for future careers.
- To complete projects and other work that we would not otherwise accomplish without the use of volunteers.
- To encourage stewardship of wildlands, wildlife, and other natural and cultural resources through public participation in and contribution to FWS programs and operations.

(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural and cultural resources, or is the use beneficial to the refuge's natural or cultural resources?

By volunteering for these hands-on activities, visitors will gain a far better understanding of the importance of protecting habitat for migratory seabirds, shorebirds, marine mammals, and sea turtles. They will learn firsthand the threats from invasive plant species and the difficulty of eradicating them to restore native habitats. They will also gain a new knowledge and caring for America's historic resources and learn more about methods to protect them. In turn, the refuge's remarkable natural and historic resources will gain significantly from the additional work visitors will be able to accomplish that limited staff cannot address.

Compatibility Determination

Proposed Use: Participatory Management/Research Program

Refuge Name: Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial

City/County and State: Midway Atoll is the penultimate western atoll in the Northwestern Hawaiian Islands, is an unincorporated territory of the United States, and lies outside the State of Hawaii.

Establishing and Acquisition Authority(ies):

Midway Atoll National Wildlife Refuge was established in 1988 as an overlay National Wildlife Refuge (NWR) under a cooperative agreement with the U.S. Navy. Under this agreement, administrative responsibility for the refuge was shared by the U.S. Fish and Wildlife Service (FWS) and the U.S. Navy (Navy). The Naval Air Facility at Midway was operationally closed in 1993. Facility cleanup was completed by June 30, 1997, when the Navy and its contractors departed. Custody and accountability for Midway Atoll were officially transferred from the Navy to FWS in May 1996. Executive Order 13022, signed by President Clinton on October 31, 1996, superseded earlier orders that assigned responsibility for Midway to the Navy. Secretary of the Interior Babbitt signed Secretary's Order 3217 on September 13, 2000, designating Midway Atoll NWR concurrently as the Battle of Midway National Memorial. On June 15, 2006, President Bush signed Presidential Proclamation 8031 making Midway Atoll NWR part of the newly established Papahānaumokuākea Marine National Monument. Under that Proclamation, Midway has unique authority and responsibility as a Special Management Area.

Refuge Purpose(s):

Midway Atoll NWR was established pursuant to the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act of 1934. Pertinent language in those statutes includes:

1 . ". . . for the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the U.S. Fish and Wildlife Service, in performing its activities and services." (Fish and Wildlife Act of 1956)

2. ". . . shall be administered by the Secretary of the Interior directly in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon . . ." (Fish and Wildlife Coordination Act of 1934).

The following purposes were included in Executive Order 13022, dated October 31, 1996, which transferred jurisdiction and control over the Midway Islands from the Navy to the Department of the Interior:

1. Maintaining and restoring biological diversity within the refuge;

2. Providing for the conservation and management of fish and wildlife and their habitats within the refuge;

3. Fulfilling the international treaty obligations of the United States with respect to fish and wildlife;

4. Providing opportunities for scientific research, environmental education, and compatible wildlife-dependent recreational activities; and

5. In a manner compatible with refuge purposes, recognizing and maintaining Midway's historic significance.

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System is:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. (National Wildlife Refuge System Administration Act of 1966, as amended [16 U.S.C. 668dd-668ee.])

Description of Use(s):

Specific visitor programs at Midway Atoll NWR will be designed to have visitors participate in a variety of wildlife monitoring and/or research activities, habitat management projects, and historic resource protection projects. Projects include (1) seabird population monitoring (e.g., nest abundance, nesting chronology, nesting success/chick survival, banding, etc.), (2) habitat restoration (e.g., clearing of exotic vegetation, planting native vegetation, etc.), and (3) historic site preservation/restoration (e.g., rehabilitation of historic buildings or gun emplacements). All projects are under the close supervision of FWS-approved staff and/or guides.

Availability of Resources:

Current refuge staffing is not adequate to properly run a quality visitor program. For Fiscal Year 2007 it is anticipated that the refuge will add at least one refuge ranger on-island to work with visitors. Additional staff support will be provided by the Hawaiian and Pacific Islands NWR Complex for periods of peak visitor use. To properly support the full visitor program envisioned in 2008 and beyond, two additional visitor services specialists and a law enforcement officer will be required in addition to increased staffing needs by the refuge infrastructure support contractor. Certain refuge infrastructure improvements will also be needed to support the visitor program. These will include improved signing, larger and safer boats, on-island transportation (bicycles or golf carts), and kayaks. The participatory research program will be closely integrated with our existing volunteer program which is adequately supported by available funds. Existing refuge staff and experienced and qualified refuge volunteers will be used to orient and train visitors who will participate in this program.

Midway Atoll NWR has been charged by Congress and FWS with developing a visitor program that is self-sustaining financially. To help us meet this goal Congress has also given the refuge receipts authority, which allows the refuge to keep reasonable fees collected for services provided at Midway Atoll. These fees will be used to offset costs of implementing the visitor services program.

Costs shown below were determined by allowing 5 days of extra work by the refuge biologist to complete the needed administrative work to enroll visitors as volunteers, provide the needed orientation and instruction, monitor their work, and complete the needed reporting requirements. Offsetting revenues

shown are generated by multiplying the daily visitor fee ($55) times the anticipated number of participants (125) under a fully operating program.

Category and Itemization	One-time ($)	Annual ($/yr)
Administration and Management		$1,000
Maintenance		
Monitoring		$650
Special equipment, facilities or improvements		
Offsetting revenues		$6,875

Anticipated Impacts of the Use(s):

1. *Seabird population monitoring*. Minimal impact is anticipated from activity of participatory research volunteers within nesting seabird colonies. Potential impacts include destroying nesting burrows of Bonin petrels or wedge-tailed shearwaters, temporary disturbance to nesting birds, or disturbing a resting monk seal or green sea turtle from a nearby haulout location. Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies (Jungius and Mirsch 1979, Fowler 1995, and Nimon *et al*. 1995). Studies, however, have not been conducted to document the long-term cumulative effects of this human disturbance. Another study on Xanthus' murrelets (*Synthliboramphus hypoleucus*) documented an increased stress response when birds were handled for a longer period during research activities (Newman *et al*. 1997). Short-term participatory research volunteers will be working at a slower pace than a trained FWS biologist or volunteer, potentially increasing the amount of disturbance to nesting seabirds involved in the study or in the area.

2. *Habitat restoration*. Minimal to no impact to nesting seabirds found within the targeted habitat restoration area is anticipated. Impacts include temporary disturbance to surface-nesting adults or chicks or injury or death of Bonin petrel or wedge-tailed shearwater adult/egg/chick after crushing a burrow. See above (1) for seabird/human disturbance concerns.

3. *Historic site preservation.* Minimal to no impact on nesting seabirds or other wildlife from actions to stabilize historical structures or to remove invasive trees and shrubs is expected.

Public Review and Comment:

This determination was issued for public review and comment as part of the Draft Interim Visitor Services Plan from the period of December 8, 2006, through February 6, 2007. The plan and associated compatibility determinations were made available through printed copies upon request and through the FWS Website at http://www.fws.gov/midway. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended.

Determination:

___ Use is Not Compatible

X Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

- All participating visitors will attend the initial orientation and will be thoroughly briefed by the FWS-approved staff and/or guides on the approved and prohibited activities.

- Participants involved in seabird projects will be shown how to collect data to avoid or minimize nesting bird disturbance, including burrowing species. Orientation will include a demonstration of how to clear a petrel burrow after cave-in. Field activity will be timed to avoid exposure of chicks and eggs to intense sun.

- Participants in habitat restoration projects will be supervised by FWS-approved staff and/or guides. They will avoid areas where nesting (including burrowing) birds will be disturbed.

Justification:

Participation of visitors in research, monitoring, habitat restoration, and historic preservation projects will contribute to the achievement of refuge objectives. Projects will be completed that would not be possible given limitations on staff. Participants will also benefit by the educational experience and by the opportunity to contribute directly to refuge projects.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____X_____ Mandatory 10-year reevaluation date (for nonwildlife dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

References Cited:

Fowler, G.S. 1995. Ecotourism, field studies and stress: behavioral and hormonal responses of Magellanic penguins to nest site disturbance. Abstracts to Pacific Seabird Group Annual Meeting, 1995.

Jungius, H. and U. Mirsch. 1979. Changes in heartbeats in nesting birds at Galapagos by human disturbance. J. Orn. 120:299-310.

Nimon, A.J., R.C. Schroter, and B. Stonehouse. 1995. Heart rate of disturbed penguins. Nature 374:415.

Refuge Determination:

Refuge Manager Approval: Barry Christenson (Signature) Date: 5/21/07

Project Leader, Hawaiian and Pacific Islands NWRC Barry W. Stieglitz (Signature) Date 5/21/07

Concurrence:

Refuge Supervisor National Wildlife Refuge System Pacific Region Forrest W. Lamoe (Signature) Date 5/23/07

Regional Chief, National Wildlife Refuge System Carolyn D. Bohan (Signature) Date 5/23/07

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FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Midway Atoll National Wildlife Refuge/Battle of Midway National Mem.

Use: Airport Operations (Nonadministrative)

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?	✔	
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will generally not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ✔ No ___

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate____ Appropriate ✔

Refuge Manager: Barry Christenson Date: May 14, 2007

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor: Date: May 14, 2007

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

FINDING OF APPROPRIATENESS OF A REFUGE USE; ATTACHMENT 1

USE: Airport Use for nonadministrative purposes

Supplemental information for Decision Criteria (e) and (i):

(e) Is the use consistent with goals and objectives in an approved management plan or other document?

Although not a specific refuge purpose, Midway Atoll has been charged by Congress with the continued operation of Henderson Airfield for use as an emergency diversion airport for twin-engine jets flying over the Pacific. In cooperation with the Federal Aviation Administration (FAA), FWS, through its contractor, operates Henderson Airfield to meet appropriate Part 139 Standards. No additional refuge acreage has been taken or altered for this use. Over time the abandoned runway will be restored to natural habitat appropriate for that part of the island. Henderson Airfield operation is managed to the maximum degree possible to minimize harm to refuge resources – primarily seabirds such as albatrosses, white terns, and brown noddies.

(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural and cultural resources, or is the use beneficial to the refuge's natural or cultural resources?

Operation of Henderson Airfield allows the refuge staff, other agencies, and the public the opportunity to come to Midway by airplane instead of relying solely on ships. This one logistical factor makes Midway unique among the Northwestern Hawaiian Islands and is the pivotal reason FWS is able to plan a visitor program at Midway. With the airport, far more visitors will be able to come to Midway than by ship alone, allowing them the opportunity to observe and learn about the diverse wildlife species and varied historic resources that make Midway a unique location to visit and a culturally important site for all Americans.

Compatibility Determination

Use(s): Airport Operation (for Nonadministrative Purposes)

Refuge Name: Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial

City/County and State: Midway Atoll is the penultimate western atoll in the Northwestern Hawaiian Islands, is an unincorporated territory of the United States, and lies outside the State of Hawaii.

Establishing and Acquisition Authority(ies):

Midway Atoll National Wildlife Refuge was established in 1988 as an overlay National Wildlife Refuge (NWR) under a cooperative agreement with the U.S. Navy. Under this agreement, administrative responsibility for the refuge was shared by the U.S. Fish and Wildlife Service (FWS) and the U.S. Navy (Navy). The Naval Air Facility at Midway was operationally closed in 1993. Facility cleanup was completed by June 30, 1997, when the Navy and its contractors departed. Custody and accountability for Midway Atoll were officially transferred from the Navy to the FWS in May 1996. Executive Order 13022, signed by President Clinton on October 31, 1996, superseded earlier orders that assigned responsibility for Midway to the Navy. Secretary of the Interior Babbitt signed Secretary's Order 3217 on September 13, 2000, designating Midway Atoll NWR concurrently as the Battle of Midway National Memorial. On June 15, 2006, President Bush signed Presidential Proclamation 8031 making Midway Atoll NWR part of the newly established Papahānaumokuākea Marine National Monument. Under that Proclamation, Midway has unique authority and responsibility as a Special Management Area.

Refuge Purpose(s):

Midway Atoll NWR was established pursuant to the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act of 1934. Pertinent language in those statutes includes:

1. ". . . for the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the U.S. Fish and Wildlife Service, in performing its activities and services." (Fish and Wildlife Act of 1956)

2. ". . . shall be administered by the Secretary of the Interior directly in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon . . ." (Fish and Wildlife Coordination Act of 1934).

The following additional purposes were included in Executive Order 13022, dated October 31, 1996, which transferred jurisdiction and control over the Midway Islands from the U.S. Navy to the U.S. Department of the Interior:

1. Maintaining and restoring biological diversity within the refuge;

2. Providing for the conservation and management of fish and wildlife and their habitats within the refuge;

3. Fulfilling the international treaty obligations of the United States with respect to fish and wildlife;

4. Providing opportunities for scientific research, environmental education, and compatible wildlife-dependent recreational activities; and

5. In a manner compatible with refuge purposes, recognizing and maintaining Midway's historic significance.

National Wildlife Refuge System Mission:

The mission of the National Wildlife Refuge System is:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. (National Wildlife Refuge System Administration Act of 1966, as amended [16 U.S.C. 668dd-668ee.])

Description of Use(s):

Although not a specific refuge purpose, Midway Atoll has been charged by Congress with the continued operation of Henderson Airfield for use as a Part 139 airport for twin-engine jets flying over the Pacific. In cooperation with the FAA, FWS, through its contractor, operates Henderson Airfield to meet appropriate Part 139 Standards.

Modern large passenger airplanes are extremely safe and reliable so use of Henderson Airfield for this purpose is very rare. In fact, in the past 3 years only one large passenger airliner has landed at Midway due to an in-flight emergency. However, many other aircraft use Henderson Airfield on a regular basis. Nonrefuge administrative/management flights that would be covered by this use include FAA required navigational aid flight checks, flights by other agencies that have business or equipment on Midway, and visitor program flights. For the period of this plan (less than 5 years), nonadministrative flights are estimated at 50 per year. This is a maximum figure based on 4 visitor flights per month for 9 months and 14 other agency flights.

Use also includes operation of a fuel truck to fuel a limited number of non-FWS related aircraft. At the present time this includes the Coast Guard but not general transient aircraft as the FWS has issued a Notice to Airmen that fuel sales at Midway have been discontinued.

Availability of Resources:

Adequate personnel and funding are available for operation of Henderson Airfield. Current funding for airport operations comes from the FAA at the direction of Congress. Refuge personnel assist with airport operations from time to time, but this is an infrequent demand on refuge resources and within our available staffing and funding. Nonrefuge/FAA flights are charged a landing fee, which can be used to offset personnel and equipment costs of staffing the airport and is adequate to cover costs incurred by the charged flight. The costs detailed below are calculated using an estimated 36 visitor flights per year (9 months at 4/mo.) and 14 other agency flights per year for a total of 50. Revenues from landing and ramp fees vary by the amount of services provided and range from a low of $464 to a maximum of $1,547. For the purposes of this analysis an average rate of $1,130 is used based on the most common services provided.

Category and Itemization	One time ($)	Annual ($/yr)
Administration and Management	$300	$15,000
Maintenance	100	5,000
Monitoring	64	3,200
Special equipment, facilities or improvements	666	33,300
Offsetting revenues	$1,130	$56,500

Anticipated Impacts of the Use(s):

The 2 million seabirds that use Midway during the peak breeding season make aircraft flights to the island potentially hazardous to both the birds and the aircraft. Albatrosses, both Laysan and black-footed, use the airport runway as a soaring area as they travel on feeding forays during the day (363 seabird runway crosses per minute, Dolbeer and Arrington, 1996). Bird use of the runway declines dramatically at night (6 seabird runway crosses per minute, Dolbeer and Arrington, 1996) however, so flights then have a much reduced chance of hitting birds. During the primary albatross season, November through July, flights are scheduled to arrive and depart during dark, thus minimizing impacts to albatross and other seabirds. During the months of August, September, and October flights arrive during the day and may occasionally hit a white tern or brown noddy. It is not possible to reduce the bird strike risk at Henderson Airfield to zero at any time of day or year short of suspending all administrative and nonadministrative flight operations. However, the small number of annual flights to the island and the requirement of night flights for most of the year make the overall impact to refuge resources minimal.

Extensive use of lights at the airport hangar causes problems for seabirds, especially Bonin petrels. These birds are disoriented by the bright flood lights at the hangar and as a result frequently fly into the side of the building and roof. During peak petrel season, this activity can result in death or injury of up to 6 birds per night. Currently this type of use and impact occurs during night arrivals in the months from November through May. The frequency of aircraft arrival at Henderson Airfield will go up upon implementation of this plan to from the current 3 per month to as many as 8 per month at full operation.

Proper operation of the fuel truck presents no hazards to refuge resources. In the event of a spill, fuel containment supplies and equipment are stored at the airport hangar for immediate response.

Public Review and Comment:

This determination was issued for public review and comment as part of the Draft Interim Visitor Services Plan from the period of December 8, 2006, through February 6, 2007. The plan and associated compatibility determinations were made available through printed copies upon request and through the FWS Website at http://www.fws.gov/midway. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

- Except for emergency landings, flights will be required to land and depart in the dark during the months from November through July.

- To reduce the time during which aircraft fly at heights used most frequently by birds (1,000 feet or less), aircraft will be advised to use steeper than normal landing and take-off flight paths. For landings, pilots will be advised to use a 1,500-foot displaced threshold and then descend at a 5 degree glide slope. For take-offs, pilots will be advised to be airborne by midfield and then to climb out at a path of 10-11 degrees pitch up for first 1,000 feet of elevation.

- Lights used to illuminate airport passenger and baggage handling areas must be designed and installed to reduce impacts to Bonin petrels, which are negatively affected by artificial light.

- Prior to each landing and take off, airport staff will ensure the runway is clear of all birds. Frequently this involves physically removing them by hand.

Justification:

Operation of Henderson Airfield at Midway Atoll NWR increases safety of all flights crossing the northern Pacific and is congressionally mandated. Use of the airport by other agencies with official business at Midway can be allowed by using proper procedures that reduce the impacts to Midway's wildlife resources to a very minimal level. Flights to accommodate the visitor program will greatly increase the number of people who can experience, learn about, and enjoy the wildlife and historic resources found at Midway Atoll.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____X_____ Mandatory 10-year reevaluation date (for nonwildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

References Cited:

Dolbeer, R., and D. P. Arrington. 1996. Can albatrosses and aircraft coexist on Midway Atoll? In Bird Strike Committee Europe, London.

Refuge Determination:

Refuge Manager Approval: Barry Christenson (Signature) **Date:** 5/21/07

Project Leader, Hawaiian and Pacific Islands NWRC Barry W. [illegible] (Signature) **Date** 5/21/07

Concurrence:

Refuge Supervisor National Wildlife Refuge System Pacific Region [illegible] (Signature) **Date** 5/23/07

Regional Chief, National Wildlife Refuge System Carolyn A. Bohan (Signature) **Date** 5/23/07

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FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Midway Atoll National Wildlife Refuge/Battle of Midway National Mem.

Use: Nonwildlife-Dependent Beach Use

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?		✔
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will generally not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ✔ No ___

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate____ Appropriate ✔

Refuge Manager: Barry Christenson Date: May 14, 2007

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor: [signature] Date: May 14, 2007

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

FINDING OF APPROPRIATENESS OF A REFUGE USE; ATTACHMENT 1

USE: Nonwildlife-dependent Beach Use

Supplemental information for Decision Criteria (e) and (i):

(e) Is the use consistent with goals and objectives in an approved management plan or other document?

This use is consistent with the approved 1996 Public Use Plan. Allowance for this use of North Beach of Sand Island on Midway Atoll NWR is also provided in FWS policy for long-term island residents in remote locations.

Both island residents and visitors are aware through an orientation given to all persons when they first arrive on the island that this privilege is allowed only as long as it has no negative impacts to fish or wildlife resources using the area. No negative impacts to Hawaiian monk seals, seabirds, or other wildlife have been detected by refuge staff during casual, periodic monitoring during the past 4 years. A more rigid and quantifiable impact analysis will be developed prior to full scale implementation of this visitor program. Detected negative impacts to sensitive wildlife species, notably monk seals, will require that the use parameters be changed or the use discontinued.

(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?

Swimming or sunbathing does not directly contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, nor is the use beneficial to the refuge's natural or cultural resources. However, if the refuge rules for use of the beach are followed, neither do they detract from them.

Although not a priority public use as determined by the National Wildlife Refuge System Improvement Act of 1997, nonwildlife-dependent beach use at Midway Atoll NWR is popular and compatible. The opportunity to relax on the beach and swim in the lagoon waters will enhance the quality of life for Midway residents, many of whom are stationed at the refuge for extended periods, without access to amenities normally available in a typical urban setting. Although their primary interest may be swimming or sunbathing, the abundance of birdlife that continually flies overhead makes these activities a wildlife observation opportunity as well.

These opportunities will also be available for refuge visitors, to improve their experience without jeopardizing Midway's wildlife resources or conflicting with the high priority wildlife-dependent activities.

Compatibility Determination

Use(s): Nonwildlife-dependent Beach Use

Refuge Name: Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial

City/County and State: Midway Atoll is the penultimate western atoll in the Northwestern Hawaiian Islands, is an unincorporated territory of the United States, and lies outside the State of Hawaii.

Establishing and Acquisition Authority(ies):

Midway Atoll National Wildlife Refuge was established in 1988 as an overlay National Wildlife Refuge (NWR) under a cooperative agreement with the U.S. Navy. Under this agreement, administrative responsibility for the refuge was shared by the U.S. Fish and Wildlife Service (FWS) and the U.S. Navy (Navy). The Naval Air Facility at Midway was operationally closed in 1993. Facility cleanup was completed by June 30, 1997, when the Navy and its contractors departed. Custody and accountability for Midway Atoll were officially transferred from the Navy to the FWS in May 1996. Executive Order 13022, signed by President Clinton on October 31, 1996, superseded earlier orders that assigned responsibility for Midway to the Navy. Secretary of the Interior Babbitt signed Secretary's Order 3217 on September 13, 2000, designating Midway Atoll NWR concurrently as the Battle of Midway National Memorial. On June 15, 2006, President Bush signed Presidential Proclamation 8031 making Midway Atoll NWR part of the newly established Papahānaumokuākea Marine National Monument. Under that Proclamation, Midway has unique authority and responsibility as a Special Management Area.

Refuge Purpose(s):

Midway Atoll NWR was established pursuant to the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act of 1934. Pertinent language in those statutes includes:

1. ". . . for the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the U.S. Fish and Wildlife Service, in performing its activities and services." (Fish and Wildlife Act of 1956)

2. ". . . shall be administered by the Secretary of the Interior directly in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon . . ." (Fish and Wildlife Coordination Act of 1934).

The following additional purposes were included in Executive Order 13022, dated October 31, 1996, which transferred jurisdiction and control over the Midway Islands from the U.S. Navy to the U.S. Department of the Interior:

1. Maintaining and restoring biological diversity within the refuge;

2. Providing for the conservation and management of fish and wildlife and their habitats within the refuge;

3. Fulfilling the international treaty obligations of the United States with respect to fish and wildlife;

4. Providing opportunities for scientific research, environmental education, and compatible wildlife-dependent recreational activities; and

5. In a manner compatible with refuge purposes, recognizing and maintaining Midway's historic significance.

National Wildlife Refuge System Mission:

The mission of the National Wildlife Refuge System is:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. (16 U.S.C. 668dd et seq.)

Description of Use(s):

Midway Atoll NWR residents and visitors use North Beach for nonwildlife-dependent beach activities such as sunbathing and swimming. Although all of North Beach is open for visitor use, most activities occur in the small area between Captain Brooks and the Clipper House. The entire North Beach is open as a "trail" for wildlife observation and receives use from refuge residents and visitors. Impacts to refuge resources under that use are covered in the Wildlife Observation Compatibility Determination.

A small number (6) of heavy, plastic lounge chairs will be set out for visitor use. This type of solid chair with no openings has been in use on North Beach for nearly 10 years and has caused no negative impacts on nearby seabirds or monk seals. Visitors and residents typically spend only a small part of a day on the beach (less than 1 hour), usually to relax and swim during the afternoon. Swimming is typically of short duration and is restricted to areas close to shore. In the interest of public safety, a pole with a throw line and life saving ring are mounted in the center of this use area. Beach users will be advised that swimming will be allowed from ½ hour after sunrise until ½ hour before sunset. Sunrise/sunset tables will be posted in the Captain Brooks beach facility.

Availability of Resources:

Current refuge staffing is not adequate to properly run a quality visitor program. For Fiscal Year 2007 it is anticipated that the refuge will add at least one refuge ranger on-island to work with visitors. Additional staff support will be provided by the Hawaiian and Pacific Islands NWR Complex for periods of peak visitor use. To properly support the full visitor program envisioned in 2008 and beyond, two additional visitor services specialists and a law enforcement officer will be required in addition to increased staffing needs by the refuge infrastructure support contractor.

Midway Atoll NWR has been charged by Congress and the FWS with developing a visitor program that is self-sustaining financially. To help us meet this goal Congress has also given the refuge receipts authority, which allows the refuge to keep reasonable fees collected for services provided at Midway Atoll. These fees will be used to offset costs of implementing the visitor services program. Costs for administration of this use are estimated below:

Category and Itemization	One-time ($)	Annual ($/yr)
Administration and Management	$	$
Maintenance		
Monitoring		1350
Special equipment, facilities or improvements	400	
Offsetting revenues	$0	$27,500

Monitoring costs were calculated based on 1.5 hours per week for 9 months for a GS-7 refuge ranger. Special equipment includes the one time purchase of new beach chairs. Offsetting revenues were calculated for 500 visitors paying a daily refuge access fee of $55, part of which would be used to support this use.

Anticipated Impacts of the Use(s):

Minimal to no negative impacts to refuge resources are expected from this activity. Visitors could displace resting monk seals from preferred beach areas if refuge visitor guidelines regarding beach use are not followed. Sea turtles have not been seen on North Beach, but should one choose to haul out there, the standard 150-foot viewing distance would be required. Since no seabird or Laysan duck nesting occurs in the areas used for this activity, no impacts to albatrosses, petrels, shearwaters, Laysan ducks, or other birds are expected. If a monk seal has hauled out in an area frequently used by visitors, the area will be signed as temporarily closed until the seal changes locations, thereby preventing disturbance to the seal.

Public Review and Comment:

This determination was issued for public review and comment as part of the Draft Interim Visitor Services Plan from the period of December 8, 2006, through February 6, 2007. The plan and associated compatibility determinations were made available through printed copies upon request and through the FWS Website at http://www.fws.gov/midway. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended.

Determination:

___ Use is Not Compatible

X Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

- As part of their orientation, visitors will receive information on how to avoid disturbance to wildlife, especially Hawaiian monk seals and green sea turtles, and how to recognize behavioral indicators of disturbance.

- Beach areas occupied by resting monk seals will be signed with small portable seal shaped placards placed 50 yards from the seals to advise visitors of the seals' presence so they do not inadvertently cause disturbance.

- Swimmers will be advised to leave the water if a monk seal or sea turtle approaches them in the water.

- Beach users will be advised how to respond if approached on the beach by a monk seal or sea turtle.

Justification:

Although not a priority general public use as determined by the National Wildlife Refuge System Improvement Act of 1997, compatible nonwildlife-dependent beach use at Midway Atoll NWR is a popular activity. Visitors and residents alike benefit from the chance to sit and relax on North Beach. Although their primary interest may be sunbathing, reading, or relaxing, the abundance of birdlife continually flying overhead makes this activity a wildlife observation opportunity as well.

Alternative recreational opportunities will enhance the quality of life for Midway residents, many of whom are stationed at the refuge for extended periods, without access to amenities normally available in a typical urban setting.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____X_____ Mandatory 10-year reevaluation date (for nonwildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

Refuge Determination:

Refuge Manager Approval: Barry Christenson (Signature) **Date:** 5/21/07

Project Leader, Hawaiian and Pacific Islands NWRC Barry W. Stieglitz (Signature) **Date** 5/21/07

Concurrence:

Refuge Supervisor National Wildlife Refuge System Pacific Region Laurent C. Kamer (Signature) **Date** 5/23/07

Regional Chief, National Wildlife Refuge System Carolyn A. Bohan (Signature) **Date** 5/23/07

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FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Midway Atoll National Wildlife Refuge/Battle of Midway National Mem.

Use: Nonwildlife-Related Outdoor Sports

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?	✔	
(h) Will this be manageable in the future within existing resources?	✔	
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?		✔
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ✔ No ___

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate____ **Appropriate** ✔

Refuge Manager: Barry Christenson Date: May 14, 2007

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor: [signature] Date: May 14, 2007

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

FINDING OF APPROPRIATENESS OF A REFUGE USE; ATTACHMENT 1

USE: Nonwildlife-dependent outdoor sports

Supplemental information for Decision Criteria (e) and (i):

(e) Is the use consistent with goals and objectives in an approved management plan or other document?

Nonwildlife-dependent sports on Midway are consistent with the right-sizing plan completed by contractors for FWS in 2003. That planning document, which is used by FWS to make long-term commitments for infrastructure improvements, acknowledges the need for island residents and visitors to participate in sporting activities by leaving for future use structures such as the gym and All Hands Club.

This use is considered appropriate only due to the unique circumstances that make Midway Atoll both a NWR and a remote, functioning community of 60-85 persons. Normally, refuge staff and visitors have many alternative locations to participate in sports activities and do not need to conduct them on a refuge. However, Midway's location, a remote island over 1,200 miles from the nearest other community with sports facilities, means that island residents and visitors have no alternative to use of the refuge for this purpose. Allowance of this use, especially for refuge residents, helps the participants stay in good physical shape and contributes toward overall morale and improved mental health.

(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?

Although not a priority general public use as determined by the National Wildlife Refuge System Improvement Act of 1997, nonwildlife-dependent sports at Midway Atoll NWR are popular. Alternative recreational opportunities will enhance the quality of life for Midway residents, many of whom are stationed at the refuge for extended periods without access to amenities normally available in a typical urban setting. Although their primary interest may be biking or jogging, the abundance of birdlife that continually flies overhead or literally covers the field along the road makes these activities a wildlife observation opportunity as well.

These opportunities will also be available for refuge visitors, to improve their experience without jeopardizing Midway's wildlife resources or conflicting with the high priority wildlife-dependent activities.

Compatibility Determination

Use(s): Nonwildlife-related Outdoor Sports

Refuge Name: Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial

City/County and State: Midway Atoll is the penultimate western atoll in the Northwestern Hawaiian Islands, is an unincorporated territory of the United States, and lies outside the State of Hawaii.

Establishing and Acquisition Authority(ies):

Midway Atoll National Wildlife Refuge (NWR) was established in 1988 as an overlay NWR under a cooperative agreement with the U.S. Navy (Navy). Under this agreement, administrative responsibility for the refuge was shared by the U.S. Fish and Wildlife Service (FWS) and the U.S. Navy. The Naval Air Facility at Midway was operationally closed in 1993. Facility cleanup was completed by June 30, 1997, when the Navy and its contractors departed. Custody and accountability for Midway Atoll were officially transferred from the Navy to FWS in May 1996. Executive Order 13022, signed by President Clinton on October 31, 1996, superseded earlier orders that assigned responsibility for Midway to the Navy. Secretary of the Interior Babbitt signed Secretary's Order 3217 on September 13, 2000, designating Midway Atoll NWR concurrently as the Battle of Midway National Memorial. On June 15, 2006, President Bush signed Presidential Proclamation 8031 making Midway Atoll NWR part of the newly established Papahānaumokuākea Marine National Monument. Under that Proclamation, Midway has unique authority and responsibility as a Special Management Area.

Refuges Purpose(s):

Midway Atoll NWR was established pursuant to the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act of 1934. Pertinent language in those statutes includes:

1 . ". . . for the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the U.S. Fish and Wildlife Service, in performing its activities and services." (Fish and Wildlife Act of 1956)

2. ". . . shall be administered by the Secretary of the Interior directly in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon . . ." (Fish and Wildlife Coordination Act of 1934).

The following additional purposes were included in Executive Order 13022, dated October 31, 1996, which transferred jurisdiction and control over the Midway Islands from the U.S. Navy to the U.S. Department of the Interior:

1. Maintaining and restoring biological diversity within the refuge;

2. Providing for the conservation and management of fish and wildlife and their habitats within the refuge;

3. Fulfilling the international treaty obligations of the United States with respect to fish and wildlife;

4. Providing opportunities for scientific research, environmental education, and compatible wildlife-dependent recreational activities; and

5. In a manner compatible with refuge purposes, recognizing and maintaining Midway's historic significance.

National Wildlife Refuge System Mission:

The mission of the National Wildlife Refuge System is:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. (16 U.S.C. 668dd et seq.)

Description of Use(s):

Several forms of nonwildlife-dependent recreation will be permitted at Midway Atoll for visitors and residents. Permitted outdoor recreation will include bicycling, jogging, volleyball, and tennis. Most sports will continue to be concentrated within the most developed areas of Sand Island. Volleyball will be allowed only in the designated sand court area adjacent to the Captain Brooks facility. Jogging and exercise bicycling will be restricted to hard surface roads in the town and industrial/historical area of Sand Island during daylight hours only (sunrise to sunset) to avoid wildlife collisions and promote safety. The tennis court is located on concrete under the roofline of the airport hangar.

Availability of Resources:

The proposed use is conducted by refuge residents and visitors during their free time, thus no refuge staff time is needed for direct supervision or involvement. However, periodic oversight will be required to ensure that this use is not having unexpected impacts on wildlife. Adequate biological staff is available for that review, but a refuge officer is needed on island to handle any law enforcement situation that may arise from residents or visitors who do not follow refuge rules regarding closed areas. Annual cost estimates below were calculated using the cost for a GS-11 biologist for one day and a GS-7 refuge officer for one day. Monitoring will be occasional in nature and is not expected to exceed 8 hours per year for each person. All biking and jogging will occur on existing roads and trails that are also used for refuge administrative purposes, therefore no new maintenance costs will occur. All other costs associated with this use are born by the island Morale, Welfare, and Recreation fund.

Category and Itemization	**One-time ($)**	**Annual ($/yr)**
Administration and Management		
Maintenance		
Monitoring		$520
Special equipment, facilities or improvements		
Offsetting revenues	$0	$0

Anticipated Impacts of the Use(s):

Occasional disturbance to nesting albatrosses or albatross chicks may occur around the outdoor volleyball court, but the court has a nest-free margin of 20-30 feet, giving the birds an adequate buffer from court activity and stray balls. The court area is free of petrel or shearwater burrows, so no impacts will occur to those ground nesting birds. The court area is at the extreme edge of the typical beach use area by monk seals (300 feet from the water's edge) so direct or even indirect impacts to seals from volleyball in this location is unlikely. No sea turtles have been observed on North Beach. Bicycling and jogging will also result in little or no impact on wildlife because bikers and joggers will remain on paved roads or marked trails. Joggers will be directed to stay on the paved/gravel roads due to the high risk of stepping into or collapsing a petrel burrow.

Public Review and Comment:

This determination was issued for public review and comment as part of the Draft Interim Visitor Services Plan from the period of December 8, 2006, through February 6, 2007. The plan and associated compatibility determinations were made available through printed copies upon request and through the FWS Website at http://www.fws.gov/midway. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended.

Compatibility Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

- Closed areas will be posted and regulations strictly enforced. Residents and visitors will be informed about closed area restrictions through orientation sessions and posted notices.

- Bicycling and jogging will be limited to paved and gravel roads and trails during daylight hours only (sunrise to sunset).

- A 150-foot approach restriction for seals and turtles will be strictly enforced. If a seal moved to within this distance of the volleyball court, the area would not be used (or the game stopped) until the seal voluntarily left the area.

- The volleyball net will be taken down and stored when not in use to eliminate the threat of injuring a bird in flight.

Justification:

Although not a priority general public use as determined by the National Wildlife Refuge System Improvement Act of 1997, compatible nonwildlife-dependent sports at Midway Atoll NWR are popular. Alternative recreational opportunities will enhance the quality of life for Midway residents, many of whom are stationed at the refuge for extended periods, without access to amenities normally available in a typical urban setting. Although their primary interest may be biking or jogging, the abundance of birdlife that continually flies overhead or literally covers the field along the road makes these activities a wildlife observation opportunity as well.

These opportunities will also be available for refuge visitors, to improve their experience without jeopardizing Midway's wildlife resources or conflicting with the high priority wildlife-dependent activities.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

_____X_____ Mandatory 10-year reevaluation date (for nonwildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

Refuge Determination:

Refuge Manager Approval: Barry Christenson (Signature) Date: 5/21/07

Project Leader, Hawaiian and Pacific Islands NWRC Barry W. Stieglitz (Signature) Date 5/21/07

Concurrence:

Refuge Supervisor National Wildlife Refuge System Pacific Region (Signature) Date 5/23/07

Regional Chief, National Wildlife Refuge System Carolyn A. Bohan (Signature) Date 5/23/07

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FINDING OF APPROPRIATENESS OF A REFUGE USE

Refuge Name: Midway Atoll National Wildlife Refuge/Battle of Midway National Mem.

Use: Amateur Radio Use

This form is not required for wildlife-dependent recreational uses, take regulated by the State, or uses already described in a refuge CCP or step-down management plan approved after October 9, 1997.

Decision Criteria:	YES	NO
(a) Do we have jurisdiction over the use?	✔	
(b) Does the use comply with applicable laws and regulations (Federal, State, tribal, and local)?	✔	
(c) Is the use consistent with applicable Executive orders and Department and Service policies?	✔	
(d) Is the use consistent with public safety?	✔	
(e) Is the use consistent with goals and objectives in an approved management plan or other document?	✔	
(f) Has an earlier documented analysis not denied the use or is this the first time the use has been proposed?	✔	
(g) Is the use manageable within available budget and staff?		✔
(h) Will this be manageable in the future within existing resources?		✔
(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?		✔
(j) Can the use be accommodated without impairing existing wildlife-dependent recreational uses or reducing the potential to provide quality (see section 1.6D, 603 FW 1, for description), compatible, wildlife-dependent recreation into the future?	✔	

Where we do not have jurisdiction over the use ("no" to (a)), there is no need to evaluate it further as we cannot control the use. Uses that are illegal, inconsistent with existing policy, or unsafe ("no" to (b), (c), or (d)) may not be found appropriate. If the answer is "no" to any of the other questions above, we will **generally** not allow the use.

If indicated, the refuge manager has consulted with State fish and wildlife agencies. Yes ✔ No ___

When the refuge manager finds the use appropriate based on sound professional judgment, the refuge manager must justify the use in writing on an attached sheet and obtain the refuge supervisor's concurrence.

Based on an overall assessment of these factors, my summary conclusion is that the proposed use is:

Not Appropriate_____ **Appropriate** ✔

Refuge Manager: Barry Christenson Date: May 14, 2007

If found to be **Not Appropriate**, the refuge supervisor does not need to sign concurrence if the use is a new use.

If an existing use is found **Not Appropriate** outside the CCP process, the refuge supervisor must sign concurrence.

If found to be **Appropriate**, the refuge supervisor must sign concurrence.

Refuge Supervisor: Date: May 14, 2007

A compatibility determination is required before the use may be allowed.

FWS Form 3-2319
02/06

FINDING OF APPROPRIATENESS OF A REFUGE USE; ATTACHMENT 1

USE: Amateur Radio Operation

Supplemental information for Decision Criteria (e) and (i):

(e) Is the use consistent with goals and objectives in an approved management plan or other document?

Amateur radio operation at Midway Atoll NWR does not automatically conflict with refuge purposes or the National Wildlife Refuge System mission. The unique infrastructure in place at Midway can allow for this use without negative impacts on refuge resources if certain special conditions are met pertaining to the radio antennae. These conditions are specified in the *Stipulations Necessary to Ensure Compatibility* section of the Compatibility Determination.

(i) Does the use contribute to the public's understanding and appreciation of the refuge's natural or cultural resources, or is the use beneficial to the refuge's natural or cultural resources?

Amateur radio operation at Midway Atoll NWR will not directly contribute to the public's understanding and appreciation of the refuge's natural, historic, or cultural resources, nor is it beneficial to the refuge's natural, historic, or cultural resources. However, any visitor to Midway, even one whose primary reason for visiting does not relate to the refuge mission or purpose, cannot spend a week on the refuge without gaining some understanding of its historical significance and its diverse wildlife. Both the history and the wildlife are so direct, obvious, and unavoidable that all visitors garner some appreciation of both through observation or discussions with island residents or refuge staff. In addition, amateur radio operators have the opportunity to educate people around the world about the refuge and Papahānaumokuākea Marine National Monument.

Compatibility Determination

Use(s): Amateur Radio Operation

Refuge Name: Midway Atoll National Wildlife Refuge and the Battle of Midway National Memorial

City/County and State: Midway Atoll is the penultimate western atoll in the Northwestern Hawaiian Islands, is an unincorporated territory of the United States, and lies outside the State of Hawaii.

Establishing and Acquisition Authority(ies):

Midway Atoll National Wildlife Refuge (NWR) was established in 1988 as an overlay NWR under a cooperative agreement with the U.S. Navy. Under this agreement, administrative responsibility for the refuge was shared by the U.S. Fish and Wildlife Service (FWS) and the U.S. Navy (Navy). The Naval Air Facility at Midway was operationally closed in 1993. Facility cleanup was completed by June 30, 1997, when the Navy and its contractors departed. Custody and accountability for Midway Atoll were officially transferred from the Navy to FWS in May 1996. Executive Order 13022, signed by President Clinton on October 31, 1996, superseded earlier orders that assigned responsibility for Midway to the Navy. Secretary of the Interior Babbitt signed Secretary's Order 3217 on September 13, 2000, designating Midway Atoll NWR concurrently as the Battle of Midway National Memorial. On June 15, 2006, President Bush signed Presidential Proclamation 8031 making Midway Atoll NWR part of the newly established Papahānaumokuākea Marine National Monument. Under that Proclamation, Midway has unique authority and responsibility as a Special Management Area.

Refuge Purpose(s):

Midway Atoll NWR was established pursuant to the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act of 1934. Pertinent language in those statutes includes:

1 . ". . . for the development, advancement, management, conservation and protection of fish and wildlife resources . . . for the benefit of the U.S. Fish and Wildlife Service, in performing its activities and services." (Fish and Wildlife Act of 1956)

2. ". . . shall be administered by the Secretary of the Interior directly in accordance with cooperative agreements . . . and in accordance with such rules and regulations for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon . . ." (Fish and Wildlife Coordination Act of 1934).

The following purposes were included in Executive Order 13022, dated October 31, 1996, which transferred jurisdiction and control over the Midway Islands from the Navy to the Department of the Interior:

1. Maintaining and restoring biological diversity within the refuge;

2. Providing for the conservation and management of fish and wildlife and their habitats within the refuge;

3. Fulfilling the international treaty obligations of the United States with respect to fish and wildlife;

4. Providing opportunities for scientific research, environmental education, and compatible wildlife-dependent recreational activities; and

5. In a manner compatible with refuge purposes, recognizing and maintaining Midway's historic significance.

National Wildlife Refuge System Mission

The mission of the National Wildlife Refuge System is:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. (16 U.S.C. 668dd-668ee)

Description of Use(s):

Midway Atoll NWR receives occasional requests from amateur radio enthusiasts for permission to travel to the refuge for the purpose of broadcasting as an amateur radio operator. Amateur radio operators are those who use radio transmitters and receivers to communicate with other amateur radio operators as a hobby. The demand for this use at Midway Atoll NWR stems from a list of geographic locations which are designated as "countries." It is an objective of these amateur radio enthusiasts to receive and/or transmit from these "countries" and certain remote, uninhabited, or otherwise difficult to reach sites become desirable sites from which to broadcast and receive due to the rarity of transmissions from those sites.

At Midway, amateur radio operators are able to set up and transmit from inside existing buildings. In the past, the airport hangar has been used for this purpose. In most cases, the operators would set up temporary antennas for transmission, usually on the roof of the building. Newer technology allows transmissions with smaller antennae (typically less than 30 feet) than previously possible. Since the goal of the individual or group is to maximize transmissions, the station is normally operated 24 hours a day during the visit period. These visitors are primarily interested in operating their radios but their proximity to Midway's wildlife will ensure that they also spend time observing and learning about our nesting seabirds and marine life.

Availability of Resources:

Current refuge staffing is not adequate to properly run a quality visitor program. For Fiscal Year 2007 it is anticipated that the refuge will add at least one refuge ranger on-island to work with visitors. Additional staff support will be provided by the Hawaiian and Pacific Islands NWR Complex for periods of peak visitor use. To properly support the full visitor program envisioned in 2008 and beyond, two additional visitor services specialists and a law enforcement officer will be required in addition to increased staffing needs by the refuge infrastructure support contractor. Certain refuge infrastructure improvements will also be needed to support the visitor program. These will include improved signing, larger and safer boats, on-island transportation (bicycles or golf carts), and kayaks.

The estimated costs below were calculated for 20 hours of management oversight and 8 hours of biological monitoring. They will also use an indeterminate amount of refuge electricity and special improvements to accommodate their equipment. The off-setting revenue shown is the cost of a Special Use Permit at Midway Atoll NWR for an activity by a third party that has no link to refuge purposes or mission. These fees are being re-evaluated as part of the new monument designation.

Category and Itemization	One-time ($)	Annual ($/yr)
Administration and Management	$1,150	$
Maintenance		
Monitoring	320	
Special equipment, facilities or improvements	400	
Offsetting revenues	$5,000	$

Midway Atoll NWR has been charged by Congress and FWS with developing a visitor program that is self-sustaining financially. To help us meet this goal Congress has also given the refuge receipts authority, which allows the refuge to keep reasonable fees collected for services provided at Midway Atoll. These fees will be used to offset costs of implementing the visitor services program.

Anticipated Impacts of the Use(s):

The antenna for transmitting the radio signal is the only aspect of this use that has potential for impacting refuge resources. The high density of nesting seabirds on Sand Island makes installation of additional tall antennae, even for a short period, a concern as they are a strike hazard for flying birds. Shorter antennae, locations away from primary flight lanes, attachment or close proximity to large objects avoided by the birds (e.g., the water tower) and time of year are all means to reduce this impact. With proper use of the above techniques, minimal or no impacts are expected to refuge resources.

The administrative oversight necessary to allow this use takes time from refuge staff that could be used for other, higher priority refuge business. It is expected that each applicant (or group) will require up to 1 day for permit review, communication, etc. Additionally, once on Midway the group will require special handling and more time due to the complexity of their use and possible impacts. It is estimated that a week visit from a radio group will use 8-12 hours of staff time for oversight while they are on-island – an indirect impact to refuge resources.

Public Review and Comment:

This determination was issued for public review and comment as part of the Draft Interim Visitor Services Plan from the period of December 8, 2006, through February 6, 2007. The plan and associated compatibility determinations were made available through printed copies upon request and through the FWS Website at http://www.fws.gov/midway. This level of review and comment was selected to meet FWS requirements under the National Wildlife Refuge System Administration Act of 1966, as amended.

Determination:

___ Use is Not Compatible

_X_ Use is Compatible with Following Stipulations

Stipulations Necessary to Ensure Compatibility:

- Use of freestanding antennae greater than 5 feet will be allowed only during the months of August, September, and October when albatross are off-island, unless installed in close proximity to other large objects, such as the water tower, so as not to incur an additional flight hazard to

seabirds. The location must be approved by the refuge manager to ensure that other species (Bonin petrel, wedge-tailed shearwaters, white terns) are not affected.

- Allowance of this use will only be scheduled if it does not displace a visitor whose purpose is one of the Refuge System's wildlife-dependent public uses.

Justification:

Although not a priority public use, amateur radio operation can be allowed at Midway Atoll NWR due to the refuge's extensive existing infrastructure. Amateur radio operators can use existing facilities and/or mount their antennae in a manner that will not materially interfere with or detract from achievement of the refuge's primary purposes or the Refuge System mission.

Mandatory 10- or 15-year Reevaluation Date:

_____ Mandatory 15-year reevaluation date (for wildlife-dependent public uses)

___X___ Mandatory 10-year reevaluation date (for nonwildlife-dependent public uses)

NEPA Compliance for Refuge Use Decision (check one below)

___Categorical Exclusion without Environmental Action Statement

___Categorical Exclusion and Environmental Action Statement

_X_ Environmental Assessment and Finding of No Significant Impact

___Environmental Impact Statement and Record of Decision

Refuge Determination:

Refuge Manager Approval: Barry Christenson (Signature) Date: 5/21/07

Project Leader, Hawaiian and Pacific Islands NWRC: Barry W. Stieglitz (Signature) Date 5/21/07

Concurrence:

Refuge Supervisor National Wildlife Refuge System Pacific Region: (Signature) Date 5/23/07

Regional Chief, National Wildlife Refuge System: (Signature) Date 5/23/07

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APPENDIX E:
Maintenance of Wilderness Character of the Proposed Hawaiian Islands Wilderness

Maintenance of Wilderness Character of the Proposed Hawaiian Islands Wilderness

On June 13, 1974, the President transmitted to Congress a proposal to designate the 1,742 emergent acres of the Hawaiian Islands National Wildlife Refuge (HINWR), except Tern Island, as wilderness. Congress has not acted on this wilderness proposal. The proposal did not include the surrounding marine waters and submerged lands. Since the time the proposal was transmitted to Congress, the area has been managed as proposed wilderness by the FWS. In compliance with Departmental regulations, the FWS manages proposed wilderness to maintain its wilderness character. By policy, this means that management activities and uses are evaluated for consistency with the Wilderness Act and Department of the Interior (DOI) and U.S. Fish and Wildlife Service (FWS) regulations and policies.

The FWS, National Oceanic and Atmospheric Administration (NOAA), and the State of Hawai'i (State) – as Co-Trustees of the Papahānaumokuākea Marine National Monument – propose to conduct or allow by permit Generally Prohibited Uses (GPU), as defined by the Wilderness Act of 1964, in the Proposed Hawaiian Islands Wilderness (PHIW) per the draft Monument Management Plan.

The FWS, as the manager of the proposed wilderness, is in the process of preparing an updated Minimum Requirement Analysis (MRA), in coordination with the Co-Trustees, to ensure that management decisions included in the Monument Management Plan will preserve the wilderness character of the proposed wilderness. The updated MRA will replace a more general programmatic MRA that is currently in effect. The MRA is a two-step process in which the wilderness manager first must determine whether a proposed activity (e.g., a FWS refuge management activity, or use by another agency or the public) is the minimum requirement necessary to administer the area as wilderness and achieve refuge purposes and wilderness objectives in accordance with the Wilderness Act. Secondarily, the MRA identifies the minimum tool that will have the least impact on wilderness character. Once completed, a copy of the updated MRA will be posted on the Refuge web site and available in hardcopy upon request to the FWS.

Legal and Policy Considerations

In areas designated by Congress as wilderness, the FWS implements the Wilderness Act of 1964, as amended (16 U.S.C. 1131-1136) through DOI regulations (Title 43 of the Code of Federal Regulations Part 19.6, 34 CFR19.6), FWS regulations (50 CFR 35) and policy found in Part 6, Section 8, of its Refuge Manual (6 RM 8). Regulation at 43 CFR 19.6 states: "[r]egulations respecting administration and use of areas under the jurisdiction of the Secretary which may be designated as wilderness areas by statute shall be developed with a view to protecting such areas and preserving their wilderness character for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, with inconsistent uses held to a minimum." For those areas pending designation as wilderness, it is FWS policy at 6 RM 8.1 that "…all wilderness areas and those outside Alaska pending Congressional establishment as wilderness on national wildlife refuges" are managed "…using the minimum tools necessary to safely accomplish the Service's refuge objectives and preserve, to the extent practicable, the interaction of natural forces with the land. The minimum tool is defined as that combination of methods and equipment that least degrades the wilderness values of the land while meeting refuge objectives in a safe and economical manner" (6 RM 8.2). Minimum tool is alternatively defined at 6 RM 8.5 as "[t]he minimum action or instrument necessary to successfully, safely, and economically accomplish wilderness management objectives."

Prohibited and Generally Prohibited Uses of Proposed Wilderness

The Co-Trustees will consider how to implement the GPU policy in a MRA and management plan. Although the Wilderness Act of 1964 permits many activities in a wilderness area so long as they do not permanently alter the natural processes that interact with the land, Congress has superimposed constraints

on the manner in which the lands and waters that have been designated as wilderness could be administered in the course of managing to achieve refuge objectives (6 RM 8.7). These constraints are found in Section 4(c) of the Wilderness Act which includes strict prohibitions against permanent roads and commercial enterprises. This section also generally prohibits temporary roads, motor vehicles, motorized equipment or motorboats, mechanical transport, landing of aircraft, other forms of mechanical transport, and structures and installations, unless they are "necessary to meet minimum requirements for the administration of the area for the purpose of this Act" or for "measures required in emergencies involving the health and safety of persons with in the area…." We evaluate whether these GPU are necessary to meet the minimum requirements exception and necessary to accomplish the purposes of the refuge, including Wilderness Act purposes, through an MRA.

Some terms require definition for common understanding. Mechanical transport is any device for moving people or material on, over, or through land, water, or air that has moving parts, provides a mechanical advantage to the user, and is powered by a living or nonliving power source. This includes, but is not limited to, sailboats, hang gliders, parachutes, bicycles, carts, and wagons. This does not include wheelchairs when used by those whose disabilities require wheelchairs for locomotion, skis, snowshoes, rafts, canoes, sleds, travois, or similar devices, or wheeled game carriers.

Motorized equipment includes machines that use or are activated by a motor, engine, or other power source, including, but not limited to, motorized portable tools, chain saws, aircraft, snowmobiles, generators, motorboats, and motor vehicles. It does not include small, handheld, portable devices such as shavers, wristwatches, flashlights, cameras, stoves, cellular telephones, radios, GPS units, or other similar small equipment or motorized wheelchairs designed solely for use by a mobility-impaired person for locomotion and that is suitable for use in an indoor pedestrian area.

A temporary structure is one with no permanent foundation that is easy to assemble, dismantle, and transport and is removed from a site between periods of actual use except as specifically permitted otherwise.

Purpose of a Minimum Requirement Analysis

An MRA documents and analyzes a specific activity, event, policy, improvement, etc., to determine whether it is indeed the minimum requirement and minimum tool necessary to administer the wilderness area and accomplish refuge purposes, including Wilderness Act purposes. At a minimum, FWS evaluates the direct, indirect, and cumulative impacts of alternatives on wilderness character. FWS considers alternatives where it:

1. Takes no management action inside the wilderness;
2. Uses no GPU inside the wilderness area; and
3. Conducts GPU activities inside and outside the wilderness.

The baseline for impact evaluation in an MRA, under the nondegradation principle, is the conditions prevailing at the time of wilderness designation or proposal. Mere convenience or cost is not a factor in determining the minimum tool.

There are several categories of use for the purposes of the MRA including refuge management activities conducted by the FWS (called 'activities' in the MRA), management activities conducted by our agency partners, access for traditional Native Hawaiian practices, and other public uses (called 'uses' in the MRA). The MRA does not suggest or determine the Appropriateness or Compatibility of proposed uses within the PHIW – merely whether the proposed use is the minimum requirement and minimum tool necessary to administer the area as wilderness and accomplish refuge purposes. Uses – as distinct from FWS refuge management activities – are evaluated as to whether they are Appropriate and Compatible. Findings of Appropriateness and Compatibility Determinations for uses are found in Appendix D.

The MRA being prepared in conjunction with the Monument Management Plan will evaluate whether the GPU proposed in the Plan employ the minimum tools necessary to achieve not only refuge purposes and wilderness objectives, but also Monument goals. This is necessary in order to ensure currently proposed GPU are properly evaluated and create thresholds of use as standards against which to assess future requests for Monument permits (see Strategy HMC-10).

The MRA analyses do not replace requirements for National Environmental Policy Act (NEPA) compliance and the three types of alternatives evaluated in the MRA are not intended to mirror the No Action and Preferred Alternatives found in NEPA Environmental Assessment associated with the attached Monument Management Plan.

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APPENDIX F:
Presidential Proclamations 8031 and 8112

Federal Register

Monday,
June 26, 2006

Part V

The President

Proclamation 8031—Establishment of the Northwestern Hawaiian Islands Marine National Monument

Federal Register
Vol. 71, No. 122
Monday, June 26, 2006

Presidential Documents

Title 3—

The President

Proclamation 8031 of June 15, 2006

Establishment of the Northwestern Hawaiian Islands Marine National Monument

By the President of the United States of America

A Proclamation

In the Pacific Ocean northwest of the principal islands of Hawaii lies an approximately 1,200 nautical mile stretch of coral islands, seamounts, banks, and shoals. The area, including the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway National Wildlife Refuge, the Hawaiian Islands National Wildlife Refuge, and the Battle of Midway National Memorial, supports a dynamic reef ecosystem with more than 7,000 marine species, of which approximately half are unique to the Hawaiian Island chain. This diverse ecosystem is home to many species of coral, fish, birds, marine mammals, and other flora and fauna including the endangered Hawaiian monk seal, the threatened green sea turtle, and the endangered leatherback and hawksbill sea turtles. In addition, this area has great cultural significance to Native Hawaiians and a connection to early Polynesian culture worthy of protection and understanding.

WHEREAS Executive Order 13089 of June 11, 1998, Executive Order 13178 of December 4, 2000, and Executive Order 13196 of January 18, 2001, as well as the process for designation of a National Marine Sanctuary undertaken by the Secretary of Commerce, have identified objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States in the area of the Northwestern Hawaiian Islands;

WHEREAS section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the ''Antiquities Act'') authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS it would be in the public interest to preserve the marine area of the Northwestern Hawaiian Islands and certain lands as necessary for the care and management of the historic and scientific objects therein,

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Northwestern Hawaiian Islands Marine National Monument (the ''monument'' or ''national monument'') for the purpose of protecting the objects described above, all lands and interests in lands owned or controlled by the Government of the United States within the boundaries described on the accompanying map entitled ''Northwestern Hawaiian Islands Marine National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved includes approximately 139,793 square miles of emergent and submerged lands and waters of the Northwestern Hawaiian Islands, which is the smallest

area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including, but not limited to, withdrawal from location, entry, and patent under mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), will have primary responsibility regarding management of the marine areas, in consultation with the Secretary of the Interior. The Secretary of the Interior, through the Fish and Wildlife Service (FWS), will have sole responsibility for management of the areas of the monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce.

The Secretary of Commerce and the Secretary of the Interior (collectively, the ''Secretaries'') shall review and, as appropriate, modify the interagency agreement developed for coordinated management of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, signed on May 19, 2006. To manage the monument, the Secretary of Commerce, in consultation with the Secretary of the Interior and the State of Hawaii, shall modify, as appropriate, the plan developed by NOAA's National Marine Sanctuary Program through the public sanctuary designation process, and will provide for public review of that plan. To the extent authorized by law, the Secretaries, acting through the FWS and NOAA, shall promulgate any additional regulations needed for the proper care and management of the objects identified above.

The Secretary of State, in consultation with the Secretaries, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of the monument and to promote the purposes for which the monument is established. The Secretary of State, in consultation with the Secretaries, shall seek the cooperation of other governments and international organizations in furtherance of the purposes of this proclamation and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas. Furthermore, this proclamation shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Nothing in this proclamation shall be deemed to diminish or enlarge the jurisdiction of the State of Hawaii.

The establishment of this monument is subject to valid existing rights and use of the monument shall be administered as follows:

Access to the Monument

The Secretaries shall prohibit entering the monument except pursuant to permission granted by the Secretaries or their designees. Any person passing through the monument without interruption must notify an official designated by the Secretaries at least 72 hours, but no longer than 1 month, prior to the entry date. Notification of departure from the monument must be provided within 12 hours of leaving. A person providing notice must provide the following information, as applicable: (i) position when making report; (ii) vessel name and International Maritime Organization identification number; (iii) name, address, and telephone number of owner and operator; (iv) United States Coast Guard (USCG) documentation, State license, or registration number; (v) home port; (vi) intended and actual route through the monument; (vii) general categories of any hazardous cargo on board; and (viii) length of vessel and propulsion type (e.g., motor or sail).

Vessel Monitoring Systems

1. As soon as possible but not later than 30 days following the issuance of this proclamation, NOAA shall publish in the **Federal Register** a list of approved transmitting units and associated communications service providers for purposes of this proclamation. An owner or operator of a vessel that has been issued a permit for accessing the monument must ensure that such a vessel has an operating vessel monitoring system (VMS) on board, approved by the Office of Legal Enforcement in the National Oceanic and Atmospheric Administration in the Department of Commerce (OLE) when voyaging within the monument. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and OLE as provided by an OLE-approved communication service provider.

2. Only a VMS that has been approved by OLE may be used. When installing and activating the OLE-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must:

a. Follow procedures indicated on an installation and activation checklist, which is available from OLE; and

b. Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.

3. No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

4. When a vessel's VMS is not operating properly, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by OLE that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by OLE the vessel's positions or returning to port until the VMS is operable.

5. As a condition of authorized access to the monument, a vessel owner or operator subject to the requirements for a VMS in this section must allow OLE, the USCG, and their authorized officers and designees access to the vessels position data obtained from the VMS. Consistent with applicable law, including the limitations on access to, and use, of VMS data collected under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the Secretaries may have access to, and use of, collected data for scientific, statistical, and management purposes.

6. OLE has authority over the installation and operation of the VMS unit. OLE may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit, when deemed appropriate by OLE.

7. The Secretaries shall prohibit any person from conducting or causing to be conducted:

a. Operating any vessel without an approved transmitting device within the monument area 45 days after the publication of the list of approved transmitting devices described in paragraph (1) above;

b. Failing to install, activate, repair, or replace a mobile transceiver unit prior to leaving port;

c. Failing to operate and maintain a mobile transceiver unit on board the vessel at all times;

d. Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel;

e. Failing to contact OLE or follow OLE instructions when automatic position reporting has been interrupted;

f. Registering a VMS or mobile transceiver unit registered to more than one vessel at the same time;

g. Connecting or leaving connected additional equipment to a VMS unit or mobile transceiver unit without the prior approval of OLE;

h. Making a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or mobile transceiver unit or communication service provider.

Restrictions

Prohibited Activities

The Secretaries shall prohibit persons from conducting or causing to be conducted the following activities:

1. Exploring for, developing, or producing oil, gas, or minerals within the monument;

2. Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a monument resource;

3. Introducing or otherwise releasing an introduced species from within or into the monument; and

4. Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope.

Regulated Activities

Except as otherwise provided in this proclamation, the Secretaries shall prohibit any person from conducting or causing to be conducted within the monument the following activities:

1. Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving monument resource;

2. Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;

3. Anchoring a vessel;

4. Deserting a vessel aground, at anchor, or adrift;

5. Discharging or depositing any material or other matter into Special Preservation Areas or the Midway Atoll Special Management Area except vessel engine cooling water, weather deck runoff, and vessel engine exhaust;

6. Discharging or depositing any material or other matter into the monument, or discharging or depositing any material or other matter outside of the monument that subsequently enters the monument and injures any resources of the monument, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust;

7. Touching coral, living or dead;

8. Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the monument;

9. Swimming, snorkeling, or closed or open circuit SCUBA diving within any Special Preservation Area or the Midway Atoll Special Management Area; and

10. Attracting any living monument resources.

Emergencies and Law Enforcement Activities

The prohibitions required by this proclamation shall not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

Armed Forces Actions

1. The prohibitions required by this proclamation shall not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard) that are consistent with applicable laws.

2. Nothing in this proclamation shall limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

3. All activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on monument resources and qualities.

4. In the event of threatened or actual destruction of, loss of, or injury to a monument resource or quality resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the USCG, the cognizant component shall promptly coordinate with the Secretaries for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the monument resource or quality.

Commercial Fishing

1. The Secretaries shall ensure that any commercial lobster fishing permit shall be subject to a zero annual harvest limit.

2. Fishing for bottomfish and pelagic species. The Secretaries shall ensure that:

a. Commercial fishing for bottomfish and associated pelagic species may continue within the monument for not longer than 5 years from the date of this proclamation provided that:

(i) The fishing is conducted in accordance with a valid commercial bottomfish permit issued by NOAA; and

(ii) Such permit is in effect on the date of this proclamation and is subsequently renewed pursuant to NOAA regulations at 50 CFR part 660 subpart E as necessary.

b. Total landings for each fishing year may not exceed the following amounts:

(i) 350,000 pounds for bottomfish species; and

(ii) 180,000 pounds for pelagic species.

c. Commercial fishing for bottomfish and associated pelagic species is prohibited in the monument after 5 years from the date of this proclamation.

General Requirements

The Secretaries shall ensure that any commercial fishing within the monument is conducted in accordance with the following restrictions and conditions:

1. A valid permit or facsimile of a valid permit is on board the fishing vessel and is available for inspection by an authorized officer;

2. No attempt is made to falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other required record or report;

3. Only gear specifically authorized by the relevant permit issued under the Magnuson-Stevens Fishery Conservation and Management Act is allowed to be in the possession of a person conducting commercial fishing under this section;

4. Any person conducting commercial fishing notifies the Secretaries by telephone, facsimile, or electronic mail at least 72 hours before entering the monument and within 12 hours after leaving the monument;

5. All fishing vessels must carry an activated and functioning VMS unit on board at all times whenever the vessel is in the monument;

6. All fishing vessels must carry an observer when requested to do so by the Secretaries; and

7. The activity does not take place within any Ecological Reserve, any Special Preservation Area, or the Midway Atoll Special Management Area.

Permitting Procedures and Criteria

Subject to such terms and conditions as the Secretaries deem appropriate, a person may conduct an activity regulated by this proclamation if such activity is specifically authorized by a permit. The Secretaries, in their discretion, may issue a permit under this proclamation if the Secretaries find that the activity: (i) is research designed to further understanding of monument resources and qualities; (ii) will further the educational value of the monument; (iii) will assist in the conservation and management of the monument; (iv) will allow Native Hawaiian practices; (v) will allow a special ocean use; or (vi) will allow recreational activities.

Findings

1. The Secretaries may not issue any permit unless the Secretaries find:

a. The activity can be conducted with adequate safeguards for the resources and ecological integrity of the monument;

b. The activity will be conducted in a manner compatible with the management direction of this proclamation, considering the extent to which the conduct of the activity may diminish or enhance monument resources, qualities, and ecological integrity, any indirect, secondary, or cumulative effects of the activity, and the duration of such effects;

c. There is no practicable alternative to conducting the activity within the monument;

d. The end value of the activity outweighs its adverse impacts on monument resources, qualities, and ecological integrity;

e. The duration of the activity is no longer than necessary to achieve its stated purpose;

f. The applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;

g. The applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;

h. The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to monument resources, qualities, and ecological integrity;

i. The applicant's vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of this proclamation; and

j. There are no other factors that would make the issuance of a permit for the activity inappropriate.

2. *Additional Findings for Native Hawaiian Practice Permits.* In addition to the findings listed above, the Secretaries shall not issue a permit to allow Native Hawaiian practices unless the Secretaries find:

a. The activity is non-commercial and will not involve the sale of any organism or material collected;

b. The purpose and intent of the activity are appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (pono), and demonstrate an understanding of, and background in, the traditional practice, and its associated values and protocols;

c. The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community;

d. The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and

e. Any monument resource harvested from the monument will be consumed in the monument.

3. *Additional Findings, Criteria, and Requirements for Special Ocean Use Permits*

a. In addition to the findings listed above, the following requirements apply to the issuance of a permit for a special ocean use:

(i) Any permit for a special ocean use issued under this section:

(A) Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the monument is designated and with protection of monument resources;

(B) Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretaries;

(C) Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure monument resources; and

(D) Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims; and

(ii) Each person issued a permit for a special ocean use under this section shall submit an annual report to the Secretaries not later than December 31 of each year that describes activities conducted under that permit and revenues derived from such activities during the year.

b. The Secretaries may not issue a permit for a special ocean use unless they determine that the proposed activity will be consistent with the findings listed above for the issuance of any permit.

c. Categories of special ocean use being permitted for the first time under this section will be restricted in duration and permitted as a special ocean use pilot project. Subsequent permits for any category of special ocean use may be issued only if a special ocean use pilot project for that category has been determined by the Secretaries to meet the criteria in this proclamation and any terms and conditions placed on the permit for the pilot project.

d. The Secretaries shall provide public notice prior to requiring a special ocean use permit for any category of activity not previously identified as a special ocean use.

e. The following requirements apply to permits for a special ocean use for an activity within the Midway Atoll Special Management Area.

(i) The Secretaries may issue a permit for a special ocean use for activities within the Midway Atoll Special Management Area provided:

(A) The Secretaries find the activity furthers the conservation and management of the monument; and

(B) The Director of the United States Fish and Wildlife Service or his or her designee has determined that the activity is compatible with the purposes for which the Midway Atoll National Wildlife Refuge was designated.

(ii) As part of a permit, the Secretaries may allow vessels to transit the monument as necessary to enter the Midway Atoll Special Management Area.

f. The Secretaries may issue a permit for a special ocean use for activities outside the Midway Atoll Special Management Area provided:

(i) The Secretaries find the activity will directly benefit the conservation and management of the monument;

(ii) The Secretaries determine the purpose of the activity is for research or education related to the resources or qualities of the monument;

(iii) The Secretaries provide public notice of the application and an opportunity to provide comments at least 30 days prior to issuing the permit; and

(iv) The activity does not involve the use of a commercial passenger vessel.

4. *Additional Findings for Recreation Permits.* The Secretaries may issue a permit only for recreational activities to be conducted within the Midway Atoll Special Management Area. In addition to the general findings listed above for any permit, the Secretaries may not issue such permit unless the Secretaries find:

a. The activity is for the purpose of recreation as defined in regulation;

b. The activity is not associated with any for-hire operation; and

c. The activity does not involve any extractive use.

Sustenance Fishing

Sustenance fishing means fishing for bottomfish or pelagic species that are consumed within the monument, and is incidental to an activity permitted under this proclamation. The Secretaries may permit sustenance fishing outside of any Special Preservation Area as a term or condition of any permit issued under this proclamation. The Secretaries may not permit sustenance fishing in the Midway Atoll Special Management Area unless the activity has been determined by the Director of the United States Fish and Wildlife Service or his or her designee to be compatible with the purposes for which the Midway Atoll National Wildlife Refuge was established. Sustenance fishing must be conducted in a manner compatible with this proclamation, including considering the extent to which the conduct of the activity may diminish monument resources, qualities, and ecological integrity, as well as any indirect, secondary, or cumulative effects of the activity and the duration of such effects. The Secretaries will develop procedures for systematic reporting of sustenance fishing.

Definitions For purposes of this proclamation:

Attract or Attracting means luring or attempting to lure a living resource by any means, except the mere presence of human beings (e.g., swimmers, divers, boaters).

Bottomfish Species means bottomfish management unit species as defined at 50 CFR 660.12.

Commercial Bottomfishing means commercial fishing for bottomfish species.

Commercial Passenger Vessel means a vessel that carries individuals who have paid for such carriage.

Commercial Pelagic Trolling means commercial fishing for pelagic species.

Deserting a vessel means:

1. Leaving a vessel aground or adrift:

(i) Without notifying the Secretaries of the vessel going aground or adrift within 12 hours of its discovery and developing and presenting to the Secretaries a preliminary salvage plan within 24 hours of such notification;

(ii) After expressing or manifesting intention to not undertake or to cease salvage efforts; or

(iii) When the Secretaries are unable, after reasonable efforts, to reach the owner/operator within 12 hours of the vessels condition being reported to authorities.

2. Leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Ecological Reserve means an area of the monument consisting of contiguous, diverse habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the monument.

Ecological Integrity means a condition determined to be characteristic of an ecosystem that has the ability to maintain the function, structure, and abundance of natural biological communities, including rates of change in response to natural environmental variation.

Fishing Year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

Introduced Species means:

1. A species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the monument; or

2. Any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Landing means offloading fish from a fishing vessel or causing fish to be offloaded from a fishing vessel.

Midway Atoll Special Management Area means the area of the monument surrounding Midway Atoll out to a distance of 12 nautical miles, established for the enhanced management, protection, and preservation of monument wildlife and historical resources.

Mobile Transceiver Unit means a vessel monitoring system or VMS device installed on board a vessel that is used for vessel monitoring and transmitting the vessel's position as required by this proclamation.

Native Hawaiian Practices means cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment, and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of monument resources for direct personal consumption while in the monument.

Ocean-Based Ecotourism means a class of fee-for-service activities that involves visiting the monument for study, enjoyment, or volunteer assistance for purposes of conservation and management.

Pelagic Species means Pacific Pelagic Management Unit Species as defined at 50 CFR 660.12.

Pono means appropriate, correct, and deemed necessary by traditional standards in the Hawaiian culture.

Recreational Activity means an activity conducted for personal enjoyment that does not result in the extraction of monument resources and that does not involve a fee-for-service transaction. This includes, but is not limited to, wildlife viewing, SCUBA diving, snorkeling, and boating.

Special Preservation Area (SPA) means discrete, biologically important areas of the monument within which uses are subject to conditions, restrictions, and prohibitions, including but not limited to access restrictions. SPAs are used to avoid concentrations of uses that could result in declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research.

Special Ocean Use means an activity or use of the monument that is engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and does not destroy, cause the loss of, or injure monument resources. This includes ocean-based ecotourism and other activities such as educational and research activities that are engaged in to generate revenue, but does not include commercial fishing for bottomfish or pelagic species conducted pursuant to a valid permit issued by NOAA.

Stowed and Not Available for Immediate Use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck

or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

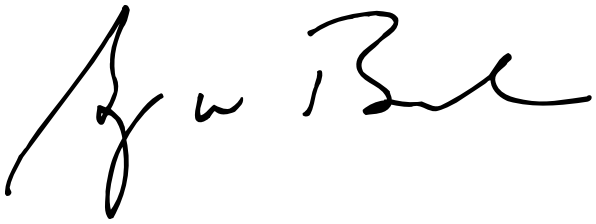
Sustenance Fishing means fishing for bottomfish or pelagic species in which all catch is consumed within the monument, and that is incidental to an activity permitted under this proclamation.

Vessel Monitoring System or VMS means a vessel monitoring system or mobile transceiver unit approved by the Office for Law Enforcement for use on vessels permitted to access the monument, as required by this subpart.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

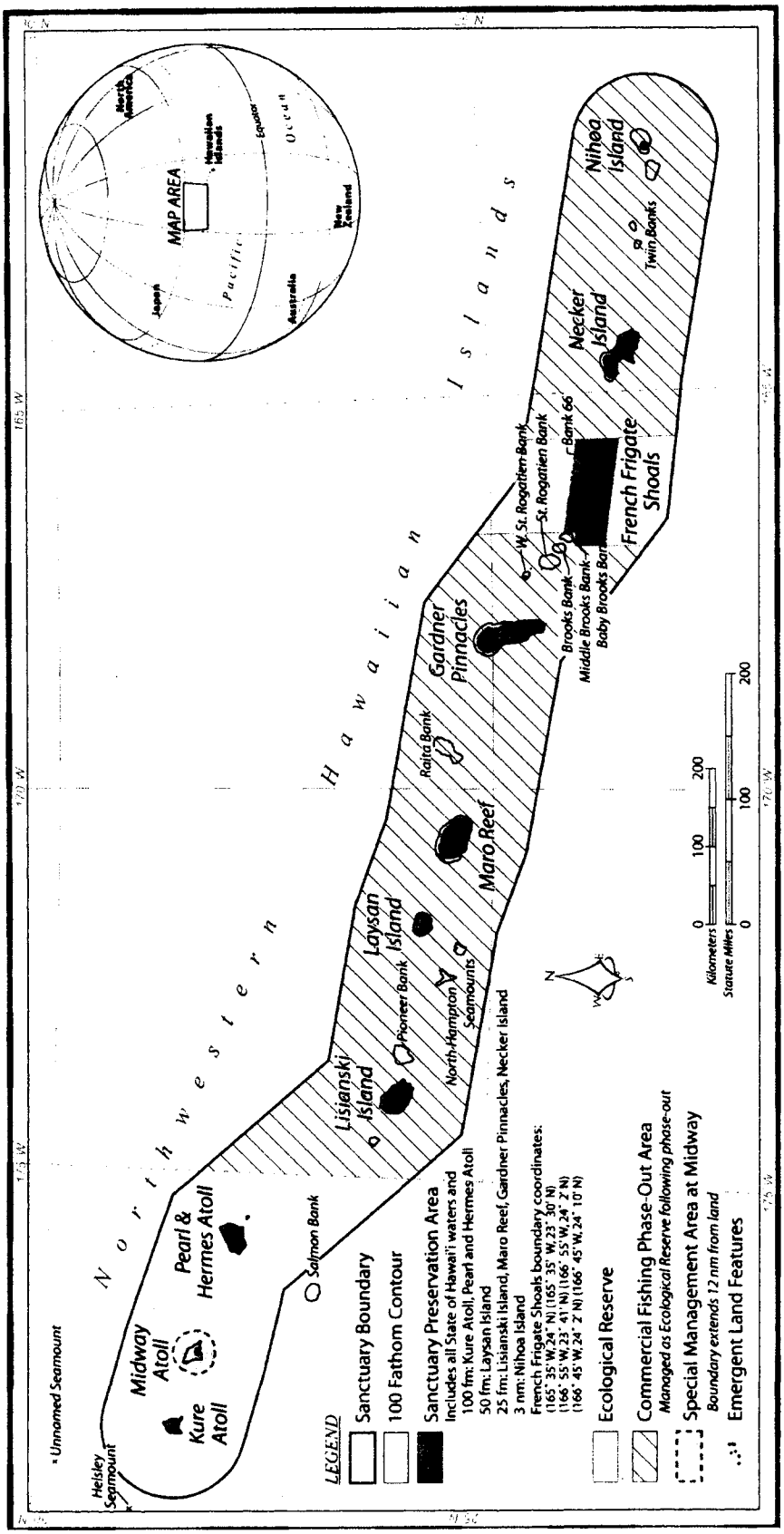
Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of June, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



Billing code 3195–01–P

Northwestern Hawaiian Islands Marine National Monument



Northwestern Hawaiian Islands Marine National Monument Boundary Coordinates

[Coordinates listed are unprojected (Geographic) and based on the North American Datum of 1983.]

Point	Latitude	Longitude
1	28.437480	-175.177660
2	28.267840	-175.000000
3	26.848220	-173.513200
4	26.600050	-171.628460
5	26.591570	-171.564050
6	26.584980	-171.514000
7	26.567910	-171.458490
8	26.555880	-171.419340
9	26.237590	-170.384040
10	25.842570	-167.964750
11	25.816640	-167.805960
12	25.784980	-167.612000
13	25.664070	-167.441430
14	25.585060	-167.329980
15	25.173930	-166.750000
16	24.681970	-166.056000
17	24.594130	-165.583330
18	24.399760	-164.537400
19	23.880420	-161.742420
20	23.868390	-161.686790
21	23.853160	-161.632100
22	23.834780	-161.578570
23	23.813320	-161.526420
24	23.788880	-161.475860
25	23.761550	-161.427080
26	23.731440	-161.380290
27	23.698680	-161.335660
28	23.663380	-161.293370
29	23.625700	-161.253600
30	23.585780	-161.216500
31	23.543790	-161.182210
32	23.499890	-161.150870
33	23.454250	-161.122600
34	23.407070	-161.097510
35	23.358510	-161.075690
36	23.308790	-161.057240
37	23.258090	-161.042210
38	23.206620	-161.030670
39	23.154580	-161.022660
40	23.102170	-161.018200
41	23.049610	-161.017300

42	22.997110	-161.019980
43	22.944850	-161.026200
44	22.893070	-161.035950
45	22.841950	-161.049190
46	22.791700	-161.065840
47	22.742520	-161.085860
48	22.694600	-161.109150
49	22.648120	-161.135620
50	22.603270	-161.165160
51	22.560230	-161.197660
52	22.519160	-161.232980
53	22.480220	-161.270990
54	22.443560	-161.311530
55	22.409340	-161.354440
56	22.377670	-161.399560
57	22.348690	-161.446710
58	22.322500	-161.495710
59	22.299220	-161.546350
60	22.278920	-161.598460
61	22.261680	-161.651810
62	22.247580	-161.706210
63	22.236670	-161.761450
64	22.228990	-161.817300
65	22.224580	-161.873560
66	22.223430	-161.930000
67	22.225570	-161.986410
68	22.230990	-162.042570
69	22.238520	-162.090980
70	22.239660	-162.098260
71	22.753090	-164.860380
72	22.837820	-165.583330
73	22.925010	-166.327230
74	22.932210	-166.388720
75	22.956970	-166.600000
76	23.062650	-166.750000
77	23.091440	-166.790850
78	24.211550	-168.380720
79	24.211630	-168.380830
80	24.211670	-168.381050
81	24.596330	-170.739990
82	24.604970	-170.793000
83	24.619830	-170.839640
84	24.629360	-170.869580
85	24.937290	-171.836510
86	25.276970	-174.414000
87	25.830690	-175.000000
88	27.246110	-176.497940
89	27.415860	-177.555230

90	27.597840	-178.498430
91	27.610780	-178.565510
92	27.625520	-178.622110
93	27.643380	-178.677580
94	27.664280	-178.731700
95	27.688140	-178.784270
96	27.714880	-178.835070
97	27.744380	-178.883910
98	27.776540	-178.930610
99	27.811230	-178.974960
100	27.848320	-179.016810
101	27.887650	-179.055990
102	27.929090	-179.092340
103	27.972460	-179.125720
104	28.017600	-179.155980
105	28.064330	-179.183020
106	28.112470	-179.206730
107	28.161840	-179.226990
108	28.212230	-179.243740
109	28.263450	-179.256890
110	28.315300	-179.266400
111	28.367580	-179.272220
112	28.412080	-179.274000
113	28.420080	-179.274320
114	28.430370	-179.274000
115	28.472580	-179.272690
116	28.524900	-179.267320
117	28.576810	-179.258240
118	28.628110	-179.245480
119	28.678610	-179.229070
120	28.728090	-179.209090
121	28.776360	-179.185600
122	28.823240	-179.158700
123	28.868520	-179.128480
124	28.912040	-179.095060
125	28.953610	-179.058580
126	28.993080	-179.019170
127	29.030280	-178.977000
128	29.065060	-178.932220
129	29.097280	-178.885010
130	29.126820	-178.835570
131	29.153560	-178.784090
132	29.177380	-178.730770
133	29.198200	-178.675830
134	29.215930	-178.619490
135	29.230490	-178.561970
136	29.241830	-178.503520
137	29.249910	-178.444360

138	29.254680	-178.384730
139	29.256140	-178.324870
140	29.254270	-178.265030
141	29.249080	-178.205450
142	29.240600	-178.146360
143	29.057970	-177.201300
144	29.042570	-177.121570
145	28.649370	-175.591270
146	28.644570	-175.572600
147	28.581980	-175.329000
148	28.437480	-175.177660

Ecological Reserves Boundary Coordinates

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

Table B-1 Ecological Reserve West of 175 degrees West Longitude

Point ID	Latitude	Longitude
1	29.042570	-177.121570
2	28.649370	-175.591270
3	28.644570	-175.572600
4	28.581980	-175.329000
5	28.437480	-175.177660
6	28.267840	-175.000000
7	25.830690	-175.000000
8	27.246110	-176.497940
9	27.415860	-177.555230
10	27.610780	-178.565510
11	27.625520	-178.622110
12	27.643380	-178.677580
13	27.664280	-178.731700
14	27.688140	-178.784270
15	27.714880	-178.835070
16	27.744380	-178.883910
17	27.776540	-178.930610
18	27.811230	-178.974960
19	27.848320	-179.016810
20	27.887650	-179.055990

21	27.929090	-179.092340
22	27.972460	-179.125720
23	28.017600	-179.155980
24	28.064330	-179.183020
25	28.112470	-179.206730
26	28.161840	-179.226990
27	28.212230	-179.243740
28	28.263450	-179.256890
29	28.315300	-179.266400
30	28.367580	-179.272220
31	28.412080	-179.274000
32	28.430370	-179.274000
33	28.472580	-179.272690
34	28.524900	-179.267320
35	28.576810	-179.258240
36	28.628110	-179.245480
37	28.678610	-179.229070
38	28.728090	-179.209090
39	28.776360	-179.185600
40	28.823240	-179.158700
41	28.868520	-179.128480
42	28.912040	-179.095060
43	28.953610	-179.058580
44	28.993080	-179.019170
45	29.030280	-178.977000
46	29.065060	-178.932220
47	29.097280	-178.885010
48	29.126820	-178.835570
49	29.153560	-178.784090
50	29.177380	-178.730770
51	29.198200	-178.675830
52	29.215930	-178.619490
53	29.230490	-178.561970
54	29.241830	-178.503520
55	29.249910	-178.444360

56	29.254680	-178.384730
57	29.256140	-178.324870
58	29.254270	-178.265030
59	29.249080	-178.205450
60	29.240600	-178.146360
61	29.057970	-177.201300
62	29.042570	-177.121570

Table B-2 French Frigate Shoals Ecological Reserve

Point ID	Latitude	Longitude
1	24.594130	-165.583330
2	23.499970	-165.583330
3	23.999970	-165.583330
4	24.166640	-166.750000
5	25.173930	-166.750000
6	24.681970	-166.056000
7	24.594130	-165.583330
8	23.740820	-166.927560
9	23.687790	-166.928170
10	23.666640	-166.750000
11	23.499970	-165.583330
12	22.837820	-165.583330
13	22.956970	-166.600000
14	23.062650	-166.750000
15	23.196210	-166.938090
16	23.740960	-166.929090
17	23.740820	-166.927560

Special Preservation Areas Boundary Coordinates

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

Table C-1 French Frigate Shoals Special Preservation Area

Point ID	Latitude	Longitude`
1	23.999970	-165.583330
2	23.499970	-165.583330
3	23.666640	-166.750000
4	23.687790	-166.928170

5	23.740820	-166.927560
6	24.036510	-166.924170
7	24.034000	-166.752270
8	24.166640	-166.750000
9	23.999970	-165.583330

Table C-2 Gardner Pinnacles Special Preservation Area

Point ID	Latitude	Longitude`
1	25.069550	-167.932070
2	25.041750	-167.925060
3	25.013260	-167.941650
4	24.941640	-167.941660
5	24.906030	-167.922730
6	24.881740	-167.901230
7	24.849970	-167.891660
8	24.747630	-167.897660
9	24.629080	-167.872660
10	24.590720	-167.873600
11	24.563150	-167.866590
12	24.491640	-167.875000
13	24.448290	-167.890630
14	24.428440	-167.901840
15	24.411150	-167.954400
16	24.419790	-167.989680
17	24.438010	-168.003690
18	24.508310	-168.016660
19	24.574980	-168.050000
20	24.591640	-168.083330
21	24.699970	-168.125000
22	24.774970	-168.133330
23	24.816640	-168.150000
24	24.883310	-168.150000
25	24.949970	-168.225000
26	25.008310	-168.266660
27	25.065400	-168.277990
28	25.093010	-168.267940
29	25.103750	-168.250890
30	25.165870	-168.225750
31	25.181750	-168.196320
32	25.191640	-168.141660
33	25.192730	-168.086360
34	25.174040	-168.041280
35	25.124980	-167.983330
36	25.069550	-167.932070

Table C-3 Kure Atoll Special Preservation Area

Point ID	Latitude	Longitude`
1	28.392840	-178.429820

2	28.399910	-178.436410
3	28.415160	-178.446280
4	28.432200	-178.448290
5	28.455370	-178.441200
6	28.478140	-178.430830
7	28.496460	-178.413240
8	28.500820	-178.406980
9	28.506480	-178.398860
10	28.514860	-178.380810
11	28.519980	-178.357030
12	28.521950	-178.334820
13	28.521950	-178.334800
14	28.525880	-178.330960
15	28.529600	-178.322670
16	28.546060	-178.307530
17	28.544020	-178.296510
18	28.522790	-178.285740
19	28.502900	-178.282050
20	28.502890	-178.282030
21	28.499380	-178.276340
22	28.487070	-178.260900
23	28.475690	-178.250260
24	28.471030	-178.245900
25	28.450220	-178.238690
26	28.416860	-178.231260
27	28.397060	-178.232420
28	28.378270	-178.238260
29	28.363050	-178.245720
30	28.362280	-178.246630
31	28.362270	-178.246650
32	28.351660	-178.238800
33	28.343860	-178.228570
34	28.341350	-178.214180
35	28.328300	-178.211250
36	28.320980	-178.215800
37	28.318750	-178.226820
38	28.326780	-178.233600
39	28.332160	-178.261690
40	28.342560	-178.262560
41	28.346030	-178.266850
42	28.343860	-178.269830
43	28.336310	-178.286080
44	28.335300	-178.315410
45	28.340220	-178.363860
46	28.344070	-178.381090
47	28.323940	-178.406220
48	28.321250	-178.428370
49	28.367630	-178.432740

50	28.392840	-178.429820

Table C-4 Pearl and Hermes Atoll Special Preservation Area

Point ID	Latitude	Longitude`
1	27.757750	-176.036520
2	27.768320	-176.040880
3	27.768320	-176.040880
4	27.770100	-176.048300
5	27.782320	-176.065490
6	27.840940	-176.037040
7	27.855580	-176.034410
8	27.874110	-176.034890
9	27.892740	-176.027240
10	27.899910	-176.012850
11	27.910770	-175.983500
12	27.910800	-175.983470
13	27.919710	-175.976620
14	27.927980	-175.967410
15	27.935100	-175.956890
16	27.939420	-175.946360
17	27.943320	-175.937810
18	27.950350	-175.926920
19	27.963550	-175.906130
20	27.974710	-175.888940
21	27.981650	-175.875480
22	27.987800	-175.860460
23	27.997110	-175.839520
24	28.004660	-175.823330
25	28.008440	-175.813830
26	28.010980	-175.803790
27	28.011520	-175.793180
28	28.011060	-175.781740
29	28.010310	-175.770160
30	28.009350	-175.764210
31	28.009350	-175.764180
32	28.011110	-175.761890
33	28.021650	-175.734510
34	28.007620	-175.715020
35	27.989730	-175.708650
36	27.989710	-175.708630
37	27.982190	-175.698330
38	27.976630	-175.691710
39	27.973990	-175.688570
40	27.967780	-175.681600
41	27.962560	-175.676580
42	27.955580	-175.672400
43	27.945870	-175.667950
44	27.935150	-175.664330

45	27.923930	-175.662390
46	27.914190	-175.661560
47	27.899720	-175.661860
48	27.883490	-175.664100
49	27.869160	-175.669150
50	27.859160	-175.672680
51	27.848250	-175.675300
52	27.836260	-175.678940
53	27.828010	-175.682580
54	27.818010	-175.688990
55	27.811250	-175.690970
56	27.805500	-175.693210
57	27.805240	-175.693310
58	27.795260	-175.697130
59	27.783750	-175.704120
60	27.776490	-175.709430
61	27.771010	-175.713510
62	27.770990	-175.713520
63	27.763470	-175.710490
64	27.755510	-175.719930
65	27.755160	-175.725020
66	27.749210	-175.729550
67	27.744440	-175.735410
68	27.739890	-175.743640
69	27.735130	-175.754680
70	27.732590	-175.766400
71	27.731290	-175.779240
72	27.730230	-175.795430
73	27.731050	-175.816390
74	27.732360	-175.825560
75	27.733580	-175.833100
76	27.734560	-175.837560
77	27.735040	-175.841750
78	27.732280	-175.845940
79	27.727480	-175.852770
80	27.722740	-175.861850
81	27.717130	-175.874800
82	27.709340	-175.894910
83	27.702570	-175.913780
84	27.699260	-175.929970
85	27.697450	-175.945320
86	27.697660	-175.956490
87	27.699370	-175.966810
88	27.703320	-175.976850
89	27.710260	-175.989680
90	27.720440	-176.003340
91	27.732370	-176.017010
92	27.741820	-176.025930

93	27.746800	-176.029970
94	27.749030	-176.031780

Table C-5 Lisianski Island Special Preservation Area

Point ID	Latitude	Longitude`
1	25.940390	-173.790690
2	25.910770	-173.795060
3	25.910770	-173.795060
4	25.871480	-173.850890
5	25.879490	-173.891610
6	25.879980	-173.943990
7	25.963710	-174.108790
8	25.979580	-174.120000
9	26.000210	-174.142570
10	26.040550	-174.157290
11	26.122730	-174.154820
12	26.174970	-174.133330
13	26.212150	-174.085540
14	26.217240	-174.050590
15	26.212430	-173.982900
16	26.183310	-173.933330
17	26.142200	-173.896560
18	26.119380	-173.861860
19	26.085600	-173.822290
20	26.041640	-173.799990
21	26.008310	-173.766660
22	25.988250	-173.752100
23	25.971020	-173.752830

Table C-6 Laysan Island Special Preservation Area

Point ID	Latitude	Longitude`
1	25.716670	-171.650000
2	25.700000	-171.666670
3	25.691670	-171.700000
4	25.700000	-171.708330
5	25.700000	-171.733330
6	25.691670	-171.750000
7	25.691670	-171.783330
8	25.708330	-171.816670
9	25.758330	-171.850000
10	25.791670	-171.866670
11	25.833330	-171.875000
12	25.866670	-171.850000
13	25.883330	-171.833330
14	25.900000	-171.800000
15	25.900000	-171.766670
16	25.883330	-171.675000
17	25.866670	-171.625000

18	25.833330	-171.600000
19	25.791670	-171.591670
20	25.766670	-171.600000
21	25.741670	-171.616670
22	25.725000	-171.633330
23	25.716670	-171.650000

Table C-7 Maro Reef Special Preservation Area

Point ID	Latitude	Longitude`
1	25.566690	-170.517140
2	25.466690	-170.408800
3	25.375020	-170.350470
4	25.258350	-170.408800
5	25.250020	-170.425470
6	25.258350	-170.542140
7	25.283350	-170.592140
8	25.300020	-170.650470
9	25.316690	-170.767140
10	25.333350	-170.800470
11	25.358350	-170.808800
12	25.391690	-170.867140
13	25.450020	-170.892140
14	25.525020	-170.900470
15	25.550020	-170.900470
16	25.583350	-170.875470
17	25.625020	-170.808810
18	25.633350	-170.775470
19	25.633350	-170.708800
20	25.616690	-170.683810
21	25.591690	-170.575470
22	25.566690	-170.517140

Table C-8 Necker Island Special Preservation Area

Point ID	Latitude	Longitude`
1	23.642160	-164.551780
2	23.613240	-164.535150
3	23.588260	-164.530180
4	23.550990	-164.527340
5	23.522830	-164.509770
6	23.490850	-164.451480
7	23.480450	-164.441650
8	23.462880	-164.393270
9	23.463220	-164.368120
10	23.449040	-164.327110
11	23.431280	-164.304620
12	23.396860	-164.282330
13	23.357080	-164.270620
14	23.308700	-164.250210

15	23.289700	-164.256760
16	23.279120	-164.267160
17	23.256820	-164.275850
18	23.235370	-164.298150
19	23.232530	-164.336710
20	23.238010	-164.369100
21	23.256190	-164.395600
22	23.263000	-164.457020
23	23.270370	-164.470630
24	23.291640	-164.483330
25	23.308310	-164.525000
26	23.308870	-164.596130
27	23.299420	-164.630360
28	23.300400	-164.641120
29	23.313770	-164.639170
30	23.323870	-164.629710
31	23.326810	-164.618950
32	23.342460	-164.621560
33	23.353870	-164.609170
34	23.406430	-164.588630
35	23.444900	-164.579500
36	23.455990	-164.605580
37	23.466750	-164.609170
38	23.479950	-164.622600
39	23.490020	-164.651170
40	23.496910	-164.695970
41	23.496540	-164.733520
42	23.484440	-164.769800
43	23.502770	-164.782090
44	23.509200	-164.799290
45	23.523370	-164.810810
46	23.537360	-164.832550
47	23.567430	-164.847030
48	23.600880	-164.834360
49	23.616190	-164.819810
50	23.622430	-164.801100
51	23.621480	-164.768400
52	23.631120	-164.738540
53	23.650580	-164.687890
54	23.663250	-164.624580
55	23.656440	-164.575820
56	23.642160	-164.551780

Table C-9 Nihoa Island Special Preservation Area

Point ID	Latitude	Longitude`
1	23.099610	-161.971310
2	23.100370	-161.970570
3	23.101120	-161.969810

4	23.101850	-161.969040
5	23.102580	-161.968250
6	23.103290	-161.967450
7	23.103990	-161.966630
8	23.104680	-161.965800
9	23.105350	-161.964950
10	23.106020	-161.964090
11	23.106670	-161.963220
12	23.107310	-161.962340
13	23.107930	-161.961440
14	23.108540	-161.960530
15	23.109140	-161.959610
16	23.109720	-161.958670
17	23.110290	-161.957730
18	23.110850	-161.956770
19	23.111390	-161.955800
20	23.111910	-161.954820
21	23.112420	-161.953830
22	23.112920	-161.952830
23	23.113400	-161.951820
24	23.113870	-161.950800
25	23.114320	-161.949770
26	23.114750	-161.948740
27	23.115170	-161.947690
28	23.115580	-161.946640
29	23.115970	-161.945570
30	23.116340	-161.944500
31	23.116700	-161.943420
32	23.117040	-161.942340
33	23.117360	-161.941250
34	23.117670	-161.940150
35	23.117960	-161.939050
36	23.118240	-161.937940
37	23.118500	-161.936820
38	23.118740	-161.935700
39	23.118970	-161.934580
40	23.119170	-161.933450
41	23.119370	-161.932320
42	23.119540	-161.931180
43	23.119700	-161.930040
44	23.119840	-161.928900
45	23.119960	-161.927750
46	23.120070	-161.926610
47	23.120160	-161.925460
48	23.120230	-161.924310
49	23.120290	-161.923150
50	23.120320	-161.922000
51	23.120350	-161.920850

52	23.120350	-161.919690
53	23.120340	-161.918540
54	23.120300	-161.917390
55	23.120260	-161.916240
56	23.120190	-161.915090
57	23.120110	-161.913940
58	23.120010	-161.912790
59	23.119890	-161.911640
60	23.119760	-161.910500
61	23.119610	-161.909360
62	23.119440	-161.908230
63	23.119250	-161.907090
64	23.119050	-161.905970
65	23.118830	-161.904840
66	23.118600	-161.903720
67	23.118350	-161.902610
68	23.118080	-161.901500
69	23.117790	-161.900400
70	23.117490	-161.899300
71	23.117170	-161.898210
72	23.116840	-161.897130
73	23.116490	-161.896050
74	23.116190	-161.895200
75	23.116120	-161.894980
76	23.115770	-161.894010
77	23.115740	-161.893920
78	23.115340	-161.892870
79	23.114930	-161.891820
80	23.114500	-161.890790
81	23.114050	-161.889760
82	23.113590	-161.888740
83	23.113110	-161.887740
84	23.112620	-161.886740
85	23.112120	-161.885750
86	23.111600	-161.884770
87	23.111070	-161.883810
88	23.110520	-161.882850
89	23.109950	-161.881910
90	23.109380	-161.880970
91	23.108780	-161.880050
92	23.108180	-161.879150
93	23.107560	-161.878250
94	23.106930	-161.877370
95	23.106280	-161.876500
96	23.105630	-161.875640
97	23.104950	-161.874800
98	23.104270	-161.873970
99	23.103580	-161.873160

100	23.102870	-161.872360
101	23.102150	-161.871570
102	23.101420	-161.870800
103	23.100670	-161.870040
104	23.099920	-161.869300
105	23.099160	-161.868580
106	23.098380	-161.867870
107	23.097960	-161.867500
108	23.097590	-161.867180
109	23.096790	-161.866500
110	23.095990	-161.865840
111	23.095170	-161.865200
112	23.094350	-161.864570
113	23.093510	-161.863960
114	23.092670	-161.863370
115	23.091810	-161.862790
116	23.090950	-161.862240
117	23.090080	-161.861700
118	23.089200	-161.861170
119	23.088320	-161.860670
120	23.087420	-161.860180
121	23.086530	-161.859720
122	23.085620	-161.859270
123	23.084700	-161.858840
124	23.083780	-161.858420
125	23.082860	-161.858030
126	23.081930	-161.857660
127	23.080990	-161.857300
128	23.080040	-161.856970
129	23.079100	-161.856650
130	23.078140	-161.856350
131	23.077190	-161.856080
132	23.076220	-161.855820
133	23.075260	-161.855580
134	23.074290	-161.855360
135	23.073320	-161.855160
136	23.072350	-161.854990
137	23.071370	-161.854830
138	23.070390	-161.854690
139	23.069410	-161.854570
140	23.068430	-161.854470
141	23.067440	-161.854390
142	23.066450	-161.854330
143	23.065470	-161.854290
144	23.064480	-161.854280
145	23.063490	-161.854280
146	23.062510	-161.854300
147	23.061520	-161.854340

148	23.060530	-161.854400
149	23.059550	-161.854490
150	23.058570	-161.854590
151	23.057580	-161.854710
152	23.056600	-161.854850
153	23.055630	-161.855020
154	23.054650	-161.855200
155	23.053670	-161.855400
156	23.052710	-161.855620
157	23.051740	-161.855860
158	23.050780	-161.856120
159	23.049820	-161.856410
160	23.048870	-161.856710
161	23.047910	-161.857030
162	23.046970	-161.857360
163	23.046030	-161.857720
164	23.045100	-161.858100
165	23.044170	-161.858500
166	23.043240	-161.858910
167	23.042330	-161.859350
168	23.041420	-161.859800
169	23.040510	-161.860270
170	23.039620	-161.860760
171	23.038730	-161.861260
172	23.037850	-161.861790
173	23.036980	-161.862330
174	23.036110	-161.862890
175	23.035250	-161.863470
176	23.034400	-161.864070
177	23.033570	-161.864680
178	23.032740	-161.865310
179	23.031910	-161.865960
180	23.031100	-161.866620
181	23.030310	-161.867300
182	23.029510	-161.868000
183	23.028730	-161.868710
184	23.027960	-161.869430
185	23.027200	-161.870180
186	23.026460	-161.870940
187	23.025720	-161.871710
188	23.025000	-161.872500
189	23.024280	-161.873300
190	23.023580	-161.874120
191	23.022900	-161.874950
192	23.022220	-161.875790
193	23.021560	-161.876650
194	23.020910	-161.877520
195	23.020270	-161.878410

196	23.019650	-161.879310
197	23.019030	-161.880220
198	23.018440	-161.881140
199	23.017860	-161.882070
200	23.017290	-161.883020
201	23.016730	-161.883980
202	23.016190	-161.884940
203	23.015670	-161.885920
204	23.015150	-161.886910
205	23.014660	-161.887910
206	23.014170	-161.888920
207	23.013710	-161.889940
208	23.013260	-161.890970
209	23.012820	-161.892010
210	23.012400	-161.893060
211	23.012000	-161.894110
212	23.011610	-161.895170
213	23.011230	-161.896240
214	23.010880	-161.897320
215	23.010540	-161.898410
216	23.010210	-161.899500
217	23.009900	-161.900590
218	23.009610	-161.901700
219	23.009340	-161.902810
220	23.009080	-161.903920
221	23.008840	-161.905040
222	23.008610	-161.906170
223	23.008400	-161.907300
224	23.008210	-161.908430
225	23.008160	-161.908750
226	23.008030	-161.909560
227	23.007880	-161.910700
228	23.007740	-161.911850
229	23.007610	-161.912990
230	23.007550	-161.913660
231	23.007510	-161.914140
232	23.007420	-161.915290
233	23.007340	-161.916440
234	23.007290	-161.917590
235	23.007250	-161.918740
236	23.007230	-161.919900
237	23.007230	-161.921050
238	23.007240	-161.922210
239	23.007270	-161.923360
240	23.007270	-161.923360
241	23.007320	-161.924510
242	23.007380	-161.925660
243	23.007470	-161.926810

244	23.007570	-161.927960
245	23.007680	-161.929100
246	23.007820	-161.930240
247	23.007970	-161.931380
248	23.008140	-161.932520
249	23.008320	-161.933650
250	23.008520	-161.934780
251	23.008740	-161.935900
252	23.008980	-161.937020
253	23.009230	-161.938140
254	23.009500	-161.939240
255	23.009780	-161.940350
256	23.010080	-161.941440
257	23.010400	-161.942530
258	23.010740	-161.943620
259	23.011090	-161.944690
260	23.011460	-161.945760
261	23.011840	-161.946820
262	23.012240	-161.947880
263	23.012650	-161.948920
264	23.013080	-161.949960
265	23.013520	-161.950980
266	23.013990	-161.952000
267	23.014460	-161.953010
268	23.014950	-161.954010
269	23.015460	-161.955000
270	23.015980	-161.955970
271	23.016510	-161.956940
272	23.017060	-161.957900
273	23.017620	-161.958840
274	23.018200	-161.959770
275	23.018790	-161.960690
276	23.019400	-161.961600
277	23.019480	-161.961720
278	23.019600	-161.961890
279	23.020010	-161.962500
280	23.020650	-161.963380
281	23.021290	-161.964250
282	23.021950	-161.965100
283	23.022620	-161.965950
284	23.023300	-161.966770
285	23.024000	-161.967590
286	23.024710	-161.968390
287	23.025430	-161.969170
288	23.026160	-161.969950
289	23.026900	-161.970700
290	23.027650	-161.971440
291	23.028420	-161.972170

292	23.029200	-161.972870
293	23.029980	-161.973570
294	23.030780	-161.974240
295	23.031590	-161.974900
296	23.032400	-161.975550
297	23.033230	-161.976170
298	23.034060	-161.976780
299	23.034910	-161.977380
300	23.035760	-161.977950
301	23.036620	-161.978510
302	23.037490	-161.979050
303	23.038370	-161.979570
304	23.039260	-161.980080
305	23.040150	-161.980560
306	23.041050	-161.981030
307	23.041960	-161.981480
308	23.042870	-161.981910
309	23.043790	-161.982320
310	23.044720	-161.982710
311	23.045650	-161.983090
312	23.046590	-161.983440
313	23.047530	-161.983780
314	23.048480	-161.984090
315	23.049430	-161.984390
316	23.050390	-161.984670
317	23.051350	-161.984930
318	23.052320	-161.985160
319	23.053290	-161.985380
320	23.054260	-161.985580
321	23.055230	-161.985760
322	23.056210	-161.985920
323	23.057190	-161.986060
324	23.058170	-161.986180
325	23.059150	-161.986280
326	23.060130	-161.986350
327	23.061120	-161.986410
328	23.062110	-161.986450
329	23.063090	-161.986470
330	23.064080	-161.986470
331	23.065070	-161.986450
332	23.066060	-161.986400
333	23.067040	-161.986340
334	23.068030	-161.986260
335	23.069010	-161.986160
336	23.069990	-161.986030
337	23.070970	-161.985890
338	23.071950	-161.985730
339	23.072930	-161.985550

340	23.073900	-161.985350
341	23.074870	-161.985120
342	23.075830	-161.984880
343	23.076800	-161.984620
344	23.077760	-161.984340
345	23.078710	-161.984040
346	23.079660	-161.983720
347	23.080610	-161.983380
348	23.081550	-161.983020
349	23.082480	-161.982650
350	23.083410	-161.982250
351	23.084330	-161.981830
352	23.085250	-161.981400
353	23.086160	-161.980950
354	23.087060	-161.980480
355	23.087960	-161.979990
356	23.088850	-161.979480
357	23.089730	-161.978960
358	23.090600	-161.978410
359	23.091470	-161.977850
360	23.092320	-161.977270
361	23.093170	-161.976680
362	23.094010	-161.976060
363	23.094840	-161.975430
364	23.095660	-161.974790
365	23.096470	-161.974130
366	23.097270	-161.973450
367	23.098060	-161.972750
368	23.098840	-161.972040

Midway Atoll Special Management Area Boundary Coordinates

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

Point	Latitude	Longitude
1	27.997920	-177.312670
2	27.991240	-177.363420
3	27.992160	-177.417620
4	27.999620	-177.470820
5	28.015160	-177.518750
6	28.036610	-177.553930
7	28.068170	-177.594240
8	28.105720	-177.620360
9	28.148620	-177.643950
10	28.201340	-177.655070
11	28.214300	-177.656000
12	28.236740	-177.650280

13	28.258770	-177.651870
14	28.297350	-177.637040
15	28.316240	-177.625190
16	28.338040	-177.607680
17	28.369970	-177.595290
18	28.404180	-177.565440
19	28.436280	-177.526610
20	28.460440	-177.490130
21	28.475910	-177.445680
22	28.482310	-177.424090
23	28.484800	-177.378720
24	28.481280	-177.324120
25	28.464920	-177.265700
26	28.442740	-177.218650
27	28.412680	-177.172550
28	28.376800	-177.137820
29	28.332440	-177.115740
30	28.268790	-177.089450
31	28.214270	-177.087250
32	28.179270	-177.084890
33	28.156690	-177.093630
34	28.125950	-177.109140
35	28.097800	-177.124810
36	28.067810	-177.150600
37	28.039860	-177.186770
38	28.021050	-177.222070
39	28.005720	-177.264920
40	27.997920	-177.312670

[FR Doc. 06–5725
Filed 6–23–06; 8:45 am]
Billing code 3195–01–C

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Federal Register

Tuesday,
March 6, 2007

Part VI

The President

Proclamation 8112—Amending Proclamation 8031 of June 15, 2006, To Read, "Establishment of the Papahanaumokuakea Marine National Monument"

Federal Register
Vol. 72, No. 43
Tuesday, March 6, 2007

Presidential Documents

Title 3—

The President

Proclamation 8112 of February 28, 2007

Amending Proclamation 8031 of June 15, 2006, To Read, ''Establishment of the Papahanaumokuakea Marine National Monument''

By the President of the United States of America

A Proclamation

WHEREAS Proclamation 8031 of June 15, 2006, established the Northwestern Hawaiian Islands Marine National Monument;

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do amend Proclamation 8031 for the purpose of giving the monument a Native Hawaiian name and making the following conforming changes and corrections;

Section 1. The title of Proclamation 8031 is amended to read, ''Establishment of the Papahanaumokuakea Marine National Monument''.

Sec. 2. The phrase Northwestern Hawaiian Islands Marine National Monument is amended to read Papahanaumokuakea Marine National Monument, wherever it appears in Proclamation 8031.

Sec. 3. Under *Findings, Additional Findings for Native Hawaiian Practice Permits*, 2(e) is amended to read: *Any living monument resource harvested from the monument will be consumed or utilized in the monument.*

Sec. 4. The title of the map of the Monument accompanying Proclamation 8031 is amended to read, ''Papahanaumokuakea Marine National Monument'' and the word ''Sanctuary'' in the map is deleted wherever it appears and the word ''Monument'' is inserted in lieu thereof.

[FR Doc. 07–1077
Filed 3–5–07; 8:58 am]
Billing code 3195–01–P

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APPENDIX G:
Monument Regulations

S6.1.4.1 Vehicles manufactured on or after September 1, 1998 and before September 1, 2007 are not required to comply with the requirements specified in S7.

S6.1.4.2 Vehicles manufactured on or after September 1, 2007 shall comply with the requirements specified in S7.

* * * * *

Issued on: August 22, 2006.

Nicole R. Nason,

Administrator.

[FR Doc. E6–14259 Filed 8–28–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 404

[Docket No. 060824225–6225–01]

RIN 0648–AU82

Northwestern Hawaiian Islands Marine National Monument

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC); United States Fish and Wildlife Service (USFWS), Department of the Interior (DOI).

ACTION: Final rule.

SUMMARY: NOAA and the USFWS are issuing final regulations for the Northwestern Hawaiian Islands Marine National Monument. This action codifies the prohibitions and management measures set forth in Presidential Proclamation 8031 establishing the Monument. The rule is effective immediately.

DATES: *Effective date:* These regulations are effective August 25, 2006. Written comments on the information collection requirement must be received by October 30, 2006.

ADDRESSES: Submit written comments regarding the burden-hour estimates or other aspects of the information collection requirements contained in this proposed rule by e-mail to Diana Hynek at *dHynek@noaa.gov.*

Coordinates for the outer boundary of the Monument, the Special Preservation Areas, the Ecological Reserves, and the Midway Atoll Special Management Area can be found at: *http://hawaiireef.noaa.gov/management/.*

FOR FURTHER INFORMATION CONTACT: *NOAA contact:* T. Aulani Wilhelm, Monument Superintendent (NOAA); 6600 Kalanianaole Highway, #300, Honolulu, HI 96825; (808) 397–2657.

FWS contact: Barry Stieglitz, Monument Project Leader (USFWS); Hawaiian and Pacific Islands NWR Complex, 300 Ala Moana Boulevard, Box 50167, Honolulu, HI 96850–5000; 808–792–9540.

State of Hawaii contact: Athline Clark, Special Projects Manager, Department of Land and Natural Resources, Division of Aquatic Resources; 1151 Punchbowl Street, Room 330, Honolulu, HI 96813; (808) 587–0099.

SUPPLEMENTARY INFORMATION: On June 15, 2006, President Bush established the Northwestern Hawaiian Islands Marine National Monument by issuing Presidential Proclamation 8031 (71 FR 36443, June 26, 2006) under the authority of the Antiquities Act (Act) (16 U.S.C. 431). The Proclamation reserves all lands and interests in lands owned or controlled by the Government of the United States in the Northwestern Hawaiian Islands (NWHI), including emergent and submerged lands and waters, out to a distance of approximately 50 nautical miles (nmi) from the islands. The outer boundary of the Monument is approximately 100 nmi wide and extends approximately 1200 nmi around coral islands, seamounts, banks, and shoals. The area includes the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge.

The Proclamation appropriated and withdrew the area from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including, but not limited to, withdrawal from location, entry, and patent under mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The Proclamation provides that the Secretary of Commerce, through NOAA, has primary responsibility regarding the management of the marine areas of the Monument, in consultation with the Secretary of the Interior. The Secretary of the Interior, through the USFWS, has sole responsibility for management of the areas of the Monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce. Further, the Proclamation provides that nothing in the Proclamation diminishes or enlarges the jurisdiction of the State of Hawaii. The Monument includes state waters, including the Northwestern Hawaiian Islands State Marine Refuge and Kure Atoll Wildlife Sanctuary. The State currently holds the submerged and ceded lands of the NWHI in trust. This public trust is overseen by the Office of Hawaiian Affairs through an amendment to the Constitution of the State of Hawaii. The State of Hawaii has primary responsibility for managing the State waters of the Monument.

The three principal entities with responsibility for managing lands and waters of the Monument—NOAA, USFWS, and the State of Hawaii (collectively, the Co-Trustees)—are working cooperatively and will consult to administer the Monument. The Co-Trustees have established a goal to provide unified management in the spirit of cooperative conservation. This relationship will be further described in a Memorandum of Agreement among the Co-Trustees.

The Proclamation requires restrictions and prohibitions regarding activities in the Monument consistent with the authority provided by the Act. The Proclamation shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law. NOAA and USFWS are promulgating as final regulations the management measures and prohibitions set forth in the Proclamation to codify them in the Code of Federal Regulations. This action will provide additional notice to the public and other interested parties of the terms of the Proclamation and activities that are prohibited or regulated and thereby facilitate improved compliance. Interested parties may view Hawaii Administrative Rules also applicable within the Monument at *http://www.hawaii.gov/dlnr/dar/fish_regs/nwhi.htm.*

These regulations address the requirement in the Proclamation that the Secretaries shall ensure, in addition to other things, that commercial fishing for bottomfish and other associated pelagic species may continue in the Monument for no more than 5 years. Section 404.10 sets out the conditions under which such fishing may continue to be conducted. However, commercial fishing remains prohibited in areas of the Monument not open to such fishing prior to issuance of the Proclamation.

Classification

Administrative Procedure Act

The Secretaries find good cause to waive notice and comment on these regulations, pursuant to 5 U.S.C. 533(b)(B), and the 30-day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary and contrary to the public interest because these regulations do not expand on the action already taken by the President in the Proclamation. The Proclamation became effective upon issuance on June 15, 2006. These regulations codify the prohibitions and management measures set forth in the Proclamation. Therefore, these regulations are being published as final regulations and are effective August 25, 2006.

E.O. 12866

This rule has been determined to be significant for purposes of E.O. 12866.

Paperwork Reduction Act

This rule contains a collection-of-information requirement that was submitted to OMB for emergency approval under the Paperwork Reduction Act (PRA). The collection-of-information requirement was approved by OMB and granted OMB control number 0648–0548 which expires on February 28, 2007. We are now requesting comment on this information collection requirement for OMB's subsequent review and approval on a non-emergency basis.

The public reporting burden for this information collection is described in the table below. The public reporting burden for permit applications and associated reporting requirements is estimated to average 1 hour per response. The public reporting burden for entry and exit notification is expected to average 15 minutes per response. The public reporting burden for VMS checklist certification is estimated to average 5 minutes per response. Each of these public reporting burdens includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

APPLICANT BURDEN

Permit type	Permits and other reporting per year	Responses per requirement	Total responses	Hours/response	Total hours	Annual record-keeping/reporting cost per response (dollar)	Total annual cost (dollar)
(a) General	33	3	99	1	99	1.00	99.00
(b) Special Ocean Use	5	3	15	24	360	1.00	15.00
(c) Native Hawaiian Practices.	2	2	4	4	16	1.00	4.00
(d) Recreation	2	3	6	1	6	1.00	6.00
(e) Entry & Exit Notice	174	2	348	5 minutes	29	0.00	0.00
(f) Purchase and installation of VMS.	50	NA	NA	4 hours	50	899 (initial cost: $3595).	44,950.00
(g) VMS maintenance	50	NA	NA	4 hours	200	0	0
(h) VMS Certification	50	0.25	12.5	5 minutes	4	0.25	13.00
(i) Hourly VMS reports	50	3805	190,224	5 seconds	264	1.28/day	10,145.00
Total	124		190,709		1028		55,232.00

Note: VMS installation and activation hours and purchase costs are annualized by dividing by 4 years, the expected service life.

Public comment is sought regarding: whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230, or via e-mail at *dHynek@noaa.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 404

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Dated: August 24, 2006.

Conrad C. Lautenbacher Jr.,

Vice Admiral, U.S. Navy (Ret.), Undersecretary of Commerce for Oceans and Atmosphere.

Dated: August 24, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

■ Accordingly, NOAA and USFWS add part 404, title 50 of the Code of Federal Regulations as follows:

PART 404—NORTHWESTERN HAWAIIAN ISLANDS MARINE NATIONAL MONUMENT

Sec.

404.1 Scope and purpose.
404.2 Boundary.
404.3 Definitions.
404.4 Access to the Monument.
404.5 Requirements for a vessel monitoring system.
404.6 Prohibited activities.
404.7 Regulated activities.
404.8 Emergencies and law enforcement activities.
404.9 Armed Forces actions.
404.10 Commercial fishing.
404.11 Permitting procedures and criteria.
404.12 International law.
Appendix A to Part 404—Map of the Monument Outer Boundary and Ecological Reserves, Special Preservation Areas, and Midway Atoll Special Management Area
Appendix B to Part 404—Approved Vessel Monitoring Systems

Authority: 16 U.S.C. 431 *et seq.*; 16 U.S.C. 460k–3; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 742f, 16 U.S.C. 742*l*, and 16 U.S.C. 668dd–

ee; 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 1531 *et seq.*, Pub. L. No. 106–513, § 6(g) (2000).

§ 404.1 Scope and purpose.

The regulations in this part codify the provisions of Presidential Proclamation 8031, and govern the administration of the Northwestern Hawaiian Islands Marine National Monument. These regulations are jointly implemented by the Secretaries of the Interior, through the U.S. Fish and Wildlife Service (USFWS), and Commerce, through the National Oceanic and Atmospheric Administration (NOAA). Nothing in these regulations shall be deemed to diminish or enlarge the jurisdiction of the State of Hawaii.

§ 404.2 Boundary.

The Northwestern Hawaiian Islands Marine National Monument consists of all lands and interest in lands owned or controlled by the Government of the United States within the boundaries of the Monument, including emergent and submerged lands and waters of the Northwestern Hawaiian Islands. The map in Appendix A to this part 404 depicts the outer boundary of the Monument, which consists of the geodetic lines connecting the coordinates specified in the Proclamation.

§ 404.3 Definitions.

The following definitions are applicable only to this Part.

Attract or Attracting means luring or attempting to lure a living resource by any means, except the mere presence of human beings (e.g., swimmers, divers, boaters).

Bottomfish Species means Bottomfish management unit species as defined at 50 CFR 665.12.

Commercial Bottomfishing means commercial fishing for bottomfish species.

Commercial passenger vessel means a vessel that carries individuals who have paid for such carriage.

Commercial pelagic trolling means commercial fishing for pelagic species.

Deserting a vessel means:

(1) Leaving a vessel aground or adrift:

(i) Without notifying the Secretaries of the vessel going aground or adrift within 12 hours of its discovery and developing and presenting to the Secretaries a preliminary salvage plan within 24 hours of such notification;

(ii) After expressing or manifesting intention to not undertake or to cease salvage efforts; or

(iii) When the Secretaries are unable, after reasonable efforts, to reach the owner/operator within 12 hours of the vessel's condition being reported to authorities.

(2) Leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Ecological Reserve means the areas of the Monument, identified in the Proclamation, consisting of contiguous, diverse habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Monument. Specific coordinates for Ecological Reserves within the Monument are found in the Proclamation, and the Ecological Reserves consist of the areas within the geodetic lines connecting these coordinates. The Ecological Reserves are depicted on the map in Appendix A to part 404.

Ecological integrity means a condition determined to be characteristic of an ecosystem that has the ability to maintain the function, structure, and abundance of natural biological communities, including rates of change in response to natural environmental variation.

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

Introduced Species means:

(1) A species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Monument; or

(2) Any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Landing means offloading fish from a fishing vessel or causing fish to be offloaded from a fishing vessel.

Midway Atoll Special Management Area means the area of the Monument surrounding Midway Atoll out to a distance of 12 nautical miles, established for the enhanced management, protection, and preservation of Monument wildlife and historical resources. The geographic coordinates of this area, which consists of the area within the geodetic lines connecting these coordinates, are found in the Proclamation. The Midway Atoll Special Management Area is depicted on the map in Appendix A to part 404.

Mobile transceiver unit means a vessel monitoring system or VMS device, as described in Appendix E to this Part, installed on board a vessel that is used for vessel monitoring and transmitting the vessel's position as required by this Part.

Monument means the Northwestern Hawaiian Islands Marine National Monument.

Native Hawaiian Practices means cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of Monument resources for direct personal consumption while in the Monument.

Ocean-based ecotourism means a class of fee-for-service activities that involves visiting the Monument for study, enjoyment, or volunteer assistance for purposes of conservation and management.

Office for Law Enforcement (OLE) refers to NOAA, National Marine Fisheries Service, Office for Law Enforcement.

Pelagic Species means Pacific Pelagic Management Unit Species as defined at 50 CFR 665.12.

Pono means appropriate, correct, and deemed necessary by traditional standards in the Hawaiian culture.

Proclamation means Presidential Proclamation 8031, dated June 15, 2006 (71 FR 36443).

Recreational activity means an activity conducted for personal enjoyment that does not result in the extraction of Monument resources and that does not involve a fee-for-service transaction. This includes, but is not limited to, wildlife viewing, SCUBA diving, snorkeling, and boating.

Secretaries means the Secretary of Commerce and the Secretary of the Interior or their designees.

Special Preservation Area (SPA) means discrete, biologically important areas of the Monument, identified in the Proclamation, within which uses are subject to conditions, restrictions, and prohibitions, including but not limited to access restrictions. SPAs are used to avoid concentrations of uses that could result in declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Specific coordinates for Special Preservation Areas within the Monument are found in the Proclamation, and the Special Preservation Areas consist of the areas within the geodetic lines connecting these coordinates. The Special

Preservation Areas are depicted on the map in Appendix A to part 404.

Special ocean use means an activity or use of the Monument that is engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and does not destroy, cause the loss of, or injure Monument resources. This includes ocean-based ecotourism and other activities such as educational and research activities that are engaged in to generate revenue, but does not include commercial fishing for bottomfish or pelagic species conducted pursuant to a valid permit issued by NOAA.

Stowed and not available for immediate use means not readily accessible for immediate use, *e.g.,* by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

Sustenance fishing means fishing for bottomfish or pelagic species in which all catch is consumed within the Monument, and that is incidental to an activity permitted under this part.

Vessel monitoring system or VMS means a vessel monitoring system or mobile transceiver unit as described in § 404.5 and approved by Office for Law Enforcement for use on vessels permitted to access the Monument, as required by this Part.

§ 404.4 Access to the Monument.

(a) Entering the Monument is prohibited and thus unlawful except:

(1) As provided in §§ 404.8 and 404.9;

(2) Pursuant to a permit issued under §§ 404.10 or 404.11; or

(3) When conducting passage without interruption in accordance with paragraph (b) of this section.

(b) Any person passing through the Monument without interruption is subject to the prohibitions in §§ 404.5, 404.6, and 404.7 and must provide notification prior to entering and after leaving the Monument. Notification of entry must be provided at least 72 hours, but no longer than 1 month, prior to the entry date. Notification of departure from the Monument must be provided within 12 hours of leaving. Notification under this paragraph may be made via e-mail, telephone or fax by contacting:

(1) E-mail: *nwhi.notifications@commat;noaa.gov;* or

(2) Telephone: 1–866–478–NWHI (6944); or (808) 395–NWHI (6944).

(c) A person providing notice under this paragraph must provide the following information, as applicable:

(1) Position when making report.

(2) Vessel name and International Maritime Organization identification number.

(3) Name, address, and telephone number of owner and operator.

(4) USCG documentation, state license, or registration number.

(5) Home port.

(6) Intended and actual route through the Monument.

(7) General categories of any hazardous cargo on board.

(8) Length of vessel and propulsion type (e.g., motor or sail).

§ 404.5 Requirements for a vessel monitoring system.

(a) *Requirement for use.* Effective August 28, 2006, an owner or operator of a vessel that has been issued a permit for accessing the Monument must ensure that such vessel has an OLE-approved, operating VMS on board when voyaging within the Monument. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and OLE as provided by an OLE-approved communication service provider. Appendix B to this part 404 provides information regarding OLE-approved transmitting units.

(b) *Installing and activating the VMS.* Only a VMS that has been approved by OLE may be used. When installing and activating the OLE-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must:

(1) Follow procedures indicated on an installation and activation checklist, which is available from OLE; and

(2) Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by OLE that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by OLE the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized access to the Monument, a vessel owner or operator subject to the requirements for a VMS in this section must allow OLE, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS. Consistent with other applicable laws, including the limitations on access to, and use of, VMS data collected under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretaries may have access to, and use of, collected data for scientific, statistical, and management purposes.

(f) *Authority for installation and operation.* OLE has authority over the installation and operation of the VMS unit. OLE may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by OLE.

(g) *Activities Regarding Vessel Monitoring Systems.* Effective August 28, 2006, the following activities regarding vessel monitoring systems are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Operating any vessel within the Monument without an OLE type-approved mobile transceiver unit described in this section;

(2) Failing to install, activate, repair, or replace a mobile transceiver unit prior to leaving port;

(3) Failing to operate and maintain a mobile transceiver unit on board the vessel at all times as specified in this section;

(4) Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified in this section;

(5) Failing to contact OLE or follow OLE instructions when automatic position reporting has been interrupted as specified in this section;

(6) Registering a VMS or mobile transceiver unit to more than one vessel at the same time;

(7) Connecting or leaving connected additional equipment to a VMS unit or mobile transceiver unit without the prior approval of OLE; and

(8) Making a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or mobile transceiver unit or communication service provider.

§ 404.6 Prohibited activities.

The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(a) Exploring for, developing, or producing oil, gas, or minerals within the Monument;

(b) Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a Monument resource;

(c) Introducing or otherwise releasing an introduced species from within or into the Monument; and

(d) Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope.

§ 404.7 Regulated activities.

Except as provided in §§ 404.8, 404.9 and 404.10, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the Monument without a valid permit as provided for in § 404.11:

(a) Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving Monument resource;

(b) Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;

(c) Anchoring a vessel;

(d) Deserting a vessel aground, at anchor, or adrift;

(e) Discharging or depositing any material or other matter into Special Preservation Areas or the Midway Atoll Special Management Area except vessel engine cooling water, weather deck runoff, and vessel engine exhaust;

(f) Discharging or depositing any material or other matter into the Monument, or discharging or depositing any material or other matter outside the Monument that subsequently enters the Monument and injures any resources of the Monument, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust;

(g) Touching coral, living or dead;

(h) Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument;

(i) Swimming, snorkeling, or closed or open circuit SCUBA diving within any Special Preservation Area or the Midway Atoll Special Management Area; and

(j) Attracting any living Monument resource.

§ 404.8 Emergencies and law enforcement activities.

The prohibitions in this part do not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

§ 404.9 Armed Forces actions.

(a) The prohibitions in this part do not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard) that are consistent with applicable laws.

(b) These regulations shall not limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

(c) All activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on Monument resources and qualities.

(d) In the event of threatened or actual destruction of, loss of, or injury to a Monument resource or quality resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the United States Coast Guard, the cognizant component shall promptly coordinate with the Secretaries for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Monument resource or quality.

§ 404.10 Commercial fishing.

(a) *Lobster fishing.* Any commercial lobster fishing permit is subject to a zero annual harvest limit condition.

(b) *Fishing and bottomfish and pelagic species.* (1) Notwithstanding the prohibitions in § 404.7(a) and (h), commercial fishing for bottomfish and associated pelagic species may continue within the Monument subject to paragraph (c) of this section, until June 15, 2011, provided that:

(i) The fishing is conducted in accordance with a valid commercial bottomfish permit issued by NOAA; and

(ii) Such permit was in effect on June 15, 2006, and is subsequently renewed pursuant to NOAA regulations at 50 CFR part 665, subpart E as necessary.

(2) Total landings for each fishing year from fishing allowed under paragraph (b)(1) of this section may not exceed the following amounts:

(i) 350,000 pounds for bottomfish species; and

(ii) 180,000 pounds for pelagic species.

(3) Commercial fishing for bottomfish and associated pelagic species is prohibited in the Monument after June 15, 2011.

(c) *General requirements.* Any commercial fishing within the Monument shall be conducted in accordance with the following restrictions and conditions:

(1) A valid permit or facsimile of a valid permit shall be on board the fishing vessel and available for inspection by an authorized officer;

(2) No attempt is made to falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other required record or report.

(3) Only gear specifically authorized by the relevant permit issued under the Magnuson-Stevens Fishery Conservation and Management Act is allowed to be in the possession of a person conducting commercial fishing under this section;

(4) Any person conducting commercial fishing notifies the Secretaries by telephone, facsimile, or electronic mail at least 72 hours before entering the Monument and within 12 hours after leaving the Monument in accordance with § 404.4(b) and (c);

(5) All fishing vessels must carry an activated and functioning VMS unit on board at all times whenever the vessel is in the Monument;

(6) All fishing vessels must carry an observer when requested to do so by the Secretaries;

(7) The activity does not take place within any Ecological Reserve, any Special Preservation Area, or the Midway Atoll Special Management Area.

§ 404.11 Permitting procedures and criteria.

(a) *Issuance.* Subject to such terms and conditions as the Secretaries deem appropriate, a person may conduct an activity prohibited by § 404.7 if such activity is specifically authorized by a permit issued under this section.

(b) *Application requirements.* Applicants for permits under this section shall submit applications to: Northwestern Hawaiian Islands Marine National Monument, 6600 Kalanianaole Highway, Suite 300, Honolulu, HI 96825.

(c) *Permit Types.* A permit under this subpart may be issued if the Secretaries find that the activity:

(1) Is research designed to further understanding of Monument resources and qualities;

(2) Will further the educational value of the Monument;

(3) Will assist in the conservation and management of the Monument;

(4) Will allow Native Hawaiian practices subject to paragraph (e) of this section;

(5) Will allow a special ocean use subject to paragraph (f) of this section; or

(6) Will allow recreational activities subject to paragraph (g) of this section.

(d) *Findings.* A permit may not be issued under this section unless the Secretaries find:

(1) The activity can be conducted with adequate safeguards for the resources and ecological integrity of the Monument;

(2) The activity will be conducted in a manner compatible with the purposes of the Proclamation, considering the extent to which the conduct of the activity may diminish or enhance Monument resources, qualities, and ecological integrity, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(3) There is no practicable alternative to conducting the activity within the Monument;

(4) The end value of the activity outweighs its adverse impacts on Monument resources, qualities, and ecological integrity;

(5) The duration of the activity is no longer than necessary to achieve its stated purpose;

(6) The applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;

(7) The applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;

(8) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to Monument resources, qualities, and ecological integrity;

(9) The applicant's vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of § 404.5; and

(10) There are no other factors that would make the issuance of a permit for the activity inappropriate.

(e) *Additional findings for Native Hawaiian practice permits.* In addition to the findings listed in paragraph (d) of this section, a permit to allow Native Hawaiian practices under paragraph (c)(4) of this section, may not be issued unless:

(1) The activity is non-commercial and will not involve the sale of any organism or material collected;

(2) The purpose and intent of the activity are appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (*pono*), and demonstrate an understanding of, and background in, the traditional practice, and its associated values and protocols;

(3) The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community;

(4) The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and

(5) Any Monument resource harvested from the Monument will be consumed in the Monument.

(f) *Additional findings, criteria, and requirements for special ocean use permits.* (1) In addition to the findings listed in paragraph (d) of this section, the following requirements apply to the issuance of a permit for a special ocean use under paragraph (c)(5) of this section:

(i) Any permit for a special ocean use issued under this section:

(ii) Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the Monument is designated and with protection of Monument resources;

(A) Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed;

(B) Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure Monument resources; and

(iii) Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims;

(iv) Each person issued a permit for a special ocean use under this section shall submit an annual report to the Secretaries not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

(2) In addition to the findings listed in paragraph (d) of this section, a permit may not be issued for a special ocean use unless the activity has been determined to be consistent with the findings made pursuant to paragraph (f) of this section.

(3) Categories of special ocean use being permitted for the first time under this section will be restricted in duration and permitted as a special ocean use pilot project. Subsequent permits for any category of special ocean use may only be issued if a special ocean use pilot project for that category meets the requirements of this section, and any terms and conditions placed on the permit for the pilot project.

(4) Public notice shall be provided prior to requiring a special ocean use permit for any category of activity not previously identified as a special ocean use.

(5) The following requirements apply to permits for a special ocean use for an activity within the Midway Atoll Special Management Area.

(i) A permit for a special ocean use for activities within the Midway Atoll Special Management Area may be issued provided:

(A) The activity furthers the conservation and management of the Monument; and

(B) The Director of the United States Fish and Wildlife Service or his or her designee has determined that the activity is compatible with the purposes for which the Midway Atoll National Wildlife Refuge was designated.

(ii) As part of a permit issued pursuant to this paragraph (f)(5), vessels may be allowed to transit the Monument as necessary to enter the Midway Atoll Special Management Area.

(6) A permit for a special ocean use for activities outside the Midway Atoll Special Management Area may be issued provided:

(i) The activity will directly benefit the conservation and management of the Monument;

(ii) The purpose of the activity is for research or education related to the resources or qualities of the Monument;

(iii) Public notice of the application and an opportunity to provide comments is given at least 30 days prior to issuing the permit; and

(iv) The activity does not involve the use of a commercial passenger vessel.

(g) *Additional findings for recreation permits.* A permit for recreational activities under paragraph (c)(6) of this section may be issued for activities to be conducted within the Midway Atoll Special Management area if, in addition to the findings listed in paragraph (d) of this section:

(1) The activity is for the purpose of recreation as defined in section 404.3;

(2) The activity is not associated with any for-hire operation; and

(3) The activity does not involve any extractive use.

(h) *Sustenance fishing.* Sustenance fishing, as defined in 404.3, may be allowed outside of any Special Preservation Area as a term or condition of any permit issued under this part. Sustenance fishing in the Midway Atoll

Special Management Area shall not be allowed unless the activity has been determined by the Director of the U.S. Fish and Wildlife Service or his or her designee to be compatible with the purposes for which the Midway Atoll National Wildlife Refuge was established. Sustenance fishing must be conducted in a manner compatible with the Proclamation and this part, including considering the extent to which the conduct of the activity may diminish Monument resources, qualities, and ecological integrity, as well as any indirect, secondary, or cumulative effects of the activity and the duration of such effects. Sustenance fishing is subject to systematic reporting requirements when developed by the Secretaries.

§ 404.12 International law.

These regulations shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Appendix A to Part 404—Map of the Monument Outer Boundary and Ecological Reserves, Special Preservation Areas, and Midway Atoll Special Management Area

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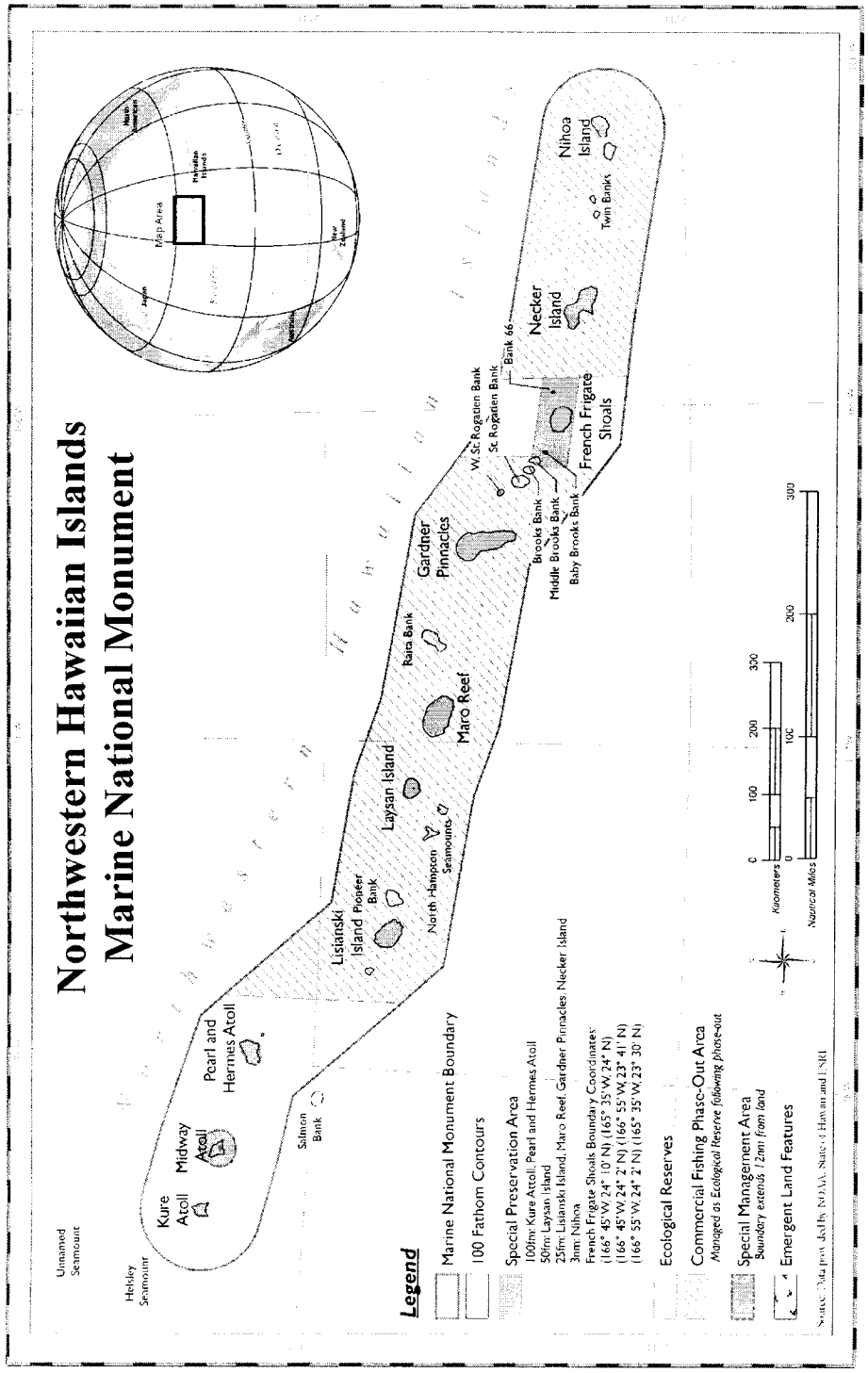

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Appendix B to Part 404—Approved VMS

I. VMS Mobile Transceiver Unit

Thrane & Thrane Sailor 3026D Gold VMS

The Thrane & Thrane Sailor 3026D Gold VMS (TT–3026D) has been found to meet the minimum technical requirements for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument. The address for the Thrane & Thrane distributor contact is provided in this notice under the heading VMS Provider Address.

The TT–3026D Gold VMS features an integrated GPS/Inmarsat-C unit and a marine grade monitor with keyboard and integrated mouse. The unit is factory pre-configured for NMFS VMS operations (non-Global Maritime Distress & Safety System (non-GMDSS)). Satellite commissioning services are provided by Thrane & Thrane personnel.

Automatic GPS position reporting starts after transceiver installation and power activation onboard the vessel. The unit is an integrated transceiver/antenna/GPS design using a floating 10 to 32 VDC power supply. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). It allows for port stays without power drain or power shut down. The unit restarts normal position transmission automatically when the vessel goes to sea.

The TT–3026D provides operation down to +/−15 degree angles. The unit has the capability of two-way communications to send formatted forms and to receive e-mail and other messages. A configuration option is available to automatically send position reports to a private address, such as a fleet management company.

A vessel owner may purchase this system by contacting the entity identified in this notice under the heading ''VMS Provider Address''. The owner should identify himself or herself as a vessel owner issued a permit to operate in the Northwestern Hawaiian Islands Marine National Monument, so the transceiver set can be properly configured. To use the TT–3026D the vessel owner will need to establish an Inmarsat-C system use contract with an approved Inmarsat-C communications service provider. The owner will be required to complete the Inmarsat-C ''Registration for Service Activation for Maritime Mobile Earth Station.'' The owner should consult with Thrane & Thrane when completing this form.

Thrane & Thrane personnel will perform the following services before shipment: (1) Configure the transceiver according to OLE specifications for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument; (2) download the predetermined NMFS position reporting and broadcast command identification numbers into the unit; (3) test the unit to ensure operation when installation has been completed on the vessel; and (4) forward the Inmarsat service provider and the transceiver identifying information to OLE.

II. Inmarsat-C Communications Providers

It is recommended, for vendor warranty and customer service purposes, that the vessel owner keep for his or her records and that Telenor and Xantic have on record the following identifying information: (1) Signed and dated receipts and contracts; (2) transceiver serial number; (3) Telenor or Xantic customer number, user name and password; (4) e-mail address of transceiver; (5) Inmarsat identification number; (6) owner name; (7) vessel name; (8) vessel documentation or registration number; and (9) mobile earth station license (FCC license).

The OLE will provide an installation and activation checklist that the vessel owner must follow. The vessel owner must sign a statement on the checklist certifying compliance with the installation procedures and return the checklist to OLE. Installation can be performed by an experienced crew or by an electronics specialist, and the installation cost is paid by the owner.

The owner may confirm the TT–3026D operation and communications service to ensure that position reports are automatically sent to and received by OLE before leaving on a trip under VMS. The OLE does not regard the vessel as meeting requirements until position reports are automatically received. For confirmation purposes, contact the NOAA Fisheries Office for Law Enforcement, 8484 Georgia Ave., Suite 415, Silver Spring, MD 20910, phone 888–219–9228, fax 301–427–0049.

Telenor Satellite Services

Inmarsat-C is a store-and-forward data messaging service. Inmarsat-C allows users to send and receive information virtually anywhere in the world, on land, at sea, and in the air. Inmarsat-C supports a wide variety of applications including Internet, e-mail, position and weather reporting, a free daily news service, and remote equipment monitoring and control. Mariners can use Inmarsat-C free of charge to send critical safety at sea messages as part of the U.S. Coast Guard's Automated Mutual-Assistance Vessel Rescue system and of the NOAA Shipboard Environmental Acquisition System programs. Telenor Vessel Monitoring System Services is being sold through Thrane & Thrane, Inc. For the Thrane & Thrane and Telenor addresses, look inside this notice under the heading ''VMS Provider Address''.

Xantic

Xantic is a provider of Vessel Monitoring Services to the maritime industry. By installing an approved OLE Inmarsat-C transceiver on the vessel, vessels can send and receive e-mail, to and from land, while the transceiver automatically sends vessel position reports to OLE, and is fully compliant with the International Coast Guard Search and Rescue Centers. Xantic Vessel Monitoring System Services are being sold through Thrane & Thrane, Inc. For the Thrane & Thrane and Xantic addresses, look in this notice under the heading ''VMS Provider Address''.

For Telenor and Xantic, Thrane & Thrane customer service supports the security and privacy of vessel accounts and messages with the following: (a) Password authentication for vessel owners or agents and for OLE to prevent unauthorized changes or inquiries; and (b) separation of private messages from OLE messages. (OLE requires VMS-related position reports, only.)

Billing is separated between accounts for the vessel owner and the OLE. VMS position reports and vessel-initiated messaging are paid for by the vessel owner. Messaging initiated from OLE operations center is paid for by NOAA.

Thrane & Thrane provides customer service for Telenor and Xantic users to support and establish two-way transmission of transceiver unit configuration commands between the transceiver and land-based control centers. This supports OLE's message needs and, optionally, the crew's private message needs.

The vessel owner can configure automatic position reports to be sent to a private address, such as to a fleet management company.

Vessel owners wishing to use Telenor or Xantic services will need to purchase an Inmarsat-C transceiver approved for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument. The owner will need to complete an Inmarsat-C system use contract with Telenor or Xantic, including a mobile earth station license (FCC requirement). The transceiver will need to be commissioned with Inmarsat according to Telenor or Xantic's instructions. The owner should refer to and follow the configuration, installation, and service activation procedures for the specific transceiver purchased.

III. VMS Provider Address

For TT–3026D, Telenor, or Xantic information, contact Ronald Lockerby, Marine Products, Thrane & Thrane, Inc., 509 Viking Drive, Suite K, L & M, Virginia Beach, VA 23452; voice: 757–463–9557; fax: 757–463–9581, e-mail: *rdl@tt.dk.com*; Web site: *http://www.landseasystems.com*.

[FR Doc. 06–7235 Filed 8–25–06; 12:24 pm]

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Corrections

Federal Register

Vol. 71, No. 173

Thursday, September 7, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 404

[Docket No. 060824225–6225–01]

RIN 0648–AU82

Northwestern Hawaiian Islands Marine National Monument

Correction

In rule document 06–7235 beginning on page 51134 in the issue of Tuesday, August 29, 2006, make the following correction:

§ 404.4 [Corrected]

On page 51137, in the first column, in § 404.4(b)(1), in the second line, ''*nwhi.notifications@commat;noaa.gov*'' should read ''*nwhi.notifications@noaa.gov*''.

[FR Doc. C6–7235 Filed 9–6–06; 8:45 am]

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(3) * * *

(i) *Possession and use of required mitigation gear.* The equipment listed in paragraph (c)(5)(i) of this section must be carried on board and must be used to handle, release, and disentangle hooked or entangled sea turtles, prohibited sharks, or smalltooth sawfish in accordance with requirements specified in paragraph (d)(3)(ii) of this section.

(ii) *Handling and release requirements.* Sea turtle bycatch mitigation gear, as required by paragraph (d)(3)(i)of this section, must be used to disengage any hooked or entangled sea turtles as stated in paragraph (c)(5)(ii) of this section. This mitigation gear should also be employed to disengage any hooked or entangled species of prohibited sharks as listed in Category (D) of Table 1 of Appendix A of this part. If a smalltooth sawfish is caught, the fish should be kept in the water while maintaining water flow over the gills and examined for research tags and the line should be cut as close to the hook as possible. Dehooking devices should not be used to release smalltooth sawfish.

* * * * *

■ 5. In § 635.71, paragraph (a)(33) is revised as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(33) Deploy or fish with any fishing gear from a vessel with pelagic or bottom longline gear on board without carrying the required sea turtle bycatch mitigation gear, as specified at § 635.21(c)(5)(i) for pelagic longline gear and § 635.21(d)(3)(i) for bottom longline gear. This equipment must be utilized in accordance with § 635.21(c)(5)(ii) and (d)(3)(ii) for pelagic and bottom longline gear, respectively.

* * * * *

[FR Doc. E7–2011 Filed 2–6–07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 404

[Docket No. 060824225–6031–02]

RIN 0648–AU82

Northwestern Hawaiian Islands Marine National Monument; Correction

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC); United States Fish and Wildlife Service (USFWS), Department of the Interior (DOI).

ACTION: Final rule; correcting amendment.

SUMMARY: NOAA and the USFWS published final regulations for the Northwestern Hawaiian Islands Marine National Monument (Monument) on August 29, 2006. The preamble and regulatory text of that notice contained errors pertaining to the electronic mail address for submitting comments on the information collection requirements of that rule, the reference to the dimensions of the outer boundary of the Monument, and the numbering sequence for one paragraph. This final rule corrects those errors. This rule makes no substantive change to the regulations.

DATES: This correction is effective February 7, 2007.

SUPPLEMENTARY INFORMATION: Regulations published by NOAA and the USFWS on August 29, 2006 to codify the prohibitions and management measures set forth in Presidential Proclamation 8031 (71 FR 36443, June 26, 2006) establishing the Monument, contained an error in the instructions for submitting comments on the information collection requirements of the final rule via electronic mail, the reference to the dimensions of the Monument's outer boundary, and the numbering sequence for one paragraph.

The first error appeared in the first sentence of the **ADDRESSES** section of the notice. Here the notice incorrectly refers to a ''proposed rule'' and provides the incorrect e-mail address. That sentence should read ''Submit written comments regarding the burden-hour estimates or other aspects of the information collection requirements contained in this final rule by e-mail to Diana Hynek at *dHynek@doc.gov*.'' The incorrect e-mail address also appeared in the **SUPPLEMENTARY INFORMATION** section of the notice in the first column on page 51135 below the table. The e-mail address should read *dHynek@doc.gov.*

The second error is in the third sentence of the first paragraph of the **SUPPLEMENTARY INFORMATION** section of the notice, where dimensions for the outer boundary of the Monument were given. The dimensions are for the Monument, not the outer boundary. Therefore, this sentence should read ''The Monument is approximately 100 nmi wide and extends approximately 1200 nmi around coral islands, seamounts, banks, and shoals.''

The regulatory text of that rule also contained an error in the numbering sequence for one paragraph. Paragraph 404.11(f)(1)(ii) should have been designated as paragraph 404.11(f)(1)(i)(A). Paragraphs 404.11(f)(1)(ii)(A) and (B) and paragraph 404.11(f)(1)(iii) should have been numbered paragraphs 404.11(f)(1)(i)(B) through (D), respectively. Paragraph 404.11(f)(1)(iv) should have been designated as paragraph 404.11(f)(1)(ii). This final rule makes these corrections. The substance of the regulations remains unchanged.

Classification

Administrative Procedure Act

The Secretaries find good cause to waive notice and comment on this correction, pursuant to 5 U.S.C. 533(b)(B), and the 30-day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary because this correction is a minor, technical change in an e-mail address and the numbering of the regulations as well as elimination of erroneous references to the notice as a proposed rule and the dimensions of the Monument's outer boundary. The substance of the regulations remains unchanged. Therefore, this correction is being published as a final regulation and is effective February 7, 2007.

E.O. 12866

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 404

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Dated: November 16, 2006.

Conrad C. Lautenbacher Jr.,

Undersecretary of Commerce for Oceans and Atmosphere.

Dated: January 5, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

■ Accordingly, NOAA and USFWS correct 50 CFR part 404 as follows:

PART 404—NORTHWESTERN HAWAIIAN ISLANDS MARINE NATIONAL MONUMENT

■ 1. The authority citation for 50 CFR part 404 continues to read as follows:

Authority: 16 U.S.C. 431 *et seq.*; 16 U.S.C. 460k–3; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 742f; 16 U.S.C. 742l; and 16 U.S.C. 668dd–ee; 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 1531 *et seq.*; Pub. L. No. 106–513, § 6(g) (2000).

■ 2. In § 404.11, paragraph (f)(1) is revised to read as follows:

§ 404.11 Permitting procedures and criteria.

* * * * *

(f) *Additional findings, criteria, and requirements for special ocean use permits.*

(1) In addition to the findings listed in paragraph (d) of this section, the following requirements apply to the issuance of a permit for a special ocean use under paragraph (c)(5) of this section:

(i) Any permit for a special ocean use issued under this section:

(A) Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the Monument is designated and with protection of Monument resources;

(B) Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed;

(C) Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure Monument resources; and

(D) Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims;

(ii) Each person issued a permit for a special ocean use under this section shall submit an annual report to the Secretaries not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

* * * * *

[FR Doc. 07–545 Filed 2–6–07; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 061124307–7013–02; I.D. 112106A]

RIN 0648–AT65

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: On January 30, 2007, NMFS published a final rule implementing 2007 specifications and management measures for Atlantic mackerel, squid, and butterfish (MSB) and modifying existing management measures. The preamble to the final rule contains Table 1 announcing the specifications for Atlantic mackerel, squid, and butterfish fisheries for the 2007 fishing year. Table 2 of the preamble to the final rule announces the trimester allocation of the *Loligo* squid quota in 2007. The headings to both tables inadvertently indicated that the specifications and allocation for 2007 were ''proposed'' rather than ''final''. This document corrects those errors.

DATES: Effective March 1, 2007.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978- 281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) appear at 50 CFR part 648, subpart B, and regulations governing foreign fishing appear at 50 CFR part 600, subpart F. The final rule published on January 30, 2007 (72 FR 4211) fulfilled NMFS regulatory requirements at §§ 648.21 and 600.516(c) based on the maximum optimum yield (Max OY) of each fishery as established by the regulations, annually specify the amounts of the initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), and domestic annual processing (DAP), as well as, where applicable, the amounts for total allowable level of foreign fishing (TALFF) and joint venture processing (JVP) for the affected species managed under the FMP. The final specifications for 2007 were identified in Table 1 of the preamble to the final rule. However, the heading to Table 1 inadvertently indicated that the specifications were ''proposed'' rather than ''final''. This document corrects the heading for Table 1 appearing on page 4212 (FR Doc. E7–1445) of the preamble contained in the January 30, 2007 **Federal Register** document. The remainder of Table 1 is republished in its entirety for the public's convenience.

The final rule published January 30, 2007 (72 FR 4213) also identified the distribution of the trimester allocation of *Loligo* squid quota for the 2007 fishing year. However, the heading to Table 2 inadvertently indicated that the trimester allocation was ''proposed'' rather than ''final''. This document corrects the heading for Table 2 appearing on page 4213 (FR Doc. E7–1445) of the preamble contained in the January 30, 2007 **Federal Register** final rule document. The remainder of Table 2 is republished in its entirety for the public's convenience.

Correction

Accordingly, the final rule published on January 30, 2007, at 72 FR 4211 (FR Doc. E7–1445), to be effective March 1, 2007, is corrected as follows:

1. On page 4212, Table 1, title heading is corrected and the table text is republished to read as follows:

APPENDIX H:
Monument Memorandum of Agreement

MEMORANDUM OF AGREEMENT

AMONG THE

STATE OF HAWAI`I
DEPARTMENT OF LAND AND NATURAL RESOURCES

AND THE

U.S. DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

AND THE

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

FOR

PROMOTING COORDINATED MANAGEMENT OF THE
NORTHWESTERN HAWAIIAN ISLANDS MARINE NATIONAL MONUMENT

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I. BACKGROUND

A. The President established the Northwestern Hawaiian Islands Marine National Monument (Monument) on June 15, 2006, to protect the scientific and historic resources of the Northwestern Hawaiian Islands (NWHI). The purposes and management regime for the Monument, as well as restrictions and prohibitions regarding activities in the Monument, are set forth in Presidential Proclamation 8031 (71 FR 36443, June 26, 2006).

B. The Monument encompasses a vast and remote chain of islands that is a part of the Hawaiian Archipelago and provides habitat for numerous species found nowhere else on earth. These islands represent a nearly pristine ecosystem where habitats upon which marine species depend include both land and water. This area represents the majority of the coral reefs found within the United States' jurisdiction and supports more than 7,000 marine species, of which at least one quarter are unique to the Hawaiian Islands chain. This diverse ecosystem is home to many species of coral, fish, birds, marine mammals, and other flora and fauna, including the endangered Hawaiian monk seal, the threatened green sea turtle, and the endangered leatherback and hawksbill sea turtles. Like the coral reefs, the islets are home to many plant and animal species found nowhere else in the world, including four endangered land birds, an endangered seabird, and 12 endangered plants. In addition, millions of central Pacific seabirds congregate on these islands to breed. The area is rich in history and represents a place of great cultural significance to Native Hawaiians. It is an area that must be carefully managed to ensure that the resources are not diminished for future generations. The Hawaiian Islands are also the most remote archipelago in the world. This isolation has resulted in the opportunity and need for integrated resource management of this vast and exceptional environment.

C. The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), has primary responsibility regarding the management of the marine areas of the Monument, in consultation with the Secretary of the Interior. The Secretary of the Interior, through the United States Fish and Wildlife Service (USFWS), has sole responsibility for the areas of the Monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce. Nothing in the Proclamation diminishes or enlarges the jurisdiction of the State of Hawai`i. The State of Hawai`i has primary responsibility for managing the State waters of the Monument. The State of Hawai`i through the Department of Land and Natural Resources has primary responsibility for the Kure Atoll portion of the Hawai`i State Seabird Sanctuary. The State of Hawai`i holds the State submerged and ceded lands of the NWHI in trust. The Department of Land and Natural Resources (DLNR) will collaborate with the Office of Hawaiian Affairs (OHA) in the perpetuation of Hawaiian cultural resources in the Monument, including the customary and traditional rights and practices of Native Hawaiians exercised for subsistence, cultural, and religious purposes under the Constitution of the State of Hawai`i, Article XII, Section 7.

D. The areas subject to this Agreement are the lands and waters within the Monument. The Monument includes all lands and interest in lands owned or controlled by the Government of the United States in the NWHI, including emergent and submerged lands, and waters out to a distance of approximately 50 nautical miles from the islands. The Monument extends approximately 1200 nautical miles across coral islands, seamounts, banks, and shoals. The Monument includes a portion of State of Hawai`i waters, including the Northwestern Hawaiian Islands State Marine Refuge and the Kure Atoll portion of the Hawai`i State Seabird Sanctuary. The Monument also includes Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Hawaiian Islands National Wildlife Refuge, and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve.

E. The United States and the State of Hawai`i recognize the importance of the Monument's healthy coral reef, marine, and terrestrial ecosystems to the cultural, economic, and biological future of the State of Hawai`i and the Nation as a whole. Both recognize that a well managed terrestrial and marine environment in the NWHI is necessary to maintain the health and vigor of rare and protected species such as Hawaiian monk seals, sea turtles, seabirds, land birds, and plants, as well as to protect the other vital components of the ecosystem. The parties are collectively charged with protecting, conserving, and enhancing fish, plant, and wildlife habitats, including coral reefs and other marine and terrestrial resources in the NHWI. In order to protect the unique resources of these remote islands, the parties will manage the Monument in a manner that is free from exploitation and degradation due to human activities.

II. PARTIES, PURPOSE AND SCOPE

A. The Parties to this agreement are the State of Hawai`i, the U.S. Department of the Interior (DOI), and the U.S. Department of Commerce (DOC) (hereinafter collectively referred to as the Co-Trustees). This Memorandum of Agreement (Agreement) constitutes an agreement among the Co-Trustees to carry out coordinated resource management for the long-term comprehensive conservation and protection of the Monument.

B. This Agreement establishes functional relationships to effectively coordinate management actions in this area among the Co-Trustees. This Agreement also provides the general terms and conditions under which the Co-Trustees will cooperate and manage the resources of the Monument.

C. This Agreement also establishes objectives and responsibilities necessary for coordinated management activities in the Monument and is intended to provide the framework for long-term comprehensive protection of the Monument. The Co-Trustees will focus on coordinating planning efforts, management priorities, and field operations in the Monument.

D. The Co-Trustees will undertake coordinated, integrated management and protection that will result in comprehensive conservation of the ecosystems of the Monument in perpetuity. The Co-Trustees recognize that the Monument is also a place of special cultural significance for Native Hawaiians, which provides a unique opportunity to manage marine resources in a manner that honors the rich heritage of the Native Hawaiian culture. The Monument also is a place of more recent historical significance, including the Battle of Midway.

E. Monument Vision, Mission, and Guiding Principles:

1. The Monument vision is that the health, diversity, and resources of the vast NWHI ecosystems and the wildlife they support – unique in the world – be protected forever.

2. The Monument mission is to carry out seamless integrated management to achieve strong, long-term protection and perpetuation of NWHI ecosystems, Native Hawaiian traditional and customary cultural and religious practices, and heritage resources for current and future generations.

3. The Monument guiding principles are to manage the Monument in a manner that, consistent with applicable law:
   - is consistent with the vision and mission;
   - recognizes that the resources of the NWHI are administered by the Co-Trustees for the benefit of present and future generations;
   - affirms that the NWHI and its wildlife are important, unique, and irreplaceable;
   - honors the significance of the region for Native Hawaiians;
   - honors the historic importance of the region;
   - incorporates best practices, scientific principles, traditional knowledge, and an adaptive management approach;
   - errs on the side of resource protection when there is uncertainty regarding impacts of an activity;
   - enhances public appreciation of the unique character and environment of the NWHI;
   - authorizes only uses consistent with Presidential Proclamation 8031 and other applicable laws;
   - coordinates with federal, state, and local governments; Native Hawaiians; relevant organizations; and the public; and
   - carries out effective outreach, monitoring, and enforcement to promote compliance.

III. REFERENCES AND AUTHORITIES

The Co-Trustees are authorized to enter into this Agreement under various authorities most relevant to coordinated management, including:

A. Antiquities Act, 16 U.S.C. § 431, *et seq.*;

B. Proclamation 8031 of June 15, 2006, 71 FR 36443 (June 26, 2006);

C. Northwestern Hawaiian Islands Marine National Monument codifying regulations, 50 CFR Part 404 (2006);

D. State of Hawai`i Organic Act of April 30, 1900, c339, 31 Stat. 141 Section 2; and Hawai`i Admission Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4 Section 2;

E. Constitution of the State of Hawai`i, Article XI, Sections 1, 2, 6, and 9; and Article XII, Section 7;

F. Title 12, Chapter 171, Section 171-3, Chapter 183D, Section 183D-8, Chapter 187A, Section 187A-8, Chapter 188, Sections 188-37 and 188-53, Chapter 195D, Section 195D-5, and Chapter 199, Section 199-3, Hawai`i Revised Statutes; and Title 13, Chapter 60.5 and Chapter 125 Hawai`i Administrative Rules;

G. National Marine Sanctuaries Amendments Act of 2000, Pub. L. 106-513 §6(g) (2000);

H. Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531, *et seq.*;

I. Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361, *et seq.*;

J. Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, *et seq.*;

K. National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. §§ 668dd-ee;

L. Refuge Recreation Act, 16 U.S.C. § 460k-3;

M. Fish and Wildlife Act of 1956, 16 U.S.C. § 742f;

N. Fish and Wildlife Improvement Act of 1978, 16 U.S.C. § 742l;

IV. MONUMENT MANAGEMENT OFFICIALS AND RESPONSIBILITIES

A. Senior Executive Board (SEB): The Co-Trustees hereby establish the SEB.

1. The SEB shall provide policy guidance to their respective agency staff assigned to carry-out Monument management activities.

2. Responsible Officials: SEB Membership will consist of an appropriate senior level designee from each of the following (Co-Trustees will notify each other of appointed designee and upon change of designee):
   a. State of Hawai`i Department of Land and Natural Resources
   b. U.S. Department of the Interior
   c. U.S. Department of Commerce

3. The SEB shall be responsible for the following activities through the Monument Management Board (MMB):

   a. Develop a management plan for ensuring the coordinated management of the coral reef ecosystems and related marine resources, terrestrial resources, and cultural and historic resources of the Monument, consistent with Proclamation 8031 and other applicable laws and regulations. To develop the management plan, the SEB shall modify, as appropriate, the plan developed by NOAA's National Marine Sanctuary Program through the public sanctuary designation process and provide for public review of that plan. The management plan should also maximize the efficient use of financial and human capital. Further, the SEB shall regularly review the implementation of the management plan and adjust the management framework as appropriate, consistent with applicable laws and policies.

   b. Provide access and support for enforcement purposes, share enforcement resources and data, as appropriate, and develop joint enforcement capabilities as needed to ensure compliance with applicable State and Federal laws. Enforcement support may involve assistance from additional agencies such as the U.S. Coast Guard.

   c. Coordinate research and monitoring efforts to better understand and address major threats to Monument resources. Initiate joint resource assessment, monitoring, and research activities including, but not limited to, population studies, species inventories and assessments, impacts from derelict fishing gear, and documentation of historic and cultural resources. Provide opportunities to participate in research activities initiated by each Co-Trustee, as appropriate. Coordinate research, including permits required for management activities that further the recovery of threatened or endangered species and protect and/or restore biodiversity within the Monument.

d. Develop a mechanism to access scientific and resource data, as needed, and, consistent with applicable law, a protocol to ensure the necessary confidentiality of certain information, such as fisheries data and the location of heritage resources.

e. Provide support to identify locations of cultural and religious significance and for noncommercial Native Hawaiian practices, which may benefit the resources of the Monument and the Native Hawaiian community. Develop a protocol to protect sensitive, culturally significant, and religious locations while allowing permitted access.

f. Manage recreational, educational, and commercial activities that may take place within the Monument consistent with Proclamation 8031.

g. Identify and facilitate, as appropriate, coordination, consultation, and partnership opportunities regarding Monument management activities among Federal, State, and local governments, Native Hawaiians, the private sector, foreign governments, international organizations, and any other public or private persons or entities.

h. Facilitate opportunities to participate in and collaborate on educational activities and projects between and among the Co-Trustees.

i. Develop interagency agreements, grants, memoranda of understanding, or other appropriate instruments that allow for ease in sharing resources, including funds as appropriate, and a sharing of in-kind assistance and support such as the sharing of vessel time, aircraft missions, or other logistical support as a means of facilitating cooperative project opportunities. These more detailed agreements on specific issues will be signed at an appropriate level.

j. Ensure appropriate monitoring of activities within the Monument. Develop a coordinated response program to assess and address human induced or natural threats to Monument resources.

k. Enhance coordination by jointly issuing permits required for activities allowed under Presidential Proclamation 8031.

B. Monument Management Board (MMB): The Co-Trustees hereby establish the MMB.

1. The MMB will promote coordinated management of the Monument at the field level.

2. Responsible Officials: MMB membership will consist of appropriate designees from the following entities (Co-Trustees will notify each other of appointed designee and upon change of designee):
   a. State of Hawai`i, Department of Land and Natural Resources, Division of Aquatic Resources, Honolulu, HI
   b. State of Hawai`i, Department of Land and Natural Resources, Division of Forestry and Wildlife, Honolulu, HI
   c. U.S. Fish and Wildlife Service, National Wildlife Refuge System, Honolulu, HI
   d. U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, Honolulu, HI
   e. National Oceanic and Atmospheric Administration, National Marine Sanctuary Program, Honolulu, HI
   f. National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Honolulu, HI
   g. State of Hawai`i, Office of Hawaiian Affairs, Honolulu, HI

3. The Monument Management Board shall implement the activities set forth in Section IV.A.3.

4. Whenever appropriate and practicable, the MMB will coordinate and consult with representatives of the U.S. Coast Guard, which provides enforcement support pertaining to laws and regulations regarding marine resources in the area.

C. Interagency Coordinating Committee (ICC): The Co-Trustees hereby authorize the MMB to establish an Interagency Coordinating Committee (ICC) to assist in the implementation of Monument management activities set forth in Section IV.A.3. The MMB will request the participation of other Federal and State agencies to establish the ICC as it determines to be appropriate and necessary to seek additional input, or as subject to needs that may arise.

V. PERIOD OF AGREEMENT, MODIFICATION, OR TERMINATION

A. This Agreement becomes effective when all Co-Trustees sign it. The Co-Trustees shall review this Agreement at least every year to determine whether it should be modified or terminated.

B. The Co-Trustees may modify this Agreement by written amendment only and with the concurrence of all Co-Trustees.

C. The Co-Trustees may terminate this Agreement by mutual written consent. Any Co-Trustee may terminate its participation in this Agreement by giving the other Co-Trustees six months advance written notice.

VI. DISPUTE RESOLUTION

If the members of the MMB disagree on an issue of Monument resource management, they shall present their differences to each other in writing, and they shall discuss them. The MMB should be the first body to attempt resolution of any disagreement. If the MMB fails to resolve their differences within 30 days after identification of the disagreement, or immediately upon determination that the MMB has reached an impasse, the matter shall be elevated to the SEB for resolution.

VII. OTHER PROVISIONS

A. Nothing in this Agreement shall be construed to conflict with applicable laws, or otherwise diminish authorities otherwise vested in the Secretaries of Commerce and Interior under federal law or the State of Hawai'i under state law. Any such conflicting term shall be invalid, but the remainder of the Agreement shall remain in effect. If a term is invalid, the Co-Trustees shall immediately review the Agreement to decide what should been done in light of the invalid term, e.g., amend or terminate the Agreement.

B. This Agreement serves as the foundation for the entering into other agreements among the Co-Trustees and with agencies and other entities, as appropriate, and at a level appropriate to such agreement. Such agreements may be for the purpose of, among other things, the pursuit of research or training, supplementation of enforcement support or enter into cooperative enforcement agreements, data sharing, or increasing management capacity in the Monument. All such agreements shall be coordinated with the other Co-Trustees and may become annexes to this Agreement.

C. The Co-Trustees intend to enter into an appropriate enforcement agreement to enhance enforcement of the Proclamation and implementing regulations. In the interim, pursuant to the authority of 16 U.S.C. 742*l* (b) and Title 12, Chapter 199, Section 199-3, Hawai`i Revised Statutes, NOAA and FWS and the State of Hawai`i each hereby authorize the other to use without reimbursement their respective personnel, services and facilities to enforce the provisions of all applicable Federal and State laws within the boundaries of the Monument.

D. This Agreement defines in general terms the basis on which the Co-Trustees will cooperate, and as such, does not constitute a financial obligation or an authorization for particular expenditures. Expenditures of funds, human resources, equipment, supplies, facilities, training, public information, and technical expertise are generally intended to be provided by each signatory Co-Trustee to the extent that their participation is required and resources are available.

E. Nothing in this agreement is intended to require the expenditure of funds in excess or advance of applicable appropriations. This Agreement is not a fiscal or funds obligation document. Any activities involving reimbursement or contribution of funds between Co-Trustees to this Agreement will be handled in accordance with

applicable laws, regulations, and procedures. Such activities will be documented in separate agreements, which will identify the specific projects between the Co-Trustees in appropriate detail. Such separate agreements should also reference this Agreement.

STATE OF HAWAI'I

Date: December 8, 2006

LINDA LINGLE
Governor
State of Hawaii

U.S. DEPARTMENT OF THE INTERIOR

Date: December 8, 2006

DIRK KEMPTHORNE
Secretary
United States Department of the Interior

U.S. DEPARTMENT OF COMMERCE

Date: December 8, 2006

CARLOS M. GUTIERREZ
Secretary of Commerce

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APPENDIX I:
Operational Protocols and Best Management Practices

Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment Papahānaumokuākea Marine National Monument[1]

I. Equipment and Dive Gear Disinfection

Equipment and gear is treated according to three levels that correspond to the potential for the spread of disease and/or introduced species.

General points applicable to all the levels and acceptable disinfection solutions are listed in D.

A. Level One: Equipment in direct contact with diseased coral tissue or other diseased organisms

- Equipment: includes, but is not limited to, gloves, chisels, forceps, drill bits, shears, clippers, and spear tips.
- Multiple sets of equipment: Use a disinfected set of equipment for diseased coral colonies and another disinfected set of equipment for non-diseased coral colonies at each dive site.
- Disinfect between sites: Use a disinfected set of equipment at each dive site. Disinfect equipment by soaking for a minimum of ten minutes in an acceptable disinfection solution (see acceptable disinfection solutions listed below).

  Non-porous equipment (e.g. forceps, chisels): Use wipes in which the active ingredient is quaternary ammonium chloride compounds (QACs) (e.g., Clorox or Lysol® wipes) to remove organic matter. Follow wiping by soaking for a minimum of ten minutes in a disinfectant solution.

  Porous equipment and dive gear (e.g. gloves, nylon mesh bags): Manually remove any organic matter, and soak for a minimum of 10 minutes in an acceptable disinfectant solution.

- Secure all samples: Seal all samples in bags or jars under water and place sample bags and jars in secure holding container.

B. Level Two: Benthic equipment not used to sample diseased coral tissue or other diseased organisms

- Benthic equipment: includes equipment that may contact the benthos such as reels, tape measures, goodie bags, transect lines, etc.
- Disinfect between sites: Use a disinfected set of equipment at each dive site.

[1] This protocol and a companion document, "Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment Papahānaumokuākea Marine National Monument," were accepted at the April 9, 2007 Monument Management Board Meeting.

- Disinfect equipment: achieved by soaking for a minimum of ten minutes in a disinfection solution (see acceptable disinfection solutions listed below).

Non-porous equipment must be wiped and/or soaked. If wiping, use wipes in which the active ingredient is QACs. An accepted wipe is Clorox or Lysol® wipes. If soaking, soak for a minimum of ten minutes in an acceptable disinfectant solution.

Porous equipment must be soaked for a minimum of ten minutes in an acceptable disinfectant solution.

C. Third Level: All dive gear used in the Monument

- Dive gear includes any wetsuit, mask, fin, snorkel, BC, regulator, weight belt, booties, etc.
- Disinfect dive gear daily (if used). Inspect all dive gear and remove any organic matter. Disinfect by submerging for a minimum of ten minutes in an acceptable disinfection solution, followed by a thorough fresh water rinse, and hanging to dry.

D. General points applicable to all three levels

- Disinfect any equipment and gear at least daily if used. Also, only disinfected equipment and gear may be transported either direction between Papahanaumokuakea and the main Hawaiian islands.
- Dispose of organic matter and used solution according to the ship's solid waste disposal or other approved secure holding system.
- Acceptable Disinfection Solutions**:**

  1. 3% dilution of commercial bleach (e.g. Clorox or other 5-6% sodium hypochlorite product) in fresh water;

  2. the manufacturer's recommended disinfection strength dilution of quaternary ammonium compounds in "soft" (low concentration of calcium or magnesium ions) fresh water. An example of an acceptable QAC solution is Lysol® All Purpose Cleaner in a 6.6% Lysol in water dilution.

II. Cleaning Tender Vessels

- At least daily (if tender vessel if used), inspect for and remove any algal fragments or other organisms (dispose of organic matter and used solution according to the ship's solid waste disposal or other approved secure holding system).
- Rinse tender vessel internal and external surfaces with fresh water between islands, including during transits in either direction between Papahanaumokuakea and the main Hawaiian islands.
- Allow tender vessel to dry before redeployment.

III. Disinfection of Shipboard Wet Laboratory

- At least daily (if lab is used), disinfect entire laboratory, including sinks, countertops, walls, doors, and floors.
- Acceptable Disinfection Solutions and Wipes**:**

1. 3% dilution of commercial bleach (e.g. Clorox or other 5-6% sodium hypochlorite product) in fresh water;

2. the manufacturer's recommended disinfection strength dilution of quaternary ammonium compounds in "soft" (low concentration of calcium or magnesium ions) fresh water. An example of an acceptable QAC solution is Lysol® All Purpose Cleaner in a 6.6% Lysol in water dilution. Also, commercially available wipes containing QACs (e.g. Clorox®, Lysol®) are acceptable; and

3. 70-80% ethanol.

- Dispose of all materials generated during cleaning according to the ship's solid disposal or other secure holding system.
- The laboratory must be clean between islands, including during transits in either direction between Papahanaumokuakea and the main Hawaiian islands.

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Papahanaumokuakea Marine National Monument
Special Conditions & Rules
For
Moving Between Islands & Atolls
And
Packing For Field Camps

June 2007

The islands and atolls of the Papahanaumokuakea Marine National Monument (Monument) and the Hawaiian Islands National Wildlife Refuge are special places providing habitat for many rare, endemic plants and animals. Many of these species are formally listed as Endangered under the Endangered Species Act. Endemic plants and insects, and the predators they support, are especially vulnerable to the introduction of competing or consuming species. Such introductions may cause the extinction of island and reef endemics, or even the destruction of entire island or reef ecological communities. Notable local examples include: the introduction of rabbits to Laysan Island in 1902 which caused the extinction of numerous plant and insect species, and 3 endemic landbird species; the introduction of rats to many Pacific Islands causing the elimination of many burrowing seabird colonies; the introduction of the annual grass, sandbur, to Laysan Island where it has crowded out native bunch grass thus, eliminating nesting habitat for the Endangered Laysan finch; and, the introduction and proliferation of numerous ant species throughout the Pacific Islands to the widespread detriment of endemic plant and insect species.

Several of the islands within the Monument are especially pristine, and as a result are rich in rare and special plants and animals. Nihoa Island has at least 17 endemic and rare insect species, 5 Endangered plants and 2 Endangered birds. Necker Island has Endangered plants and 11 endemic insects. Laysan Island has Endangered plants, 9 endemic arthropods and the Endangered Laysan finch and Laysan duck. Other islands in the Monument such as Lisianski, and islets in Atolls such as Pearl and Hermes Reef and French Frigate Shoals provide homes for a variety of endemic and/or endangered species and require special protection from alien species.

Other Pacific Island such as Kure and the “high islands” (Oahu, Hawaii, Maui, Kauai, etc.) as well as, certain islands within Midway Atoll, Pearl and Hermes Reef and French Frigate Shoals have plants and/or animals that are of high risk for introduction to the relatively pristine islands discussed above. Of special concerns are snakes, rats, cats, dogs, ants and a variety of other insect and plant species. Harmful plant species of highest concern that we know of are *Verbesina encelioides, Cenchrus echinatus, and Setaria verticillata.*

The Co-trustees are responsible for the management and protection of the islands, reefs and wildlife of the Monument. No one is permitted to set foot within the Monument without the express permission of the Co-trustees through the permitting process. Because of the above concerns, the following restrictions on the movement of personnel and materials throughout the Monument exist.

The Following Conditions and Rules apply to the all islands within the Monument with the exception of those at French Frigate Shoals and Midway Atoll:

Definitions:
“**new**" means off the shelf and never used anywhere but the island in question.
"**clothing**" is all apparel , shoes, socks, over and under garments.

"**soft gear**" is all gear such as daypacks, fannypacks, packing foam or similar material, camera bags, camera/binocular straps, microphone covers, nets, holding or weighing bags, bedding, tents, luggage, or any fabric, fiber, paper or material capable of harboring seeds or insects.

1. Any personnel who will be landing boats, and staying within the boats, at any island should have clean clothes and shoes.

2. Any personnel going ashore at any island and moving inshore from the immediate area in which waves are breaking, or beyond the intertidal area, at the time of landing must have new footwear, new or island specific clothes and new or island specific soft gear. All must be frozen for at least 48 hours prior to landing.

3. Any personnel entering any vegetated area, regardless of how sparse the vegetation, must have new footwear, new clothes and new soft gear all frozen for at least 48 hours prior to landing.

4. To avoid transport of seeds from within small boats the following protocol should be followed. For islands with safe or sandy landing conditions, one should keep quarantine shoes/socks inside quarantine containers until the island is reached. One should go ashore bare foot, and then don the quarantine shoes. Non quarantine shoes should be removed in the small boat, put into a bucket or some kind of sealed container, and left enclosed in that container until the person departs the island. The sealed container, if clean on the outside, may go ashore, but should not be opened ashore. For landings which are rocky, rough, and relatively unsafe (such as Necker and Nihoa) for safety reasons, quarantine shoes should be donned when inside the small boats, but care should be taken to look for seeds and insects which may be in the small boat.

5. Soft gear may not be moved between islands. Hard gear must be thoroughly cleaned and frozen for at least 48 hours between islands.

6. During transit, clothing and gear coming off Kure, Midway, or any islet of French Frigate Shoals must be carefully sequestered to avoid contamination of gear bound for cleaner islands. Special care must be taken to avoid contaminating gear storage areas and quarters aboard transporting vessels with seeds or insects from these islands.

7. Regardless of origin or destination, inspect and clean all equipment, supplies, etc., just prior to any trip to the Monument. Carefully clean all clothing, footwear and softgear following use to minimize risk of cross contamination of materials between islands.

8. Pack supplies in plastic buckets with fitted lids or other sealable metal or plastic containers since they can be thoroughly cleaned inside and out. **Cardboard is not permitted on islands.** Cardboard boxes disintegrate in a short time and harbor seeds, animals, etc., which cannot be easily found or removed. **Wood is not permitted unless sealed (painted or varnished) on all surfaces and frozen for 48 hours.**

   Wooden boxes can also harbor insects and seeds and therefore are only allowed if well constructed (tight fitting seams are required). All wood must be treated, and inside and outside surfaces must be painted or varnished to provide a smooth, cleanable finish that seals all holes.

9. Freeze or tarp and fumigate then seal all equipment (clothes, books, tents, everything) just prior to departure. Food and cooking items need not be fumigated but should be cleaned and frozen, if freezable. Cameras, binoculars, radios, and other electronic equipment must be thoroughly cleaned, including internal inspection whenever possible, but do not need to be frozen or

fumigated. Such equipment can only be packed in wooden crates if treated as in #2 above. Any containers must contain new, clean packing materials and be frozen or fumigated.

10. At present, Tern Island is the singular exception to the above rule, having less stringent rules due to the large number of previously established alien species. Careful inspection of all materials and containers is still required. However, it is acceptable to use wooden and cardboard containers for transporting supplies to Tem Island. Also, there is no requirement for freezing or fumigating items disembarked at Tem. Although requirements for Tem Island are more lax, the Refuge is still concerned about the possibilities of new introductions. Do not wear clothing to Tern Island that has been worn at Pearl and Hermes, Midway Atoll or Kure Atoll.

Additional Special Conditions for Travel to Nihoa and Necker (Mokumanamana) Islands:
Nihoa and Necker are the most pristine locations in the Monument. Nihoa is home to the highest number of federally listed endangered species in the Monument. Many areas of these small rugged islands are inaccessible. Introduction of any alien species could have disastrous results in a very short time. It would be almost impossible to mount any kind of control or eradication program on these islands should an alien species become established. Because of these reasons, access to Nihoa and Necker are strictly limited, and rules governing entry are more stringent.

1. Access to Nihoa and Necker by permittees will only be allowed under the accompaniment and supervision of a U.S. Fish and Wildlife Service (USFWS) Representative. The representative, who shall be appointed by the U.S. Fish and Wildlife Service Monument Manager will work with permittees to assure careful compliance with all rules for inspection, handling and preparation of equipment. The USFWS Representative will have the authority to control and limit access to various parts of the island to protect animals, plants and archaeological sites, especially endangered species. The USFWS Representative will have the authority to disallow access to the island, or order an immediate departure from the island if conditions for working on the island are not met or are violated in some way.

2. All field equipment made out of fabric material or wood must be new, and never previously used in the Northwestern or main Hawaiian Islands. Equipment previously purchased or made for use on Nihoa and Necker that has been carefully sealed and stored while away from Nihoa and Necker, and not used elsewhere, may also be brought onto the island. Rules for freezing and/or fumigating are as described for other sites in the Monument (see above).

3. Clothing, footwear (shoes, slippers, socks, etc.), daypacks (soft gear) must be new, unused, or previously only used on Nihoa (or Necker) and carefully sealed and stored while off of the island. Hard gear such as camera, and equipment must be thoroughly cleaned and inspected.

Additional Special Conditions for Travel Within Pearl and Hermes Atoll:
In recent years *Verbesina encelioides* has been introduced to Southeast Island within Pearl and Hermes Atoll. This noxious weed has taken over a large portion of the island. To prevent the further spread of this weed to the other islets within this atoll the following precaution must be taken:

1. Every person should have one set of quarantine gear and clothing for Southeast Island and one set of quarantine gear and clothing for all other islets in the atoll. For instance the same clothing, and if needed camping gear, may be used at north and seal kittery, but anything used at southeast needs to stay off all other islets in the atoll. Do not use the outer islet clothing and gear on Southeast Island.

2. Carefully inspect small boats and their associated equipment when traveling between islets at Pearl and Hermes Atoll. Since folks likely take one anchor ashore and put one anchor in the water there is potential for seed dispersal on anchor lines as well as from within the small boats. This needs to be watched very carefully.

Additional Special Conditions for Food:

Fresh foods such as fruits, vegetables, leafy vegetables and tubers are not permitted on quarantine enforced islands (Necker, Nihoa, Laysan, Garner Pinnacles, Lisianski and Pearl and Hermes Reef). Concern is not only that certain species such as tomatoes could easily become established but that decomposing organic waste can also harbor microbes and insects and can act as an introduction vector. Soil can contain many seeds, eggs, larvae, etc., and cannot be transported to or between islands.

All other food that can be safely frozen (this does not apply to food in cans or glass jars) must be packaged in air tight containers just as all other gear and frozen for 48 hours.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-76
Hawaii Administrative Rules

August 10, 2007

SUMMARY

Chapter 13-76, Hawaii Administrative Rules, entitled "Non-Indigenous Aquatic Species", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4

FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 76

NON-INDIGENOUS AQUATIC SPECIES

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SUBCHAPTER 1

GENERAL PROVISIONS

§13-76-1 Purpose. This chapter governs rules aimed at preventing, to the extent practical, the introduction and spread of non-indigenous aquatic species into State waters. Such non-indigenous aquatic species are potentially harmful to the environment and economy of Hawaii because they may replace or destroy native species and alter their habitats. [Eff OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-2 Definitions. As used in this chapter unless otherwise provided:

"Board" means the board of land and natural resources.

"Department" means the department of land and natural resources.

"Master" means the person authorized by the vessel operator to be the captain of the vessel.

"Non-indigenous aquatic species" means any marine, brackish water, or freshwater species or other viable biological material, including, but not limited to, eggs, spores, or seeds, that enters or exists in an ecosystem where it was not known to have existed before, is outside its natural or historic range, or may have come to Hawaii by human introduction.

"Person" means any individual, corporation, partnership, trust, association, or other private entity, or any officer, employee, agent, department, or instrumentality of the federal government, of any state or political subdivision thereof, or of any foreign government.

"State" means the State of Hawaii.

"State marine waters" means all waters of the State, including the water column and the water surface, extending from the upper reaches of the wash of the waves on shore seaward to the limit of the

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State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary.

"USCG" means the United States Coast Guard.

"Vessel operator" means a company that owns, operates or has chartered a vessel. [Eff OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-3 General permit conditions. (a) The general permit provisions of this section shall be in addition to the more specific provisions of section 13-76-15, and as otherwise provided in this chapter.

(b) The department may require persons to submit an application for a permit issued pursuant to this chapter.

(c) The submission of an application to the department shall not obligate the department to issue a permit or constitute a right or interest on the part of the applicant to have a permit issued.

(d) A permit shall have a limited duration subject to the provisions of this chapter, but such duration shall not exceed one year from the date of issuance. The issuance of a permit shall not constitute a vested right or property interest to receive future or additional permits.

(e) Permits are non-transferable, so that whenever a permittee parts with possession or transfers, in whole or in part, the title to or interest in the vessel identified in the permit to another person by any arrangement, the permit shall immediately expire. The permittee must notify the department prior to and immediately after such transfer has occurred.

(f) The department may impose terms and conditions it deems necessary to carry out the purposes of this chapter, including requiring a report or reports of any activity conducted that may potentially introduce a non-indigenous species to state marine waters by the applicant or permit holder within the state.

(g) It is unlawful for any person to violate any provision of any permit issued pursuant to this chapter. Failure to comply with any provision of this chapter, or any provision of any permit issued hereunder, shall be cause for termination of said permit.

(h) If the department determines that the protection and conservation of aquatic life in the area requires the cessation of all or certain activities allowed under the permits, upon notification to the permit holders of this determination by any reasonable means, the permits shall automatically expire on a date provided in the notification.

(i) There is no right to a renewal or re-issuance of a permit. When reviewing an application for a permit, the department shall consider whether the applicant has previously violated or not complied with any term or condition of a permit and may deny the application on this basis.

(j) The permittee shall have the permit on board the vessel and be able to show the permit upon the demand of any employee, agent, or officer authorized to enforce this chapter. Failure or refusal to show the permit shall be a violation of this chapter and sufficient cause to immediately but temporarily suspend the permit until such time that the board may take action to revoke the permit.

(k) The board may revoke any permit for any violation of the terms and conditions of the permit and a person whose permit was revoked shall not be eligible to apply for another permit until one year from the date of revocation. [Eff OCT 12 2007] (Auth: HRS §§187A-5, 187A-32) (Imp: HRS §§187A-5, 187A-32)

§13-76-4 Penalties. A person violating the provisions of this chapter shall be guilty of a petty misdemeanour, as provided under section 187A-13, HRS, subject to administrative penalties as provided under

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section 187A-12.5, HRS, and punished as provided by law. [Eff OCT 12 2007] (Auth: HRS §§187A-12.5, 187A-13, 187A-32) (Imp: HRS §§187A-12.5, 187A-13)

§13-76-5 Severability. The provisions of these rules are declared to be severable, and if any portion or the application thereof to any person or property is held invalid for any reason, the validity or application of the remainder of these rules to other persons or property shall not be affected. [Eff OCT 12 2007] (Auth: HRS §§187A-12.5, 187A-13, 187A-32) (Imp: HRS §§187A-12.5, 187A-13)

SUBCHAPTER 2

BALLAST WATER MANAGEMENT

§13-76-11 Purpose. (a) This subchapter addresses the management and disposition of vessel ballast water as a medium or means for the introduction of aquatic invasive species into state marine waters, such as but not limited to any ocean, estuary, bay, harbor, beach, or coastal area. These rules are intended to act in coordination with federal regulations on ballast water management by 1) establishing state laws that will correspond to and complement federal regulations on ballast water to ensure consistency, 2) providing best practices guidelines to improve vessel ballast water management prior to entering state marine waters, 3) adopting a ballast water management program, including a ballast water exchange reporting system, and 4) monitoring compliance with program requirements.

(b) This subchapter identifies: 1) prohibited activities; 2) vessels exempted from ballast water management plan requirements, ballast water reporting requirements, ballast water exchange requirements, and ballast water discharge requirements; 3) which permits are available to qualifying vessels; 4) requirements

that incoming vessels are subject to regarding ballast water; and 5) State verification of compliance with this subchapter. [Eff OCT 12 2007] (Auth: HRS §§187A-5, 187A-32) (Imp: HRS §§187A-5, 187A-32)

§13-76-12 Definitions. As used in this subchapter, unless otherwise provided:

"Aquatic invasive species" means a non-indigenous aquatic species, which, if introduced into an ecosystem, may cause harm to Hawaii's economy, environment, human health, or public safety and welfare.

"Ballast operations" means the transfer, uptake, and/or discharge of ballast water.

"Ballast tank" means any tank, hold, or part of a vessel used to carry ballast water, whether or not the tank or hold was designed for that purpose.

"Ballast water" means any water, associated sediments, and suspended matter taken on board a vessel to manipulate, control, or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

"BWM" means ballast water management as required by federal law 33 CFR Part 151 Subpart D, Mandatory Ballast Water Management Program for U.S. Waters, dated July 28, 2004.

"Coastwise trade" includes the transportation of passengers or merchandise between points embraced within the coastwise laws of the United States.

"Discharge" means to drain or remove part or all of the ballast water off the vessel.

"EEZ" means the United States exclusive economic zone established by Presidential Proclamation No. 5030, dated March 10, 1983, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles, substantially as defined in federal law 33 CFR 151.2025, dated July 1, 2005.

"Empty/refill exchange" means to pump the ballast tank or tanks out, until empty or as close to empty as the master determines is safe to do so, then refilling

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the tank with mid-ocean waters.

"Exchange" means to replace water in ballast tanks by using flow through exchange, empty/refill exchange, or other exchange methodology recommended or required by the United States Coast Guard.

"Flow through exchange" means to flush out ballast tanks by pumping in mid-ocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of the ballast water tank capacity have been changed.

"MHI EEZ" means the main Hawaiian islands exclusive economic zone identified as those waters of the EEZ surrounding the main Hawaiian islands east of 161° West longitude.

"Mid-ocean waters" means waters at least 200 nautical miles from any coast.

"Permanent ballast" means a weight or heavy material added to a vessel to enhance the vessel's stability that is always left on the vessel and not normally removed either between or during voyages.

"Transfer" means the on-board movement of ballast water from one part of the vessel to another.

"Qualifying vessels" means all vessels, United States or foreign flagged, carrying ballast water into state marine waters after operating outside the EEZ.

"Sediments" means any material that settles out of ballast water within a vessel.

"Uptake" means to fill part or all of the vessel's ballast tanks with water from outside the vessel.

"Vessel in innocent passage" means a ship engaged in continuous and expeditious surface passage through the territorial sea and archipelagic waters of foreign coastal states in a manner not prejudicial to its peace, good order, or security. Passage includes stopping and anchoring, but only if incidental to ordinary navigation or necessary by rough weather or distress, or for the purpose of rendering assistance to persons, ships, or aircraft in danger or distress.

"Voyage" means any transit by a vessel that originates from a port or place outside of the EEZ

surrounding the State of Hawaii and destined for a port or place in Hawaii. [Eff OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-13 Prohibited activities. (a) Unless exempted under the provisions of section 13-76-14, by permit issued pursuant to section 13-76-15, or as may be otherwise provided by law, it is unlawful for the master of a qualifying vessel:

(1) To fail to have or fail to follow a ballast water management plan, as required under section 13-76-16;

(2) To exchange ballast water contrary to the provisions of section 13-76-17;

(3) To discharge, or allow the discharge of, ballast water in state marine waters in violation of section 13-76-18;

(4) To fail to submit a ballast water report form, as required in section 13-76-19; and

(5) To violate any provision in this subchapter.

(b) It is unlawful for the master to prevent, hinder, or otherwise interfere with the department's or USCG's evaluation of the vessel's compliance with the provisions of this subchapter. The evaluation may be conducted in accordance with section 13-76-20 and as may be otherwise provided in this subchapter. [Eff OCT 12 2007] (Auth: HRS §§187A-5, 187A-32) (Imp: HRS §§187A-5, 187A-32)

§13-76-14 Applicability. (a) The ballast water management plan requirements of section 13-76-16 shall apply to qualifying vessels.

(b) The ballast water reporting requirements of section 13-76-19 shall apply to qualifying vessels, except for the following:

(1) Crude oil tankers engaged in coastwise trade. This exemption applies only to vessels carrying unrefined crude oil product from one U.S. place to another, including

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Hawaii;

(2) Any vessel of the United States Department of Defense or USCG, subject to the requirements of Section 1103 of the National Invasive Species Act of 1996, or any vessel of the armed forces, as defined in Section 1322(a)(14) of Title 33 of the United States Code that is subject to the "Uniform National Discharge Standards for Vessels of the Armed Forces" pursuant to Section 1322(n) of Title 33 of the United States Code;

(3) Any vessel that operates exclusively within the MHI EEZ;

(4) Any vessel that operates outside of the EEZ, but conducts all ballast operations exclusively in the MHI EEZ, regardless of the number of voyages the vessel makes; and

(5) Any vessel in innocent passage or having entered state marine waters due to circumstances beyond its control; provided that the vessel does not discharge ballast water into state marine waters, or into waters that may impact state marine waters, unless the vessel meets the requirements of section 13-76-18;

(c) The ballast water exchange requirements of section 13-76-17 shall apply to qualifying vessels that conduct ballast water exchanges; except for vessels exempted under subsection 13-76-14(b)(1),(2),(3),(5) and the following:

(1) Any vessel equipped with a functioning treatment system designed to kill all living aquatic organisms in the ballast water; provided that USCG or other approving authority has determined that the system is designed to be at least as effective as ballast water exchange at reducing the risk of transfer of aquatic invasive species in ballast water and the treatment system is properly functioning as designed; and

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(2) Any vessel, to the extent that it is equipped with permanent, freshwater, or treated ballast, as specified in section 13-76-14 (c)(1) above or will not discharge ballast water in state marine waters.

(d) The ballast water discharge requirements of section 13-76-18 shall apply to qualifying vessels that either will discharge or have discharged ballast water into state marine waters; except for vessels exempted under subsections 13-76-14(b)(2) and (3), and 13-76-14(c)(1) and (2).

(e) The master, or vessel operator when there is no master, shall be responsible for complying with the provisions of this subchapter, unless otherwise provided. Nothing in this subchapter shall relieve the master of the responsibility to ensure the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility. [Eff OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-15 Permits. (a) The department may issue permits to vessel operators, exempting qualifying vessels from the provisions of this subchapter, subject to the provisions of section 13-76-3 and the following conditions:

(1) Receipt of a completed application, on a form provided by the department, and any other information the department may require; and

(2) Approval by the department, after an assessment of the appropriateness of the application based on:

(A) Safety of the crew or its passengers, USCG approved ballast water treatment system, protection of property, vessel integrity or other factors the department considers relevant to the intent and purpose of this subchapter; and

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(B) All applicable state and federal law.

(b) The permit exemptions are limited to the provisions of this subchapter and do not exempt the master from other state laws or any federal laws. [Eff OCT 12 2007] (Auth: HRS §§187A-5, 187A-32) (Imp: HRS §§187A-5, 187A-32)

§13-76-16 Ballast water management plan requirements. Vessels in compliance with BWM requirements for a ballast water management plan, shall be deemed to also be in compliance with this section. It is unlawful for any master to violate BWM requirements for a ballast water management plan. [Eff OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-17 Ballast water exchange requirements. (a) Qualifying vessels that require ballast water exchanges shall conduct such exchanges in mid-ocean waters. Unless exempted by section 13-76-14(c), or as may be otherwise provided by law, it is unlawful for a master to conduct a ballast water exchange within state marine waters while holding ballast water obtained from an area less than 200 nautical miles from any coast.

(b) All such exchanges shall be by flow through exchange, empty/refill exchange, or other exchange methodology recommended or required by the USCG or other approving authority.

(c) The master is responsible for the safety of the vessel, its crew, and its passengers and is not required to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions. Should the master make such a determination, the master shall

take all feasible measures, based on the best available technologies economically achievable, that do not compromise the safety of the vessel, its crew, and its passengers, to minimize the discharge of ballast water containing non-indigenous aquatic species into state marine waters or waters that may impact state marine waters. Such discharge shall be subject to the provisions of section 13-76-18.

(d) Nothing in this subchapter relieves the master of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility. [Eff OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-18 Ballast water discharge requirements. (a) To the extent practical, the master of any qualifying vessel that has not conducted a mid-ocean waters ballast water exchange, and is subject to the provisions of subsection 13-76-14(d), shall not discharge ballast water into state marine waters.

(b) The master shall report to the department, pursuant to section 13-76-19, when a mid-ocean waters ballast water exchange was not done and a ballast water discharge into state marine waters is necessary.

(c) Unless exempted by subsections 13-76-14(c) or 13-76-14(e) of this section, prior to any ballast water discharge into the EEZ or state marine waters, the master shall obtain approval from the department to discharge ballast water. Upon approval, the master shall then implement all feasible measures to minimize the discharge of ballast water.

(d) This subchapter does not authorize the discharge of oil, noxious liquid substances, or any other pollutant in a manner prohibited by state, federal or international laws or regulations. Ballast water carried in any tank containing a residue of oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

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(e) The master shall be exempted from the provisions of subsections 13-76-18(a) and 13-76-18(c), if the master determines that such ballast water discharge is necessary to ensure the safety and stability of the vessel or the safety of the crew and passengers, because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions. [Eff OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-19 Ballast water reporting requirements. (a) Unless exempted in subsection 13-76-14(b), for all qualifying vessels, the master shall:

(1) Fully and accurately fill out the USCG ballast water report form;

(2) Submit the form by fax, electronic mail, or as otherwise provided to the department no later than twenty-four (24) hours prior to vessel arrival into state marine waters;

(3) Submit an amended form to the department before the vessel departs state marine waters, should there be a change in any of the information submitted in accordance with this section; and

(4) Maintain on board the vessel records that include all of the information provided on the form for at least two years.

(b) Submission of this form or an amended form to the department does not relieve the master of the responsibility to report to the USCG, if the USCG requires such report or amended form. [Eff OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-20 Evaluation and compliance. (a) In order to evaluate the compliance rate of qualifying vessels with the provisions of this subchapter, the department, in coordination with the USCG, may:

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(1) Take samples of ballast water and sediment, examine documents, and make other appropriate inquiries;

(2) Compile the information obtained from submitted reports and use the information in conjunction with existing information relating to the number of vessel arrivals; and

(3) Take other actions necessary for the purposes of this subchapter.

(b) The master shall make available to the department, upon the department's request, the records required by section 13-76-19 and other relevant information. [Eff OCT 12 2007] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

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DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-76, Hawaii Administrative Rules, on the Summary Page dated August 10, 2007, was adopted on August 10, 2007, following a public hearing held on June 28, 2007, after public notice was given in the Honolulu Star-Bulletin on May 20, 2007.

The adoption of chapter 13-76 shall take effect ten days after filing with the Office of the Lieutenant Governor.

Laura H. Thielen
Interim Chairperson
Board of Land and Natural Resources

APPROVED:

Linda Lingle
Governor
State of Hawaii

Dated: OCT -1 2007

APPROVED AS TO FORM:

Deputy Attorney General

Filed

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Precautions for Minimizing Human Impacts on Endangered Land Birds in Papahānaumokuākea Marine National Monument

The Nihoa finch *(Telespiza ultima),* Nihoa millerbird (*Acrocephalus remota*), and Laysan finch (*Telespyza cantans*) are inquisitive birds that constantly inspect and probe their environment while foraging. While this probably benefits them in their natural environment, it can be problematic when humans bring in equipment or set up encampments. Things that we normally would not think of as hazards to wildlife become sources of finch or millerbird mortality (usually by drowning, entanglement, and entrapment). In order to avoid the unintentional killing of these endangered species, it is imperative that visitors to Nihoa, Laysan, and Pearl and Hermes Atoll be aware of the different hazards that humans pose to passerine birds. The guidelines below derive from documented mortalities and will help you "bird-proof' your operation, but additional hazards exist, so use common sense at all times.

1. The burn barrel must be attended **at all times** when burning trash; be vigilant. When not burning, any vents or rust-eaten holes in the barrel or lid must be covered *(*e.g., with rocks).

2. Buckets must always be overturned so that they won't collect rainwater.

3. Laundry buckets must have lids on them while laundry is soaking.

4. Water-filled buckets for dishwashing (or any other chore) must always be attended.

5. Desalinator garbage cans should have netting placed between the can and the lid. Make sure the lids close properly; faulty positioning of hoses can interfere with proper closure.

6. Tarps *(*e.g., those covering propane, etc.) must be tucked in tightly so that they don't collect rainwater.

7. Fabric with loose threads should be burned; little feet can become entangled when fabric is hung out to dry. Cut loose threads off tents and tarps.

8. Anything with small mesh *(*e.g., bird nets or insect nets) should be put away to avoid foot entanglement.

9. Water jugs should be aligned with ample space between rows so that finches won't get trapped. Always keep jugs capped.

10. For stability reasons, buckets should not be stacked more than two high. Keep an eye out for leaning buckets or water jugs, and level the sand beneath them if necessary.

11. Tents should be zipped at all times (day and night) so that finches and millerbirds cannot enter.

12. Finches and millerbirds should be discouraged from eating people-food so as not to augment the camp population any more than it is already. Dependency by the finches on the camp will result in suffering when temporary and more-permanent field camps dissolve.

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Human Hazards to Seabirds in Papahānaumokuākea Marine National Monument

Most seabirds exhibit insular tameness, which is behavior characterized by a lack of the wariness you might observe in birds living in areas with terrestrial predators. Because of this, it sometimes appears by their actions as if humans pose no problems for them. In fact there are a number of potentially serious consequences every time a seabird colony is entered, even by experienced researchers. Hazards to seabirds also result from the movement of vessels through the waters of the Monument.

Mechanical - At most seabird colonies in the Monument, you will see birds nesting on three different levels, under the ground, on the surface, and in the shrubs and trees. At many times of the year it is difficult to walk in some parts of the colony without stepping on eggs or caving in the burrows of the petrels and shearwaters. Chicks of several of the tern species hide in vegetation so you should be careful about setting your foot where you cannot see the surface of the ground. Ground-nesting gray-backed terns and brown noddies are often most affected by your activities because they are very timid and nest in open areas that may be travel pathways. If you have occasion to have to walk in burrow areas, you must be prepared to rescue a shearwater or petrel by digging if you accidentally cave in its home. Putting out temporary tents or stacks of equipment may provide a site that burrowing or crevice nesting birds will use. Subsequently removing these materials may cause the nest to fail. Special care should be taken never to leave string or line anywhere in the colony. Seabirds have an uncanny ability to find it and get tangled in any material of this kind. Lights in camps or on vessels at sea cause a collision hazard for petrels and shearwaters in particular because they are confused by the light and collide with the vessel or lighted structure. All ship lights except for running lights or anchor lights should be extinguished or shielded, especially when operating in proximity to seabird colonies.

Thermal - The climate of the tropical and subtropical islands seems mild but the eggs and small chicks of all the species live a precarious life on the edge of thermal disaster. The attendance patterns of adults reflect this with eggs and tiny chicks virtually never left unattended. Great care and attention must be given to never keeping a bird off its egg or chick for more than a few minutes. Keep this in mind if you must spend more than 3 or 4 minutes in any area. This is an issue when it is hot as well as when it is cool and wet. When first approaching a site look for any nests or adults flushed from an inconspicuous nest and plan your work to minimize keeping birds from attending their eggs or chicks for more than 3 minutes.

Biological - In some colonies, one species may learn to take advantage of human disturbance to prey upon others. Frigatebirds will take chicks and steal nest material from booby nests and other frigatebird nests when the owners of the nest are frightened off by human disturbance. In colonies inhabited by finches of various species, the minute an egg is exposed the finch will rush in and peck a hole and consume the contents. Unattended eggs of ground-nesting species are often eaten by shorebirds such as ruddy turnstones. All small seabirds are at great risk in colonies where there are introduced rats. It is possible that going up to isolated or cryptic nests and handling the eggs will provide a trail that might lead rats to the nest.

Behavioral considerations – Young ground-nesting terns such as sooty terns, gray-backed terns and brown noddies are particularly vulnerable to disturbance at age 2 through 7 days from hatching because they are large enough to run in panic if a person walks through the nesting area but not old enough to find their way back to their own nest-site where their parent will recognize and feed them. A colony with chicks at this young age (before scapular feathers have erupted) must not be disturbed. All three species

of boobies (brown, red-footed, and masked) are vulnerable to injury and death when they dive on towed lures used during trolling operations. Younger birds seem particularly susceptible to this. Sustenance fishing operations in the Monument should be stopped immediately if birds are flying in the area and express interest in the lures.

Papahānaumokuākea Marine National Monument

National Marine Fisheries Service Best Management Practices

- If there is any Hawaiian monk seal or any other protected species in the area when performing any permitted activity, the activity shall cease until the animal(s) depart the area unless the activity is covered under a separate permit that allows that activity (e.g., ESA and/or MMPA permits);

- The applicant and those working under any permit issued for this activity shall be familiar with the "Marine Wildlife Viewing Guidelines," accessible at NOAA's National Marine Fisheries Service website: http://www.fpir.noaa.gov/PRD/prd_laws_policies_guidelines1.html;

- Implement the "Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment Papahānaumokuākea Marine National Monument" for in-water activities; and

- Implement the "Bests Practices for Minimizing the Impact of Artificial Light on Sea Turtles" Pacific Islands regional Office, NOAA National Marine Fisheries service, Rev. Nov. 9, 2007, as applicable.

February 28, 2008 Pacific Islands Regional Office.

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Best Practices for Minimizing the Impact of Artificial Light on Sea Turtles

NOAA's National Marine Fisheries Service (NOAA Fisheries) and the U.S. Fish and Wildlife Service are jointly responsible for the protection of threatened and endangered sea turtles. In Hawai'i, the agencies are especially concerned about the impact of shoreline activities on the successful nesting and basking of green and hawksbill sea turtles.

Over 90 percent of nesting activity for the Hawaiian population of the threatened green sea turtle (*Chelonia mydas*) occurs at French Frigate Shoals in the Northwestern Hawaiian Islands (NWHI). Green turtles nest from May through September, peaking in June and July. Hatchlings continue to emerge from nests through November. Large numbers of green turtles are also known to bask throughout the NWHI. The endangered hawksbill sea turtle (*Eretmochelys imbricata*) also nests in Hawai'i, with over 90 percent of documented nests occurring on the Island of Hawai'i. Regular nesting also occurs on Maui and Moloka'i. Hawksbills appear to nest and forage primarily within the main Hawaiian Islands, though they have been sighted in the Northwestern Hawaiian Islands.

Many factors affect the potential survival of these turtles, including the loss or destruction of nesting and basking beaches, and other human shoreline activities such as the use of artificial lights. The following set of measures should be adopted as appropriate, to minimize the impacts of lighting on sea turtles:

A. **Avoid the use of artificial lighting near beaches, where possible, particularly during nesting and hatching seasons**.
Artificial light sources on a nesting beach may deter adult females from exiting the water to lay eggs on the beach, cause abandonment of nesting attempts, or disorient adult females and disrupt their natural behavior of returning to the sea after nesting. Artificial light will disorient hatchlings that use light cues to find their way to the sea, making them more vulnerable to predation, exhaustion, and desiccation. Artificial light may also disturb basking turtles.

B. **Do not use excessive or unnecessary amounts of light, or leave lights on or allow campfires to burn longer than necessary.**
Basking behavior may help turtles avoid marine predators. If artificial lighting causes a basking turtle to return to the sea, it may be more vulnerable to predation.

C. **Shield or redirect lights to reduce as much as possible the amount of light that can be seen from the nesting or basking beach**.
Effective light shields should be completely opaque, sufficiently large, and positioned so that light from the shielded source does not reach the beach.

D. Where possible, use low-intensity light sources that emit long wavelength light (yellow, red) and avoid sources that emit short wavelengths (ultraviolet, blue, green, white).
Long wavelengths are the least disturbing to sea turtles. Red light-emitting diodes (LEDs) are the best option and one of the light sources least disruptive to sea turtles. Amber or yellow filters placed on light sources are less desirable than red lighting, as they vary in effectiveness and will fade over time.

E. Aboard vessels at sea, use the minimum lighting necessary to comply with navigation rules and best safety practices.
Sea turtles of all life stages may be attracted to lights from vessels at sea. These turtles may be vulnerable to vessel activities, as well as being vulnerable to predators that may also be attracted to the same lights.

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Special Conditions & Rules for Small Boat Operations at Tern Island

Trip Authorization

All boat trips, including the use of non-FWS vessels, must be authorized by the resident refuge manager before leaving Tern Island or entering French Frigate Shoals. Information must be provided on the trip objectives, the destination(s), and approximate time of return. The resident refuge manager may withhold permission for a boat to leave Tern Island or operate within the refuge boundary if in his/her opinion, the seas are too rough, the weather is inclement, the equipment is in questionable condition, or the operator lacks the experience to cope with prevailing conditions.

Boat Operators and Passengers

All boat operators are required to have completed a Boat Safety Course for use of boats at French Frigate Shoals. FWS Employees must have official DOI boat training certification. Operators must be experienced in handling small craft around coral heads and choppy seas and be familiar with outboard engine operation and repair. If the resident refuge manager is not familiar with their abilities, he/she may request a demonstration ride or other means for skills verification. All persons involved in boating operations must be able to swim. The operator is responsible for seeing that all boat use policy requirements are met. Any kind of unsafe boat operation (violation of boating policy, reckless driving, excessive speed, etc.) will be cause for the resident refuge manager to revoke that person's right to operate boats at French Frigate Shoals. Everyone in the boat must have his/her life jacket on at all times! Each person that is to operate boats at French Frigate Shoals will be required to read and sign the Tern Island copy of the Boat Use Policy to verify that he/she has read and understood it.

Boats and Equipment

All boats going on solo trips are required to have two motors in working condition. Both motors must be tested before leaving the dock area and must be attached to the boat by a safety chain or rope unless bolted to the hull. Boats must have standard safety equipment on board including a life preserver for each person (diving buoyancy compensators and wet suits are not adequate), a bow anchor with at least 120 feet of line (and a similarly equipped stern anchor, if landing on another islet), paddles or oars, an emergency tool kit, a first-aid kit, an emergency locating transmitter (EPIRB), an emergency strobe light, and handheld radios.

A second boat with two motors in good working condition will either travel with the other boat(s) or be ready for immediate use at Tern Island should an emergency arise and rescue be required.

Radio Procedure

All boats launched from Tern Island must be equipped with two operational radios. An exception to this rule is when several boats are being used to offload vessels. Since all boats will be in visual contact with other boats, Tern Island, or the offloading vessel, only one radio is required. Check with the resident refuge manager for the radio frequencies being used. Radios must be tested before leaving the dock area. It is the responsibility of the boat operator to make sure that radios are properly charged prior to any trip (check with the resident refuge manager for proper charging procedures).

Boats must contact Tern Island when they leave a location and when they reach their destination. Arrangements must be made prior to a boat trip to have someone monitoring the radios at Tern Island within 15 minutes after arrival at a destination, or of the time of a prearranged radio call. If contact is not made the boat must immediately return to Tern Island. If radio contact is made while returning to Tern Island the trip can be resumed. If Tern Island does not hear from a boat 1 hour past the expected arrival or prearranged radio call, the backup boat will be launched and a search will commence.

Previous FFS Boating Policy required a rescue boat to be launched 1 hour after any boat is overdue for radio check in. This remains unchanged except that in the late afternoon all boat operators must check in prior to the Departure Guidelines listed below. If a boat has not checked in by the listed guideline, a rescue boat will be launched immediately and sent to the last known location of the missing boat.

Departure Guidelines

All boating activities must be limited to a period between half an hour after sunrise and 1 1/2 hours before sunset. If you change your original route for any reason during the day, contact the resident refuge manager by radio on Channel 16. To allow reasonable amount of time to perform search and rescue, boats must depart the following areas before sunset as stated: Disappearing Island 5 hours, the Gins 2 hr 15 min; East Island 2 hours; Shark, Trig, and Round Islands 1 hr 50 min.

General Rules

No boats may be launched if the wind speed exceeds 20 knots or if seas are deemed exceedingly rough by the resident refuge manager. Approach to within one-half mile of any islet not specifically mentioned on Monument Permits is prohibited, except in emergency situations or unless permission is otherwise obtained in advance from the resident refuge manager. At least two people must be aboard a boat at all times unless pre-approved by the resident refuge manager.

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