

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

August 23, 2013

Board of Land
and Natural Resources
Honolulu, Hawaii

Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Special Ocean Use Permit to Ms. Cynthia Vanderlip, Kure Atoll Conservancy, for Access to State Waters to Conduct Photography and Anthropogenic Item Collection Activities

The Division of Aquatic Resources (DAR) hereby submits a request for your authorization and approval for issuance of a Papahānaumokuākea Marine National Monument special ocean use permit to Ms. Cynthia Vanderlip (Applicant), Executive Director, Kure Atoll Conservancy, pursuant to § 187A-6, Hawaii Revised Statutes (HRS), chapter 13-60.5, Hawaii Administrative Rules (HAR), and all other applicable laws and regulations.

The special ocean use permit, as described below, would allow entry and activities to occur in Papahānaumokuākea Marine National Monument (Monument), including the NWHI State Marine Refuge and the waters (0-3 nautical miles) surrounding the following sites:

- Kure Atoll

The activities covered under this permit would occur between September 1, 2013 to August 31, 2014.

The Applicant and activities are new. The proposed activities have previously been permitted elsewhere in the Monument.

INTENDED ACTIVITIES

The Applicant proposes to photograph, swim, and collect objects with the purpose of raising awareness and funds for Kure Atoll Conservancy (KAC), a non-profit 501(c)(3) organization. KAC would sell various items collected that are related to the natural resources of Kure Atoll and the Monument. The natural, non-living resource items would include photographs, clothing, glass balls, and other anthropogenic debris. Photographs may also be used for secondary products such as calendars or other items. These items would not be sold within the Monument, but would have their origin on Kure Atoll. The collection of items would be done exclusively by trained field staff who are most familiar with Kure's resources. Items would be collected when

there is no disturbance to living resources and only scenic panoramic (marine and terrestrial) and terrestrial resources would be photographed. Monument Best Management Practices for boat operations and marine wildlife viewing would be followed when the applicant is conducting proposed activities in the proximity of marine mammals and turtles. Including the Applicant, twelve (12) personnel would be covered under this permit from September 1, 2013 to August 31, 2014.

The activities proposed by the Applicant directly supports the Monument Management Plan (MMP) Habitat Management and Conservation Action Plan (Strategy HMC-4) through funding of "ecosystem restoration activities on Kure Atoll and MMP Constituency Building and Outreach Action Plan (Strategy CBO-2) by continuing to "develop and disseminate materials...that help inform Monument constituencies about the Monument" (MMP 2008 Vol. 1, p. 179 and 267).

The activities described above may require the following regulated activities to occur in State waters:

- Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging any living or nonliving monument resource
- Swimming, snorkeling, or closed or open circuit SCUBA diving within any Special Preservation Area or Midway Atoll Special Management Area

REVIEW PROCESS:

The permit application was sent out for review and comment to the following scientific and cultural entities: Hawaii Division of Aquatic Resources, Hawaii Division of Forestry and Wildlife, Papahānaumokuākea Marine National Monument (NOAA/NOS), NOAA Pacific Islands Regional Office (NOAA-PIRO), United States Fish and Wildlife Service Hawaiian and Pacific Islands National Wildlife Refuge Complex Office, and the Office of Hawaiian Affairs (OHA). In addition, the permit application has been posted on the Monument Web site since March 13, 2013, giving the public an opportunity to comment. The application was posted within 40 days of its receipt, in accordance with the Monument's Public Notification Policy.

Comments received from the scientific community are summarized as follows:

Scientific reviews support the acceptance of this application.

The following concerns were raised. Applicant responses are noted below.

- 1. The applicant refers to "other non-living items", but specifics are requested. What other non-living items in addition to glass balls might be collected for future sale? For example, washed up shells, coral, and sand from the beach are all non-living items that are very popular in gift shops. Would these items be part of the "but not limited to" items?**

The Applicant states that items collected opportunistically during routine survey operations and marine debris removal activities will be restricted to anthropogenic debris (e.g. glass balls,

buoys, plastic items). No formerly living items will be collected (e.g. coral, sand, shells, urchin tests, sea stars etc.).

- 2. Does Kure Atoll Conservancy have a written agreement with the State of Hawaii concerning ownership rights of photos taken by their employees and volunteers during their tenure at Kure? When I worked as a contract employee with NOAA, all photographs I took during reef monitoring cruises to the NWHI and elsewhere in the U.S. Pacific belonged to NOAA, even those taken with a personal camera. Similarly, do they have a written agreement with the State of Hawaii giving them ownership of collected glass balls (and potentially other non-living items) for the intended commercial distribution?**

The Applicant states that Kure Atoll Conservancy's mission is to support the State of Hawaii restoration objectives for Kure Atoll. All proceeds from photographs or anthropogenic debris will be used directly to fund State of Hawaii authorized restoration activities. No private individual will profit from the proceeds of photographs or marine debris. As per the Papahānaumokuākea Marine National Monument Management Plan, the permittee retains ownership of photographic or video material, but the Federal Government and the State of Hawaii retain a lifetime, non-exclusive, worldwide license to use same for governmental purposes, including copying and dissemination, and making derivative works.

- 3. Where would these items be sold/displayed in a store, gift shop, internet, from a private individual? How would these items be advertised to the public for purchase?**

The Applicant answers that all items will be offered from the Kure Atoll Conservancy's web page and public outreach events.

- 4. The access to beaches in order to actively search for glass balls may be disturbance to monk seals and sea turtles, as the goal is to generate a profit to support programs on the island. What precautions have the applicant detailed that will ensure that no wildlife will be disturbed as a result of collecting glass balls and other non-living items?**

The Applicant assures that the staff are trained specifically for their positions on Kure and therefore are qualified to conduct and complete these activities and mitigate any potential impact. The anthropogenic debris items will be collected only when no disturbance to living resources will occur. Also, Kure staff will be advised that no photo or video of a mammal or turtle will be taken for fund raising purposes if:

- 1. taken from inside the "take" distance*
- 2. exhibiting any "take" behaviors*
- 3. taken while conducting any research under permit by any federal or state agency*

- 5. What training is provided for these positions to collect glass balls off of beaches and to take photographs of the natural and cultural resources? What exactly are the positions and does the training qualify them for this activity?**

The Applicant states that as a requirement for these positions, all personnel receive appropriate training regarding cultural, historical, and natural resources of the Monument and Kure Atoll. Items will be collected incidentally during routine wildlife survey operations and marine debris removal activities by experienced personnel qualified to conduct the science-based operations. These staff are trained specifically for their positions on Kure and therefore are qualified to conduct and complete these activities and mitigate any potential impact. The anthropogenic debris items will be collected only as an incidental activity during research and restoration operations that have authorized access to beach and reef areas.

- 6. Technically, Cynthia, as a State Worker, should be providing all photos to the State that she took during work time at no cost, and with no copyright. Where does one draw the line between photos taken during work hours and during non-work hours? It is important to make it clear that images collected while on the clock, no matter the method collected, are Government property, ie, public domain. And how is the management/use of such photos enforced?**

The Applicant states that no private individual will profit from the proceeds of photographs or marine debris.

The Applicant assures that Kure Atoll Conservancy's mission is to support the State of Hawaii restoration objectives for Kure Atoll. All proceeds from photographs or anthropogenic debris will be used directly to fund State of Hawaii authorized restoration activities. As per the Papahānaumokuākea Marine National Monument Management Plan, the permittee retains ownership of photographic or video material, but the Federal Government and the State of Hawaii retain a lifetime, non-exclusive, worldwide license to use same for governmental purposes, including copying and dissemination, and making derivative works.

- 7. Natural non-living items/resources within the Monument should not be allowed to be collected by groups and then sold for profit.**

The Applicant explains, as stated above, no private individual will profit from the proceeds of photographs or marine debris. Kure Atoll Conservancy's mission is to support the State of Hawaii restoration objectives for Kure Atoll. All proceeds from photographs or anthropogenic debris will be used directly to fund Kure Atoll restoration activities.

- 8. Verify legal entitlement to photographs & collected items intended for commercial distribution, given that applicant/collectors will be working as State of Hawaii employees/volunteers.**

The Applicant explains, as per the Papahānaumokuākea Marine National Monument Management Plan, the permittee retains ownership of photographic or video material, but the Federal Government and the State of Hawaii retain a lifetime, non-exclusive, worldwide license to use same for governmental purposes, including copying and dissemination, and making derivative works. All proceeds from photographs or anthropogenic debris will be used directly to fund Kure Atoll restoration activities that further State of Hawaii restoration objectives at the atoll.

9. What type of imagery will be sold?

The Applicant explains that imagery will be restricted to scenic panoramas (marine and terrestrial), and terrestrial natural resources. No images of monk seals, marine mammals, or turtles will be offered.

10. How will cultural knowledge, connection, and practice be reflected and described in these images?

The Applicant's web page will include a link to the page offering images and anthropogenic marine debris. The web page will include an introduction to Papahānaumokuākea and Kure Atoll which relates this unique environment and its natural history to the place it occupies in Native Hawaiian culture and history. All images will include the Hawaiian place name, and/or organism name. This introduction will stress the unique testimony that Papahānaumokuākea and Kure Atoll represent to a living Native Hawaiian cultural tradition.

11. Will there be other forms of artistry sold, i.e.- composed mele, oli, mo`ōlelo relating to Kure Atoll?

The Applicant states that proceeds will be restricted to anthropogenic marine debris and photographic images.

12. What type of cultural protocols will be used before taking items from Kure Atoll?

The Applicant states that, as a requirement of their position, all personnel will receive all appropriate training regarding cultural, historical, and natural resources of the Monument. All personnel receive a cultural briefing before arriving at Kure Atoll, and all efforts are made to meet with cultural practitioners before leaving for Kure Atoll.

13. How will the species photographed be honored and represented?

The Applicant explains, as stated above, the Kure Atoll Conservancy's web page will include an introduction to Papahānaumokuākea and Kure Atoll which relates this unique environment and its natural history to the place it occupies in Native Hawaiian culture and history. All images will include the Hawaiian place name, and/or organism name. This introduction will stress the unique testimony that Papahānaumokuākea and Kure Atoll represent to a living Native Hawaiian cultural tradition.

FOLLOW-UP QUESTIONS:

- 1. While the response to Q6 is accurate that in general, under an SOU permit, permittee's retain the ownership rights to images/footage, as a government employee, or government volunteer, images collected during work time are not copyrighted to the photographer, or owned by the photographer, but are public domain in addition to non-exclusive use by PMNM. Is this your understanding?**

If there is another way to handle images collected during non-work hours while on Kure, please describe how this will be handled.

The Applicant explains that ALL photos taken at ANY time (work hours, non-work hours) are subject to the stipulations outlined in the Papahānaumokuākea Marine National Monument Management Plan, viz. the permittee retains ownership of photographic or video material, but the Federal Government and the State of Hawaii retain a lifetime, non-exclusive, worldwide license to use same for governmental purposes, including copying and re-dissemination, and making derivative works.

Further, the Applicant states that all personnel that enter the PMNM are given a pre-departure briefing, and part of the briefing includes an explanation that PMNM, the State of Hawaii, and the Federal government retain the right of a lifetime license to use any individual's photo at any time in the future.

Comments received from the Native Hawaiian community are summarized as follows:

Cultural reviews support the acceptance of this application.

Comments received from the public are summarized as follows:

No comments were received from the public on this application.

Additional reviews and permit history:

Are there other relevant/necessary permits or environmental reviews that have or will be issued with regard to this project? (e.g. MMPA, ESA, EA) Yes No

If so, please list or explain:

- Coordination and consultation pursuant to ESA Section 7 will occur prior to issuance of this permit. Consultation was initiated to analyze the effects of conducting filming activities on Hawaiian Monk Seals, Hawksbill Sea Turtles, Green Sea Turtles, and monk seal designated critical habitat. The outcome of the consultation may require the applicant to adhere to other NMFS-prescribed conditions.
- The Department has made an exemption determination for this permit in accordance chapter 343, HRS, and Chapter 11-200, HAR. See Attachment (“DECLARATION OF EXEMPTION FROM THE PREPARATION OF AN ENVIRONMENTAL ASSESSMENT UNDER THE AUTHORITY OF CHAPTER 343, HRS AND CHAPTER 11-200 HAR, FOR PAPAĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT SPECIAL OCEAN USE PERMIT TO MS. CYNTHIA VANDERLIP, KURE ATOLL CONSERVANCY, FOR ACCESS TO STATE WATERS TO CONDUCT PHOTOGRAPHY AND ANTHROPOGENIC ITEM COLLECTION ACTIVITIES UNDER PERMIT PMNM-2013-017”)

Has Applicant been granted a permit from the State in the past? Yes No

If so, please summarize past permits:

- Similar activities, including the sale of Midway logoed objects to help raise funds to the non-profit organization, Friends of Midway (PMNM-2012-043 Loy), have been permitted in the Monument.

Have there been any a) violations: Yes No
 b) Late/incomplete post-activity reports: Yes No

Are there any other relevant concerns from previous permits? Yes No

STAFF OPINION:

DAR staff is of the opinion that Applicant has properly demonstrated valid justifications for his application and should be allowed to enter the NWHI State waters and to conduct the activities therein as specified in the application with certain special instructions and conditions, which are in addition to the Papahānaumokuākea Marine National Monument Special Ocean Use Permit General Conditions. All suggested special conditions have been vetted through the legal counsel of the Co-Trustee agencies (see Recommendation section).

MONUMENT MANAGEMENT BOARD OPINION:

The MMB is of the opinion that the Applicant has met the findings of Presidential Proclamation 8031 and this activity may be conducted subject to completion of all compliance requirements. The MMB concurs with the special conditions recommended by DAR staff.

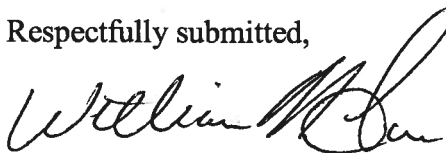
RECOMMENDATION:

Based on the attached proposed declaration of exemption prepared by the department after consultation with and advice of those having jurisdiction and expertise for the proposed permit actions:

1. That the Board declare that the actions which are anticipated to be undertaken under this permit will have little or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Upon the finding and adoption of the department's analysis by the Board, that the Board delegate and authorize the Chairperson to sign the declaration of exemption for purposes of recordkeeping requirements of chapter 343, HRS, and chapter 11-200, HAR.
3. That the Board authorize and approve a Special Ocean Use Permit to Ms. Cynthia Vanderlip, Kure Atoll Conservancy, with the following special conditions:

- a. To prevent introduction of disease or the unintended transport of live organisms, the permittee must comply with the disease and transport protocol attached to this permit.
- b. Tenders and small vessels must be equipped with engines that meet EPA emissions requirements.
- c. Refueling of tenders and all small vessels must be done at the support ships and outside the confines of lagoons or near-shore waters in the State Marine Refuge.
- d. If there is any Hawaiian monk seal or any other protected species in the area when performing any permitted activity shall cease until the animal(s) depart the area, except as permitted for specific management of that species.

Respectfully submitted,



William M. Tam
Acting Administrator

APPROVED FOR SUBMITTAL



William J. Aila, Jr.
Chairperson

Papahānaumokuākea Marine National Monument
SPECIAL OCEAN USE 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.

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: Cynthia Vanderlip

Affiliation: Kure Atoll Conservancy, a non-profit 501 (c)(3) organization

Permit Category: Special Ocean Use

Proposed Activity Dates: April, 2013-March, 2014

Proposed Method of Entry (Vessel/Plane): plane/vessel

Proposed Locations: Kure Atoll

Estimated number of individuals (including Applicant) to be covered under this permit:
12 (6/field camp x 2)

Estimated number of days in the Monument: 365

Description of proposed activities: (complete these sentences):

a.) The proposed activity would...
support the efforts of State of Hawaii employees and volunteers on Kure who are working to conduct seabird research, habitat restoration, and facility maintenance and repair by providing funds to assist in those activities.

b.) To accomplish this activity we would
raise funds through the sale of various items related to the natural resources of Kure and the Monument. These non-living resource items may include, but are not limited to, photographs, clothing, and glass balls. Photographs may also be used for secondary products such as calendars or other items. These items would not be sold within the Monument but items such as photographs and glass balls will have their origin on Kure.

c.) This activity would help the Monument by ... providing visibility, awareness, and educational opportunities for the PMNM as well as Kure Atoll Wildlife Sanctuary in addition to assisting with on-the-ground research and management on Kure.

Other information or background:

The specific purpose of the Kure Atoll Conservancy is to foster and support the restoration and management of biological diversity, ecosystem health, and cultural resources of Kure Atoll in the Northwestern Hawaiian Archipelago.

The organization's activities will directly accomplish this purpose and include developing funds through proposal writing and donor requests to conduct the following:

- 1) habitat restoration - native plant propagation, eradication of invasive species, removal of human-made structures
- 2) natural resource protection - collaborate with others in monitoring and studying the health of bird, mammal, arthropod, and plant populations as well as the coral reef ecosystem of Kure Atoll.
- 3) pollution reduction - clean up anthropogenic materials causing harm to birds, mammals, and native plants
- 4) public outreach and education - collaborate with ongoing education programs in Hawaii, produce high quality media to support the mission, give presentations to the public and schools, share knowledge of Kure Atoll internationally
- 5) cultural studies - facilitate and expand cultural knowledge and practice on Kure Atoll

Section A - Applicant Information

1. Applicant

Name (last, first, middle initial): Cynthia Vanderlip

Title: Executive Director, Kure Atoll Conservancy

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

Cynthia Vanderlip

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

[REDACTED]

[REDACTED]

Fax:

Email:

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

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

Kure Atoll Conservancy is a 501 (c) (3) organization dedicated to supporting and improving the resources of Kure Atoll and the Papahānaumokuākea Marine National Monument.

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):

DLNR field technicians and volunteers: 6/field camp; 2 field camps/year. Personnel to be determined later.

Section B: Project Information

5a. Project location(s):

- | | | | |
|---|--|---|-------------------------------------|
| <input type="checkbox"/> Nihoa Island | <input type="checkbox"/> Land-based | <u>Ocean Based</u> | |
| <input type="checkbox"/> Necker Island (Mokumanamana) | <input type="checkbox"/> Land-based | <input type="checkbox"/> Shallow water | <input type="checkbox"/> Deep water |
| <input type="checkbox"/> French Frigate Shoals | <input type="checkbox"/> Land-based | <input type="checkbox"/> Shallow water | <input type="checkbox"/> Deep water |
| <input type="checkbox"/> Gardner Pinnacles | <input type="checkbox"/> Land-based | <input type="checkbox"/> Shallow water | <input type="checkbox"/> Deep water |
| <input type="checkbox"/> Maro Reef | | | |
| <input type="checkbox"/> Laysan Island | <input type="checkbox"/> Land-based | <input type="checkbox"/> Shallow water | <input type="checkbox"/> Deep water |
| <input type="checkbox"/> Lisianski Island, Neva Shoal | <input type="checkbox"/> Land-based | <input type="checkbox"/> Shallow water | <input type="checkbox"/> Deep water |
| <input type="checkbox"/> Pearl and Hermes Atoll | <input type="checkbox"/> Land-based | <input type="checkbox"/> Shallow water | <input type="checkbox"/> Deep water |
| <input type="checkbox"/> Midway Atoll | <input type="checkbox"/> Land-based | <input type="checkbox"/> Shallow water | <input type="checkbox"/> Deep water |
| <input checked="" type="checkbox"/> Kure Atoll | <input checked="" type="checkbox"/> Land-based | <input checked="" type="checkbox"/> Shallow water | <input type="checkbox"/> Deep water |
| <input type="checkbox"/> Other | | | |

Remaining ashore on any island or atoll (with the exception of Midway & Kure Atolls and Field Camp staff on other islands/atolls) between sunset and sunrise.

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

Location Description:

Green Island, Kure Atoll

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

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

To support the work of staff and volunteers on Kure Atoll Wildlife Sanctuary by providing funds to directly support that work. Funds will be raised by the sale of photographs (and related secondary products such as calendars) taken of protected resources at Kure Atoll (both marine and terrestrial) and by the sale of non-living resources (glass balls) found on the beach.

*Considering the purpose of the proposed activities, do you intend to film / photograph federally protected species? Yes No

For a list of terrestrial species protected under the Endangered Species Act visit:

<http://www.fws.gov/angered/>

For a list of marine species protected under the Endangered Species Act visit:

<http://www.nmfs.noaa.gov/pr/species/esa/>

For information about species protected under the Marine Mammal Protection Act visit:

<http://www.nmfs.noaa.gov/pr/laws/mmpa/>

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?

All work done under this permit while in the Monument will be conducted by employees or volunteers of the State of Hawaii. As a requirement of their position, these persons will receive all appropriate training regarding cultural, historical, and natural resources of the Monument. It should be noted that these employees and volunteers on Kure are not there for the money, indeed that is most likely the least of their reasons for venturing so far from their homes. Instead native Hawaiians and those who have lived their lives in Hawaii know that it is their kuleana to assist in the sustainability of the cultural and natural resources on Kure and the Monument and their work on Kure is driven by that responsibility. New arrivals to Hawaii who are fortunate to be on Kure soon learn that they are there as stewards to malama those resources which are so apparent on Kure. A tourist on Waikiki may watch a sunset to catch the green flash, but a worker on Kure will more likely see the cultural significance of mother Earth and the expansive father sky that is Papahānaumokuākea. Their photographs and non-living resource collections (glass floats) will only serve to enhance that respect and desire for preservation.

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? This activity will support the Monument Management Plan (MMP) Habitat Management and Conservation Action Plan 3.2.3 (MMP Vol. 1, p. 179) through funding for seabird research and habitat restoration. Habitat restoration done with funding provided through this permit will enhance Monument resources by reducing invasive terrestrial species (and persuantly enhancing native species). Conservancy activities in Hawaii will also support MMP 3.5.2, Constituency Building and Outreach Action Plan by working to educate Hawaiians and all Americans about the natural and cultural resources of Kure Atoll Wildlife Sanctuary. Our efforts will support the Monument's efforts to bring the place to the people. The beauty, wonder and cultural foundation that are Papahānaumokuākea MNM can only be enhanced by increased public understanding of those natural and cultural resources.

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.

All activities must initially be conducted within the Monument (on Kure) to obtain the photographic images and glass balls which will later be sold as a fundraising activity. No sales will occur within 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?

There are no known or expected adverse impacts from the activities supported through this permit. End values of the activity include increased public knowledge of Monument resources and improved habitat for native species on Kure.

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

Continued support of research and management on Kure will require a long term commitment and will continue no longer than necessary to achieve our stated goals. However, actual on the ground efforts (photographs, ball collection) will only take a small amount of time during any given year.

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

Collection of the photos, balls, or other non-living items which are then offered for sale will be done exclusively by trained staff and employees of the State of Hawaii who are most familiar with Kure's resources. These staff are trained specifically for their positions on Kure and therefore are qualified to conduct and complete the activity and mitigate any potential impact.

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. Luckily for the Kure Atoll Conservancy, all collection work done under the authorization of this requested permit will be done by employees of or volunteers for the State of Hawaii who are on Kure during a specified work period. Therefore, no financial resources will be required of the Kure Atoll Conservancy for any aspect of this requested permit done within the Monument.

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.

All on-island collections will be done exclusively by personnel with extensive experience, and/or training, with appropriate methods to ensure that their actions will not negatively affect the cultural or ecological resources of Kure Atoll Wildlife Sanctuary and the PMNM.

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

n/a

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

There are no other factors that would make this issuance inappropriate.

FOR SPECIAL OCEAN USE ACTIVITIES OUTSIDE OF MIDWAY ATOLL SPECIAL MANAGEMENT AREA, ANSWER THE ADDITIONAL THREE FINDINGS BELOW:

k. Explain how your activity will directly benefit the conservation and management of the Monument.

Work completed under authorization of this requested permit will directly aid in future conservation and management of cultural and wildlife resources on Kure Atoll by providing funding to help fund seabird research and native habitat restoration. This work will also help build supportive constituencies for and awareness of Kure's resources.

l. Explain how the purpose of your activity is for research or education related to the resources or qualities of the Monument.

Sale of photographs taken on Kure and glass balls found on Kure beaches will both generate funds to help fund research and management on Kure and help educate the public regarding the wonder of and threats to the Monument's marine and terrestrial resources.

m. Does the activity involve the use of a commercial passenger vessel (defined as a vessel that carries individuals who have paid for such carriage)?

no

FOR SPECIAL OCEAN USE ACTIVITIES WITHIN MIDWAY ATOLL SPECIAL MANAGEMENT AREA, ANSWER THE ADDITIONAL TWO FINDINGS BELOW:

- n. Explain how your activity will further the conservation and management of the Monument.
- o. How is your activity compatible with the purposes for which the Midway Atoll National Wildlife Refuge was designated?

NOTE: If this is a first time Special Ocean Use activity, it will be subject to a pilot project and will be restricted in duration. Special Ocean Use activities proposed outside the Midway Atoll Special Management Area will require public notice of the application and an opportunity to provide comments is given at least 30 days prior to issuing the permit.

8. Procedures/Methods:

Taking photographs while walking or swimming and collecting (picking up and carrying) glass floats on the beach.

9. Provide proof of general liability insurance, or indicate that you will be posting an equivalent bond against claims arising out of activities conducted under the permit:
na.

10. If applicable, describe how you are collaborating with others in any way to reduce duplicative activities in the Monument or elsewhere?
There are no duplicating activities on Kure Atoll.

11. List all specialized gear and materials to be used in this activity:
digital SLR cameras and housings (for underwater use).

12. List all Hazardous Materials you propose to take to and use within the Monument:
none

13. Describe any fixed installations and instrumentation proposed to be set in the Monument:
none

14. List all Applicants' publications directly related to the proposed project:
No publications will be written based on these efforts. However, as part of the Conservancy's outreach efforts, occasional updates of Kure activities are posted on the Conservancy website and Facebook page.

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

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):

Cynthia Vanderlip – Kure Atoll Wildlife Sanctuary Manager
Wayne Haight – Field Technician
Afsheen Ahmad - Field Technician
Erin Pickett - Field Technician
Nicole Hoku Cody - Field Technician
Zacharay Bigelow - Field Technician
Joshua Willman - Field Technician
Matthew Kanoa Saunter - Field Technician
Naomi Worchester - Field Technician
9 DLNR volunteers TBA

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

Green Island, Kure Atoll

3. Other permits (list and attach documentation of all other related Federal or State permits): Kure Conservancy has no other Federal or State permits relative to this application. However, the State of Hawaii's Management Permit (no. not known) is related as they individuals who will act under this application are (or will be) on Kure under the authority of that permit.

a. 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): There are no specific costs associated with activities described and conducted under auspices of this permit.

5. Time frame: September 1, 2013 through August 31, 2014

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: N.A.

All personnel acting under authority of this permit will concurrently be on Kure as State of Hawaii employees or volunteers. Therefore, any insurance, cost reimbursements, etc will be borne by the State of Hawaii as allowed by law, regulation and policy covering employees and volunteers.

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

- Vessel
 Aircraft

Provide Vessel and Aircraft information: Fish and Wildlife Service contract aircraft to Midway Atoll; NOAA vessel to Kure Atoll from Midway OR NOAA vessel from Honolulu to Kure Atoll

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#:
Contact:

***Individuals MUST ENSURE that a type-approved VMS unit is installed and that its automatic position reports are being properly received by the NOAA OLE system prior to the issuance of a permit. To make sure your VMS is properly configured for the NOAA OLE system, please contact NOAA OLE at (808) 203-2503 or (808) 203-2500.**

***PERMITS WILL NOT BE ISSUED TO INDIVIDUALS ENTERING THE MONUMENT VIA VESSEL UNTIL NOAA OLE HAS CONTACTED THE MONUMENT PERMIT COORDINATOR WITH A 'POSITIVE CHECK' READING.**

10. Tender information: N.A.

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:

N.A. All work done under this requested permit will be performed by foot travel on Green Island by personnel already on island under authority of the 2013 Management Permit issued to the State of Hawaii by the Monument.

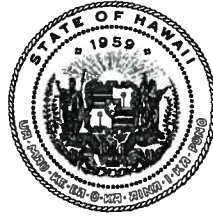
12. Room and board requirements on island: none specific to this permit

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

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 23, 2013


WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT


ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

TO: Division of Aquatic Resources File

THROUGH: William J. Aila, Jr., Chairperson 

FROM: William Tam 
Water Deputy and Acting Administrator, Division of Aquatic Resources

SUBJECT:

DECLARATION OF EXEMPTION FROM THE PREPARATION OF AN ENVIRONMENTAL ASSESSMENT UNDER THE AUTHORITY OF CHAPTER 343, HRS AND CHAPTER 11-200 HAR, FOR PAPAĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT SPECIAL OCEAN USE PERMIT TO MS. CYNTHIA VANDERLIP, KURE ATOLL CONSERVANCY, FOR ACCESS TO STATE WATERS TO CONDUCT PHOTOGRAPHY AND ANTHROPOGENIC ITEM COLLECTION ACTIVITIES UNDER PERMIT PMNM-2013-017.

The following permitted activities are found to be exempted from preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR:

Project Title:

Papahānaumokuākea Marine National Monument Special Ocean Use Permit to Ms. Cynthia Vanderlip, for Access to State Waters to Photography and Anthropogenic Item Collection Activities

Permit Number: PMNM-2013-017

Project Description:

The special ocean use permit application, as described below, would allow entry and activities to occur in Papahānaumokuākea Marine National Monument (Monument), including the NWHI State waters from September 1, 2013 to August 31, 2014.

The Applicant proposes to photograph, swim, and collect objects with the purpose of raising awareness and funds for Kure Atoll Conservancy (KAC), a non-profit 501(c)(3) organization. KAC would sell various items collected that are related to the natural resources of Kure Atoll and the Monument. The natural, non-living resource items would include photographs, clothing, glass balls, and other anthropogenic debris. Photographs may also be used for secondary products such as calendars or other items. These items would not be sold within the Monument,

ITEM F-3c

but would have their origin on Kure Atoll. The collection of items would be done exclusively by trained field staff who are most familiar with Kure's resources. Items would be collected when there is no disturbance to living resources and only scenic panoramic (marine and terrestrial) and terrestrial resources would be photographed. Monument Best Management Practices for boat operations and marine wildlife viewing would be followed when the applicant is conducting proposed activities in the proximity of marine mammals and turtles. Including the Applicant, twelve (12) personnel would be covered under this permit from September 1, 2013 to August 31, 2014.

The proposed activities are in direct support of the Monument Management Plan's (MMP) priority management need through the Habitat Management and Conservation Action Plan (Strategy HMC-4) through funding of "ecosystem restoration activities on Kure Atoll and MMP Constituency Building and Outreach Action Plan (Strategy CBO-2) by continuing to "develop and disseminate materials...that help inform Monument constituencies about the Monument" (MMP 2008 Vol. 1, p. 179 and 267). Activities such as those to be carried out by the permittee, are also addressed in the Monument Management Plan Environmental Assessment (December 2008) which resulted in a FONSI.

Consulted Parties:

The permit application was sent out for review and comment to the following scientific and cultural entities: Hawaii Division of Aquatic Resources, Hawaii Division of Forestry and Wildlife, Papahānaumokuākea Marine National Monument (NOAA/NOS), NOAA Pacific Islands Regional Office (NOAA-PIRO), United States Fish and Wildlife Service Hawaiian and Pacific Islands National Wildlife Refuge Complex Office, and the Office of Hawaiian Affairs (OHA). In addition, the permit application has been posted on the Monument Web site since March 13, 2013, giving the public an opportunity to comment. The application was posted within 40 days of its receipt, in accordance with the Monument's Public Notification Policy.

Exemption Determination:

After reviewing HAR § 11-200-(8), including the criteria used to determine significance under HAR § 11-200-12, DLNR has concluded that the activities under this permit would have minimal or no significant effect on the environment and that issuance of the permit is categorically exempt from the requirement to prepare an environmental assessment based on the following analysis:

1. All activities associated with this permit, including photography and anthropogenic item collection, have been evaluated as a single action. As a preliminary matter, multiple or phased actions, such as when a group of actions are part of a larger undertaking, or when an individual project is precedent to or represents a commitment to a larger project, must be grouped together and evaluated as a single action. HAR § 11-200-7. This permit does not involve an activity that is precedent to a later activity.

2. The Exemption Class for Scientific Research with no Serious or Major Environmental Disturbance Appears to Apply. Chapter 343, HRS, and section 11-200-8, HAR, provide for a list of classes of actions exempt from environmental assessment requirements. HAR §11-200-8.A.5. exempts the class of actions which involve "basic data collection, research, experimental management, and resource evaluation activities, which do not result in a serious or major disturbance to an environmental resource." This exemption class has been interpreted to include

activities such as those being proposed. Additionally, Exemption Class #5, Exempt Item #2 includes game and non-game wildlife surveys, photography, and collection. DEPARTMENT OF LAND & NATURAL RESOURCES, EXEMPTION LIST FOR THE DIVISION OF FORESTRY AND WILDLIFE (June 12, 2008).

The proposed photography and collecting activities here appear to fall squarely under the exemption class identified under HAR § 11-200-8.A.5., and are succinctly described under the former Fish and Game Division exemption list published in 1976. As discussed below, no significant disturbance to any environmental resource is anticipated in photography or collecting (including swimming) activities. Thus, so long as the below considerations are met, an exemption class should include the action now contemplated.

3. Cumulative Impacts of Actions in the Same Place and Impacts with Respect to the Potentially Particularly Sensitive Environment Will Not be Significant. Even where a categorical exemption appears to include a proposed action, the action cannot be declared exempt if “the cumulative impact of planned successive actions in the same place, over time, is significant, or when an action that is normally insignificant in its impact on the environment may be significant in a particularly sensitive environment.” HAR § 11-200-8.B. To gauge whether a significant impact or effect is probable, an exempting agency must consider every phase of a proposed action, any expected primary and secondary consequences, the long-term and short-term effects of the action, the overall and cumulative effect of the action, and the sum effects of an action on the quality of the environment. HAR § 11-200-12. Examples of actions which commonly have a significant effect on the environment are listed under HAR § 11-200-12.

This activity involves scenic photography and the collection of anthropogenic items from Kure Atoll, including swimming in the State Marine Refuge to carry out these activities. Following Best Management Practices for minimizing interactions with seabirds, marine mammals, and sea turtles, minimal impact to the environment or marine mammals and turtles is expected. With this in mind, significant cumulative impacts are not anticipated as a result of this activity, and numerous safeguards further ensure that the potentially sensitive environment of the project area will not be significantly affected. All activities will be conducted in a manner compatible with the management direction of the Monument Proclamation in that the activities do not diminish monument resources, qualities, and ecological integrity, or have any indirect, secondary, cultural, or cumulative effects. The joint permit review process did not reveal any anticipated indirect or cumulative impacts, nor did it raise any cultural concerns, that would occur as a result of these activities.

The activities would be conducted from Kure Atoll field camps from September 1, 2013 to August 31, 2014. Field technicians and volunteers are present on Kure Atoll conducting activities under the Monument Manager’s permit (PMNM-2013-001).

Since no significant cumulative impacts or significant impacts with respect to any particularly sensitive aspect of the project area are anticipated, the categorical exemptions identified above should remain applicable.

4. Overall Impacts will Probably be Minimal and Insignificant.

Again, any foreseeable impacts from the proposed activity will probably be minimal, and further mitigated by general and specific conditions attached to the permit. Specifically, all activities covered by this permit will be carried out with strict safeguards for the natural, historic, and cultural resources of the Monument as required by Presidential Proclamation 8031, other applicable law and agency policies and standard operating procedures.

Conclusion. Upon consideration of the permit to be approved by the Board of Land and Natural Resources, the potential effects of the above listed project as provided by Chapter 343, HRS and Chapter 11-200 HAR, have been determined to be of probable minimal or no significant effect on the environment and exempt from the preparation of an environmental assessment.

William J. Aila, Jr.
Chairperson, Board of Land and Natural Resources

Date