

GLOSSARY

Abiotic: Pertaining to the non-living components of the environment.

Abysal (zone): Relating to the bottom waters of oceans, usually below 1000 m.

Alien species: With respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

Anthropogenic: Caused by humans.

Apex Predator: A fish at the top of the food chain, relying on smaller fishes for food.

Aquaculture: Cultivation of aquatic organisms under controlled conditions.

Archipelago: A group or cluster of islands.

Ballast sediment: Sediment used to manipulate the trim and stability of a vessel.

Bathymetry: Study and mapping of sea floor elevations and the variations of water depth; the topography of the sea floor.

Benthic habitat: Of the sea floor, or pertaining to organisms living on or in the sea floor.

Biogeographical: Of relating to or involved with biogeography, a branch of biology that deals with the geographical distribution of animals and plants.

Biological community: A naturally occurring assemblage of plants and animals that live in the same environment and are mutually sustaining and interdependent.

Biomass: The total weight of all the living organisms, or some designated group of living organisms, in a given area.

Bioprospecting: Search for new chemicals compounds, genes and their products in living things that will have some value to people.

Biota: All the organisms, including animals, plants, fungi and microorganisms, found in a given area.

Biotic: Pertaining to any aspect of life, especially to characteristics of entire populations or ecosystems.

Bottomfish species: Bottomfish species are the species of fish including deep water snappers, found primarily in depths of 100 to 150 fathoms.

Bottomfishing: Fishing for bottomfish species using hook-and-line method of fishing where weighted and baited lines are lowered and raised with electric, hydraulic, or hand-powered reels.

Calderas: A crater whose diameter is many times that of the volcanic vent because of the collapse or subsidence of the central part of a volcano or because of explosions of extraordinary violence.

Catch-per-unit-effort (CPUE): The average number of fish caught in a discrete amount of time.

Commercial Fishing: Fishing in which the fish harvested, either in whole or in part, are intended to enter commerce through sale, barter or trade.

Conservation: Preserving and renewing, when possible, human and natural resources. The use, protection, and improvement of natural resources according to principles that ensure their highest economic or social benefits.

Crustacean: A member of the phylum Crustacea, such as a crab, shrimp, or lobster.

Derelict: Abandoned, especially by the owner or occupant; forgotten unused.

Ea: [Hawaiian] sovereignty, independence, life, and breath.

Ecological: Of, or having to do with, the environments of living things or with the pattern of relations between living things and their environments.

Ecological impacts: The effect that a human-caused or natural activity has on living organisms and their environment.

Ecological Reserve: An area of the Sanctuary consisting of contiguous, diverse habitats within which uses are subject to conditions, restrictions and prohibitions, including, but not limited to, access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary.

Ecosystem: A geographically specified system of organisms (including humans), the environment, and the processes that control its dynamics.

Ecosystem Integrity: A condition determined to be characteristic of an ecosystem that has the ability to maintain its function, structure, and abundance of natural biological communities, including rates of change in response to natural environmental variation.

Ecosystem-based management approach: Management that carefully considers impacts to all species and trophic interactions, including maintenance of biological communities and the protection of natural habitats, populations and ecological processes. The approach emphasizes the inherent value of ecosystems and recognizes the importance of species interactions and conservation of habitats, and only permits resource utilization in a manner that is consistent with the Sanctuary's primary goal of resource protection.

Ecotourism: Ecotourism is travel to relatively undisturbed natural areas to foster environmental and cultural understanding, appreciation and conservation.

Effluent: Something that flows out, usually waste products.

Endangered species: An animal or plant species in danger of extinction throughout all or a significant portion of its range.

Endangered Species Act: The Endangered Species Act of 1973, as amended, is federal legislation that is intended to provide a means to conserve the ecosystems upon which endangered and threatened species depend and provide programs for the conservation of those species, thus preventing extinction of plants and animals. USFWS and NOAA Fisheries administer the law.

Endemic: Referring to species native to and confined to a particular region, thus often having a comparatively restricted distribution.

Environmental Impact Statement: A document required of federal agencies by the National Environmental Policy Act (NEPA) for major projects or legislative proposals significantly affecting the environment. A tool for decision making, it describes the positive and negative effects of the undertaking and cites alternative actions.

Executive Order 13089: Coral Reef Protection of June 11, 1998 established the U.S. Coral Reef Task Force and federal responsibilities to protect coral reefs.

Executive Order 13158: Marine Protected Area EO of May 31, 2000 established the Marine Protected Area Center and called for the development of a national system of MPAs.

Executive Order 13178 and 13196: Established the NWHI Coral Reef Ecosystem Reserve on December 4, 2000, and was amended by EO 13196 on January 18, 2001.

Fathom: A unit of length equal to 1.8m (6ft) used to measure water depth.

Fishery: The act, process, or season of taking fish or other sea products for sale or consumption.

Geographic Information System (GIS): A system of spatially referenced information, including computer programs that acquire, store, manipulate, analyze, and display spatial data.

Geomorphologic: Relating to geomorphology, a science that deals with land and submarine relief features of the earth's surface.

Guano: Name given to the collected droppings of seabirds.

Hānai a 'ai: [Hawaiian] To care for and eat from.

Hula: [Hawaiian] Dance, song or chant used for a hula.

Hi'ialakai: NOAA research vessel [Hawaiian: embracing pathways to the sea].

Ho'okupu: [Hawaiian] Tribute, ceremonial gift giving as a sign of honor and respect.

Hōkūle'a: a traditional Hawaiian double hulled voyaging canoe that was re-created by the Polynesian Voyaging Society in the 1970s which signified a rebirth of ancient voyaging and navigation and a new cultural renaissance period in Hawaiian history [Hawaiian: star of gladness].

Hypersaline: Salinity well in excess of that of seawater; found in enclosed water bodies.

Indigenous (species): Existing within a historical ecological range, usually within a balanced system of coevolved organisms.

Interagency: Involving two or more public or government agencies.

Introduced: The transfer of an organism to an ecosystem outside the historic range of the species of which the organism is a member.

Invasive species: A non-indigenous species that may threaten the diversity or abundance of native species or the ecological stability and or uses of infested waters and the introduction of which into an ecosystem may cause harm to the economy, environment, human health, recreation, or public welfare.

Invertebrates: Any animal that is not a vertebrate, that is, whose nerve cord is not enclosed in a backbone of bony segments.

Iwi: [Hawaiian] Bones; considered the most cherished possession.

Kapu: [Hawaiian] Prohibition.

Konohiki: [Hawaiian] Head steward of an ahupua'a land division under the chief.

Kuleana: [Hawaiian] Responsibility.

Kupuna: [Hawaiian] Respected elder.

Lacey Act (1900): Lacey Act as amended in 1981, aids in the restoration of game and other wild birds. Public Law 100-653.

Larval: An immature stage of any invertebrate animal that differs dramatically in appearance from the adult.

Magnuson-Stevens Act: Magnuson-Stevens Fishery Conservation and Management Act as amended in 1996. Public Law 94-265.

Marine debris: Trash and lost or discarded fishing gear that ends up in oceans and along beaches, commonly plastics and nets.

Marine Mammal Protection Act (1972): The Act as amended in 1994 establishes a federal responsibility to conserve marine mammals, with management vested in the Department of Commerce for cetaceans and pinnipeds other than walrus. The Department of the Interior is responsible for all other marine mammals, including sea otter, walrus, polar bear, dugong and manatee. Public Law 103-238.

Maritime: Of or relating to navigation or commerce on the sea.

Mele: [Hawaiian] Song or chant.

Memorandum of Agreement (MOA): A non-binding agreement between state or federal agencies, or divisions within an agency, which delineate tasks, jurisdiction, standard operating procedures or other matters which the agencies or units are duly authorized and directed to conduct.

Meta-population: A subdivided population of a single species.

Migratory Bird Treaty Act (1918): As amended by the Migratory Bird Treaty Reform Act of 1998, establishes a Migratory Bird Conservation Commission to approve areas of land or water recommended by the Secretary of the Interior for acquisition as reservations for migratory birds.

Mo'olelo: [Hawaiian] Story, myth, history, tradition, or narrative.

National Invasive Species Act (1996): This Act reauthorizes and amends the Non-indigenous Aquatic Nuisance Prevention Control Act of 1990. It stresses that preventative management measures are needed nationwide to prevent the further introduction and infestation of destructive species.

Native Hawaiian: Any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai'i.

Native Hawaiian Practices: 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 Sanctuary resources for direct personal consumption while in the Sanctuary.

Native species: A species within its natural range or natural zone of dispersal without human aid.

Natural variability: Uncertainties that stem from inherent or assumed randomness and unpredictability in the natural world. Variability is characterized by observations made upon individuals in observed populations.

NOWRAMP: Northwestern Hawaiian Islands Coral Reef Assessment and Monitoring Program that took place in 2000, 2002 and 2004. NOWRAMP's objective is to rapidly evaluate and map the shallow water reef habitats in the NWHI.

Oceanographic: Of or relating to oceanography, a science that deals with the ocean and its phenomena.

Oli: [Hawaiian] Chant.

Pelagic: Referring to the open ocean.

Pelagic species: Species living or occurring in the open ocean.

Petrels: Any of numerous seabirds constituting the families Procellariidae and Hydrobatidae; any of various small- to medium-sized long-winged birds that fly far from land, feed on small surface-swimming creatures, and breed in burrows and crevices.

Pono: [Hawaiian] Goodness, righteous, moral qualities, correct or proper procedure.

Predator-dominated ecosystem: Reef ecosystems that have relatively greater abundance of large fish, such as sharks and jacks and fewer smaller fish that graze on the coral and algae.

Productivity: Rate of energy fixation or storage per unit time; not to be confused with production.

Prohibitions: Actions prohibited by authority of law.

Rare: Uncommon, seldom occurring or found.

Recreational Fishing: Fishing for sport or pleasure, in which catch is not bartered, traded or sold.

Remediation: Rehabilitation of a section of the environment that has been polluted or degraded from a sustainable (self-repairing) state.

Resiliency: The ability of an ecosystem to recover from, or adjust to, stress or change.

Sanctuary: The Northwestern Hawaiian Islands National Marine Sanctuary.

Sanctuary Preservation Area (SPA): The discrete, biologically important areas of the Sanctuary within which uses are subject to conditions, restrictions and prohibitions, including, but not limited to, access restrictions, 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.

SCUBA: A self-contained underwater breathing apparatus and includes, but is not limited to, open circuit and re-breather technology.

Seamount: Submerged volcanic mountain rising above the deep-sea floor.

Secretary: The Secretary of Commerce or his/her designee.

Sessile invertebrates: Organism being attached to a substrate.

Shoal: Elevation of the sea bottom comprising any material except rock or coral (in which case it is a reef) and which may endanger surface navigation.

Socioeconomic: Relating to, or involving a combination of social and economic factors.

Spawning: The direct release of sex cells into the water for reproduction.

Spearfishing: Fishing underwater with a sharp, pointed, or barbed instrument on a shaft that is operated manually or shot from a gun or sling.

Stakeholder: Any and all interested parties; an organization, governmental entity, or individual that has a stake in, or may be impacted by, a given approach to environmental regulation or other agency action.

Submersible: A research submarine, designed for manned or remote operation at great depths.

Substrate: The material making up the base on which an organism lives or to which it is attached.

Substratum: The bottom of the bay, the soils of the bay bottom. May also refer to any surface that allows for the colonization of marine life.

Sustenance Fishing: Fishing in which all catch is consumed on site.

Symbiotic: Situation in which two dissimilar organisms live together in close association.

Terrestrial species: Plants and animals living on land.

Threatened species: Any species which is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Topographic: General elevation pattern of the land surface or the ocean bottom.

Trolling: Fishing using one or more lines with hooks or lures attached and drawn through the water behind a moving vessel.

Trophic: Relating to nutrition; a trophic level is the position of an organism in a food chain or food pyramid.

Unified Ocean Governance: An integrated ecosystem-based management approach using an overall governance framework of shared principles and authority, clear communications and protocols.

Vessel Monitoring System (VMS): The hardware and software used by vessels to track and transmit their positions to a receiver in a remote location.

Zooxanthellae: A group of dinoflagellates living symbiotically in association with one of a variety of invertebrate groups and found in corals and other marine organisms.

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APPENDICES

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Appendix 3: Activity Summary Tables

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Appendix 1: Regulations

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APPENDIX 2a: Guidelines for Submitting Permit Applications

I. INTRODUCTION

The National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*) directs the Secretary of Commerce to designate and manage areas of the marine environment with nationally significant aesthetic, ecological, historical, or recreational values as national marine sanctuaries. The National Marine Sanctuary Program (NMSP) has issued regulations to implement this act (15 CFR Part 922). These regulations exist to safeguard resources within sanctuary boundaries and include prohibitions on the conduct of some activities. Program regulations outline the procedure and criteria under which the NMSP will issue permits to allow certain activities beneficial to sanctuaries that would otherwise be prohibited. These guidelines describe the requirements and process by which an applicant may apply for a permit under this authority.

NMSP permits are typically issued by a sanctuary superintendent. The type of activities that qualify for a permit vary from sanctuary to sanctuary, but in general include research on sanctuary natural and cultural resources, educational activities, and activities that further sanctuary management objectives.

In addition to permits, in certain sanctuaries a manager may authorize an activity that is permitted by a valid lease, permit, license, approval or other authorization issued by any federal, state, or local authority of competent jurisdiction. Since the general process and requirements governing the handling of authorizations and permits are very similar, in these guidelines the term “permit” applies to both permits and authorizations. When there is a difference in the requirements or process between permits and authorizations, this distinction is noted.

Anyone conducting prohibited activities without a valid national marine sanctuary permit may be subject to the penalties as provided under Section 307 of the National Marine Sanctuaries Act.

II. GENERAL GUIDANCE

Permit applications should include the required information listed below in sufficient detail that an educated non-specialist may understand exactly what is proposed. If a relevant proposal for a funding application, work plan, formal agreement, or similar document already exists, then elements of this original proposal can be used to satisfy NMSP application requirements, and may be referenced and attached to the application. The amount and depth of information to be given on an application depends primarily on the complexity of the proposed activity.

A form has been provided to assist an applicant in submitting the required information (Appendix 2b). Note that more or less information may be required for certain permit types.

III. APPLICATIONS

Applications for sanctuary permits shall include the following information:

A. Applicant and Project Information

1. **Project title**
2. **Sanctuary** – Note the sanctuary(s) in which the activity is proposed to occur.
3. **Applicant information** – Provide name, title, address, telephone number, fax number, email address, and institutional affiliation of the primary applicant/principal investigator and any co-applicants. In addition, list the name and affiliation of any additional colleagues authorized to do work under the permit.
4. **Project abstract** – Abstract of approximately 250 words summarizing the project including objectives, methods, and project significance. The abstract shall be suitable for use in the public press.
5. **Project rationale** – Describe the issue to be investigated and its importance and relevance to the sanctuary. Provide relevant background information that clarifies the need for the project and why it is valuable and/or necessary for this activity to be conducted in the sanctuary.
6. **Objectives** – Describe the specific objectives of the proposed project. Where appropriate, the objectives should be stated as specific hypotheses to be tested.
7. **Intended use of results** – Describe how the products/outcomes will be used, including any anticipated commercial use.

B. Methods – Describe how the proposed methods and analytical techniques will achieve the activity objectives. This description should include the following, as applicable:

1. **Proposed location of activity** – Clearly describe the study area in terms of sanctuary name(s), geographic location(s), and place names. Unless it is necessary for the activity to take place throughout the sanctuary, provide the geographic coordinates of the proposed location in decimal degrees or degrees, minutes, seconds. Explain whether coordinates notate sampling point(s), boundary points, or a central point and associated radius. Indicate whether the work will take place in any sanctuary marine zones (see section G).
2. **Procedures** – Describe the proposed activity design that addresses the stated objectives and hypotheses. Explain the methods and protocols to be employed in the field. Include descriptions and diagrams of any instrumentation or equipment to be used and deployment duration. Describe all phases of activity, including equipment removal. Include activity frequency (e.g., daily, monthly) as appropriate.
3. **Collections** – If applicable, describe the type, size, and quantity of specimens or materials to be collected, sampled, or captured. Include collection methods, handling, frequency, and replicates required for each experiment. If aware that specimens of the proposed types already exist in a repository, explain why additional collecting is

- necessary. Provide scientific nomenclature where possible. Provide information on all other applicable federal or state permits where required.
4. **Schedule** – Provide a schedule that includes start of project, approximate dates or seasons of fieldwork, analysis, reporting, and completion dates. Include the requested start and stop dates for the permit.
 5. **Budget** – Briefly outline the expenses associated with this project and identify your expected funding source(s). Provide contract number, performance period, and name of sponsoring agency, as applicable.
- C. **Products** – With limited exemptions, all information resulting from activities conducted under a national marine sanctuary permit must be made available to the public.
1. **Publications and reports** – Describe the expected publications or reports that will be generated as part of this study.
 2. **Collections** – Describe the proposed disposition of collected specimens or materials. If you propose that the NMSP lend the specimens or samples to a non-NMSP institution for long-term storage, identify that institution and give a brief justification for this proposal.
 3. **Data and other materials** – Describe any other products to be generated as part of the project, such as photographs, maps, models, handouts, exhibits, software presentations, raw data, GIS coverage, or videos, and the proposed disposition of these materials. If data are to be collected from the public as part of this study, provide a copy of the data collection instrument (survey, questionnaire, interview protocol, etc.).
- D. **Literature Cited** – Include full bibliographic citations for any reports and publications used in the text of the application.
- E. **Qualifications** – Provide a background summary or curriculum vitae for the primary applicant/principal investigator and any co-applicant. Identify their training and qualifications relevant to the proposed project and their ability to conduct field activities in the environment of the proposed activity area. Describe previous research and other permitted activities in national marine sanctuaries, including any sanctuary permits previously issued.
- F. **Environmental Impacts** – Discuss the environmental consequences of conducting the proposed activity and indicate whether the activity could be conducted outside the sanctuary and still accomplish the project’s objectives. Specify the direct and indirect environmental impacts of the activity and explain how the benefits of the research will outweigh the disadvantages or environmental consequences in both the short- and long-term.

- G. **Supporting Documentation and Special Concerns** – Provide information on the following topics where applicable. Attach copies of any supporting documentation that will facilitate processing your application, such as other required federal and state permits, copies of peer reviews, letters of support and funding commitments, and certifications.
1. **Coordination with other research** – NMSP encourages research coordination and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of effort. Applicants should include a description of these efforts, where applicable. Cite similar or supporting past or present research results.
 2. **Copies of other permits** – Include, if applicable, copies of other federal, state and/or local permits issued with regards to this permit request.
 3. **Requests for NMSP assistance** – NMSP has limited on-site sanctuary personnel, facilities and equipment that may be used to support permitted activities under special circumstances. Requests for support should accompany the permit application and include details on the support requested, justification, dates and length required, and alternate plans if NMSP support is not available.
 4. **Activities in marine zones** – Some sanctuaries have established marine zones to more fully protect habitats, restore the ecological integrity of these areas, or deconflict certain activities. For any activity or portion of activity proposed to take place in marine zones, describe why it is necessary to conduct this activity in a particular zone and how it will further the understanding and/or management of the zone or sanctuary.
 5. **Vessel information** – Information on the size and type of vessel and marine sanitation device to be used will assist in determining the type and amount of discharge that may affect sanctuary resources.

IV. SUBMISSION OF PERMIT REQUESTS

Permits will be issued on a seasonal basis twice a year by deadlines to be determined under the process described in the *Permitting Action Plan, Activity P-1.2*. Under special circumstances, applications may be considered under an out-of-time application process. This would only apply if there were exceptional circumstances that prevent the applicant from adhering to the application deadlines.

The completed permit application should be sent to the sanctuary permit coordinator listed in Appendix 2c. In order to expedite processing, applicants are encouraged to contact the sanctuary in advance of submitting a formal application to discuss any other permits required by jurisdictional agencies, or questions or issues they feel may complicate or delay the application process.

V. EVALUATION OF PERMIT REQUESTS

Permit applications are generally processed by the sanctuary in the order received and will first be reviewed for completeness and adherence to these guidelines. Applicants will be contacted for clarification or if applications are incomplete within twenty (20) calendar days of receipt of the application. If a sanctuary requests such additional information or clarification, and no response has been received from the applicant within ninety (90) calendar days, the application will be deemed withdrawn, no further action will be taken on the application by the sanctuary, and any application for this activity will have to be resubmitted by the applicant as a new request.

The NMSP will not make permit decisions based on poor or incomplete applications. Permit applications will be deemed incomplete if previous permit requirements, such as submission of permit report(s), have not been fulfilled.

Complete applications are reviewed by the sanctuary permit coordinator and other on-site personnel. Among other duties, the permit coordinator must determine, on a case-by-case basis, if each application fits an appropriate permit type, ensure the proposed activity meets all regulatory thresholds and review criteria, and conduct all required consultations and environmental analysis. Depending on the type and location of the proposed activity, additional review may be required by partner jurisdictional agencies, additional NMSP program personnel, or outside experts. Based on the reviews of the application, NMSP will approve or deny the permit. If approved, the sanctuary superintendent will issue the permit. If denied, applicants are notified of the reason(s) for denial and informed of the appeal process.

Determining the Level of Review

For certain types of activities additional program review by NMSP headquarters personnel, legal counsel or other experts may be required. Depending on location and type, activities may also be subject to permit requirements of other jurisdictional federal and state agencies. The NMSP uses a three-tier classification scheme that corresponds to differing levels of program review:

1. Class A permits are those activities which have minor and/or short-term impacts to sanctuary resources. These permits do not typically require prolonged evaluation by the sanctuary permit coordinator and can be issued directly from the field without headquarters input or review. Examples of Class A permits are benthic transects, fish count surveys, or general access.
2. Class B permits are those activities that have potentially moderate, short-term impacts on sanctuary resources with little or no national policy implications. Class B permits require the site to undergo a brief consultation with NMSP headquarters (e.g., an exchange of emails or phone calls) to ensure upper-level management is aware of the proposed activity. Activities that might require this level of review are those that occur when the impacts to sanctuary resources are unknown, a Section 7 ESA consultation is required, there are unresolved legal issues with the applicant, or there may be site-specific policy implications (e.g., interactions with endemic species or any proposed extractive uses).
3. Class C permits are those activities that might result in significant or long-term impacts on sanctuary resources, require a special use permit, involve a submerged archaeological resource, have program-wide policy implications, or are the source of major public concern or controversy. Permits in this category are reviewed by technical and policy staff at the field and program level, and may also require external review by relevant experts and partner agencies. Examples of activities that would require Class C review include ocean tourism and maritime archaeological research.

These levels of review are used for internal NMSP deliberation and evaluation only and will not affect the burden to the applicant. In addition, the sanctuary permit coordinator has the discretion to consult with outside experts for any class of permit.

Consultations and Statutory Requirements

Depending on the nature of the proposed activity, the sanctuary may also have to consult with the State of Hawai'i and other federal agencies to ensure compliance with statutes, such as the National Historic Preservation Act, National Wildlife Refuge System Administration Act, Endangered Species Act, Magnuson-Stevens Act (Essential Fish Habitat Amendments), and Marine Mammal Protection Act, among others.

VI. PERMIT AMENDMENTS

Once a permit or authorization has been issued, changes can be made in the form of an amendment. Requests for amendments (e.g., requests to change the activity location or to extend the expiration date) must conform to these guidelines. Persons desiring to continue permitted activities in the sanctuary must reapply for an extension of the current permit at least thirty (30) calendar days before it expires. Reference to the original application may be given in lieu of a

new application, provided the scope of work does not change significantly and all cruise logs and project summaries pertinent to the original permit have been submitted to, and approved by, on-site sanctuary personnel. **Note: requests for amendments not received within the time frame specified above may not be processed before the requested effective date. In addition, expired permits cannot be amended.**

VII. PERMIT REPORTS

Most permits will require the permittee to submit certain reports documenting activities conducted under the permit. Depending on the permit type and proposed activity, such reports may include (but are not limited to) interim and final activity reports, cruise and flight logs, catch logs, and sample/collection logs. For most permits, these reports will generally be 1-2 pages in length, although complex activities may call for more extensive documentation. Information required to be included in these reports will vary according to the specific activity being permitted, but will generally include a brief summary of activities undertaken, activity dates and locations, any results or findings, appropriate charts or photos, details regarding samples and collections made, publications resulting from permitted activities, and any deviations from the proposed or permitted activities. Specific requirements for reports for permits involving archeological research are included in Appendix 2f.

VIII. SPECIAL SITUATIONS

Although the information required here applies to most permit situations, certain types of activities require more or less application information and may involve a different review and/or approval process. Please see the relevant appendix if the proposed activity involves one of the following situations:

- A. Special Use Permits (Appendix 2e)
- B. Activities involving sanctuary historical resources, including submerged cultural resources, maritime heritage resources, and submerged archaeological resources (Appendix 2f)

IX. REPORTING BURDEN

Submittal of the information requested in these guidelines is required to obtain a permit pursuant to NMSP regulations (15 CFR Part 922). These data are used 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 NMSP is able to use permitting as one of the management tools to protect sanctuary resources and qualities.

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). NOAA will make all possible

attempts to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5 U.S.C. 552[b][4]). Personal information affecting an individual's privacy will also be kept confidential consistent with 5 U.S.C. 552(b)(6).

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 to average one (1) hour per response (e.g., initial application, cruise log, final report) except for the following permit types:

- A. Twenty-four (24) hours per response for special use permits;
- B. Thirteen (13) hours per response for activities involving sanctuary historical resources;
- C. Fifteen (15) minutes per response for amendments to permits;
- D. Thirty (30) minutes per response for certification requests;
- E. Fifteen (15) minutes per response for voluntary registration; and
- F. Ninety (90) minutes per response for appeals of permit decisions.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to National Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway (N/ORM6), 11th Floor, Silver Spring, MD 20910.

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.

Appendix 2b: Permit Application Form



Northwestern Hawaiian Islands National Marine Sanctuary PERMIT APPLICATION FORM

The National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*) directs the Secretary of Commerce to designate and manage areas of the marine environment with nationally significant aesthetic, ecological, historical, or recreational values as national marine sanctuaries. The National Marine Sanctuary Program has issued regulations to implement this act (15 CFR Part 922). These regulations exist to safeguard resources within sanctuary boundaries and include prohibitions on the conduct of some activities. Program regulations also give the NMSP authority to issue permits to allow certain activities beneficial to sanctuaries that would otherwise be prohibited.

Guidelines on applying for permits are given in “Guidelines for Submitting Applications for National Marine Sanctuary Permits and Authorizations,” to which this form is an appendix. Applicants are responsible for reviewing and understanding the guidelines in their entirety to ensure all application requirements are met. This form does not and is not meant to replace the guidelines, but is instead provided to assist potential applicants in gathering and submitting the information required for most permits. Some permits may require more or less information; applicants should consult the guidelines for details. This form is provided for the convenience of applicants only and is not required.

Completed applications should be submitted to the appropriate sanctuary(s) in which the activity is proposed to take place. This contact information is included in the guidelines.

Anyone conducting prohibited activities without a valid national marine sanctuary permit or authorization may be subject to the penalties as provided under Section 307 of the National Marine Sanctuaries Act.

Public Reporting Burden

Submittal of the information requested in these guidelines is required to obtain a permit pursuant to NMSP regulations (15 CFR part 922). 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 NMSP is able to use permitting as one of the management tools to protect sanctuary resources and qualities.

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). NOAA will make all possible attempts to protect such proprietary information, consistent with all applicable FOIA exemptions in 5 U.S.C. 552(b). Typically exempt information includes trade secrets, commercial and financial information (5 U.S.C. 552[b][4]). Personal information affecting an individual’s privacy will also be kept confidential consistent with 5 U.S.C. 552(b)(6).

Public reporting burden for this collection of information is estimated to average one (1) hour per response (e.g., initial application, cruise log, final report), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to National Permit Coordinator, NOAA National Marine Sanctuary Program, 1305 East-West Highway (N/ORM6), 11th Floor, Silver Spring, MD, 20910.

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.

A. APPLICANT AND PROJECT INFORMATION

Project Title:

Sanctuary(s):

Applicant Information:

Name:
Affiliation:
Department:
Mailing address (*include street or post office box, city, state, and zip code*):

Phone number:
Fax number:
E-mail address:

Secondary (co-applicant) information (if applicable):

Name:
Affiliation:
Department:
Mailing address (*include street or post office box, city, state, and zip code*):

Phone number:
Fax number:
E-mail address:

Name(s) of any other individuals authorized to conduct activities under this permit:

Name(s):
Affiliation(s):

Project abstract: (*approximately 250 words*)
Include summary of objectives, methods, and project significance.

Project rationale:
Describe the issue to be investigated, its importance and relevance to the sanctuary, and why it is necessary to be conducted in the sanctuary.

Activity objectives:
When appropriate, include the specific hypothesis to be tested.

Intended use of results:

B. METHODS

Proposed location of activity:

Include geographic coordinates of activity in decimal degrees or degrees, minutes, seconds. Explain whether coordinates notate sampling point(s), boundary points, or a central point and associated radius. Indicate whether the work will take place in any sanctuary marine zones (if so, complete section G).

Procedures:

Explain the methods and protocols to be employed in the field. Include descriptions and diagrams of any instrumentation or equipment to be used and deployment duration. Describe all phases of activity, including equipment removal. Include activity frequency (e.g., daily, monthly) as appropriate.

Collections: (when applicable)

Describe the type, size, and quantity of specimens or materials to be collected, sampled, or captured. Include collection methods, handling, frequency, and replicates required for each experiment. If aware that specimens of the proposed types already exist in a repository, explain why additional collecting is necessary. Provide scientific nomenclature where possible. Provide information on all other applicable federal or state permits where required.

Project schedule:

Describe overall project schedule along with requested permit dates:

Requested permit start date:

Requested permit stop date:

Project budget:

Briefly outline expenses associated with this activity. Provide contract number, performance period, and name of sponsoring agency, as applicable.

C. PRODUCTS

Describe expected publications or reports, proposed disposition of collected specimens, and any data to be generated as part of this project.

D. LITERATURE CITED IN THIS APPLICATION

E. QUALIFICATIONS OF PERMITTED PERSONNEL

F. ENVIRONMENTAL IMPACTS OF ACTIVITY

G. SUPPORTING DOCUMENTATION AND SPECIAL CONCERNS

Coordination with other research/activities:

Copies of other permits:

List all permits required from other agencies for the proposed project. Indicate date the permit was acquired or application was submitted. Attach/submit other permits or applications.

Requests for NMSP assistance:

Activities in marine zones:

For any activity or portion of activity proposed to take place in marine zones, describe why it is necessary to conduct this activity in a particular zone and how it will further the scientific understanding and/or management of the zone or sanctuary.

Appendix 2c: Sanctuary Permitting Contacts

For further information on NMSP permits, contact the national office or appropriate sanctuary contacts listed below. Applications for permits and authorizations should be sent to the sanctuary office in which the proposed activity is to take place.

Northwestern Hawaiian Islands

National Marine Sanctuary

Permit Coordinator
6600 Kalaniana'ole Hwy #300
Honolulu, HI 96825
(808) 397-2660
hawaiiireef.noaa.gov

Sanctuary Superintendent
6600 Kalaniana'ole Hwy #300
Honolulu, HI 96825
(808) 397-2660
hawaiiireef.noaa.gov

National Marine Sanctuary Program

National Permit Coordinator
NOAA National Marine Sanctuary Program
1305 East-West Highway (N/ORM6)
Silver Spring, MD 20910-3282
(301) 713-3125
(301) 713-0404 (fax)
sanctuaries.noaa.gov

Appendix 2d: NMSP Permit General Conditions

1. Within 30 (thirty) days of the date signed by the sanctuary official the permittee must sign and date on the appropriate line below for this permit to be considered valid. Once signed and dated, the permittee must ensure that the persons listed below each receive a signed original within 35 (thirty-five) days of the date signed by the sanctuary official:

David Bizot
National Permit Coordinator
NOAA National Marine Sanctuary Program
1305 East-West Highway (N/ORM6)
Silver Spring, MD 20910
2. It is a violation of this permit to conduct any activity authorized by this permit prior to the sanctuary official having received a permit with the permittee's original signature on the appropriate line below. The permittee must contact the sanctuary office to ensure the requisite documentation has been received before conducting any activity authorized by this permit.
3. This permit may only be amended by the National Marine Sanctuary Program. The permittee may not change or amend any part of this permit at any time. The terms of the permit must be accepted in full, without revision; otherwise, the permittee must return the permit to the sanctuary office unsigned with a written explanation for its rejection. Amendments to this permit must be requested in the same manner the original request was made.
4. All persons participating in the permitted activity must be under the supervision of the permittee, and the permittee is responsible for any violation of this permit, the NMSA, and sanctuary regulations for activities conducted under, or in junction with, this permit. The permittee must assure that all persons performing activities under this permit are fully aware of the conditions herein.
5. This permit is non-transferable and must be carried by the permittee at all times while engaging in any activity authorized by this permit.
6. This permit may be suspended, revoked, or modified for violation of the terms and conditions of this permit, the regulations at 15 CFR Part 922, the NMSA, or for other good cause. Such action will be communicated in writing to the applicant or permittee, and will set forth the reason(s) for the action taken.
7. This permit may be suspended, revoked or modified if requirements from previous National Marine Sanctuary Program permits or authorizations issued to the permittee are not fulfilled by their due date.
8. Permit applications for any future activities in the sanctuary or any other sanctuary in the system by the permittee might not be considered until all requirements from this permit are fulfilled.
9. This permit does not authorize the conduct of any activity prohibited by 15 CFR § 922, other

than those specifically described in the “Permitted Activity Description” section of this permit. If the permittee or any person acting under the permittee’s supervision conducts, or causes to be conducted, any activity in the sanctuary not in accordance with the terms and conditions set forth in this permit, or who otherwise violates such terms and conditions, the permittee may be subject to civil penalties, forfeiture, costs, and all other remedies under the NMSA and its implementing regulations at 15 CFR Part 922.

10. 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 National Marine Sanctuary Permit «permit_number» and be sent to the sanctuary official listed in general condition number 1.
11. This permit does not relieve the permittee of responsibility to comply with all other federal, state and local laws and regulations, and this permit is not valid until all other necessary permits and/or authorizations are obtained. Particularly, this permit does not allow disturbance of marine mammals or seabirds protected under provisions of the Endangered Species Act, Marine Mammal Protection Act, or Migratory Bird Treaty Act. Authorization for incidental or direct harassment of species protected by these acts must be secured from the U.S. Fish and Wildlife Service and/or NOAA Fisheries, depending upon the species affected.
12. The permittee shall indemnify and hold harmless the National Marine Sanctuary Program, NOAA, the Department of Commerce and the United States for and against any claims arising from the conduct of any permitted activities.
13. Any question of interpretation of any term or condition of this permit will be resolved by NOAA.

Appendix 2e: Special Use Permits

Section 310 of the National Marine Sanctuaries Act (16 U.S.C. § 1441; NMSA) allows the Secretary of Commerce (delegated to the National Marine Sanctuary Program [NMSP]) to issue special use permits to authorize the conduct of specific activities in a sanctuary if such authorization is necessary (1) to establish conditions of access to and use of any sanctuary resource or (2) to promote public use and understanding of a sanctuary resource. Special use permits are generally issued for concessionaire-type activities and other commercial activities that require access to the sanctuary to achieve a desired goal.

Public notice

The NMSA requires, among other things, the NMSP to provide “appropriate public notice before identifying any category of activity subject to a special use permit” (see section 310[b] of the NMSA). To comply with this directive from Congress, the NMSP has issued a *Federal Register* notice that describes the types of activities for which it can require the issuance of a special use permit (67 FR 35501). To qualify for a special use permit, an activity must be among those listed in this notice. The notice lists the following activities:

- A. The disposal of cremated human remains by a commercial operator in any national marine sanctuary;
- B. The operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries for commercial purposes;
- C. The placement and subsequent recovery of objects associated with public events on non-living substrate of the seabed;
- D. The discharge and immediate recovery of objects related to special effects of motion pictures; and
- E. The continued presence of submarine cables beneath or on the seabed.

If a proposed activity does not fall within the description of one of the types of activities for which NMSP has provided public notice, NMSP would need to publish a new *Federal Register* notice and solicit public comments on the use of special use permits for the type of activity proposed prior to issuing a permit.

Terms of special use permits

The NMSA provides four conditions on special use permits. The NMSA requires that special use permits:

- A. Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;
- B. Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;
- 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 sanctuary 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.

Permit fees

The NMSA allows the NMSP to assess and collect fees for the conduct of any activity under a special use permit. If it is assessed, the amount of the fee is calculated by adding all of the following.

- A. The costs incurred, or expected to be incurred, by the Secretary in issuing the permit;
- B. The costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and
- C. An amount that represents the fair market value of the use of the sanctuary resource.

Information requirements

Applicants for special use permits should submit all of the information requested in the standard guidance for NMSP permit applications given in this document. In addition, the following will also be required:

- A. Comprehensive Liability Insurance. Applicants will be required to purchase and maintain comprehensive general liability insurance, or to 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. Applicants should show proof of such insurance with the rest of the application materials.
- B. Annual financial report. Most permits require some form of reporting. Special use permit recipients are also required to submit financial reports on or before December 31 of each year the permit is valid. These reports should detail the activities conducted under the permit during the reporting year and any revenues derived from those activities.

Appendix 2f: Archeological Research Permits

The National Marine Sanctuary Program's (NMSP) policy regarding submerged cultural resources is to leave them in place. This policy is consistent with the Federal Archaeological Program, the Abandoned Shipwreck Act (ASA), and the ASA Guidelines. However, removal of historic resources may be necessary or appropriate to protect the resource and/or fulfill other purposes of the National Marine Sanctuaries Act (NMSA) for research, education, or public access and appreciation. Recovery of historical resources may be justified in a particular case because the existence of a resource is threatened or the recovery presents an opportunity for research and education. Some examples of projects that may be conducted under a submerged archaeological resources permit include the identification, survey, and study of the historic whaling ships *Pearl* and *Hermes*, World War II artifacts, and other resources.

The following guidelines have been prepared for applicants proposing to conduct activities involving historical resources of the National Marine Sanctuary System (including submerged cultural resources, maritime heritage resources, and submerged archaeological resources). These guidelines have been prepared in compliance with the Federal Archaeological Program laws, regulations and guidelines including the:

- A. Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation;
- B. Abandoned Shipwreck Act Final Guidelines (55 FR 233, December 4, 1990);
- C. Archaeological Resources Protection Act of 1979;
- D. Final Uniform Regulations on Protection of Archaeological Resources (43 CFR Part 7); and
- E. Programmatic agreements involving archaeological resources and/or historical resource management.

The primary purpose of these guidelines is to assist potential permit applicants in submitting their application materials to the NMSP for consideration. While some of the information requirements described in the standard guidelines for permits and authorizations apply to permits for historical resources, much of the required information is different. Applications of this type should adhere to the following guidance instead.

I. Cover Sheet – The cover sheet shall identify:

- A. Title of project (e.g., "Survey of the USS *Alligator*");
- B. Applicant's name, address, telephone number, and affiliation;
- C. Name, address, affiliation of other key personnel;
- D. Proposed date of project and anticipated duration;
- E. Demonstrate reasonable ability to fund each phase of intended investigation covered by the permit;
- F. Glossary/key words.

II. Project Summary – The applicant should provide a 250-word (maximum) summary of the project including a brief statement of research objectives, scientific methods to be used, and the significance of the proposed work to the established management plan goals of the sanctuary. Also include a chart that shows the location and the latitude and longitude of the proposed work area.

III. Technical Information – The applicant should provide clear, concise, and complete statements for the following information. Documentation and excavation must follow standard archaeological methodology. Please note that an archaeological survey must be conducted on a site before a Research/Recovery Permit can be issued (see section VIII of this appendix).

- A. Research Plan. A research plan describing in detail the specific research objectives and goals (methodologies should be addressed in the Operational Plan – see below). The plan should include a description of:
1. The archaeological goals and methods to be employed;
 2. The problems toward which the research will be directed (i.e., what questions will this research answer); and
 3. The ways in which other researchers have sought to answer them.
- B. Project Significance. The applicant should discuss significant previous research in the area of interest and how the proposed effort may enhance or contribute to improving the state of knowledge of history, anthropology or archaeology. Explain why the proposed effort should be performed in the sanctuary and any potential benefits that might be imparted to the public's interest and to sanctuary resources protection and management. Discuss potential benefits that might result from the addition of artifacts to the pool of artifacts available for display. Discuss how the project may provide public access to artifacts embedded in submerged lands and not able to be directly examined or physically displayed to the public without removal.
- C. Operational Plan. The applicant should describe the tasks required to accomplish the project's objectives. Describe the proposed methods to be used for site documentation, excavation, recovery and the storage of artifacts and related materials on site and at the storage lab. Describe the rationale for selecting the proposed methods over any alternative methods.
- D. Required Reports and Recordkeeping. If a permit is issued the following reports will be required (see sections VII and VIII of this appendix):
1. Seasonal Reports.
 2. Final Project Report.
 3. Artifact Conservation Report.
 4. Project Log – Master copies of standard logbook sheets shall be supplied to the permittee who shall make sufficient copies and fill them out on a daily basis. Copies of all completed field logs must be turned over to NMSP following the completion of the project.
 5. Artifact Log – An Artifact Log should be kept at the site and in the storage lab. Each artifact will be assigned a Field Number. A description of the artifact, archaeological provenience data and the recorder's name and the date should be recorded in the log. A copy of the Artifact Log will be turned over to the NMSP at the completion of the project.
 6. Photographs and Videotapes – Applicant should provide photographs and/or videotapes (optional) of significant individual site features and/or artifact clusters both in situ and after removal. Images should include photo scale, north arrow and date/site name board.

- E. Artifact Handling Plan. The applicant should provide an Artifact Handling Plan that includes the following:
1. Artifact removal – Discuss techniques for removal of various types of artifacts expected to be encountered. Specifically address types of artifacts requiring special care, such as glass or ceramics and organic artifacts, such as rope, leather, textiles, and other fragile objects.
 2. Artifact processing – Discuss plans for artifact storage between the field and conservation lab. Discuss proposed artifact inventory methodology. Each artifact should be tagged with a Field Catalogue Number to be assigned as soon as it is removed from the water at the site. Additional tags bearing accession numbers may be assigned and affixed by the NMSP. In this case, NMSP will maintain public records linking the original Field Catalogue Number and any additional numbers assigned.
 3. Unique or valuable artifacts should be photographed from two perspectives with a bar scale, date and the Catalogue Number tag prominently displayed. The Field Catalogue Number tag should be sturdy and waterproof and should be attached to the artifact in a non-destructive manner so as to accompany the artifact through storage and the conservation process. Bulk or highly repetitive artifacts, such as coins, musket balls, pottery shards, etc. need not be photographed individually, but should be photographed in groups with the artifact tag number containing the Field Catalogue number visible.
- F. Conservation Plan. The applicant should provide a detailed plan for the conservation of artifacts. Include methods of conservation and intended processes. The Conservation Plan should include:
1. Conservation methodology – Discuss the methods of conservation and the intended processes for each class of artifact (i.e., ceramic, wood, other organic materials, ferrous metal, and non-ferrous metal);
 2. Conservation equipment – Describe the conservation facility or facilities;
 3. Storage space – Describe the conservation facility's location and size of the storage space.
- G. Curation and Display Plan. The applicant should provide a detailed plan for the curation of artifacts to ensure their maintenance and safety and in compliance with 36 CFR 79–Curation of Federally Owned and Administered Archaeological Collections. The Curation Plan should ensure that the following processes are considered:
1. Curation facility and personnel – Identify the curatorial facility and the professional personnel. Curatorial facilities should have adequate space to ensure the safe storage of artifacts.
 2. Artifact storage – Archaeological specimens should be maintained so that their information values are not lost through deterioration. Storage records should be maintained to a professional archival standard.
 3. Project records – Project and curation records should be maintained in a manner conforming to standard archival method. Storage should conform to professional archival standards and should allow for accessibility of records to qualified researchers within a reasonable amount of time of having been requested.

4. Artifact availability – Artifact collections must be accessible to qualified researchers within a reasonable amount of time of having been requested.
5. Artifact loans – Artifacts should be available for loan to other institutions for interpretive purposes, subject to reasonable security precautions and scheduling practicalities.
6. Artifact display – Collections should be available for educational and interpretive purposes, subject to reasonable security precautions. A plan for the display exhibit area will be required if artifacts are intended for display. Exhibit information will include display case design and security, building security and temperature and humidity control. A loan agreement will be prepared between NOAA and the exhibiting institution in keeping with 36 CFR 79 (see above).

IV. Qualifications – Show evidence of the ability of each team member to perform the assigned tasks for the following personnel:

- A. Supervising Archaeologist. – The Supervising Archaeologist is responsible for archaeological aspects of the project and need not serve as project manager. The applicant should submit a resume detailing the professional qualifications of the Supervising Archaeologist (including citations and examples of archaeological site reports and professional publications). In compliance with the “Secretary of Interior’s Standards and Guidelines for Archaeology and Historic Preservation” and the Archaeological Resources Protection Act, the Supervising Archaeologist should fulfill the following qualifications:
 1. A graduate degree in archaeology, anthropology, maritime history equivalent training and experience;
 2. At least one year of professional experience or equivalent specialized training in archaeological research, administration or management;
 3. At least four months of supervised field and analytic experience in general North American archaeology and maritime history;
 4. Demonstrated ability to carry research to completion;
 5. At least one year of full-time professional experience at a supervisory level in the study of historic marine archaeological resources (for historic shipwreck studies) or prehistoric marine archaeological resources (for submerged prehistoric studies); and
 6. Ability to demonstrate ability in comprehensive analysis and interpretation through authorship of reports and monographs.
- B. Archaeological Assistants. – Archaeological Assistants need not meet Supervising Archaeologist qualifications but will serve under the direction of the Supervising Archaeologist. The applicant should provide the name and experience of all qualified archaeological assistants who will assist the Supervising Archaeologist in site documentation and research.
- A. Artifact Conservator. – The applicant should provide documentation of the Artifact Conservator’s demonstrated experience in conservation of artifacts from submerged sites. Professional experience should include experience in the conservation of ferrous and non-ferrous metals, ceramics, glass and organic materials.

V. Environmental Consequences – The applicant should provide an analysis of the extent and nature of potential environmental impacts on sanctuary resources from permitted activity. If impact to natural resources is proposed, the applicant should provide a Site Restoration and Remediation Plan to address any injury or impacts resulting from the project.

VI. Supporting Documentation and Special Concerns

- A. Financial Support. Provide contract number, performance period, and name of sponsoring entity, if any. If none, provide sufficient data to substantiate the fiscal capability to complete the phases of work proposed to be permitted. If artifact recovery is proposed, financial data must address the resources necessary for the conservation, curation and interpretation of the resulting archaeological collection.
- B. Coordination with Research in Progress or Proposed. The NMSP encourages coordination and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of efforts, where applicable.
- C. Letters of Intent. Applicant should provide letters of intent to participate in this project from the Supervising Archaeologist and Conservator.
- D. References. Provide bibliographic references for any citations made in text.

VII. Archeological Research Report and Research/Recovery Permit Report Guidelines – If a permit is issued, the permittee will be required to submit certain reports or other records to document permitted activities. This section describes the various report types that will likely be required.

- A. Seasonal Reports. The permittee will provide a Seasonal Report within sixty (60) days of the conclusion of each dive season for the duration of the permit. With this report, the applicant should also submit copies of pertinent photographs, video, maps, artifact logs, and field logs. The Seasonal Report should include:
 - 1. A summary of the season’s activities;
 - 2. A discussion of any problems encountered that may require a revision of the permit;
 - 3. Plans for the next field season based on permittee’s assessment of the preceding season’s work.
- B. Final Report. The permittee will provide a Final Report on the activities and results of the project. The Final Report must be reviewed by the Supervising Archaeologist and signed and dated with his/her comments. The Final Report must be submitted within one (1) year of the completion of field work and artifact conservation. The bound Final Report must include:
 - 1. Site Description – a description of the study area;
 - 2. Site History – a contextual history relating the site to the general history of the region;
 - 3. Research Design – the original project design and research goals for the project;

4. Field Work Description – a description of the field activities including a summary of the survey and/or excavation process;
 5. Field Observations – all observations of notable occurrences, patterns, etc.;
 6. Data Analysis – full analysis and results of recovered data and artifacts to also include:
 7. Maps – The permittee should supply the following maps:
 - a. An overall map showing site in relation to submerged features and nearest land mass (e.g., NOAA chart);
 - b. A pre-excavation plan view (overhead) map showing significant or readily observable exposed artifacts and site features;
 - c. An overall plan-view site map showing all excavated hull structure;
 - d. Detailed feature maps for each significant feature to include location of artifacts removed from site. Artifact locations will include the artifact Field Catalogue Number. If numerous artifacts are retrieved from a specific area they may be listed in table form and keyed to the map location by an index number. They will relate the artifact positions to features in the overall site map. The feature maps will include three (3) different perspectives, including overhead or plan view, side/profile view, and (if practicable) frontal/sectional view;
 - e. All maps should show a grid or grid ticks on the outer border of the map in Loran C, longitude and latitude, or other recognized coordinate system. Smaller-scale maps should have grids with X-Y coordinates related to data on overall site map. Maps should include a bar scale, North arrow, and title block which identifies the map. The title block should include the permit number, permittee's name, and year of the permit.
 8. Project Assessment – The Final Report should include a discussion of the applicant's perceived success of the project and recommendations for updating historical contexts and planning goals.
- C. Conservation Report. The Conservation Report should include an account of all work done on artifacts. Note work done on different materials and/or classes of artifacts, work on significant (e.g., unique or fragile) artifacts, and work on composite-type artifacts composed of two or more materials (e.g., wood and iron). The report of the conservation of artifacts should include appendices containing:
1. An artifact list;
 2. Copies of the conservation lab records; and
 3. Before and after photographs of artifacts at the conservation lab.

VIII. Survey Reporting Guidelines – This section will assist anyone conducting remote sensing surveys of archaeological resources in preparing reports and in submitting the relevant information to the NMSP.

- A. Survey/Inventory Report. The survey/inventory report should include:
1. Introduction – The introduction should include the dates of the survey; the general region and the parameters of the survey area in latitude and longitude; the number of days spent conducting remote sensing survey; the number of days diving to identify anomalies; the names of people involved with the operation and their capacity; and a brief statement outlining the highlights and results of the work.

2. Equipment – Describe any equipment used for navigation and horizontal positioning as well as magnetometer and other types of remote sensing.
 3. Equipment use – Explain how equipment was used, calibrated and configured for navigation and horizontal positioning, as well as magnetometer and other remote sensing equipment.
 4. Recording of survey information – Explain how and when position fixes were recorded, how the magnetometer (and other remote sensing equipment) correlated to the horizontal position data, and how far apart the parallel passes were and in what direction(s) the survey vessel was navigated (recommended spacing is 150 feet or less).
 5. Completion of work – Summarize the work completed. Describe how much work was accomplished and how much is left to accomplish to complete the remote sensing phase of your survey work.
 6. Summary statement – Provide a general statement about what you found and how these findings shape your future plans. Discuss and interpret the anomaly patterns. What parts of the anomaly patterns appear to be significant and what parts do not? Are there any significant clusters? Were any anomalies identified? If suspected archaeological remains were found, provide a detailed description including:
 - a. The nature of remains (i.e., ship structural features, ballast, and artifacts);
 - b. The probable approximate date of site, explaining why you think so;
 - c. The distribution and extent of remains;
 - d. The integrity of the remains (i.e., does site appear to be disturbed and, if so, recently?); and
 - e. The natural environment in the vicinity of the wreck.
 7. Report appendices – The report should include the following appendices:
 - a. Include as a first appendix a list that assigns each anomaly a unique designation. This index serves as a cross-reference so anomalies identified in the report can be correlated to their plotted positions on the base map. This appendix should include the anomaly identification designation, its location (e.g., Loran-C coordinates, or latitude and longitude in degrees, minutes, and decimal minutes), and gamma intensity.
 - b. Include as a second appendix examples of a dozen or so magnetometer chart sections showing some of the anomalies encountered in your contract area (label each example strip chart section with its corresponding designation as assigned in above).
- B. Survey/Inventory Map.** The maps submitted following a survey/inventory should include the following:
1. Encompass a large enough area to include your entire contract and show the contract boundaries. The map(s) should also depict the location of the shoreline and other prominent features, such as buried cable, rock outcrops, islands, etc.
 2. Show a grid or grid ticks on the outer border of the map in Loran C, longitude and latitude, or other recognized coordinate system including the system used in the anomaly table in the first appendix.
 3. Use a bar scale, North arrow, and title block which identifies the map. The title block should include the contract number, contractor's name, and year of the contract.
 4. Depict your work progress on the base map.

5. Show the distance and direction of each survey pass made by the survey vessel.
6. Identify each anomaly with a unique indexed number or letter that is to correspond with the appendix listing all anomalies and with all other references to anomalies in the report.
7. If the survey included limited test excavations and/or limited removal of artifacts or other materials to identify anomalies, please include the following information:
 - a. A summary of the excavation process including equipment used; number, type and provenience of recovered artifacts; and method of recovery and on-site storage of artifacts.
 - b. A summary of the conservation process including information on the conservation facility and chief conservator; and a description of the conservation process including appendices containing artifact lists, lab conservation records, before and after conservation photographs of artifacts.
 - c. A description of post-conservation artifact storage consistent with 36 CFR Part 79.
 - d. A plan-view map of the excavation or recovery area that includes significant bottom features; at least two datum reference points; significant historical features; and location of recovered material.

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Appendix 3: Activity Summary Tables

Appendix 3a: Educational and Outreach Activities Summary Table

Appendix 3b: Native Hawaiian Activities Summary Table

Appendix 3c: Research Activities Summary Table

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Appendix 3a: Education and Outreach Activities Summary Table

| 3.1 UNDERSTANDING AND INTERPRETING THE NWHI | |
|---|--|
| ECMR-4.2 | Prioritize research, monitoring, and modeling projects for education and outreach |
| ECMR-4.3 | Include an educational component in all research expeditions |
| ECMR-4.4 | Use materials gathered and created during research expeditions to develop or enhance education and outreach products |
| NHCH-2.1 | Integrate Native Hawaiian values and cultural information into general outreach and education program |
| NHCH-2.2 | Develop a culturally based strategy for education and outreach to the Native Hawaiian community |
| NHCH-2.3 | Integrate Native Hawaiian values and cultural information into Sanctuary permittee education and outreach program |
| NHCH-2.4 | Facilitate cultural education opportunities in the field for students, teachers, and cultural specialists |
| MH-2.1 | Incorporate maritime heritage materials into Sanctuary education and outreach strategies |
| MH-2.2 | Develop and deliver public maritime heritage educational materials at selected presentations, conferences, and events |
| 3.2 REDUCING THREATS TO THE ECOSYSTEM | |
| MD-2.4 | Work with partners to develop and implement an outreach strategy for marine debris |
| AS-2.1 | Integrate alien species information into overall outreach program for Sanctuary permittees |
| AS-2.2 | Integrate alien species information into general Sanctuary outreach materials |
| AS-3.1 | Participate in statewide and international initiatives on alien species |
| VH-1.2 | Inform Sanctuary users about hazards, regulations, permit requirements, and compliance regarding vessel operations |
| 3.3 MANAGING HUMAN ACTIVITIES | |
| P-3.1 | Develop and implement a permit and regulatory educational program |
| P-3.2 | Coordinate with interagency partners on permitting outreach |
| P-3.3 | Develop a pre-trip training program |
| P-3.4 | Develop boundary and zoning informational tools |
| EN-3.1 | Integrate regulations briefings into pre-access training required for all Sanctuary and NWR users |
| NHP-2.1 | Support Native Hawaiian cultural research and education |
| NHP-2.2 | Develop outreach for those planning expeditions for Native Hawaiian practices |
| NHP-2.3 | Seek assistance from permittees to share lessons learned from their experiences |
| OER-1.3 | Develop outreach materials specific to recreational uses and integrate into permitting outreach program |
| 3.4 COORDINATING CONSERVATION AND MANAGEMENT EFFORTS | |
| OLCB-1.1 | Develop integrated five-year strategic and annual communications plans to coordinate constituency outreach |
| OLCB-1.2 | Produce and utilize constituency outreach tools |
| OLCB-1.3 | Conduct constituency building outreach activities with partners |
| OLCB-1.4 | Continuously update the Sanctuary website and listserv postings |
| OLCB-1.5 | Develop and implement a Volunteer Program |
| OLCB-2.1 | Conduct a needs assessment for educational materials about the NWHI and Hawaiian marine environment in Hawai'i's primary schools with educational partners |
| OLCB-2.2 | Contract curricula developers to develop appropriate curricula for integration into schools with educational partners |
| OLCB-2.3 | Develop an ocean stewardship program for middle school and high school students with educational partners |
| OLCB-2.4 | Hold teacher workshops using Sanctuary education materials and materials developed through education partnerships |
| OLCB-2.5 | Continue teacher and class-at-sea program |
| OLCB-2.6 | Expand educational programs for school groups at Mokuapāpapa: Discovery Center for Hawai'i's Remote Reefs |
| OLCB-2.7 | Enhance and expand interpretive exhibits at Mokuapāpapa: Discovery Center for Hawai'i's Remote Reefs |
| OLCB-3.1 | Conduct a socioeconomic study to determine the non-market and/or existence value of NWHI ecosystems |
| OLCB-3.2 | Identify and prioritize research and development projects to increase ocean literacy and conservation in NWHI |
| OLCB-3.3 | Conduct feasibility study on the use of telepresence technology for education and outreach activities |
| 3.5 ACHIEVING EFFECTIVE OPERATIONS | |
| SO-3.3 | Build capacity for information technology management |
| IM-2.1 | Design tools for accessing the NWHI-IMS |
| IM-2.2 | Assess data access needs and provide training for NWHI-IMS users |

Appendix 3b: Native Hawaiian Activities Summary Table

| 3.1 UNDERSTANDING AND INTERPRETING THE NWHI | |
|---|--|
| NHCH-1.1 | Identify cultural research needs and priorities |
| NHCH-1.2 | Support Native Hawaiian cultural research of the NWHI |
| NHCH-1.3 | Integrate Native Hawaiian traditional ecological knowledge and management concepts into Sanctuary management. |
| NHCH-1.4 | Seek protective status, as appropriate, to protect cultural sites |
| NHCH-2.1 | Integrate Native Hawaiian values and cultural information into general outreach and education program |
| NHCH-2.2 | Develop a culturally based strategy for education and outreach to the Native Hawaiian community |
| NHCH-2.3 | Integrate Native Hawaiian values and cultural information into Sanctuary permittee education and outreach program |
| NHCH-2.4 | Facilitate cultural education opportunities in the field for students, teachers and cultural specialists |
| MH-2.1 | Incorporate maritime heritage materials into Sanctuary education and outreach strategies |
| MH-3.1 | Coordinate interagency maritime heritage resources management |
| MH-3.2 | Enhance protective measures for selected sites within the NWHI |
| 3.3 MANAGING HUMAN ACTIVITIES | |
| P-1.4 | Establish a list of permit review consultants |
| P-3.3 | Develop a pre-trip training program |
| NHP-1.1 | Review Native Hawaiian practices permit applications and track and monitor permitted activities |
| NHP-1.2 | Develop and implement Native Hawaiian cultural best management practices and protocols |
| NHP-2.1 | Support cultural access trips for cultural research, education, and outreach needs |
| NHP-2.2 | Develop an outreach program for those planning trips to the NWHI for Native Hawaiian practices |
| NHP-2.3 | Solicit assistance from previous permittees in sharing lessons learned from their experiences in the NWHI |
| 3.4 COORDINATING CONSERVATION AND MANAGEMENT EFFORTS | |
| IC-1.1 | Establish the Interagency Coordinating Committee and conduct cooperative management operations as described in Memorandum of Agreement |
| IC-1.2 | Conduct annual interagency planning workshop |
| IC-2.4 | Support the State of Hawai'i in its bid for World Heritage Site status |
| SAC-1.1 | Establish the Sanctuary Advisory Council |
| NHCI-1.1 | Establish a Native Hawaiian Sanctuary Advisory Council working group |
| NHCI-1.2 | Add a seat on the SAC for the Office of Hawaiian Affairs or other governing body of the Native Hawaiian people |
| NHCI-1.3 | Add a seat on the Interagency Coordinating Committee for OHA |
| NHCI-2.1 | Continue to expand and explore opportunities to partner with institutions serving Native Hawaiians |
| OLCB-1.1 | Develop integrated five-year strategic and annual communications plans to coordinate constituency outreach |
| OLCB-1.2 | Produce and utilize constituency outreach tools |
| OLCB-1.3 | Conduct constituency building outreach activities with partners |
| OLCB-2.1 | Conduct a needs assessment for educational materials about the NWHI and Hawaiian marine environment in Hawai'i's primary schools with educational partners |
| OLCB-2.2 | Contract curricula developers to develop appropriate curricula for integration into schools with educational partners |
| OLCB-2.3 | Develop an ocean stewardship program for middle school and high school students with educational partners |
| OLCB-2.4 | Hold teacher workshops using sanctuary education materials and materials developed through education partnerships |
| OLCB-2.5 | Continue teacher and class at sea program |
| OLCB-2.6 | Expand educational programs for school groups at Mokupapapa : Discovery Center for Hawai'i's Remote Reefs |
| OLCB-3.1 | Conduct a socioeconomic study to determine the non-market and/or existence value of NWHI ecosystems |
| OLCB-3.2 | Identify and prioritize research and development projects to increase ocean literacy and conservation in NWHI |
| 3.5 ACHIEVING EFFECTIVE OPERATIONS | |
| SO-3.3 | Build capacity for information technology management |
| IM-1.4 | Begin incorporating information into NWHI-IMS |

Appendix 3c: Research Activities Summary Table

| 3.1 UNDERSTANDING AND INTERPRETING THE NWHI | |
|--|--|
| ECMR-1.1 | Develop and implement a prioritized research and monitoring plan for the Sanctuary and update annually |
| ECMR-1.2 | Coordinate meetings for research updates with researchers |
| ECMR-2.1 | Continue to characterize types and spatial distributions of shallow-water marine habitats |
| ECMR-2.2 | Work with partners to select, map, and characterize deep-water habitats |
| ECMR-2.3 | Conduct a biogeographic assessment of NWHI living marine resources |
| ECMR-2.4 | Implement additional research priorities identified in the Sanctuary Research and Monitoring Plan. |
| ECMR-2.5 | Facilitate and support the development of ecosystem models |
| ECMR-3.1 | Assess monitoring program protocols |
| ECMR-3.2 | Formalize a collaborative regional monitoring program for the NWHI |
| ECMR-3.3 | Continue monitoring at established sites in shallow-water coral reef ecosystems |
| ECMR-3.4 | Establish a monitoring program for deep-water ecosystems |
| ECMR-3.5 | Collect, analyze and input research, monitoring, and bathymetric data into appropriate databases to inform management decisions |
| ECMR-4.1 | Coordinate an annual meeting to present current research being conducted in the NWHI |
| ECMR-4.2 | Prioritize research, monitoring, and modeling projects for education and outreach |
| NHCH-1.1 | Identify cultural research needs and priorities |
| NHCH-1.2 | Support Native Hawaiian cultural research of the NWHI |
| MH-1.1 | Identify, collect, and review publications, data sets, and documents |
| MH-1.2 | Plan and carry out coordinated field mapping surveys of selected sites |
| MH-1.3 | Report potential environmental hazards |
| MH-1.4 | Recover and conserve maritime heritage artifacts where appropriate |
| 3.2 REDUCING THREATS TO THE ECOSYSTEM | |
| PS-1.2 | Assist in developing and implementing a protected species threat reduction assessment for the NWHI |
| PS-2.1 | Identify research needs and support research to enhance populations of protected species |
| PS-2.2 | Incorporate new data on candidate and protected species into the NWHI biogeographic assessment database |
| MD-1.2 | Develop and implement a 5 year marine debris removal and prevention plan for the Sanctuary |
| MD-2.1 | Support NOAA Fisheries' marine debris studies |
| AS-1.1 | Develop an interagency NWHI alien species plan to address prevention, control, and response and develop best management practices |
| AS-1.2 | Conduct hull inspections and cleaning for NOAA research vessels to prevent the introduction of marine alien species to the NWHI |
| AS-1.3 | Develop a hull inspection and cleaning program for vessels operating under permit in SPAs to prevent the introduction of marine alien species to the NWHI |
| AS-1.4 | Identify, characterize, and monitor populations of alien species |
| AS-1.5 | Conduct research on alien species detection and control |
| VH-1.1 | Develop protocols and practices for safe vessel operations with jurisdictional partners |
| VH-1.2 | Develop a hull inspection and cleaning program for vessels operating under permit in around SPAs to prevent the introduction of marine alien species to the NWHI |
| VH-2.1 | Conduct a vessel threat assessment |
| VH-2.2 | Conduct studies on vessel hazards and impacts |
| R-1.1 | Work with partners to inventory and prioritize restoration needs in the NWHI |
| 3.3 MANAGING HUMAN ACTIVITIES | |
| P-2.2 | Develop a GIS-based permit tracking system |
| P-2.3 | Analyze permit data to inform management decision making |
| EN-1.3 | Develop standard operating procedures for enforcement |
| EN-2.1 | Conduct an assessment of all activities occurring in the NWHI to establish a historical baseline for |

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| | enforcement |
| EN-2.3 | Develop and implement a coordinated and integrated Sanctuary enforcement plan for the NWHI |
| P-2.4 | Periodically analyze permit data for patterns of compliance |
| NHP-2.1 | Support Native Hawaiian cultural research and education |
| OER-1.2 | Track and assess recreational activities |
| F-1.2 | Incorporate interested fishermen into Sanctuary ecosystem research, monitoring, and management efforts |
| F-2.1 | Track and assess recreational fishing activity |
| 3.4 COORDINATING CONSERVATION AND MANAGEMENT EFFORTS | |
| IC-1.1 | Establish the Interagency Coordinating Committee and conduct cooperative management operations as described in Memorandum of Agreement |
| IC-1.2 | Conduct annual interagency planning workshop |
| OLCB-3.1 | Conduct a socioeconomic study to determine the non-market and/or existence value of NWHI ecosystems |
| OLCB-3.2 | Identify and prioritize research and development projects to increase ocean literacy and conservation in NWHI |
| OLCB-3.3 | Conduct feasibility study on telepresence technology for education and outreach activities |
| 3.5 ACHIEVING EFFECTIVE OPERATIONS | |
| IM-1.1 | Develop and implement a data inventory and acquisition plan |
| IM-1.2 | Develop appropriate data management protocols, procedures, and agreements with partner agencies |
| IM-1.3 | Design, build, and maintain a NWHI-Information Management System (NWHI-IMS) |
| CFO-1.1 | Develop and implement a five-year Sanctuary field operations plan |
| CFO-1.2 | Develop and implement standardized field operations protocols to protect the ecosystem and conduct fieldwork safely |
| CFO-1.3 | Assess threats that research and management activities pose to the ecosystem |
| CFO-1.4 | Assess safety of field operations |
| CFO-1.5 | Identify asset needs and opportunities for collaboration in support of field operations |
| CFO-2.3 | Develop and implement a Sanctuary vessel and aircraft plan |
| CFO-3.2 | Support Sanctuary-related field diving operations |
| EV-1.1 | Prepare a comprehensive Sanctuary evaluation plan |
| EV-1.2 | Conduct annual program review |
| EV-1.3 | Conduct comprehensive evaluation |
| EV-1.4 | Conduct management plan review |

Appendix 4: Reserve/Sanctuary Advisory Council

| | |
|------------------------------|---|
| Native Hawaiian | Member: Louis Agard (elder) Alternate: Isabella Aiona Abbott (elder) |
| | Member: William Aila Alternate: Tammy Harp |
| | Member: Vacant Alternate: Carlos Andrade |
| Research | Member: Cynthia Hunter Alternate: Kanekoa Shultz |
| | Member: William Gilmartin Alternate: Brian Bowen |
| | Member: Don Schug Alternate: William Worchester |
| Conservation | Member: Paul Achitoff Alternate: Jessica Wooley |
| | Member: Linda Paul Alternate: Julie Leialoha |
| | Member: Laura Thompson Alternate: Carol Wilcox |
| Commercial Fishing | Member: Robert Gomes Alternate: Gary Dill |
| Recreational Fishing | Member: Rick Gaffney Alternate: Rick Hoo |
| Education | Member: Gail Grabowsky Alternate: Gail Clarke |
| Ocean-Related Tourism | Member: Vacant Alternate: Matthew Zimmerman |
| Citizen-At-Large | Member: Kem Lowry Alternate: Sean Naleimaile |
| State of Hawaii | Member: Timothy Johns Alternate: Athline Clark |

Appendix 4: Reserve/Sanctuary Advisory Council (Continued)

| Non-voting Representatives from the following agencies | |
|---|--|
| Department of Defense | National Science Foundation |
| Department of the Interior | U.S. Coast Guard |
| Department of State | Western Pacific Regional Fishery Management Council |
| Marine Mammal Commission | Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve |
| National Marine Fisheries Service | Hawaiian Islands Humpback Whale National Marine Sanctuary |

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Appendix 5: National Marine Sanctuaries Act

National Marine Sanctuaries Act

*Title 16, Chapter 32, Sections 1431 et seq. United States Code
As amended by Public Law 106-513, November 2000*

| | |
|--|-----|
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| SEC. 305. [16 U.S.C. 1435] APPLICATION OF REGULATIONS; INTERNATIONAL NEGOTIATIONS AND COOPERATION..... | 339 |
| SEC. 306. [16 U.S.C. 1436] PROHIBITED ACTIVITIES..... | 340 |
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| SEC. 310. [16 U.S.C. 1441] SPECIAL USE PERMITS..... | 345 |
| SEC. 311. [16 U.S.C. 1442] COOPERATIVE AGREEMENTS, DONATIONS, AND ACQUISITIONS..... | 346 |
| SEC. 312. [16 U.S.C. 1443] DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES..... | 347 |
| SEC. 313. [16 U.S.C. 1444] AUTHORIZATION OF APPROPRIATIONS..... | 349 |
| SEC. 314. [16 U.S.C. 1445] U.S.S. MONITOR ARTIFACTS AND MATERIALS..... | 349 |
| SEC. 315. [16 U.S.C. 1445A] ADVISORY COUNCILS..... | 350 |
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SEC. 301. [16 U.S.C. 1431] FINDINGS, PURPOSES, AND POLICIES; ESTABLISHMENT OF SYSTEM

- (a) FINDINGS.—The Congress finds that—
- (1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these efforts have been directed almost exclusively to land areas above the high-water mark;
 - (2) certain areas of the marine environment possess conservation, recreational, ecological; historical, scientific, educational, cultural, archeological, or esthetic qualities which give them special national, and in some cases international, significance;

- (3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment; and
 - (4) a Federal program which establishes areas of the marine environment which have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities as national marine sanctuaries managed as the National Marine Sanctuary System will—
 - (A) improve the conservation, understanding, management, and wise and sustainable use of marine resources;
 - (B) enhance public awareness, understanding, and appreciation of the marine environment; and
 - (C) maintain for future generations the habitat, and ecological services, of the natural assemblage of living resources that inhabit these areas.
- (b) PURPOSES AND POLICIES.—The purposes and policies of this chapter are—
- (1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System;
 - (2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;
 - (3) to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes;
 - (4) to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System;
 - (5) to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas;
 - (6) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;
 - (7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;
 - (8) to create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques; and
 - (9) to cooperate with global programs encouraging conservation of marine resources.

- (c) ESTABLISHMENT OF SYSTEM.—There is established the National Marine Sanctuary System, which shall consist of national marine sanctuaries designated by the Secretary in accordance with this chapter.

SEC. 302. [16 U.S.C. 1432] DEFINITIONS

As used in this chapter, the term—

- (1) “draft management plan” means the plan described in section 1434(a)(1)(C)(v) of this title;
- (2) “Magnuson-Stevens Act” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);
- (3) “marine environment” means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law;
- (4) “Secretary” means the Secretary of Commerce;
- (5) “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States;
- (6) “damages” includes—
 - (A) compensation for—
 - (i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and (II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or
 - (ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired;
 - (B) the cost of damage assessments under section 1443(b)(2) of this title;
 - (C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;
 - (D) the cost of curation and conservation of archeological, historical, and cultural sanctuary resources; and
 - (E) the cost of enforcement actions undertaken by the Secretary in response to the destruction or loss of, or injury to, a sanctuary resource;
- (7) “response costs” means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss, or injury, including costs related to seizure, forfeiture, storage, or disposal arising from liability under section 1443 of this title;
- (8) “sanctuary resource” means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical,

educational, cultural, archeological, scientific, or aesthetic value of the sanctuary;
and

- (9) “exclusive economic zone” means the exclusive economic zone as defined in the Magnuson-Stevens Act; and
- (10) “System” means the National Marine Sanctuary System established by section 1431 of this title.

SEC. 303. [16 U.S.C. 1433] SANCTUARY DESIGNATION STANDARDS

- (a) **STANDARDS.**—The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary determines that—
 - (1) the designation will fulfill the purposes and policies of this chapter;
 - (2) the area is of special national significance due to—
 - (A) its conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities;
 - (B) the communities of living marine resources it harbors; or
 - (C) its resource or human-use values;
 - (3) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;
 - (4) designation of the area as a national marine sanctuary will facilitate the objectives stated in paragraph (3); and
 - (5) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.
- (b) **FACTORS AND CONSULTATIONS REQUIRED IN MAKING DETERMINATIONS AND FINDINGS.**—
 - (1) **FACTORS.**—For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a) of this section, the Secretary shall consider—
 - (A) the area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site;
 - (B) the area's historical, cultural, archaeological, or paleontological significance;
 - (C) the present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

- (D) the present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C);
 - (E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this chapter;
 - (F) the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;
 - (G) the public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;
 - (H) the negative impacts produced by management restrictions on incomegenerating activities such as living and nonliving resources development;
 - (I) the socioeconomic effects of sanctuary designation;
 - (J) the area's scientific value and value for monitoring the resources and natural processes that occur there;
 - (K) the feasibility, where appropriate, of employing innovative management approaches to protect sanctuary resources or to manage compatible uses; and
 - (L) the value of the area as an addition to the System.
- (2) CONSULTATION.—In making determinations and findings, the Secretary shall consult with—
- (A) the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;
 - (B) the Secretaries of State, Defense, Transportation, and the Interior, the Administrator, and the heads of other interested Federal agencies;
 - (C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary;
 - (D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson-Stevens Act (16 U.S.C. 1852) that may be affected by the proposed designation; and
 - (E) other interested persons.

SEC. 304. [16 U.S.C. 1434] PROCEDURES FOR DESIGNATION AND IMPLEMENTATION

- (a) SANCTUARY PROPOSAL.—
- (1) NOTICE.—In proposing to designate a national marine sanctuary, the Secretary shall—

- (A) issue, in the Federal Register, a notice of the proposal, proposed regulations that may be necessary and reasonable to implement the proposal, and a summary of the draft management plan;
 - (B) provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal; and
 - (C) no later than the day on which the notice required under subparagraph (A) is submitted to the Office of the Federal Register, submit a copy of that notice and the draft sanctuary designation documents prepared pursuant to paragraph (2), including an executive summary, to the Committee on Resources of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Governor of each State in which any part of the proposed sanctuary would be located.
- (2) SANCTUARY DESIGNATION DOCUMENTS.—The Secretary shall prepare and make available to the public sanctuary designation documents on the proposal that include the following:
- (A) A draft environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).
 - (B) A resource assessment that documents—
 - (i) present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial, governmental, or recreational uses;
 - (ii) after consultation with the Secretary of the Interior, any commercial, governmental, or recreational resource uses in the areas that are subject to the primary jurisdiction of the Department of the Interior; and
 - (iii) information prepared in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, on any past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary. Public disclosure by the Secretary of such information shall be consistent with national security regulations.
 - (C) A draft management plan for the proposed national marine sanctuary that includes the following:
 - (i) The terms of the proposed designation.
 - (ii) Proposed mechanisms to coordinate existing regulatory and management authorities within the area.
 - (iii) The proposed goals and objectives, management responsibilities, resource studies, and appropriate strategies for managing sanctuary resources of the proposed sanctuary, including interpretation and education, innovative management strategies, research, monitoring and assessment, resource protection, restoration, enforcement, and surveillance activities.

- (iv) An evaluation of the advantages of cooperative State and Federal management if all or part of the proposed sanctuary is within the territorial limits of any State or is superjacent to the subsoil and seabed within the seaward boundary of a State, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 et seq.).
 - (v) An estimate of the annual cost to the Federal Government of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education.
 - (vi) The proposed regulations referred to in paragraph (1)(A).
 - (D) Maps depicting the boundaries of the proposed sanctuary.
 - (E) The basis for the determinations made under section 1433(a) of this title with respect to the area.
 - (F) An assessment of the considerations under section 1433(b)(1) of this title.
- (3) PUBLIC HEARING.—No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national marine sanctuary for the purpose of receiving the views of interested parties.
- (4) TERMS OF DESIGNATION.—The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The terms of designation may be modified only by the same procedures by which the original designation is made.
- (5) FISHING REGULATIONS.—The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The

Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

- (6) COMMITTEE ACTION.—After receiving the documents under subsection (a)(1)(C) of this section, the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the documents. If within the forty-five day period of continuous session of Congress beginning on the date of submission of the documents, either Committee issues a report concerning matters addressed in the documents, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.

(b) TAKING EFFECT OF DESIGNATIONS.—

- (1) NOTICE.—In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. The Secretary shall issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6) of this section. The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless, in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.
- (2) WITHDRAWAL OF DESIGNATION.—If the Secretary considers that actions taken under paragraph (1) will affect the designation of a national marine sanctuary in a manner that the goals and objectives of the sanctuary or System cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not certified under paragraph (1) shall take effect.

- (3) PROCEDURES.—In computing the forty-five-day periods of continuous session of Congress pursuant to subsection (a)(6) of this section and paragraph (1) of this subsection—
 - (A) continuity of session is broken only by an adjournment of Congress sine die; and
 - (B) the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.
- (c) ACCESS AND VALID RIGHTS.—
 - (1) Nothing in this chapter shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary.
 - (2) The exercise of a lease, permit, license, or right is subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.
- (d) INTERAGENCY COOPERATION.—
 - (1) REVIEW OF AGENCY ACTIONS.—
 - (A) IN GENERAL.—Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Secretary.
 - (B) AGENCY STATEMENTS REQUIRED.—Subject to any regulations the Secretary may establish each Federal agency proposing an action described in subparagraph (A) shall provide the Secretary with a written statement describing the action and its potential effects on sanctuary resources at the earliest practicable time, but in no case later than 45 days before the final approval of the action unless such Federal agency and the Secretary agree to a different schedule.
 - (2) SECRETARY'S RECOMMENDED ALTERNATIVES.—If the Secretary finds that a Federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall (within 45 days of receipt of complete information on the proposed agency action) recommend reasonable and prudent alternatives, which may include conduct of the action elsewhere, which can be taken by the Federal agency in implementing the agency action that will protect sanctuary resources.
 - (3) RESPONSE TO RECOMMENDATIONS.—The agency head who receives the Secretary's recommended alternatives under paragraph (2) shall promptly consult with the Secretary on the alternatives. If the agency head decides not to follow the alternatives, the agency head shall provide the Secretary with a written statement explaining the reasons for that decision.
 - (4) FAILURE TO FOLLOW ALTERNATIVE.—If the head of a Federal agency takes an action other than an alternative recommended by the Secretary and such action results in the destruction of, loss of, or injury to a sanctuary resource, the head of

the agency shall promptly prevent and mitigate further damage and restore or replace the sanctuary resource in a manner approved by the Secretary.

- (e) REVIEW OF MANAGEMENT PLANS.—Not more than five years after the date of designation of any national marine sanctuary, and thereafter at intervals not exceeding five years, the Secretary shall evaluate the substantive progress toward implementing the management plan and goals for the sanctuary, especially the effectiveness of site-specific management techniques and strategies, and shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this chapter. This review shall include a prioritization of management objectives.
- (f) LIMITATION ON DESIGNATION OF NEW SANCTUARIES.—
 - (1) FINDING REQUIRED.—The Secretary may not publish in the Federal Register any sanctuary designation notice or regulations proposing to designate a new sanctuary, unless the Secretary has published a finding that—
 - (A) the addition of a new sanctuary will not have a negative impact on the System; and
 - (B) sufficient resources were available in the fiscal year in which the finding is made to —
 - (i) effectively implement sanctuary management plans for each sanctuary in the System; and
 - (ii) complete site characterization studies and inventory known sanctuary resources, including cultural resources, for each sanctuary in the System within 10 years after the date that the finding is made if the resources available for those activities are maintained at the same level for each fiscal year in that 10 year period.
 - (2) DEADLINE.—If the Secretary does not submit the findings required by paragraph (1) before February 1, 2004, the Secretary shall submit to the Congress before October 1, 2004, a finding with respect to whether the requirements of subparagraphs (A) and (B) of paragraph (1) have been met by all existing sanctuaries.
 - (3) LIMITATION ON APPLICATION.—Paragraph (1) does not apply to any sanctuary designation documents for—
 - (A) a Thunder Bay National Marine Sanctuary; or
 - (B) a Northwestern Hawaiian Islands National Marine Sanctuary.

SEC. 305. [16 U.S.C. 1435] APPLICATION OF REGULATIONS; INTERNATIONAL NEGOTIATIONS AND COOPERATION

- (a) REGULATIONS.—This chapter and the regulations issued under section 1434 of this title shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with—

- (1) generally recognized principles of international law;
 - (2) an agreement between the United States and the foreign state of which the person is a citizen; or
 - (3) an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.
- (b) **NEGOTIATIONS.**—The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.
- (c) **INTERNATIONAL COOPERATION.**—The Secretary, in consultation with the Secretary of State and other appropriate Federal agencies, shall cooperate with other governments and international organizations in furtherance of the purposes and policies of this chapter and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.

SEC. 306. [16 U.S.C. 1436] PROHIBITED ACTIVITIES

It is unlawful for any person to—

- (1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;
- (2) possess, sell, offer for sale, purchase, import, export, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;
- (3) interfere with the enforcement of this chapter by—
 - (A) refusing to permit any officer authorized to enforce this chapter to board a vessel, other than a vessel operated by the Department of Defense or United States Coast Guard, subject to such person's control for the purposes of conducting any search or inspection in connection with the enforcement of this chapter;
 - (B) resisting, opposing, impeding, intimidating, harassing, bribing, interfering with, or forcibly assaulting any person authorized by the Secretary to implement this chapter or any such authorized officer in the conduct of any search or inspection performed under this chapter; or
 - (C) knowingly and willfully submitting false information to the Secretary or any officer authorized to enforce this chapter in connection with any search or inspection conducted under this chapter; or
- (4) violate any provision of this chapter or any regulation or permit issued pursuant to this chapter.

SEC. 307. [16 U.S.C. 1437] ENFORCEMENT

- (a) **IN GENERAL.**—The Secretary shall conduct such enforcement activities as are necessary and reasonable to carry out this chapter.

- (b) **POWERS OF AUTHORIZED OFFICERS.**—Any person who is authorized to enforce this chapter may—
- (1) board, search, inspect, and seize any vessel suspected of being used to violate this chapter or any regulation or permit issued under this chapter and any equipment, stores, and cargo of such vessel;
 - (2) seize wherever found any sanctuary resource taken or retained in violation of this chapter or any regulation or permit issued under this chapter;
 - (3) seize any evidence of a violation of this chapter or of any regulation or permit issued under this chapter;
 - (4) execute any warrant or other process issued by any court of competent jurisdiction;
 - (5) exercise any other lawful authority; and
 - (6) arrest any person, if there is reasonable cause to believe that such person has committed an act prohibited by section 1436(3) of this title.
- (c) **CRIMINAL OFFENSES.**—
- (1) **OFFENSES.**—A person is guilty of an offense under this subsection if the person commits any act prohibited by section 1436(3) of this title.
 - (2) **PUNISHMENT.**—Any person that is guilty of an offense under this subsection—
 - (A) except as provided in subparagraph (B), shall be fined under title 18, imprisoned for not more than 6 months, or both; or
 - (B) in the case of a person who in the commission of such an offense uses a dangerous weapon, engages in conduct that causes bodily injury to any person authorized to enforce this chapter or any person authorized to implement the provisions of this chapter, or places any such person in fear of imminent bodily injury, shall be fined under title 18, imprisoned for not more than 10 years, or both.
- (d) **CIVIL PENALTIES.**—
- (1) **CIVIL PENALTY.**—Any person subject to the jurisdiction of the United States who violates this chapter or any regulation or permit issued under this chapter shall be liable to the United States for a civil penalty of not more than \$100,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.
 - (2) **NOTICE.**—No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.
 - (3) **IN REM JURISDICTION.**—A vessel used in violating this chapter or any regulation or permit issued under this chapter shall be liable in rem for any civil penalty assessed for such violation. Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

- (4) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order.
 - (5) COLLECTION OF PENALTIES.—If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.
 - (6) COMPROMISE OR OTHER ACTION BY SECRETARY.—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.
- (e) FORFEITURE.—
- (1) IN GENERAL.—Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this chapter or of any regulation or permit issued under this chapter shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection. The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section 1443 of this title. None of those proceeds shall be subject to set-off.
 - (2) APPLICATION OF THE CUSTOMS LAWS.—The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this chapter.
 - (3) DISPOSAL OF SANCTUARY RESOURCES.—Any sanctuary resource seized pursuant to this chapter may be disposed of pursuant to an order of the appropriate court, or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.
 - (4) PRESUMPTION.—For the purposes of this section there is a rebuttable presumption that all sanctuary resources found on board a vessel that is used or seized in connection with a violation of this chapter or of any regulation or permit issued under this chapter were taken or retained in violation of this chapter or of a regulation or permit issued under this chapter.
- (f) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.—
- (1) EXPENDITURES.—

- (A) Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 9607(f)(1) of title 42.
 - (B) Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property seized in connection with a violation of this chapter or any regulation or permit issued under this chapter.
 - (C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to—
 - (i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;
 - (ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this chapter or any regulation or permit issued under this chapter; and
 - (iii) manage and improve any other national marine sanctuary.
- (2) **LIABILITY FOR COSTS.**—Any person assessed a civil penalty for a violation of this chapter or of any regulation or permit issued under this chapter, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any sanctuary resource or other property seized in connection with the violation.
- (g) **SUBPOENAS.**—In the case of any hearing under this section which is determined on the record in accordance with the procedures provided for under section 554 of title 5, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, electronic files, and documents, and may administer oaths.
- (h) **USE OF RESOURCES OF STATE AND OTHER FEDERAL AGENCIES.**—The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary’s responsibilities under this section.
- (i) **COAST GUARD AUTHORITY NOT LIMITED.**—Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14.
- (j) **INJUNCTIVE RELIEF.**—If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section 1443 of this title, the Attorney General, upon request of the Secretary, shall

seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

- (k) **AREA OF APPLICATION AND ENFORCEABILITY.**—The area of application and enforceability of this chapter includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law.
- (l) **NATIONWIDE SERVICE OF PROCESS.**—In any action by the United States under this chapter, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

SEC. 308. [16 U.S.C. 1439] REGULATIONS

The Secretary may issue such regulations as may be necessary to carry out this chapter.

SEC. 309. [16 U.S.C. 1440] RESEARCH, MONITORING, AND EDUCATION

- (a) **IN GENERAL.**—The Secretary shall conduct, support, or coordinate research, monitoring, evaluation, and education programs consistent with subsections (b) and (c) of this section and the purposes and policies of this chapter.
- (b) **RESEARCH AND MONITORING.**—
 - (1) **IN GENERAL.**—The Secretary may—
 - (A) support, promote, and coordinate research on, and long-term monitoring of, sanctuary resources and natural processes that occur in national marine sanctuaries, including exploration, mapping, and environmental and socioeconomic assessment;
 - (B) develop and test methods to enhance degraded habitats or restore damaged, injured, or lost sanctuary resources; and
 - (C) support, promote, and coordinate research on, and the conservation, curation, and public display of, the cultural, archeological, and historical resources of national marine sanctuaries.
 - (2) **AVAILABILITY OF RESULTS.**—The results of research and monitoring conducted, supported, or permitted by the Secretary under this subsection shall be made available to the public.
- (c) **EDUCATION.**—
 - (1) **IN GENERAL.**—The Secretary may support, promote, and coordinate efforts to enhance public awareness, understanding, and appreciation of national marine sanctuaries and the System. Efforts supported, promoted, or coordinated under this subsection must emphasize the conservation goals and sustainable public uses of national marine sanctuaries and the System.

- (2) EDUCATIONAL ACTIVITIES.—Activities under this subsection may include education of the general public, teachers, students, national marine sanctuary users, and ocean and coastal resource managers.
- (d) INTERPRETIVE FACILITIES.—
 - (1) IN GENERAL.—The Secretary may develop interpretive facilities near any national marine sanctuary.
 - (2) FACILITY REQUIREMENT.—Any facility developed under this subsection must emphasize the conservation goals and sustainable public uses of national marine sanctuaries by providing the public with information about the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities of the national marine sanctuary.
- (e) CONSULTATION AND COORDINATION.—In conducting, supporting, and coordinating research, monitoring, evaluation, and education programs under subsection (a) of this section and developing interpretive facilities under subsection (d) of this section, the Secretary may consult or coordinate with Federal, interstate, or regional agencies, States or local governments.

SEC. 310. [16 U.S.C. 1441] SPECIAL USE PERMITS

- (a) ISSUANCE OF PERMITS.—The Secretary may issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines such authorization is necessary—
 - (1) to establish conditions of access to and use of any sanctuary resource; or
 - (2) to promote public use and understanding of a sanctuary resource.
- (b) PUBLIC NOTICE REQUIRED.—The Secretary shall provide appropriate public notice before identifying any category of activity subject to a special use permit under subsection (a) of this section.
- (c) PERMIT TERMS.—A permit issued under this section—
 - (1) shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;
 - (2) shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;
 - (3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and
 - (4) 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.
- (d) FEES.—

- (1) ASSESSMENT AND COLLECTION.—The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.
- (2) AMOUNT.—The amount of a fee under this subsection shall be equal to the sum of—
 - (A) costs incurred, or expected to be incurred, by the Secretary in issuing the permit;
 - (B) costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and
 - (C) an amount which represents the fair market value of the use of the sanctuary resource.
- (3) USE OF FEES.—Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary—
 - (A) for issuing and administering permits under this section; and
 - (B) for expenses of managing national marine sanctuaries.
- (4) WAIVER OR REDUCTION OF FEES.—The Secretary may accept in-kind contributions in lieu of a fee under paragraph (2)(C), or waive or reduce any fee assessed under this subsection for any activity that does not derive profit from the access to or use of sanctuary resources.
- (e) VIOLATIONS.—Upon violation of a term or condition of a permit issued under this section, the Secretary may—
 - (1) suspend or revoke the permit without compensation to the permittee and without liability to the United States;
 - (2) assess a civil penalty in accordance with section 1437 of this title; or
 - (3) both.
- (f) REPORTS.—Each person issued a permit under this section shall submit an annual report to the Secretary not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.
- (g) FISHING.—Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities in a national marine sanctuary.

SEC. 311. [16 U.S.C. 1442] COOPERATIVE AGREEMENTS, DONATIONS, AND ACQUISITIONS

- (a) AGREEMENTS AND GRANTS.—The Secretary may enter into cooperative agreements, contracts, or other agreements with, or make grants to, States, local governments, regional agencies, interstate agencies, or other persons to carry out the purposes and policies of this chapter.

- (b) AUTHORIZATION TO SOLICIT DONATIONS.—The Secretary may enter into such agreements with any nonprofit organization authorizing the organization to solicit private donations to carry out the purposes and policies of this chapter.
- (c) DONATIONS.—The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this chapter. Donations accepted under this section shall be considered as a gift or bequest to or for the use of the United States.
- (d) ACQUISITIONS.—The Secretary may acquire by purchase, lease, or exchange, any land, facilities, or other property necessary and appropriate to carry out the purposes and policies of this chapter.
- (e) USE OF RESOURCES OF OTHER GOVERNMENT AGENCIES.—The Secretary may, whenever appropriate, enter into an agreement with a State or other Federal agency to use the personnel, services, or facilities of such agency on a reimbursable or nonreimbursable basis, to assist in carrying out the purposes and policies of this chapter.
- (f) AUTHORITY TO OBTAIN GRANTS.—Notwithstanding any other provision of law that prohibits a Federal agency from receiving assistance, the Secretary may apply for, accept, and use grants from other Federal agencies, States, local governments, regional agencies, interstate agencies, foundations, or other persons, to carry out the purposes and policies of this chapter.

SEC. 312. [16 U.S.C. 1443] DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES

- (a) LIABILITY.—
 - (1) LIABILITY TO UNITED STATES.—Any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for an amount equal to the sum of—
 - (A) the amount of response costs and damages resulting from the destruction, loss, or injury; and
 - (B) interest on that amount calculated in the manner described under section 2705 of title 33.
 - (2) LIABILITY IN REM.—Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.
 - (3) DEFENSES.—A person is not liable under this subsection if that person establishes that—
 - (A) the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;

- (B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or
 - (C) the destruction, loss, or injury was negligible.
- (4) LIMITS TO LIABILITY.—Nothing in sections 181 to 188 of title 46, Appendix, or section 192 of title 46, Appendix, shall limit the liability of any person under this chapter.
- (b) RESPONSE ACTIONS AND DAMAGE ASSESSMENT.—
 - (1) RESPONSE ACTIONS.—The Secretary may undertake or authorize all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury.
 - (2) DAMAGE ASSESSMENT.—The Secretary shall assess damages to sanctuary resources in accordance with section 1432(6) of this title.
- (c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAMAGES.—
 - (1) The Attorney General, upon request of the Secretary, may commence a civil action against any person or vessel who may be liable under subsection (a) of this section for response costs and damages. The Secretary, acting as trustee for sanctuary resources for the United States, shall submit a request for such an action to the Attorney General whenever a person may be liable for such costs or damages.
 - (2) An action under this subsection may be brought in the United States district court for any district in which—
 - (A) the defendant is located, resides, or is doing business, in the case of an action against a person;
 - (B) the vessel is located, in the case of an action against a vessel; or
 - (C) the destruction of, loss of, or injury to a sanctuary resource occurred.
- (d) USE OF RECOVERED AMOUNTS.—Response costs and damages recovered by the Secretary under this section shall be retained by the Secretary in the manner provided for in section 9607(f)(1) of title 42, and used as follows:
 - (1) RESPONSE COSTS.—Amounts recovered by the United States for costs of response actions and damage assessments under this section shall be used, as the Secretary considers appropriate—
 - (A) to reimburse the Secretary or any other Federal or State agency that conducted those activities; and
 - (B) after reimbursement of such costs, to restore, replace, or acquire the equivalent of any sanctuary resource.
 - (2) OTHER AMOUNTS.—All other amounts recovered shall be used, in order of priority—
 - (A) to restore, replace, or acquire the equivalent of the sanctuary resources that were the subject of the action, including for costs of monitoring and the costs of curation and conservation of archeological, historical, and cultural sanctuary resources;

- (B) to restore degraded sanctuary resources of the national marine sanctuary that was the subject of the action, giving priority to sanctuary resources and habitats that are comparable to the sanctuary resources that were the subject of the action; and
 - (C) to restore degraded sanctuary resources of other national marine sanctuaries.
- (3) FEDERAL-STATE COORDINATION.—Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2)(A) and (B) in accordance with the court decree or settlement agreement and an agreement entered into by the Secretary and the Governor of that State.
- (e) STATUTE OF LIMITATIONS.—An action for response costs or damages under subsection (c) of this section shall be barred unless the complaint is filed within 3 years after the date on which the Secretary completes a damage assessment and restoration plan for the sanctuary resources to which the action relates.

SEC. 313. [16 U.S.C. 1444] AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to the Secretary—

- (1) to carry out this chapter—
 - (A) \$32,000,000 for fiscal year 2001;
 - (B) \$34,000,000 for fiscal year 2002;
 - (C) \$36,000,000 for fiscal year 2003;
 - (D) \$38,000,000 for fiscal year 2004;
 - (E) \$40,000,000 for fiscal year 2005; and
- (2) for construction projects at national marine sanctuaries, \$6,000,000 for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

SEC. 314. [16 U.S.C. 1445] U.S.S. MONITOR ARTIFACTS AND MATERIALS

- (a) CONGRESSIONAL POLICY.—In recognition of the historical significance of the wreck of the United States ship Monitor to coastal North Carolina and to the area off the coast of North Carolina known as the Graveyard of the Atlantic, the Congress directs that a suitable display of artifacts and materials from the United States ship Monitor be maintained permanently at an appropriate site in coastal North Carolina.
- (b) DISCLAIMER.—This section shall not affect the following:
 - (1) RESPONSIBILITIES OF SECRETARY.—The responsibilities of the Secretary to provide for the protection, conservation, and display of artifacts and materials from the United States ship Monitor.
 - (2) AUTHORITY OF SECRETARY.—The authority of the Secretary to designate the Mariner's Museum, located at Newport News, Virginia, as the principal museum for coordination of activities referred to in paragraph (1).

SEC. 315. [16 U.S.C. 1445A] ADVISORY COUNCILS

- (a) ESTABLISHMENT.—The Secretary may establish one or more advisory councils (in this section referred to as an “Advisory Council”) to advise and make recommendations to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act.
- (b) MEMBERSHIP.—Members of the Advisory Councils may be appointed from among—
 - (1) persons employed by Federal or State agencies with expertise in management of natural resources;
 - (2) members of relevant Regional Fishery Management Councils established under section 1852 of this title; and
 - (3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.
- (c) LIMITS ON MEMBERSHIP.—For sanctuaries designated after November 4, 1992, the membership of Advisory Councils shall be limited to no more than 15 members.
- (d) STAFFING AND ASSISTANCE.—The Secretary may make available to an Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonably required to enable the Advisory Council to carry out its functions.
- (e) PUBLIC PARTICIPATION AND PROCEDURAL MATTERS.—The following guidelines apply with respect to the conduct of business meetings of an Advisory Council:
 - (1) Each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda.
 - (2) Emergency meetings may be held at the call of the chairman or presiding officer.
 - (3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register, except that in the case of a meeting of an Advisory Council established to provide assistance regarding any individual national marine sanctuary the notice is not required to be published in the Federal Register.
 - (4) Minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

SEC. 316. [16 U.S.C. 1445B] ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES

- (a) AUTHORITY.—The Secretary may establish a program consisting of—
 - (1) the creation, adoption, and publication in the Federal Register by the Secretary of a symbol for the national marine sanctuary program, or for individual national marine sanctuaries or the System;
 - (2) the solicitation of persons to be designated as official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

- (3) the designation of persons by the Secretary as official sponsors of the national marine sanctuary program or of individual sanctuaries;
 - (4) the authorization by the Secretary of the manufacture, reproduction, or other use of any symbol published under paragraph (1), including the sale of items bearing such a symbol, by official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;
 - (5) the creation, marketing, and selling of products to promote the national marine sanctuary program, and entering into exclusive or nonexclusive agreements authorizing entities to create, market or sell on the Secretary's behalf;
 - (6) the solicitation and collection by the Secretary of monetary or in-kind contributions from official sponsors for the manufacture, reproduction or use of the symbols published under paragraph (1);
 - (7) the retention of any monetary or in-kind contributions collected under paragraphs (5) and (6) by the Secretary; and
 - (8) the expenditure and use of any monetary and in-kind contributions, without appropriation, by the Secretary to designate and manage national marine sanctuaries. Monetary and in-kind contributions raised through the sale, marketing, or use of symbols and products related to an individual national marine sanctuary shall be used to support that sanctuary.
- (b) **CONTRACT AUTHORITY.**—The Secretary may contract with any person for the creation of symbols or the solicitation of official sponsors under subsection (a) of this section.
- (c) **RESTRICTIONS.**—The Secretary may restrict the use of the symbols published under subsection (a) of this section, and the designation of official sponsors of the national marine sanctuary program or of individual national marine sanctuaries to ensure compatibility with the goals of the national marine sanctuary program.
- (d) **PROPERTY OF UNITED STATES.**—Any symbol which is adopted by the Secretary and published in the Federal Register under subsection (a) of this section is deemed to be the property of the United States.
- (e) **PROHIBITED ACTIVITIES.**—It is unlawful for any person—
- (1) designated as an official sponsor to influence or seek to influence any decision by the Secretary or any other Federal official related to the designation or management of a national marine sanctuary, except to the extent that a person who is not so designated may do so;
 - (2) to represent himself or herself to be an official sponsor absent a designation by the Secretary;
 - (3) to manufacture, reproduce, or otherwise use any symbol adopted by the Secretary under subsection (a)(1) of this section, including to sell any item bearing such a symbol, unless authorized by the Secretary under subsection (a)(4) of this section or subsection (f) of this section; or
 - (4) to violate any regulation promulgated by the Secretary under this section.

- (f) COLLABORATIONS.—The Secretary may authorize the use of a symbol adopted by the Secretary under subsection (a)(1) of this section by any person engaged in a collaborative effort with the Secretary to carry out the purposes and policies of this chapter and to benefit a national marine sanctuary or the System.
- (g) AUTHORIZATION FOR NON-PROFIT PARTNER ORGANIZATION TO SOLICIT SPONSORS.—
 - (1) IN GENERAL.—The Secretary may enter into an agreement with a non-profit partner organization authorizing it to assist in the administration of the sponsorship program established under this section. Under an agreement entered into under this paragraph, the Secretary may authorize the non-profit partner organization to solicit persons to be official sponsors of the national marine sanctuary system or of individual national marine sanctuaries, upon such terms as the Secretary deems reasonable and will contribute to the successful administration of the sanctuary system. The Secretary may also authorize the non-profit partner organization to collect the statutory contribution from the sponsor, and, subject to paragraph (2), transfer the contribution to the Secretary.
 - (2) REIMBURSEMENT FOR ADMINISTRATIVE COSTS.—Under the agreement entered into under paragraph (1), the Secretary may authorize the non-profit partner organization to retain not more than 5 percent of the amount of monetary contributions it receives from official sponsors under the agreement to offset the administrative costs of the organization in soliciting sponsors.
 - (3) PARTNER ORGANIZATION DEFINED.—In this subsection, the term “partner organization” means an organization that—
 - (A) draws its membership from individuals, private organizations, corporations, academic institutions, or State and local governments; and
 - (B) is established to promote the understanding of, education relating to, and the conservation of the resources of a particular sanctuary or 2 or more related sanctuaries.

SEC. 317. [16 U.S.C. 1445NT] SHORT TITLE

This title may be cited as the “The National Marine Sanctuaries Act”.

SEC. 318 [16 U.S.C. 1445C] DR. NANCY FOSTER SCHOLARSHIP PROGRAM

- (a) ESTABLISHMENT.—The Secretary shall establish and administer through the National Ocean Service the Dr. Nancy Foster Scholarship Program. Under the program, the Secretary shall award graduate education scholarships in oceanography, marine biology or maritime archeology, to be known as Dr. Nancy Foster Scholarships.
- (b) PURPOSES.—The purposes of the Dr. Nancy Foster Scholarship Program are—
 - (1) to recognize outstanding scholarship in oceanography, marine biology, or maritime archeology, particularly by women and members of minority groups; and

- (2) to encourage independent graduate level research in oceanography, marine biology, or maritime archeology.
- (c) AWARD.—Each Dr. Nancy Foster Scholarship—
- (1) shall be used to support graduate studies in oceanography, marine biology, or maritime archeology at a graduate level institution of higher education; and
- (2) shall be awarded in accordance with guidelines issued by the Secretary.
- (d) DISTRIBUTION OF FUNDS.—The amount of each Dr. Nancy Foster Scholarship shall be provided directly to a recipient selected by the Secretary upon receipt of certification that the recipient will adhere to a specific and detailed plan of study and research approved by a graduate level institution of higher education.
- (e) FUNDING.—Of the amount available each fiscal year to carry out this chapter, the Secretary shall award 1 percent as Dr. Nancy Foster Scholarships.
- (f) SCHOLARSHIP REPAYMENT REQUIREMENT.—The Secretary shall require an individual receiving a scholarship under this section to repay the full amount of the scholarship to the Secretary if the Secretary determines that the individual, in obtaining or using the scholarship, engaged in fraudulent conduct or failed to comply with any term or condition of the scholarship.
- (g) MARITIME ARCHEOLOGY DEFINED.—In this section the term “maritime archeology” includes the curation, preservation, and display of maritime artifacts.

Appendix 6: Sanctuary Designation Standards

INTRODUCTION

Under the NMSA the Secretary of Commerce may designate an area as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary makes a set of determinations and findings, and has considered factors and conducted consultations described in section 303 of the NMSA (16 U.S.C. 1431 *et seq.*). Section 303 (b) describes the consultations required in accordance with, the factors that were considered, and the findings regarding the designation of the NWHI National Marine Sanctuary.

SECTION I: CONSULTATIONS UNDER SECTION 303 (b)(2) OF THE NMSA:

Under section 303(b)(2) of the NMSA, the Secretary must consult with Congress, federal and state agencies, and other interested persons. Consultations regarding the NWHI National Marine Sanctuary have been conducted with the following:

- Department of Defense
- Department of Energy
- Department of Homeland Security
- Department of the Interior
- Department of Justice
- Department of State
- Department of Transportation
- Environmental Protection Agency
- United States Coast Guard
- Council on Environmental Quality
- NOAA National Marine Fisheries Service
- Western Pacific Fishery Management Council
- Governor, State of Hawaii
- State of Hawaii Department of Land and Natural Resources
- House of Representatives Committee on Resources
- Senate Committee on Commerce, Science and Transportation
- Members of Hawaii's Congressional Delegation

The comments and ideas received from the results of the consultations were considered in the preparation of the DEIS, draft management plan, and the proposed regulations. Additional consultations will be conducted and will include:

- Section 7 Endangered Species Act consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service
- Essential Fish Habitat consultation with the National Marine Fisheries pursuant to the Magnuson-Stevens Fishery Conservation and Management Act

- Federal consistency consultation with the State of Hawaii pursuant to the Coastal Zone Management Act
- The National Historic Preservation Act

SECTION II: FACTORS THAT HAVE BEEN CONSIDERED (Section 303 (b)(1)):

The following factors have been considered for purposes of determining whether the marine waters and the submerged lands of the NWHI proposed as a national marine sanctuary meet the standards set forth in Section 1433(a) for designation. Information describing these factors is set forth in greater detail in the EIS and, as appropriate, is incorporated into these determinations and findings as indicated.

(A) The area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and biogeographic representation of the site.

The waters and submerged lands of the Sanctuary, and their associated habitats, ecosystems, and organisms, are of national significance due to their exceptional natural resource and ecological qualities. The ecological interconnectedness among the NWHI, the main Hawaiian Islands, and other parts of the Pacific Ocean region is becoming increasingly evident as researchers document ocean circulation patterns, the distribution of marine species, and genetic information flow in the marine environment. Coral reefs and deepwater habitats of the NWHI are the foundation of multiple ecosystems that host a distinct assemblage of marine mammals, fish, sea turtles, birds, and invertebrates, including species that are endemic, rare, threatened, and/or endangered. The diverse array of geomorphologic features, including atolls, volcanic islands, seamounts, deepwater banks, and shoals of the NWHI hosts some of the healthiest and most extensive shallow and deepwater marine ecosystems in the world.

The NWHI are among the few, large-scale, intact, predator-dominated coral reef ecosystems left in the world, with apex predator biomass several orders of magnitude greater in the NWHI compared with the heavily fished main Hawaiian Islands. In many parts of the world, top-level carnivores have been overfished, resulting in significant changes in the structure and function of marine ecosystems. The NWHI is unique in supporting relatively intact marine ecosystems over a large area.

Roughly one third of reef fish and coral species found in the NWHI are believed to be endemic to the Hawaiian Archipelago. Because of their isolation and their relatively undisturbed condition, the NWHI host a number of federally protected species including the endangered Hawaiian monk seal (for which the NWHI serve as the major breeding site), the threatened green sea turtle, and other marine mammals, turtles, and birds. Threatened green sea turtles inhabit waters throughout the Hawaiian Archipelago but nest largely in the NWHI. While these species are protected under the Endangered Species Act and other national and international laws and

treaties, the proposed Sanctuary would provide additional protection for these highly vulnerable species.

The NWHI region is also important globally, as it is one of the world's most significant coral reef and marine ecosystems and would become the world's largest protected marine conservation area. The NWHI region serves as an example of ongoing geological processes, biological evolution, and the effects humans have had on the natural environment. The relatively pristine NWHI provide outstanding scientific, conservation and aesthetic value in contrast to most marine ecosystems around the world that are more heavily impacted by human activities at sea and from populations concentrated along the coast. At the same time, the more than one million pounds of marine debris that have been removed from the NWHI even as more marine debris continues to accumulate illustrates the impact that human actions have on distant, uninhabited ecosystems on an international scale. Recognition of the exceptional values of the NWHI have caused the State of Hawaii to nominate the NWHI as a United Nations Educational, Scientific, and Cultural Organization World Heritage Site.

Related information regarding the natural resources and ecological qualities of the area that has been considered for the purposes of these determinations and findings is found in Section 3.2 of the DEIS.

(B) The area's historical, cultural, archaeological or paleontological significance.

Polynesians were the discoverers of the Hawaiian archipelago and continued to inhabit the islands for thousands of years prior to Western contact. Today, Native Hawaiians continue to maintain strong cultural ties to the lands and seas, as documented in their oral and written histories, mythologies, genealogies, proverbs, songs and dances. In Hawaiian traditions, the NWHI are considered a sacred place, a region of primordial darkness from which life springs and spirits return after death. Much of the information about the NWHI has been passed down from generation to generation and eventually documented. Through these sources, Native Hawaiians are able to recount the travels of seafaring ancestors between the NWHI and the main Hawaiian Islands.

While the emergent land is not part of the Sanctuary - the Sanctuary comprises the marine waters and the submerged lands thereunder up to the mean high water line - it is part of the larger area of water, submerged lands, reefs, and islands that is inseparably connected to the essence of Native Hawaiian history and culture. The extensive evidence of human activity on the islands demonstrates that the surrounding waters and submerged lands were used by the earliest Hawaiians and were critical for fishing, transportation, cultural activities and spirituality. Today, Native Hawaiians maintain their strong cultural and spiritual ties to the Northwestern Hawaiian Islands. Cultural practitioners have voyaged to the NWHI to honor their ancestors and to perpetuate traditional practices. In 1997, Hui Malama i Na Kupuna o Hawai'i Nei repatriated sets of human remains to Nihoa and Necker Islands that were collected by archaeologists in 1924-25. In 2003, a cultural protocol group traveled to Nihoa on the voyaging canoe Hokule'a to conduct traditional ceremonies. In 2004, Hokule'a sailed over 1200 miles to the most distant

end of the island chain to visit Kure Atoll as part of a statewide educational initiative. In 2005, Na Kupu'eu Paimoku sailed to Necker to conduct protocol ceremonies on June 21, the summer solstice.

Related information describing in further detail the rich historical, cultural and archaeological of the NWHI and that has been considered for the purposes of these determinations and findings is found in Section 3.3 of the DEIS.

(C) The present and potential uses of the area that depend on maintenance of the area's resources, including commercial and recreational fishing, subsistence use, other commercial and recreational activities, and research and education.

Present and potential uses of the area that depend on maintenance of the resources of the area include commercial fishing for bottomfish and associated pelagic species; recreational activities that may include recreational and sport fishing, wildlife viewing, diving and snorkeling, and boating; ecotourism activities; Native Hawaiian cultural activities; educational activities; and scientific research. Information describing these activities and that has been considered for the purposes of these determinations and findings is found in Section 3.5 of the DEIS.

(D) The present and potential activities that may adversely affect the factors identified in subparagraphs (A), (B), and (C).

Without careful management, virtually all human activities could adversely affect the natural, historical, cultural, and sustainable uses of the area. The activities described in subparagraph C either extract, use or depend upon natural or cultural resources of the area. In addition, marine traffic in the area has the potential to cause adverse effects from incidents such as accidental groundings, oil spills and operational activities (e.g., anchoring, release of vessel discharges).

(E) The existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of the NMSA.

Descriptions of the jurisdictional authorities and the existing regulatory environment of the area that has been considered for the purposes of these determinations and findings are found in Sections 2.2 and 3.2 of the DEIS.

Existing authorities provide a measure of protection to many of the resources in the area but the Sanctuary will provide additional protection to all of the area's highly vulnerable resources. The state and federal agencies with jurisdiction over the various natural and cultural resources coordinate on a number of management activities in the NWHI. However, these agencies either manage discrete areas within the NWHI (e.g., state waters, National Wildlife Refuge), or manage discrete activities or species (e.g., fisheries management, endangered species). Comprehensive, collaborative management mechanisms are needed to provide comprehensive resource protection, promote cooperative ocean governance, to share limited financial resources, to review

the cumulative effect of the agencies' collective activities on an ecosystem basis, and to rapidly respond to important management issues.

(F) The manageability of the area, including such factors as the size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities.

At 139,793 square miles the area would be, by far, the largest sanctuary in the National Marine Sanctuary System and the largest marine conservation area in the world. The area includes a number of discrete ecosystems associated with the islands and atolls comprising the NWHI chain that will be encompassed by a clearly recognizable sanctuary boundary that mirrors the existing Coral Reef Ecosystem Reserve and NOAA Fisheries' longline exclusion zone, although the Sanctuary boundary would be "straight-lined" to facilitate enforcement and management. Although the Sanctuary is the largest of those in the system, public accessibility to the area is limited by the area's remote location and distance from population centers in the main Hawaiian islands, thus reducing the challenges of managing an area of this size. Moreover, managing such a large area would be facilitated by cooperative enforcement agreements and joint monitoring efforts that have been successfully used in other national marine sanctuaries. This will enable efficient use of resources and personnel among partner agencies. The Sanctuary will be in the position to establish strong links of communication and coordination among agencies and provide a leadership role in focusing disparate roles, responsibilities and activities of concerned agencies and groups in ways that will achieve important conservation objectives, through research, monitoring, education and enforcement. Sanctuary designation would therefore allow for integrated and coordinated management among jurisdictional entities and would make management of the vital resources of the NWHI more efficient and effective.

(G) The public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of national significance, vital habitats, and resources which generate tourism.

Coral reef ecosystems, which are among them most productive and biologically rich ecosystems on earth, are in a state of global decline as a direct or indirect result of human activities. The NWHI sanctuary represents a significant action for marine conservation in the United States as well as globally. Sanctuary designation will strengthen management of human activities and provide a coordinated and integrated enforcement regime. Sanctuary designation will facilitate interagency coordination, financial resource sharing, and the development of an integrated permitting system among jurisdictional agency partners. The Sanctuary will result in beneficial impacts on the preservation of cultural and historical resource and marine water quality, Native Hawaiian practices, and research providing new opportunities for management-driven, ecosystem science. While tourism is not anticipated to be a significant activity in the Sanctuary, protection of natural resources in the Sanctuary will support limited wildlife viewing, ecotourism, scuba diving and snorkeling, recreational and sport fishing, and wildlife photography. Additional information regarding beneficial impacts resulting from sanctuary

designation that have been considered for the purposes of these determinations and findings are found in Chapter 4 of the DEIS.

(H) The negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development.

Descriptions of the negative impacts resulting from management restrictions on income-generating activities that have been considered for the purposes of these determinations and findings are found in the Initial Regulatory Flexibility Analysis and in the DEIS at Chapters 2 and 4, with regard to the Preferred Alternative.

The Sanctuary designation will significantly impact commercial bottomfish and associated pelagic fishing activities and will have negative (but not significant) impact on the fishing industry as a result of the increased area in no-take zones and the phase out of fishing activity within 5 years of designation. The designation could result in potential impacts to present and future commercial ocean uses, pending the results of a feasibility study and pilot project to determine the compatibility of these uses within the Sanctuary.

(I) The socioeconomic effects of sanctuary designation.

Descriptions of socioeconomic effects of designation that have been considered for the purposes of these determinations and findings are found in the Initial Regulatory Flexibility Analysis and in Section 4.6 of the DEIS.

Long-term minor beneficial effects are expected to result from Sanctuary designation. Sanctuary-related management/research expenditures estimated for the first five years of Sanctuary establishment would increase total employment by about 209 jobs per year, increase income by about \$11.3 million and increase output by about \$17.5 million. These beneficial effects would offset impacts to the fishing industry.

Although there would be net economic gains, there would be an economic loss in the fishing industry. There would be no commercial fishing activity in the Sanctuary five years after designation, resulting in a loss of approximately 20 fishing jobs. The impact of this loss would be negligible relative to the overall economy of the State of Hawaii. The total loss of commercial fishermen's revenue when fishing is phased out would equal a direct loss of \$1 million in local bottomfish that would not enter the Hawaiian economy, representing less than 0.001 percent reduction in [ROI] earnings by the industry. The loss of the NWHI fishermen's jobs would represent a 0.006 decrease in [ROI] employment. Losses would be in the fishing industry; associated businesses (i.e., wholesale, retail, and service industry) would remain largely unaffected. Bottomfish imports could compensate for the loss of fish production in NWHI waters. The NWHI fishing jobs would be transferable to the main Hawaiian Islands; fishermen could possibly continue operating their boats in the main islands or could find jobs with other fishing operations in the main islands.

(J) The area's scientific value and value for monitoring the resources and natural processes that occur there.

Coral reef ecosystems, which are among the most productive and biologically rich ecosystems on earth, are in a state of global decline as a direct or indirect result of human activities. The NWHI region is one of the world's most significant coral reef and marine ecosystems and would become the world's largest protected marine conservation area. The NWHI region serves as an example of ongoing geological processes, biological evolution, and the effects humans have had on the natural environment. The relatively pristine NWHI provide outstanding scientific, conservation and aesthetic value in contrast to most marine ecosystems around the world that are more heavily impacted by human activities at sea and from populations concentrated along the coast.

Remote, uninhabited, and relatively pristine in comparison to the main Hawaiian Islands and other marine ecosystems in the world, the NWHI serve as one of the few modern sentinels for monitoring and deciphering short-term and long-term responses to local, regional, and global environmental and anthropogenic stressors. The NWHI are one of the few marine regions on earth where monitoring and research activities can be conducted in the virtual absence of local human habitation. Ongoing research and monitoring of the marine ecosystems in the NWHI will continue to provide significant insights that will benefit management not only for the NWHI but in the entire Hawaiian Archipelago and marine ecosystems around the world.

(K) The feasibility, where appropriate, of employing innovative management approaches to protect sanctuary resources or to manage compatible uses.

Several innovative management approaches will be used in the Sanctuary to facilitate management and the enforcement of Sanctuary regulations, which will result in greater protection of Sanctuary resources. Descriptions of management approaches that have been considered for the purposes of these determinations and findings are found in the Draft Management Plan Section 2.0.

Zoning will be used to provide greater protection to highly sensitive habitats, particularly shallow coral reefs. Discrete, biologically important areas of the Sanctuary are designated as Sanctuary Preservation Areas (SPAs) and resource extraction, and almost all forms of discharges will be prohibited. Other areas have been designated as Ecological Reserves, consisting of contiguous, diverse habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats. Resource extraction will be highly restricted within Ecological Reserves. In the Midway Atoll Special Management Area (SMA), permitted activities will be subject to a compatibility determination by the Director of the U.S. Fish and Wildlife Service, to ensure that activities occurring within the waters surrounding Midway Atoll meet the goals and objectives of the Sanctuary and complement and parallel the purposes for establishing the Midway Atoll National Wildlife Refuge.

Mobile transceiver units approved by NOAA Office for Law Enforcement will be required for vessels entering the Sanctuary. This requirement will be applied to all vessels, consistent with international law, and will greatly increase the efficient use of enforcement resources and interagency coordination.

Access restrictions and notification requirements to the Sanctuary will also provide greater protection to Sanctuary resources and will provide managers with a more complete information regarding geographic and temporal aspects of activities within the Sanctuary. A notification requirement to enter and leave the Sanctuary will also provide managers with information about overall vessel traffic.

To provide the highest level of protection from vessel activities, NOAA will, in accordance with sections 305(b) and (c) of the NMSA, will consider the development of proposals for measures applicable to foreign flag vessels, and will consult with the Department of State and other applicable agencies regarding the submission of any proposal by the Administration to the International Maritime Organization.

(L) The value of the area as an addition to the System.

The Northwestern Hawaiian Islands National Marine Sanctuary to the National Marine Sanctuary System will be an exceptionally valuable and significant addition to the System. The NWHI will be the 14th National Marine Sanctuary and will protect important coral reefs and their associated habitats within U.S. jurisdiction. Information derived from research in the NWHI may benefit other national marine sanctuaries with coral resources, such as the Florida Keys and Flower Garden Banks.

SECTION III: NMSA FINDINGS AND DETERMINATIONS

The following determinations are made in accordance with Section 303(a) of the NMSA. The factors set forth in Section 303(b)(1) and information received during consultations have been considered in making these determinations.

1. The designation of the NWHI National Marine Sanctuary will fulfill the purposes and policies of the National Marine Sanctuaries Act, which are:

- to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System;
- to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;
- to maintain the natural biological communities in the national marine sanctuaries, and to protect, and where appropriate, restore and enhance natural habitats, populations, and ecological processes;
- to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archaeological resources of the National Marine Sanctuary System;
- to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas;
- to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;
- to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;
- to create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques; and
- to cooperate with global programs encouraging conservation of marine resources.

2. The marine waters of the Northwestern Hawaiian Islands and the submerged lands thereunder are an area of special national significance due to—

- their conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or aesthetic qualities;
- the communities of living marine resources they harbor; and
- their resource or human-use values.

3. Existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education.
4. Designation of the Northwestern Hawaiian Islands National Marine Sanctuary will facilitate the objectives stated in (3) above; and
5. The area of the Northwestern Hawaiian Islands National Marine Sanctuary is of a size and nature that will permit comprehensive and coordinated conservation and management.

DRAFT

Appendix 7: Executive Order 13178, December 4, 2000

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Marine Sanctuaries Act, (16 U.S.C. 1431 *et seq.*), and the National Marine Sanctuaries Amendments Act of 2000, Public Law 106-513, and in furtherance of the purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act (33 U.S.C. 1251 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-ee), and other pertinent statutes, it is ordered as follows:

Section 1. Preamble. The world's coral reefs—the rain forests of the sea— are in serious decline. These important and sensitive areas of biodiversity warrant special protection. While United States waters contain approximately 3 percent of the world's coral reefs, approximately 70 percent of U.S. coral reefs are in the Northwestern Hawaiian Islands. The 3.5 million acres of coral reefs around the remote, mostly uninhabited Northwestern Hawaiian Islands are spectacular and almost undisturbed by humans. The approximately 1,200 mile stretch of coral islands, seamounts, banks, and shoals are unquestionably some of the healthiest and most extensive coral reefs in the United States. In their own right, the spectacular coral reefs and lands provide an amazing geological record of volcanic and erosive powers that have shaped this area. This vast area supports a dynamic reef ecosystem that supports more than 7,000 marine species, of which approximately half are unique to the Hawaiian Island chain. This incredibly 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 as well as linkages to early Polynesian culture—making it additionally worthy of protection and understanding. This is truly a unique and special place, a coral reef ecosystem like no place on earth, and a source of pride, inspiration, and satisfaction for all Americans, especially the people of Hawaii. It is fully worthy of our best efforts to preserve a legacy of America's natural wonders for future generations. Due to the special significance of this area, I have determined that it is in the best interest of our Nation, and of future generations, to provide strong and lasting protection for the coral reef ecosystem of the Northwestern Hawaiian Islands.

On May 26, 2000, I directed the Secretaries of Commerce and the Interior, working cooperatively with the State of Hawaii and consulting with the Western Pacific Fishery Management Council, to develop recommendations for a new, coordinated management regime to increase protection of the coral reef ecosystem of the Northwestern Hawaiian Islands and provide for sustainable use of the area. Upon consideration of their recommendations and comments received during the public visioning process on this initiative, and based on the statutory authorities set forth above, I am issuing this Executive Order.

Sec. 2. Purpose. The purpose of this Executive Order is to ensure the comprehensive, strong, and lasting protection of the coral reef ecosystem and related marine resources and species (resources) of the Northwestern Hawaiian Islands.

Sec. 3. Establishment of Coral Reef Ecosystem Reserve. There is hereby established in the Northwestern Hawaiian Islands a coral reef ecosystem reserve to be known as the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The Reserve shall include submerged lands and waters of the Northwestern Hawaiian Islands, extending approximately 1,200 nautical miles (nm) long and 100nm wide. The Reserve shall be adjacent to and seaward of the seaward boundaries of the State of Hawaii and the Midway Atoll National Wildlife Refuge, and shall overlay the Hawaiian Islands National Wildlife Refuge to the extent that it extends beyond the seaward boundaries of the State of Hawaii. The boundaries of the Reserve are described in section 6 of this order.

Sec. 4. Management Principles. The Secretary of Commerce, or his designee, (hereafter “Secretary”) shall, subject to section 10(b) of this order, manage the Reserve in accordance with the following principles:

(a) The principal purpose of the Reserve is the long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the Northwestern Hawaiian Islands in their natural character;

(b) The Reserve shall be managed using available science and applying a precautionary approach with resource protection favored when there is a lack of information regarding any given activity, to the extent not contrary to law;

(c) Culturally significant, noncommercial subsistence, cultural, and religious uses by Native Hawaiians should be allowed within the Reserve, consistent with applicable law and the long-term conservation and protection of Reserve resources;

(d) The Reserve shall be managed using, when appropriate, geographical zoning and innovative management techniques to ensure that the Reserve resources are protected from degradation or harm;

(e) To the extent consistent with the primary purpose of the Reserve, the Reserve shall be managed to support, promote, and coordinate appropriate scientific research and assessment, and long-term monitoring of Reserve resources, and the impacts or threats thereto from human and other activities, to help better understand, protect, and conserve these resources and species for future generations;

(f) To the extent consistent with the primary purpose of the Reserve, the Reserve shall be managed to enhance public awareness, understanding, and appreciation of Reserve resources, and the impacts or threats thereto from human and other activities;

(g) The Reserve shall be managed to further restoration and remediation of degraded or injured Reserve resources; and

(h) The Reserve shall be managed to facilitate coordinated management among Federal and State agencies and other entities, as appropriate, to provide comprehensive (looking beyond jurisdictional boundaries) conservation of the coral reef ecosystem and related marine resources and species throughout the Northwestern Hawaiian Islands, consistent with applicable authorities and the Management Principles of this section.

Sec. 5. Implementation. (a) Management of the Reserve. The Secretary shall manage the Reserve under the National Marine Sanctuaries Act and in accordance with this order.

(b) *Reserve Operations Plan.* The Secretary, in consultation with the Secretary of the Interior and the Governor of Hawaii, shall develop an operations plan to govern the management of the Reserve. In developing the Reserve Operations Plan the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (c) of this section.

The Reserve Operations Plan shall be directed at priority issues and actions that, at a minimum, provide for:

- (1) Coordinated management among the Reserve, Hawaiian Islands National Wildlife Refuge, Midway Atoll National Wildlife Refuge, and the State of Hawaii, consistent with relevant authorities;
- (2) Coordination among Federal agencies and the Director of the National Science Foundation to make vessels and other resources available for conservation and research activities for the Reserve;
- (3) The cleanup and prevention of marine debris in the Reserve;
- (4) The restoration or remediation of any degraded or injured resources of the Reserve;
- (5) Research, monitoring, and assessment of the Reserve;
- (6) Education and outreach about the Reserve and its resources and efforts to conserve them;
- (7) Enforcement and surveillance for the Reserve, including the use of new technologies and coordination with the United States Coast Guard and other relevant agencies;
- (8) Identification and coordination with Native Hawaiian interests, regarding culturally significant, noncommercial subsistence, cultural, and religious uses and locations within the Reserve;
- (9) Identification of potential tourism, recreational, and commercial activities within the Reserve and actions necessary to ensure that these activities do not degrade the Reserve's resources or diminish the Reserve's natural character;
- (10) Use of vessel monitoring systems for any vessel entering or transiting the Reserve, if warranted. To this end, the Secretary in consultation with the Department of State, United States Coast Guard, and the Department of Defense, shall evaluate the need for the establishment of vessel monitoring systems and, if warranted, shall initiate the steps necessary to have the appropriate domestic agencies, and request that the International Maritime Organization, adopt a vessel monitoring system requirement for the Reserve;
- (11) Any regulations, in addition to the conservation measures and Reserve Preservation Areas established under this order, that the Secretary determines are necessary to manage the Reserve in accordance with this order; and
- (12) Coordination of all relevant activities with the process to designate the Reserve as a National Marine Sanctuary, as provided under paragraph (f) of this section.

(c) *Conservation Measures.* The Reserve Operations Plan shall also include the conservation measures in section 7 of this order and the Reserve Preservation Areas in section 8 of this order.

(d) *Memorandum of Agreement.* To further paragraph (b)(1) of this section, and subject to section 10(b) of this order, and in particular to promote coordinated management of the entirety of the shallow areas of the coral reef ecosystem throughout the Northwestern Hawaiian Islands, the Secretary shall work with the Secretary of the Interior and Governor of the State of Hawaii to enter into one or more memoranda of agreement for the coordinated conservation and management of the Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and State of Hawaii submerged lands and waters within the Northwestern Hawaiian Islands.

(e) *National Marine Sanctuary.* The Secretary shall initiate the process to designate the Reserve as a national marine sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (16 U.S.C. 1433, 1434). In doing so the Secretary shall supplement or complement the existing Reserve. The Secretary shall, in consultation with the Governor of the State of Hawaii, determine whether State submerged lands and waters should be included as part of the sanctuary. In designating and managing the sanctuary, the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (f) of this section.

(f) *Council.* After considering input from the Secretary of the Interior and Governor of the State of Hawaii, the Secretary shall establish a Coral Reef Ecosystem Reserve Council pursuant to section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) to provide

advice and recommendations on the Reserve Operations Plan and designation and management of any sanctuary. The Council shall include:

(1) Three Native Hawaiian representatives, including one Native Hawaiian elder, with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.

(2) Three representatives from the non-Federal science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

(A) Marine mammal science.

(B) Coral reef ecology.

(C) Native marine flora and fauna of the Hawaiian Islands.

(D) Oceanography.

(E) Any other scientific discipline the Secretary determines to be appropriate.

(3) Three representatives from nongovernmental wildlife/marine life, environmental, and/or conservation organizations.

(4) One representative from the commercial fishing industry that conducts activities in the Northwestern Hawaiian Islands.

(5) One representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.

(6) One representative from the ocean-related tourism industry.

(7) One representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.

(8) One citizen-at-large representative.

(9) One representative from the State of Hawaii as appointed by the Governor.

(10) One representative each, as nonvoting, *ex officio* members, from the Department of the Interior, United States Coast Guard, Department of Defense, Department of State, the National Marine Fisheries Service, the Hawaiian Islands Humpback Whale National Marine Sanctuary, National Science Foundation, Marine Mammal Commission, and Western Pacific Regional Fishery Management Council.

(g) *Report.* The Secretary shall provide a progress report on the implementation of this order to the Chair of the Council on Environmental Quality within 1 year from the date of this order.

Sec. 6. Area of the Reserve. The Reserve includes the waters and submerged lands of the Northwestern Hawaiian Islands as follows:

(a) The seaward boundary of the Reserve is 50nm from the approximate center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner

Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Island. Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semicircles of the 50nm areas that lie around such areas shall delimit the remainder of the Reserve.

(b) The inland boundary of the Reserve around each of the areas named in subparagraph (a) of this section is the seaward boundary of Hawaii State waters and submerged lands, and the seaward boundary of the Midway Atoll National Wildlife Refuge, as appropriate.

(c) The Reserve boundary is generally depicted on the map attached to this order. The Secretary, after consultation with the Governor of the State of Hawaii, may make technical modifications to the boundary of the Reserve, including providing straight-line boundaries for the Reserve for clarity and ease of identification, as appropriate.

Sec. 7. Protection and Conservation Measures. The conservation measures in this section apply throughout the Reserve.

(a) (1) *Commercial Fishing.* All currently existing commercial Federal fishing permits and current levels of fishing effort and take, as determined by the Secretary and pursuant to regulations in effect on the date of this order, shall be capped as follows:

(A) No commercial fishing may occur in Reserve Preservation Areas pursuant to section 8 of this order;

(B) There shall be no increase in the number of permits of any particular type of fishing (such as for bottomfishing) beyond the number of permits of that type in effect the year preceding the date of this order;

(C) The annual level of aggregate take under all permits of any particular type of fishing may not exceed the aggregate level of take under all permits of that type of fishing in the years preceding the date of this order, as determined by the Secretary, provided that the Secretary shall equitably divide the aggregate level into individual levels per permit, and further provided that the Secretary may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits;

(D) There shall be no permits issued for any particular type of fishing for which there were no permits issued in the year preceding the date of this order; and

(E) The type of fishing gear used by any permit holder may not be changed except with the permission of the Secretary, as provided under paragraph 3 of this section.

(2) *Recreational Fishing.* All currently existing (preceding the date of this order) levels of recreational fishing effort, as determined by the Secretary and pursuant to regulations in effect on the day of this order, shall be capped (i.e., no increase of take levels or levels of fishing effort, species targeted, or change in gear types) throughout the Reserve. However, fishing is further restricted as provided in section 8 of this order.

(3) The Secretary, after consultation with the Secretary of the Interior and Governor of the State of Hawaii, and after public review and comment and consideration of any advice or recommendations of the Reserve Council and Western Pacific Regional Fishery Management Council, may further restrict the fishing activities under subparagraphs (a)(1) and (a)(2) of this section if necessary to protect Reserve resources, or may authorize or require alternate gear types if such gear would offer equal or greater protection for Reserve resources.

(b) In addition to the conservation measures in paragraph (a) of this section, the following activities are prohibited throughout the Reserve:

- (1) Exploring for, developing, or producing oil, gas, or minerals;
 - (2) Having a vessel anchored on any living or dead coral with an anchor, an anchor chain, or an anchor rope when visibility is such that the seabed can be seen;
 - (3) Drilling into, dredging, or otherwise altering the seabed; or constructing, placing, or abandoning any structure, material, or other matter on the seabed, except as an incidental result of anchoring vessels;
 - (4) Discharging or depositing any material or other matter into the Reserve, or discharging or depositing any material or other matter outside the Reserve that subsequently enters the Reserve and injures any resource of the Reserve, 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; and
 - (5) Removal, moving, taking, harvesting, or damaging any living or nonliving Reserve resources, except as provided under paragraph (a) of this section and sections 8(a) and 9 of this order.
- (c) The Secretary may conduct, or authorize by permit the activities listed in subparagraphs (b)(3)-(5) of this section to the extent that they are necessary for research, monitoring, education, or management activities that further the Management Principles of section 4 of this order.

Sec. 8. Reserve Preservation Areas.

(a) To further protect Reserve resources, the following areas are hereby established as Reserve Preservation Areas until some or all are made permanent after adequate public review and comment, within which all activities referred to in paragraph (b) of this section are prohibited.

(1) From the seaward boundary of Hawaii State waters and submerged lands to a mean depth of 100 fathoms (fm) around:

- (A) Nihoa Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 10fm, unless and until the Secretary determines otherwise after adequate public review and comment;
- (B) Necker Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 20fm, unless and until the Secretary determines otherwise after adequate public review and comment;
- (C) French Frigate Shoals;
- (D) Gardner Pinnacles, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 10fm, unless and until the Secretary determines otherwise after adequate public review and comment;
- (E) Maro Reef, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 20fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(F) Laysan Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 50fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(G) Lisianski Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 50fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(H) Pearl and Hermes Atoll; and

(I) Kure Island.

(2) Twelve nautical miles around the approximate geographical centers of:

(A) The first bank immediately east of French Frigate Shoals;

(B) Southeast Brooks Bank, which is the first bank immediately west of French Frigate Shoals, provided that the closure area shall not be closer than approximately 3nm of the next bank immediately west;

(C) St. Rogatien Bank, provided that the closure area shall not be closer than approximately 3nm of the next bank immediately east, provided further that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment;

(D) The first bank west of St. Rogatien Bank, east of Gardner Pinnacles;

(E) Raita Bank; and

(F) Pioneer Bank, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment.

(b) Activities Prohibited Within Reserve Preservation Areas.

(1) In addition to the conservation measures in section 7 of this order, which are applicable to the entire Reserve, the following activities are prohibited within the Reserve Preservation Areas listed in paragraph (a) of this section, except as expressly otherwise stated in this paragraph and sections (8)(a) and 9 of this order:

(A) Commercial and recreational fishing;

(B) Anchoring in any area that contains available mooring buoys, or anchoring outside an available anchoring area when such area has been designated by the Secretary;

(C) Any type of touching or taking of living or dead coral;

(D) Discharging or depositing any material or other matter except cooling water or engine exhaust; and

(E) Such other activities that the Secretary identifies after adequate public review and comment, and after consideration of any advice and recommendations of the Reserve Council.

(2) Notwithstanding the prohibitions in this paragraph, the Secretary may conduct, or authorize by permit, research, monitoring, education, or management activities within any Reserve Preservation Area that further the Management Principles of section 4 of this order.

(3) The Reserve Preservation Areas in this section are approximated using fathoms. The Secretary will develop straight line boundaries based on longitude and latitude coordinates to encompass each Reserve Preservation Area, to provide for clarity and ease of identification. The Secretary may make technical modifications to any such boundaries.

Sec. 9. *Native Hawaiian Uses.* Native Hawaiian noncommercial subsistence, cultural, or religious uses may continue, to the extent consistent with existing law, within the Reserve and Reserve Preservation Areas identified under section 8 of this order. The Secretary shall work with Native Hawaiian interests to identify those areas where such Native Hawaiian uses of the Reserve's resources may be conducted without injury to the Reserve's coral reef ecosystem and related marine resources and species, and may revise the areas where such activities may occur after public review and comment, and consideration of any advice and recommendations of the Reserve Council.

Sec. 10. *National Wildlife Refuges.*

(a) The Secretary of the Interior, in managing, through the U.S. Fish and Wildlife Service the Hawaiian Islands and Midway Atoll National Wildlife Refuges pursuant to the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee) and other applicable laws, shall follow the Management Principles of section 4 of this order, to the extent consistent with applicable law.

(b) Wherever the Reserve overlaps the Hawaiian Islands National Wildlife Refuge, the Reserve shall be managed to supplement and complement management of the Refuge to ensure coordinated conservation and management of the Reserve and the Refuge, consistent with the purposes and policies of the National Marine Sanctuaries Act, the National Marine Sanctuaries Amendments Act of 2000, and this order, and the authorities of the U.S. Fish and Wildlife Service under the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668ee) and other laws with respect to management of the Refuge. Nothing in this order shall enlarge or diminish the jurisdiction or authority of the Secretary or Secretary of the Interior in managing the Reserve or Refuge, respectively.

(c) The Secretary of the Interior, through the U.S. Fish and Wildlife Service, shall coordinate with the Secretary and the Governor of the State of Hawaii, as provided under section 5(b) of this order, to ensure coordinated protection and management among the Reserve, Refuges, and State, consistent with relevant authorities.

Sec. 11. *Administration and Judicial Review.*

(a) *International Law.* Management of the Reserve and any regulations issued pursuant thereto and all other provisions of this order shall be applied consistently with the 1983 Presidential Proclamation on the Exclusive Economic Zone, the 1988 Presidential Proclamation on the Territorial Sea, and the 1999 Presidential Proclamation on Contiguous Zone and in accordance with generally recognized principles of international law, and with the treaties, conventions, and other agreements to which the United States is a party. The Secretary shall consult with the Department of State in implementing this order.

(b) *Agency Responsibilities.* All Federal agencies whose actions may affect the Reserve and any National Marine Sanctuary established by the Secretary pursuant to this order shall carry out such actions in accordance with applicable laws, regulations and Executive Orders, including Executive Orders 13089 of June 11, 1998, and 13158 of May 26, 2000.

(c) *National Security and Emergency Actions.* Consistent with applicable law, nothing in this order is intended to apply to military activities (including those carried out by the United States Coast Guard), including military exercises, conducted within or in the vicinity of the Reserve, consistent with the requirements of Executive Orders 13089 of June 11, 1998, and 13158 of May 26, 2000. Further, nothing in this order is intended to restrict the Department of Defense from conducting activities necessary during time of war or national emergency, or when necessary for reasons of national security as determined by the Secretary of Defense, consistent with applicable law. In addition, consistent with applicable law, nothing in this order 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.

(d) *United States Coast Guard.* Nothing in this order is intended to limit the authority of the United States Coast Guard to enforce any Federal law, or install or maintain aids to navigation.

(e) *Funding.* This order shall be carried out subject to the availability of appropriated funds and to the extent permitted by law.

(f) *Territorial Waters.* Nothing in this order shall enlarge or diminish the jurisdiction or authority of the State of Hawaii or the United States over submerged or other lands within the territorial waters off the coast of Hawaii.

(g) *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

THE WHITE HOUSE,
December 4, 2000.

Presidential Documents
Federal Register
Vol. 65, No. 236
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Appendix 8: Executive Order 13196, January 18, 2001

Final Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Marine Sanctuaries Act, (16 U.S.C. 1431 *et seq.*), and the National Marine Sanctuaries Amendments Act of 2000, Public Law 106–513, and in furtherance of the purposes of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act (33 U.S.C. 1251 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–e.e.), and other pertinent statutes, it is ordered as follows:

Sec. 1. Preamble. On December 4, 2000, I issued Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) pursuant to my authority under the National Marine Sanctuaries Act, as amended by the National Marine Sanctuary Amendments Act of 2000 (Act). In establishing the Reserve, I set forth a number of conservation measures and created specific Reserve Preservation Areas to protect the coral reef ecosystem and related marine resources and species (resources) of the Reserve. The Act provides that no closure areas can become permanent without adequate notice and comment. Accordingly, I proposed to make permanent the Reserve Preservation Areas and initiated a 30-day comment period on this proposal. I also sought comment on the conservation measures for the Reserve. On my behalf, the Secretary of Commerce received the public comments and held seven public hearings, including six throughout Hawaii. After considering the comments expressed at the hearings and received in writing, I have determined to make permanent the Reserve Preservation Areas with certain modifications set forth below. Further, I have modified certain conservation measures to address concerns raised, particularly regarding commercial and recreational fishing within the Reserve. With this action, the establishment of the Reserve under the Act, including the conservation measures and permanent Reserve Preservation Areas, is complete. The Secretary of Commerce will manage the Reserve pursuant to Executive Order 13178, as modified by this order, under the Act. The Secretary shall also initiate the process to designate the Reserve as a National Marine Sanctuary, as required by the Act.

Sec. 2. Purpose. The purpose of this order is to amend Executive Order 13178, and to make permanent Reserve Preservation Areas, as modified below, to ensure the comprehensive, strong, and lasting protection of the resources of the Northwestern Hawaiian Islands.

Sec. 3. Amendments to Sections 7 of Executive Order 13178.

1. Section 7(a)(1) of Executive Order 13178 is hereby amended by revising the first sentence to read as follows:

“Commercial Fishing. All currently existing commercial Federal fishing permits and current levels of fishing effort and take, which also includes the non-permitted level of trolling for pelagic species by currently permitted bottom fishers, as determined by the Secretary and pursuant to regulations in effect on December 4, 2000, shall be capped as follows:”

2. Section 7(a)(1)(C) of Executive Order 13178 is hereby revised to read as follows:

“(C) The annual level of aggregate take under all permits of any particular type of fishing may not exceed the aggregate level of take under all permits of that type of fishing as follows:

(1) Bottomfishing—the annual aggregate level for each permitted bottomfisher shall be that permittee’s individual average taken over the 5 years preceding December 4, 2000, as determined by the Secretary, provided that the Secretary, in furtherance of the principles of the reserve, may make a onetime reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits;

(2) All other commercial fishing—the annual aggregate level shall be the permittee’s individual take in the year preceding December 4, 2000, as determined by the Secretary.”

3. A new section 7(a)(1)(F) is hereby added to Executive Order 13178 and reads as follows:

“(F) Trolling for pelagic species shall be capped based on reported landings for the year preceding December 4, 2000.”

4. Section 7(b)(4) is revised to read as follows:

“(4) Discharging or depositing any material or other matter into the Reserve, or discharging or depositing any material or other matter outside the Reserve that subsequently enters the Reserve and injures any resource of the Reserve, except:

(A) fish parts (i.e., chumming materia or bait) used in and during fishing operations authorized under this order;

(B) biodegradable effluent incident to vessel use and generated by a marine sanitation device in accordance with section 312 of the Federal Water Pollution Control Act, as amended;

(C) water generated by routine vessel operations (e.g., deck wash down and graywater as defined in section 312 of the Federal Water Pollution Control Act), excluding oily wastes from bilge pumping; or

(D) cooling water from vessels or engine exhaust; and”.

Sec. 4. Amendments to Sections 8 of Executive Order 13178.

1. Section 8 of Executive Order 13178 is modified by substituting “provided that commercial bottomfishing and commercial and recreational trolling for pelagic species in accordance with the requirements of sections 7(a)(1) and 7(a)(2) of this order, respectively,” for “provided that bottomfishing in accordance with the requirements of section 7(a)(1)” everywhere the latter phrase appears in section 8.

2. Section 8(a)(1)(A) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 10fm.”

3. Section 8(a)(1)(B) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 20fm.”

4. Section 8(a)(1)(D) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 10fm.”

5. Section 8(a)(1)(E) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 20fm.”

6. Section 8(a)(1)(G) is modified by substituting “a mean depth of 25 fm” for “a mean depth of 50fm.”

7. Section 8(a)(1)(I) is revised to read “Kure Atoll.”

8. Sections 8(a)(2)(D) and (E) are hereby deleted and a new section 8(a)(3) is hereby substituted as follows:

“(3) Twelve nautical miles around the approximate geographical centers of

(A) The first bank west of St. Rogation Bank, east of Gardner Pinnacles, provided that commercial bottomfishing and commercial and recreational trolling for pelagic species in accordance with the requirements of sections 7(a)(1) and 7(a)(2) of this order, shall be allowed to continue for a period of 5 years from the date of this order; and

(B) Raita Bank, provided that commercial bottomfishing and commercial and recreational trolling for pelagic species in accordance with the requirements of sections 7(a)(1) and 7(a)(2) of this order, shall be allowed to continue for a period of 5 years from the date of this order; and

(C) Provided that both banks described above in (3)(A) and (3)(B) shall only continue to allow commercial bottomfishing and commercial and recreational trolling for pelagic species after the 5-year time period if it is determined that continuation of such activities will have no adverse impact on the resources of these banks.”

Sec. 5. Reserve Preservation Areas. The Reserve Preservation Areas, as modified in sections 3 and 4 of this order, are hereby made permanent in accordance with the Act.

Sec. 6. Judicial Review. This order does not create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the United States, its agencies, its officers, or any person.

THE WHITE HOUSE,
January 18, 2001.

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