

Prepared for:

National Oceanic and Atmospheric Administration
National Marine Fisheries Service

Programmatic Environmental Impact Statement

Appendix A: Agency Correspondence

Final PEIS for Hawaiian Monk Seal Recovery Actions

March 2014



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*Initial Agency Letters to U.S.
FWS and State of Hawai'i DLNR
Inviting Them to Cooperate*

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U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1110
Honolulu, Hawaii 96814-4700
(808) 944-2200 • Fax (808) 973-2941

SEP 14 2010

Loyal Mehrhoff, Ph.D.
Field Supervisor
Pacific Islands Ecological Field Service Office
Fish and Wildlife Service
300 Ala Moana Blvd., Room 3-122
Honolulu, HI 96850-0056

Dear Dr. Mehroff:

The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is planning to prepare a Programmatic Environmental Impact Statement (PEIS) regarding implementation of various research and enhancement activities designed to improve survival of Hawaiian monk seals (HMS) in the Northwestern Hawaiian Islands (NWHI). As you are aware, the NMFS Pacific Islands Regional Office (PIRO) and NMFS Pacific Islands Fisheries Science Center (PIFSC) are responsible for HMS recovery and research under the Endangered Species Act (ESA) (16 United States Code [U.S.C.] 1531 et seq.) and the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 et seq.).

The PEIS, in compliance with the National Environmental Policy Act (NEPA) (40 CFR Parts 1500-1508), will evaluate potential environmental, social, and economic impacts of implementing a range of research and enhancement activities stipulated in the HMS Recovery Plan (2007) to address low juvenile seal survival in the NWHI. As you know, low survival to reproductive age in the NWHI has been identified as a main factor driving the current steep HMS population decline.

Given the jurisdiction of USFWS within the proposed project area (the NWHI) and your agency's technical expertise regarding much of the subject matter to be covered in the PEIS, we are inviting your agency to participate as a cooperating agency on the proposed action pursuant to the Council on Environmental Quality's Regulations for Implementing NEPA (40 CFR 1501.6).

Should USFWS decide to work with NMFS as a cooperating agency, we suggest that we meet to discuss developing an MOU to delineate our respective roles and responsibilities. Should you decide not to serve as a cooperating agency, please know that we will include USFWS in all of the public information gathering processes undertaken during the PEIS preparation. Regardless of your decision regarding this invitation, we look forward to continuing our coordination with USFWS on HMS recovery and research activities in the NWHI as co-trustees of the Papahānaumokuākea Marine National Monument.



We would appreciate being notified of your decision regarding this invitation on or before October 8, 2010. If you have any questions or would like to meet to discuss this request, please contact Jeff Walters, our Hawaiian monk seal recovery coordinator, at (808) 944-2235, or via email at jeff.walters@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "m. d. tosatto".

Michael D. Tosatto
Acting Regional Administrator

cc: Barry Stieglitz, USFWS, Hawaiian and Pacific Islands NWR Complex



U.S. DEPARTMENT OF COMMERCE
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SEP 14 2010

Barry Stieglitz
Project leader
Hawaiian and Pacific Islands National Wildlife Refuge Complex
Fish and Wildlife Service
300 Ala Moana Blvd., Room 5-231
Honolulu, HI 96850-0056

Dear Mr. Stieglitz:

The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is planning to prepare a Programmatic Environmental Impact Statement (PEIS) regarding implementation of various research and enhancement activities designed to improve survival of Hawaiian monk seals (HMS) in the Northwestern Hawaiian Islands (NWHI). As you are aware, the NMFS Pacific Islands Regional Office (PIRO) and NMFS Pacific Islands Fisheries Science Center (PIFSC) are responsible for HMS recovery and research under the Endangered Species Act (ESA) (16 United States Code [U.S.C.] 1531 et seq.) and the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 et seq.).

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Sincerely,

A handwritten signature in black ink, appearing to read "m. d. tosatto". The signature is fluid and cursive, with the first name "m" being the most prominent.

Michael D. Tosatto
Acting Regional Administrator

cc: Loyal Mehrhoff, USFWS, Pacific Islands Ecological Services



U.S. DEPARTMENT OF COMMERCE
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SEP 14 2010

Ms. Laura H. Thielen
Chairperson
Department of Land and Natural Resources
1151 Punchbowl St.
Honolulu, HI 96813

Dear Ms. Thielen:

The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is planning to prepare a Programmatic Environmental Impact Statement (PEIS) regarding implementation of various research and enhancement activities designed to improve survival of Hawaiian monk seals (HMS) in the Northwestern Hawaiian Islands (NWHI). As you are aware, the NMFS Pacific Islands Regional Office (PIRO) and NMFS Pacific Islands Fisheries Science Center (PIFSC) are responsible for HMS recovery and research under the Endangered Species Act (ESA) (16 United States Code [U.S.C.] 1531 et seq.) and the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 et seq.).

The PEIS, in compliance with the National Environmental Policy Act (NEPA) (40 CFR Parts 1500-1508), will evaluate potential environmental, social, and economic impacts of implementing a range of research and enhancement activities stipulated in the HMS Recovery Plan (2007) to address low juvenile seal survival in the NWHI. As you know, low survival to reproductive age in the NWHI has been identified as a main factor driving the current steep HMS population decline.

Given the jurisdiction of DLNR within the proposed project area (the NWHI) and your agency's technical expertise regarding much of the subject matter to be covered in the PEIS, we are inviting your agency to participate as a cooperating agency on the proposed action pursuant to the Council on Environmental Quality's Regulations for Implementing NEPA (40 CFR 1501.6).

Should DLNR decide to work with NMFS as a cooperating agency, we suggest that we meet to discuss developing an MOU to delineate our respective roles and responsibilities. Should you decide not to serve as a cooperating agency, please know that we will include DLNR in all of the public information gathering processes undertaken during the PEIS preparation. Regardless of your decision regarding this invitation, we look forward to continuing our coordination with DLNR on HMS recovery and research activities in the NWHI as co-trustees of the Papahānaumokuākea Marine National Monument.



We would appreciate being notified of your decision regarding this invitation on or before October 8, 2010. If you have any questions or would like to meet to discuss this request, please contact Jeff Walters, our Hawaiian monk seal recovery coordinator, at (808) 944-2235, or via email at jeff.walters@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "m.d.t.", with a stylized flourish at the end.

Michael D. Tosatto
Acting Regional Administrator

Response by U.S.FWS

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Hawaiian and Pacific Islands National Wildlife Refuge Complex
300 Ala Moana Boulevard, Room 5-231
Box 50167
Honolulu, Hawaii 96850



October 5, 2010



Michael D. Tosatto
Acting Regional Administrator
Pacific Islands Regional Office
National Marine Fisheries Service
1601 Kapiolani Blvd., Suite 1110
Honolulu, Hawaii 96814-4700

Dear Mr. Tosatto:

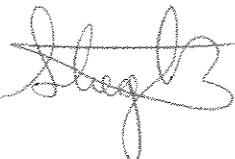
Thank you for your letter dated September 14, 2010, regarding an invitation to participate as a cooperating agency on the preparation of the Programmatic Environmental Impact Statement (PEIS) to improve the survivability of the Hawaiian monk seal (HMS). The Hawaiian and Pacific Islands National Wildlife Refuge Complex recognizes the importance of this National Environmental Policy Act (NEPA) action to evaluate potential environmental, social, and economic impacts of implementing a range of research and enhancement activities identified in the HMS Recovery Plan (2007) to address low juvenile seal survival in the Northwestern Hawaiian Islands. On behalf of the Fish and Wildlife Service (FWS), we accept your invitation to participate in the preparation of this PEIS as a cooperating agency in accordance with NEPA regulations and procedures.

Based on FWS legally mandated management responsibilities and technical expertise associated with protecting, conserving, and, where appropriate, restoring fish, wildlife and plants and their habitats within the Hawaiian Islands and Midway Atoll National Wildlife Refuges, we look forward to working together with you on this PEIS. We also support your suggestion to develop a Memorandum of Understanding to delineate our respective roles and responsibilities.

I would also like to take this opportunity to introduce you to Mr. Thomas R. Edgerton, who will be arriving in Honolulu on November 8, 2010, to fill the currently vacant FWS Superintendent position for the Papahānaumokuākea Marine National Monument. Tom will be your point of contact for this cooperative effort and will also be replacing Ms. Susan White as the Fish and Wildlife Service member of the Hawaiian Monk Seal Recovery Team.

If you have additional questions or need assistance prior to Tom's arrival, please contact Ray Born, our Acting Superintendent, at 808.742.9488 or via email at Ray_Born@fws.gov.

Sincerely,

Barry W. 

Barry W. Stieglitz
Project Leader

Cc: Loyal Mehrhoff, USFWS, Pacific Islands Ecological Services



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SEP 14 2010

Barry Stieglitz
Project leader
Hawaiian and Pacific Islands National Wildlife Refuge Complex
Fish and Wildlife Service
300 Ala Moana Blvd., Room 5-231

Dear Mr. Stieglitz:

The National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is planning to prepare a Programmatic Environmental Impact Statement (PEIS) regarding implementation of various research and enhancement activities designed to improve survival of Hawaiian monk seals (HMS) in the Northwestern Hawaiian Islands (NWHI). As you are aware, the NMFS Pacific Islands Regional Office (PIRO) and NMFS Pacific Islands Fisheries Science Center (PIFSC) are responsible for HMS recovery and research under the Endangered Species Act (ESA) (16 United States Code [U.S.C.] 1531 et seq.) and the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 et seq.).

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Should USFWS decide to work with NMFS as a cooperating agency, we suggest that we meet to discuss developing an MOU to delineate our respective roles and responsibilities. Should you decide not to serve as a cooperating agency, please know that we will include USFWS in all of the public information gathering processes undertaken during the PEIS preparation. Regardless of your decision regarding this invitation, we look forward to continuing our coordination with USFWS on HMS recovery and research activities in the NWHI as co-trustees of the Papahānaumokuākea Marine National Monument.



Anne Southam

From: Jeff Walters <Jeff.Walters@noaa.gov>
Sent: Wednesday, November 30, 2011 12:08 PM
To: Tom_Edgerton@fws.gov
Cc: Anne Southam
Subject: Re: Cooperating Agency for Hawaiian Monk Seal PEIS

Aloha Tom:

First, let me please extend my sincere apologies for the delay in responding to your email message below.

I have shared your message with my leadership and the PEIS team.

We understand and appreciate the rationale for your decision and agree that we have a good working relationship that will continue to draw on and strengthen as we develop the PEIS.

I will call and/or set up a meeting soon to give you an update on where we are in the PEIS process, share a revised time line, discuss your staff's engagement, etc. As we discussed at the recent MMB meeting, we are currently developing our responses to the comments received on the Draft PEIS.

Thanks again,

Jeff

Jeffrey S. Walters, Ph.D.
Marine Mammal Branch Chief
& Hawaiian Monk Seal Recovery Coordinator Protected Resources Division Pacific Islands Regional Office NOAA National Marine Fisheries Service
1601 Kapiolani Blvd., Suite 1110
Honolulu, HI 96814

Phone: (808) 944-2235

Email: jeff.walters@noaa.gov

Web: http://www.fpir.noaa.gov/PRD/prd_index.html

Tom_Edgerton@fws.gov wrote:

>
> Hi Jeff,
>
> Following our recent discussion, this is to formally document our
> agreement that the U.S. Fish and Wildlife Service (FWS) and NOAA
> National Marine Fisheries Service (NMFS) will no longer pursue
> completion of a formal MOU for the FWS to be a Cooperating Agency for
> development of the Hawaiian Monk Seal Programmatic Environmental
> Impact Statement.
>
> For the record, we had several reasons for this decision. For one, the

> FWS currently has limited staff capacity to provide the level of input
> that normally accompanies such a relationship. The Draft PEIS is
> already in an advanced stage of development and, without the formal
> MOU, the FWS has to date not been involved at the level normally
> expected by such a relationship. However this has not been an issue
> since the FWS does not have, nor does it expect, any major concerns
> regarding either the process or the proposed work addressed in the
> PEIS. The two agencies also have a good relationship, are already
> collaborating, and intend to continue working together whenever and
> wherever needed. In addition, the FWS intends to be a regular part of
> the public input process for review of the PEIS.
>
> In summary, representing our respective agencies, we agree that this
> is the best course of action and are comfortable that development of
> the HMS PEIS will in no way suffer due to the decision.
>
> Tom
>
> Tom Edgerton
>
> FWS Superintendent
> Papahānaumokuākea Marine National Monument National Wildlife Refuge
> System Honolulu, Hawaii
> Office: 808-792-9481
> Cell: 808-271-8637
> Fax: 808-792-9585
>
> "A team is a group of people that go out of their way to make each
> other look good." Unknown

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Response by State of Hawai'i
DLNR

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

April 19, 2011

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

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

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

Mr. Michael D. Tosatto
Regional Administrator
Pacific Islands Regional Office
National Marine Fisheries Service
1601 Kapiolani Blvd., Suite 1110
Honolulu, Hawaii 96814-4700



Dear Mr. Tosatto:

Thank you for your letter dated March 8, 2011, inviting the Department of Land & Natural Resources to participate in preparing the Programmatic Environmental Impact Statement (PEIS) for Hawaii monk seal recovery actions. We regret that we must decline your invitation to participate as a state cooperating agency in preparation of the PEIS. Our decision is based on severe staffing and budgetary constraints that our Department is presently facing. Unfortunately, we foresee further reduction in our workforce, considering the state of our State budget.

We will continue to be in close coordination with your staff during the development of the PEIS for Hawaiian monk seal recovery.

Sincerely,

A handwritten signature in cursive script, appearing to read "William J. Aila, Jr.".

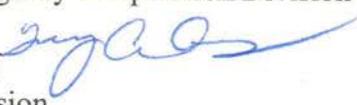
WILLIAM J. AILA, JR.
Chairperson

*ESA Section 7 Consultation
Correspondence*



FEB 13 2012

MEMORANDUM FOR: PR5 – Gina Shultz, Chief
Endangered Species Act Interagency Cooperation Division

FROM:  PR1 – P. Michael Payne, Chief 
Permits and Conservation Division

SUBJECT: Request for initiation of Section 7 Programmatic Consultation
under the Endangered Species Act (File Nos. 10137 and 16632;
and Programmatic Environmental Impact Statement for Hawaiian
monk seal Recovery Actions)

The Permits and Conservation Division (PR1) proposes to issue a permit and a permit amendment to the NMFS Pacific Islands Fisheries Science Center (PIFSC), Hawaiian monk seal Research Program, to take Hawaiian monk seals (*Monachus schauinslandi*) for scientific research and enhancement purposes in the Hawaiian Archipelago and Johnston Atoll. The permits would be issued pursuant to the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 et seq.), and the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 et seq.).

The PIFSC has requested an amendment to their existing Permit No. 10137-06 to conduct translocations of monk seals within the Northwestern Hawaiian Islands (NWHI), similar to that previously analyzed by the NMFS Endangered Species Division (PR3)¹ in a Biological Opinion for Permit No. 10137-01. Permit No. 10137-06 expires June 30, 2014. In compliance with the National Environmental Policy Act (NEPA), an environmental assessment (EA) was prepared for issuance of Permit No. 10137. This EA analyzed the effects of translocations within the NWHI. The translocations are proposed to take place in August 2012.

The PIFSC has also requested a new 5-year permit to include activities currently authorized plus expanded research and enhancement activities. This proposed permit (No. 16632) would expire 5 years after the date of issuance and would replace Permit No. 10137-06. The PIFSC is requesting activities under the new permit begin as early as April 2013.

PIRO, PIFSC, and PR1 have prepared a Draft Programmatic Environmental Impact Statement (PEIS) for Hawaiian monk seal Recovery Actions in compliance with NEPA. The purpose of the Draft PEIS is to evaluate the potential direct, indirect, and cumulative impacts on Hawaiian monk seals and other components of the human environment, from NMFS' funding, undertaking, and permitting research and enhancement activities on Hawaiian monk seals. The research and

¹ The Endangered Species Division (PR3) was reorganized October 1, 2011; since then, section 7 consultations are conducted by the Endangered Species Act Interagency Cooperation Division (PR5).



enhancement priorities listed in the 2007 Hawaiian Monk Seal Recovery Plan provide a general framework for activities in the preferred alternative (Alternative 4) of the Draft PEIS and in the new permit application (File No. 16632).

PR1 concludes that issuing the permit amendment (No. 10137-07) and permit (No. 16632) to authorize the takes and carry out the activities described in the initiation package may adversely affect NMFS listed species, Hawaiian monk seals, but will not adversely modify designated critical habitat within the action area.

PR5 has determined that a programmatic consultation is appropriate for activities proposed under Alternative 4 in the Draft PEIS. Because the permit and the amendment cover, among other things, translocations within the NWHI, we are requesting PR5 consider both the permit and the amendment in the programmatic consultation. PR5 agreed to this approach on December 15, 2011.

To comply with ESA section 7 regulations (50 CFR 402.14(c)), an initiation package is provided. Please review the materials listed below and **respond no later than March 14, 2012** to inform me of whether the initiation package is complete or if additional information is needed.

Consultation history: Consultation on the proposed action first began when PIFSC, PR1, PR3, and NEPA staff attended a meeting in Sausalito, CA during May 8-12, 2009, to discuss the enhancement permit for expanded translocations, vaccinations, and captive care. The PEIS team (PIRO, PIFSC, and PR1), and PR3 later met in Seattle, WA during December 7-8, 2010, to discuss the analytical approach to assessing the impacts of the proposed activities on Hawaiian monk seals. Consulting biologists have attended bi-weekly calls on development of the Draft PEIS as requested. The Draft PEIS was made available to PR3 on March 24, 2011 during the NMFS-internal review of the draft, and comments were received from PR3 on April 7, 2011. The PEIS team and PR5 held meetings on several occasions during October and November 2011 to discuss the programmatic consultation.

Description of proposed action: The proposed action (as described in the PEIS) is funding, permitting, and carrying out recovery actions (research and enhancement activities) for the endangered Hawaiian monk seal. The purpose of permit issuance is to allow an exemption to the moratoria and prohibition on takes established under the MMPA and ESA (see Sections 1.5.2 and 1.5.3 of the Draft PEIS) so the proposed research and enhancement activities may be undertaken.

The PIFSC seeks a scientific research and enhancement permit amendment and permit to carry out take activities designed to recover the endangered Hawaiian monk seal. Research is intended to identify impediments to recovery, inform the design of conservation interventions, and evaluate those measures. Enhancement activities are designed to improve the survival and reproductive success of individual monk seals, with the intent to improve subpopulation and overall species' status.

Research activities covered by Permit No. 10137-06 include take associated with visual and photographic monitoring by ground, vessel, air, and remote video cameras; flipper tagging; pelage bleach marking; biological sampling for health screening; instrumentation for foraging studies; deworming research; necropsies; opportunistic tissue sampling (e.g., molt); and import/export of parts. Enhancement activities include translocations (within the NWHI or within the main Hawaiian Islands [MHI], but not between); removing aggressive adult male seals that harm or kill other seals; and, disentangling and de-hooking seals. Non-target seals may be disturbed during research and enhancement activities.

Alternative 4 of the Draft PEIS and draft Permit No. 16632 includes all currently permitted activities and further address the recommendations of the Hawaiian Monk Seal Recovery Plan by including new research and enhancement activities. New activities include but are not limited to:

- Expanding the scope and number of seal translocations, including (1) moving seals with unmanageable human interactions from the MHI to NWHI, (2) taking seals age three years and older from the MHI to NWHI to examine their subsequent survival, and (3) using a two-stage translocation program whereby weaned pups are taken from areas of lower survival to areas of higher survival. This could include moving seals from the NWHI to the MHI and vice versa.
- Researching and developing tools for modifying seal behavior related to interactions with humans and fishing gear in the MHI.
- Potentially implementing de-worming as a tool to improve juvenile survival.
- Supplementing monk seal diet using feeding stations in NWHI locations where seals are released after being cared for in rehabilitation.
- Conducting vaccination studies and potential use of vaccines to mitigate infectious diseases (West Nile Virus and Morbilliviruses).
- Conducting research on and potential use of chemical alteration of aggressive male monk seal behavior using a testosterone suppressant.

The purpose of each specific research and enhancement activity is described in the permit application (see Project Purpose: Hypothesis/Objectives and Justification), and in Section 2.5 of the Draft PEIS.

Action area: The action area is described in Section 1.3 of the Draft PEIS and includes the Hawaiian Archipelago and Johnston Atoll.

Description of all listed species and/or critical habitat that may be affected by the action:

(1) *Species description:* A complete description of the Hawaiian monk seal is provided in the Draft PEIS. This includes the species' distribution (Section 3.3.1.1), physical description and life

cycle (3.3.1.2), population status and trends (3.3.1.3), habitat requirements and critical habitat (3.3.1.4), foraging ecology (3.3.1.5), carrying capacity (3.3.1.6), threats to survival (3.3.1.7), and recovery plan priorities (3.3.1.8).

(2) *Proposed authorized take*: A list of the takes to be authorized for Hawaiian monk seals by activity and location can be found in the attached draft permits (see Appendix 1 of draft permits). Please note that the table in Permit No. 16332 includes updates since the Draft PEIS was published. Please refer to the permit tables for proposed take levels.

(3) *Other species*: There are no NMFS ESA-listed species that will be incidentally affected by the authorized activities. Sections 3.3.2 – 3.3.8 in Chapter 3 (Affected Environment) of the Draft PEIS describes non-target species in the action area. In Chapter 4 (Environmental Consequences), Sections 4.6 and 4.8.3 – 4.8.7 discuss how the non-target species may be affected, if at all, and what mitigation measures would be implemented to avoid or minimize take of non-target species.

In brief, spinner dolphins (*Stenella longirostris*) may be incidentally disturbed during research and enhancement activities. Green sea turtles (*Chelonia mydas*) on land and certain ESA-listed bird species may be affected by the proposed activities; however, these species are under the jurisdiction of the U.S. Fish and Wildlife Service, requiring consultation with that agency.

(4) *Species proposed listed*: The Hawaii insular stock of false killer whales (*Pseudorca crassidens*) is the only species proposed listed under the ESA in the action area. As described in Sections 3.3.3 and 4.8.4 of the Draft PEIS, NMFS does not anticipate impacts to this or other cetacean species (except spinner dolphins) from the proposed action.

(5) *Critical habitat*: Critical habitat for the Hawaiian monk seal was designated in 1986, revised in 1988, and is described in 50 CFR 226.201. It includes all beach areas and ocean waters out to 20 fathoms around the islands and atolls in the NWHI. Section 3.3.1.4 of the Draft PEIS also describes monk seal critical habitat.

On June 2, 2011, NMFS proposed to revise Hawaiian monk seal critical habitat (76 FR 32026). This would include an expansion of current critical habitat in the Northwestern Hawaiian Islands out to the 500 meter depth contour, and to include Sand Island at Midway Atoll. This proposed expansion would also include adding the main Hawaiian Islands (coastlines five meters inland from the shoreline and marine waters from the shoreline out to the 500 meter depth contour).

(6) *Other permits for take of monk seals*: Section 1.4 of the Draft PEIS describes the only two current permits authorizing direct takes of Hawaiian monk seals. These include PIFSC's Permit No. 10137-06 and Permit No. 932-1905/MA-009526 issued to the NMFS Marine Mammal Health and Stranding Response Program (MMHSRP). The MMHSRP ESA section 10 permit authorizes takes of Hawaiian monk seals for activities carried out under section 109h of the MMPA (i.e., response and rescue activities). Section 1.4 of the Draft PEIS describes how the MMHSRP activities are coordinated with PIFSC.

Description of the manner in which the action may affect Hawaiian monk seals, and analysis of cumulative effects:

(1) *Direct and indirect exposure:* The methods for carrying out the proposed research and enhancement activities, and how they will result in takes of Hawaiian monk seals, are described in the permit amendment application (File No. 10137-07), the File No. 16632 permit application (see Project Description/Methods and Appendices), and Section 2.5 of the Draft PEIS.

(2) *Minimization measures:* Conditions intended to minimize impacts from the proposed activities on monk seals are incorporated in the protocols in the permit applications, and also in Section 2.5 of the Draft PEIS. Conditions listed in the attached draft permits are also intended to minimize negative impacts from the proposed activities. Such conditions are also listed in Section 4.7 of the Draft PEIS.

(3) *Cumulative effects:* Section 4.5.1 of the Draft PEIS describes relevant past and present actions (federal and non-federal) within the action area. Section 4.5.2 of the Draft PEIS describes reasonably foreseeable future actions (federal and non-federal human-controlled actions and natural events).

(4) *Anticipated Responses:* Chapter 4 of the Draft PEIS (Section 4.8.1) and Appendix E (Proposed Translocation Plan, revised December 1, 2011) describe the anticipated responses and effects to Hawaiian monk seals from the proposed research and enhancement activities.

Relevant reports, including any EIS, EAs, BAs, or other analyses prepared on the proposal:

As mentioned above, a Draft PEIS has been completed for Hawaiian monk seal research and enhancement recovery actions. The Draft PEIS is available on our web site: <http://www.nmfs.noaa.gov/pr/permits/eis/hawaiianmonksealeis.htm>.

An EA was prepared for issuance of Permit No. 10137; supplemental EAs were prepared for certain amendments to Permit No. 10137.

A PEIS was prepared for issuance of Permit No. 932-1905/MA009526. This PEIS is available on our web site: <http://www.nmfs.noaa.gov/pr/health/eis.htm>.

Other relevant studies or information available on the action, the affected species, or critical habitat:

Recent peer-reviewed publications on Hawaiian monk seals, including those in a special edition of the journal *Aquatic Mammals* dedicated to the genus *Monachus*, are provided. The 2010 stock assessment report for Hawaiian monk seals and annual reports for Permit No. 10137 and the MMHSRP permit are provided.

The initiation package includes the following attachments:

- Amendment application for the August 2012 translocations
- Draft Permit No. 10137-07
- Permit application for File No. 16632
- Draft Permit No. 16632

The initiation package includes the following documents on a CD submitted with this memo. These documents and electronic copies of the attached documents have also been placed on the shared G: drive under G:/Prall/Temp HI monk seals/PEIS sec 7 files:

- 10137 documents
 - Permit 10137 and amendments with associated applications, NEPA analyses, Biological Opinions and other section 7 analyses; and 10137 annual reports
- 16632 documents
 - File No. 16632 application and draft permit
- Critical habitat
 - Federal Register notices - designation and proposed revision
- Meeting notes and emails
 - May 2009 and December 2010 meeting notes
 - Email correspondence with consulting biologists
- MMHSRP documents
 - Biological Opinion for Permit No. 932-1905/MA009526
 - Permit No. 932-1905/MA-009526
 - Annual reports for monk seal response activities for MMHSRP's Permit No. 932-1905/MA-009526
- PEIS Word files
 - PEIS schedule
 - Chapters 1-5
 - Chapter 4 with monk seal analysis only
 - Revised Translocation Plan (December 2011)
 - Revised Vaccination Plan (October 2011)
- Publications and data
 - Aquatic Mammals special issue publications
 - Health and disease
 - Morphometrics and survival data
 - Translocations
 - Vaccinations
 - 2010 Stock Assessment report

If you have any questions or require additional information, please contact Amy Sloan or Joselyd Garcia-Reyes at 301-427-8401.

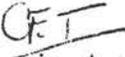
Attachments



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

FEB 27 2014

Memorandum For: Tammy C. Adams, Ph.D.
Acting Chief, Permits and Conservation Division

From: Cathryn E. Tortorici 
Chief, Endangered Species Act Interagency Cooperation Division

Subject: Biological and conference opinion on the proposal to implement the Hawaiian monk seal research and enhancement program and issue scientific research permit number 16632, pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973

Enclosed is the NOAA National Marine Fisheries Service (NMFS) biological and conference opinion on the effects of the implementation of the Hawaiian monk seal research and enhancement program and issuance of scientific research permit number 16632, prepared pursuant to section 7(a)(2) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

In this biological opinion, NMFS concludes that the implementation of the program and issuance of the permit is not likely to jeopardize the continued existence of the Hawaiian monk seal or result in the adverse modification or destruction of its critical habitat. We also conclude that the action may affect, but is not likely to adversely affect, the following ESA-listed species: sperm whale, blue whale, fin whale, humpback whale, sei whale, false killer whale (Hawaiian insular) green sea turtle (all other areas), hawksbill sea turtle, leatherback sea turtle, loggerhead sea turtle (North Pacific), and olive ridley sea turtle (all other areas). In this conference opinion, NMFS concludes that the implementation of the program and issuance of the permit is not likely to jeopardize the continued existence of the following ESA-proposed species: *Acropora paniculata*, *Monitpora flabellate*, *M. dilatata*, *M. turgescens*, *M. patula*, and *M. verrilli*.

This concludes formal consultation and conference on this action. Consultation on this issue must be reinitiated if: (1) the amount or extent of allowable take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this biological opinion; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this biological opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action.





UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

MAR 18 2013

Barry W. Stieglitz
Project Leader
Hawaiian and Pacific Islands Nat'l Wildlife Refuges and
Northwestern Hawaiian Islands Marine Nat'l Monument
300 Ala Moana Boulevard, Room 5-231
PO Box 50167
Honolulu, Hawai'i 96850

Dear Mr. Stieglitz,

The National Marine Fisheries Service (NMFS) requests consultation with the U.S. Fish and Wildlife Service (USFWS) under section 7 of the Endangered Species Act for incidental take of Laysan finch (*Telespyza cantans*) during field camps to take Hawaiian monk seals (*Monachus schauinslandi*) for research and enhancement purposes.

We also request concurrence from USFWS on our determination that the activities proposed may affect but will not likely adversely affect the green sea turtle (*Chelonia mydas*), Nihoa Miller bird (*Acrocephalus familiaris kingi*), Laysan duck (*Anas laysanensis*), and short-tail albatross (*Phoebastria albatrus*). We have determined that the proposed activities will not adversely modify or destroy designated critical habitat.

Enclosed is supporting documentation for these determinations and the USFWS 2009 biological opinion on incidental take of Laysan finch for Permit No. 10137. Please respond by April 15, 2013 to let us know if the enclosed initiation package is complete.

We propose to issue a new 5-year permit (Permit No. 16632) to the NMFS Pacific Islands Fisheries Science Center, Hawaiian monk seal Research Program (HMSRP) to replace their existing Permit No. 10137. The proposed start date for Permit No. 16632 is January 2014.

In compliance with the National Environmental Policy Act, NMFS is preparing a Final Programmatic Environmental Impact Statement (PEIS) for Hawaiian monk seal Recovery Actions, which includes activities proposed in the permit application. A Draft PEIS for Hawaiian monk seal Recovery Actions was made available to the public in 2011 (76 FR 51945). The intent of the PEIS is to evaluate the potential direct, indirect, and cumulative impacts on the human environment of the alternative approaches to implementing recovery actions, including research and enhancement activities requiring a permit.

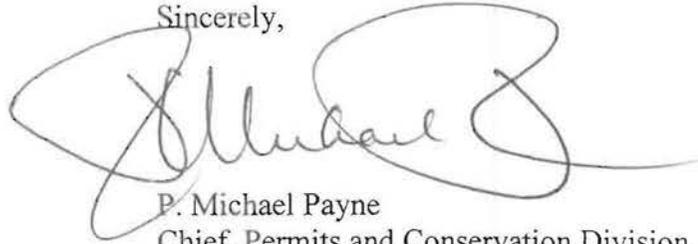


Printed on Recycled Paper



If you have questions, please contact Amy Sloan (Amy.Sloan@noaa.gov) or Colette Cairns (Colette.Cairns@noaa.gov) by email or phone (301-427-8401).

Sincerely,

A handwritten signature in black ink, appearing to read "P. Michael Payne". The signature is fluid and cursive, with a large loop at the end.

P. Michael Payne
Chief, Permits and Conservation Division
Office of Protected Resources
(phone: 301-427-8401)

Enclosures

cc: Patrice Ashfield, USFWS
Hoku Johnson, PMNM



JUN 5 2013

Loyal Mehrhoff, Ph.D.
Field Supervisor
Pacific Islands Fish and Wildlife Office
U.S. Fish and Wildlife Service
300 Ala Moana Boulevard, Suite 3-122
Honolulu, HI 96850

Dear Dr. Mehrhoff,

In a letter addressed to Mr. Barry Stieglitz, dated March 18, 2013, we requested consultation with the U.S. Fish and Wildlife Service (USFWS) under section 7 of the Endangered Species Act for incidental take of Laysan finch (*Telespyza cantans*) during field camps to take Hawaiian monk seals (*Monachus schauinslandi*) for research and enhancement purposes. We also requested concurrence that the activities proposed may affect but will not likely adversely affect the green sea turtle (*Chelonia mydas*), Nihoa Miller bird (*Acrocephalus familiaris kingi*), Laysan duck (*Anas laysanensis*), and short-tail albatross (*Phoebastria albatrus*). We have determined that the proposed activities will not adversely modify or destroy designated critical habitat.

The enclosed letter and consultation package were transmitted to Mr. Stieglitz via mail and email on March 18, 2013. On March 19, 2013, Mr. Stieglitz answered the email, indicating he would later respond with a point of contact for the consultation. On June 3, 2013, we were notified by Christine Ogura that section 7 consultation requests are handled by the Ecological Services Division and should be addressed you. Ms. Ogura verified the consultation package has been transmitted to your office.

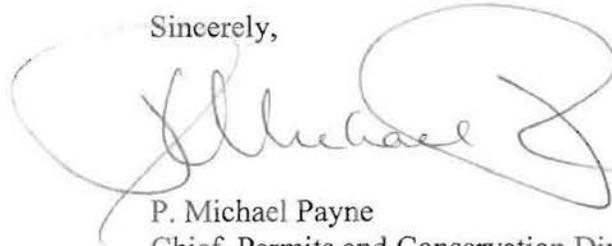
Based on the guidance received from Ms. Ogura, we are requesting consultation with your office for incidental take of Laysan finch, and requesting concurrence that the green sea turtle, Nihoa Miller bird, Laysan duck, and short-tail albatross will not likely be adversely affected during Hawaiian monk seal research and enhancement activities. We propose to issue a new 5-year permit (Permit No. 16632) to the NMFS Pacific Islands Fisheries Science Center to replace their existing Permit No. 10137. The proposed start date for Permit No. 16632 is January 1, 2014. In compliance with the National Environmental Policy Act, NMFS is preparing a Final Programmatic Environmental Impact Statement (PEIS) for Hawaiian monk seal Recovery Actions, which includes activities proposed in the permit application. A Draft PEIS for Hawaiian monk seal Recovery Actions was made available to the public in 2011 (76 FR 51945). The intent of the PEIS is to evaluate the potential direct, indirect, and cumulative impacts on the human environment of the alternative approaches to implementing recovery actions, including research and enhancement activities requiring a permit.



Enclosed is supporting documentation for the consultation and the USFWS 2009 biological opinion on incidental take of Laysan finch for the current Hawaiian monk seal Permit No. 10137.

Please respond as soon as possible with a point of contact for the consultation and to let us know if the enclosed initiation package is complete. Correspondence regarding the consultation should be directed to Amy Sloan (Amy.Sloan@noaa.gov) and Colette Cairns (Colette.Cairns@noaa.gov); phone (301-427-8401).

Sincerely,

A handwritten signature in black ink, appearing to read "P. Michael Payne". The signature is fluid and cursive, with a large loop at the end.

P. Michael Payne
Chief, Permits and Conservation Division
Office of Protected Resources
(phone: 301-427-8401)

Enclosures

cc: Barry Stieglitz, USFWS
Christine Ogura, USFWS
Hoku Johnson, PMNM



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Pacific Islands Fish and Wildlife Office
300 Ala Moana Boulevard, Room 3-122
Honolulu, Hawai'i 96850

In Reply Refer To:
2013-F-0237

Tammy Adams, Ph.D
Acting Chief, Permits, Conservation and Education Division
Office of Protected Resources
United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Silver Spring, Maryland 20910

FEB 20 2014

Subject: Biological Opinion for the Final Programmatic Environmental Impact Statement for Hawaiian Monk Seal Recovery Actions, Hawaii Archipelago and Johnston Atoll

Dear Ms. Adams:

This Biological Opinion responds to your request for initiation of formal consultation with the U.S. Fish and Wildlife Service (Service) pursuant to the Endangered Species Act of 1973, as amended (Act). We initiated consultation on June 5, 2013. At issue are the impacts to the endangered Laysan finch (*Telespyza cantans*) resulting from Hawaiian monk seal (*Monachus schauinslandi*) recovery actions conducted by the National Marine Fisheries Service (NMFS) Pacific Islands Fisheries Center, Hawaiian monk seal Research Program (HMSRP) to continue population monitoring (including health, disease, and foraging research) on the endangered Hawaiian monk seal. In the course of conducting biological research on Hawaiian monk seals, researchers and technicians will camp and spend extended periods of time on Laysan Island and the islands in Pearl and Hermes Reef. In the past, seemingly benign activities such as camping or storage of supplies has led to the inadvertent death of several Laysan finches. This Biological Opinion will address the incidental take of the Laysan finch due to the presence of researchers working and camping on Laysan Island and the islands at Pearl and Hermes Atoll.

In your letter of June 5, 2013, you determined the proposed action "may affect but is not likely to adversely affect" the threatened green sea turtle (*Chelonia mydas*) on land, Nihoa millerbird (*Acrocephalus familiaris kingi*), short-tail albatross (*Phoebastria albatrus*), and Laysan duck (*Anas laysanensis*).

Green sea turtle

The action area for your potential impact to green sea turtles is the areas under the jurisdiction of the Service within the Monument. The green turtle nests in the NWHI and may be affected by



the research activities when on land. Sleeping and basking green sea turtles are generally unaware of unobtrusive human presence. However, there is the possibility that some activities such as small boat transits and landings, capturing seals, and other research activities may startle basking turtles, causing them to relocate into the water. Best management practices have been included to minimize and avoid the unintentional harassment of basking and/or nesting green sea turtles while conducting research or camping on various islands. These measures include the following:

- Walking is prohibited on all beaches, from dusk to dawn, where adult turtles rest.
- All field camps will use maximum light control (shading, minimum wattage, etc.).
- All field camps must avoid disorienting hatchling turtles.

We concur with your determination that this action “may affect, but is not likely to adversely affect” terrestrial green sea turtles because researchers will follow the aforementioned minimization measures and adhere to best management practices to avoid basking and nesting green sea turtles.

Nihoa Millerbird

The Service in conjunction with American Bird Conservancy translocated 24 millerbirds from Nihoa Island to Laysan Island in September 2011, to decrease the risk of extinction from a catastrophic event on Nihoa. The Nihoa millerbirds on Laysan Island do not appear to show the same camp-following behavior as Laysan finch. Injury or death to Nihoa millerbirds is not expected from interactions with field camps and HMSRP activities on Laysan Island. It is possible that Millerbirds could be disturbed if they nest near field camps or if HMSRP researchers hike through the interior of the island.

We concur with your determination that this action “may affect, but is not likely to adversely affect Nihoa millerbirds because outlined activities are unlikely to result in adverse effects to the species.

Short-tail albatross

Short-tailed albatross have been sighted on Kure Atoll, Laysan Island and Midway Atoll where a pair has successfully nested each of the last two years. Albatross require a long straight-line ground trajectory to become airborne, and there is a small risk that they could fly into camera-mounted poles (e.g., at French Frigate Shoals or at other sites if erected) or shoreline pen fencing (erected temporarily to hold seals at any site) with possible injury. Camera-mounted poles have been maintained at French Frigate Shoals, and the HMSRP is not aware of any records of sea birds flying into the poles. Temporary pens have been seasonally maintained by HMSRP at Kure Atoll, Midway Atoll, and French Frigate Shoals for over ten years during summer months with no incidents of seabirds becoming entangled in the fence. However, during 3-month winter maintenance of a temporary pen at French Frigate Shoals in 2006, a single Laysan albatross (*P. immutabilis*) flew into the fencing and was injured, but survived.

The HMSRP will ensure that monk seal pens would not be placed in the vicinity of short-tailed albatross or their nests. For example, at Midway Atoll, the shore pen will not be on the same island where the short-tailed albatross decoys, sound recordings, and recent nesting occurred.

The placement of the pen would be on Sand Island, approximately 3 miles from the short-tailed albatross nesting location.

Monk seal shore pens will normally be erected in the fall, after the short-tailed albatross breeding season and fledging of hatchlings. However, pens could be erected at any time of year. If shore pens are erected, the height of the pen would be below 5 ft. HMSRP researchers would increase monitoring of pens on windy days. Pens would be dismantled immediately after use, which typically would not exceed two weeks for holding seals. In the unlikely event that a short-tailed albatross were to fly into a shore pen, the pen would be taken down and the Monument and Service would be contacted for guidance. HMSRP field camps in the North Western Hawaiian Islands are typically supplied and staffed using vessels, rather than aircraft. The use of an aircraft may occasionally occur at Midway Atoll or French Frigate Shoals, which could pose a risk to short-tailed albatross. Requirements of the Monument would be in place to ensure the overall effects of air strikes on albatross and other birds is minimal (PMNM 2008). These include:

- Night flights for most of the year at Midway;
- Vegetation management along the runways to modify bird flight and nesting behavior;
- Flight path advisories given to pilots; and
- Runway clearing of birds and other wildlife by personnel prior to landing and takeoffs.

We concur with your determination that this action “may affect, but is not likely to adversely affect” short-tail albatross because researchers will follow the aforementioned minimization measures and adhere to best management practices to avoid adverse impacts to short-tail albatross.

Laysan duck

The Laysan duck is found on Laysan Island and Midway Atoll. Although these ducks primarily use vegetated upland and lake/lowland habitats, a few ducks on Laysan use the camp area to get freshwater, insects, and shade (Service 2009a). Coastal habitats are used more frequently during the post-breeding season (September through February) than the breeding season. Flocks of up to 70 Laysan ducks were recorded on the coast during the post-breeding season (Service 2009a).

HMSRP researchers could disturb ducks near camp. There is a small possibility that ducks in coastal areas could fly or run into the temporary monk seal holding pens when foraging. However, Laysan ducks have never interacted with shore pens used by the HMSRP since 1981 and any such occurrence is not expected. Thus, no injury or mortality to Laysan ducks is expected.

We concur with your determination that this action “may affect, but is not likely to adversely affect Laysan duck because outlined activities are unlikely to result in adverse effects to the species.

This response represents the Service's Biological Opinion regarding the effects of the proposed project on the Laysan finch pursuant to the Act. This consultation is based on information obtained from research permit applications, your Final Programmatic Environmental Impact

Statement and other information available to us. A full administrative record is available at our office. Details of the proposed Hawaiian monk seal research and population enhancement activities can be found in the Final Programmatic Environmental Impact Statement for Hawaiian Monk Seal Recovery Actions, Hawaii Archipelago and Johnston Atoll.

CONSULTATION HISTORY

March 11, 2013. P. Michael Payne Chief, Permits, Conservation and Education Division, National Marine Fisheries Service sent Barry Stieglitz, Project Leader for the Hawaiian and Pacific Islands National Wildlife Refuges and Northwestern Hawaiian Islands Marine National Monument, a letter requesting formal consultation for activities related to Final Programmatic Environmental Impact Statement for Hawaiian Monk Seal Recovery Actions, Hawaii Archipelago and Johnston Atoll.

June 3, 2013. Christine Ogura, Acting Pacific Island and Remotes Refuge Manager, informed National Marine Fisheries Service that our office should take the lead on preparing this Biological Opinion.

June 5, 2013. Mr. Payne transmitted the letter requesting formal consultation for activities related to Final Programmatic Environmental Impact Statement for Hawaiian Monk Seal Recovery Actions, Hawaii Archipelago and Johnston Atoll.

July 15, 2013. Aaron Nadig, Service Fish and Wildlife Biologist, had a phone call with Amy Sloan, NMFS Office of Protected Resources to discuss past interactions with Laysan finch under previous Biological Opinion and proposed covered activities under the PEIS.

July 25, 2013. Ms. Sloan provided excerpts from PEIS and additional Laysan Finch information requested on July 15 phone conversation.

DESCRIPTION OF THE PROPOSED ACTION

The Final Programmatic Environmental Impact Statement for Hawaiian Monk Seal Recovery Actions, Hawaii Archipelago and Johnston Atoll (NMFS 2013) fully describes the proposed actions and is incorporated by reference herein. A brief description of the proposed action is provided below. This Biological Opinion will include effects from recovery actions conducted by the NMFS Pacific Islands Fisheries Center, HMSRP to continue population monitoring (including health, disease, and foraging research) on the endangered Hawaiian monk seal. This consultation covers only activities authorized or permitted within the Monument. The HMSRP proposes to continue existing permitted activities in the Hawaiian Archipelago and Johnston Atoll including:

- Population assessment of seals (e.g., ground surveys; flipper tagging and marking for identification);
- Health and disease studies (e.g., capture, sedation, tissue sampling, weights and morphometrics);

- Foraging studies (e.g., telemetry studies, scat collection);
- De-worming research (e.g., fecal samples, testing anti-parasite treatments);
- Translocation of weaned pups within the NWHI to improve juvenile survival;
- Mitigation of fishery interactions (e.g., disentanglement, removal of hooks); and
- Mitigation of adult male aggression (e.g., removal of aggressive males).

New activities proposed include:

- Expanding the scope and number of seal translocations, including:
 - • moving seals with unmanageable human interactions from the MHI to the NWHI;
 - • taking seals three years of age and older from the MHI to NWHI to examine their subsequent survival; and
 - • using a two-stage translocation program where weaned pups are taken from areas of lower survival to areas of higher survival (no seals would be moved from the NWHI to the MHI as part of two-stage translocation under the proposed permit).
- Research and development of tools for modifying seal behavior to minimize interactions with humans and fishing gear in the MHI.
- Potential use of de-worming as a tool to improve juvenile survival.
- Supplementing monk seal diet using feeding stations in NWHI locations where rehabilitated seals are released.
- Vaccination studies and potential use of vaccines to mitigate infectious diseases including West Nile Virus and Morbilliviruses.
- Chemical alteration of aggressive male monk seal behavior using a testosterone suppressant.

Both NMFS and the Service maintain camps at Laysan Island. In addition to the camp at Laysan, NMFS personnel set up temporary field camps when they are working on the islands at Pearl and Hermes Atoll. Laysan finches are not fearful of humans and readily enter field camps in search of food and water. In the past, unfortunate incidents led to the mortality of several Laysan finches to include: (1) drowning in containers that filled with rain water during cloud bursts while biologist were away from the camp; (2) entrapment or entanglement in camping equipment such as tents; and (3) following a research vessel and flying down the smoke stack.

The action area pursuant to section 7 regulations consists of “all areas to be affected directly or indirectly by the Federal action.” The action area for this Biological Opinion for Laysan finch is Laysan Island and the islands in Pearl and Hermes Reef. Currently there is no federally designated critical habitat for Laysan finch.

Conservation Measures to Avoid and Minimize Impacts to Laysan Finch

When used in the context of the ESA, “conservation measures” represent actions proposed by the Federal action agency that are intended to further the recovery of and/or minimize or compensate for project effects on the species under review. Because conservation measures are part of the

Project Description and committed to by the action agency, their implementation is required under the terms of the consultation.

In the past, seemingly benign activities such as camping or supply storage have led to the inadvertent death of several Laysan finches. The following Best Management Practices (BMPs) are incorporated to avoid and minimize take of Laysan finch:

To minimize accidental drownings:

- a. Buckets will always be overturned so that they cannot collect rainwater.
- b. Laundry buckets must have lids while laundry is soaking.
- c. Buckets, bowls, and any other vessels large enough to hold a small bird containing water for dish washing or any other purpose will always be attended or covered securely.
- d. Tarps (e.g., those covering propane) will be tucked in tightly so that they cannot collect rainwater.
- e. Garbage cans used for desalinization will have netting placed between the can and the lid. Care will be taken to make sure the lids close properly; faulty positioning of hoses can interfere with proper closure.

To minimize accidental entanglement:

- a. Loose threads on fabric will be burned to minimize the risk of entanglement. Birds' feet can become entangled when fabric is hung out to dry.
- b. Loose threads will be cut off tents and tarps.
- c. Anything with small mesh (e.g., mist nets) will be stored in closed ziploc bags to avoid entanglement.
- d. Tent doors will be kept completely closed at all times (day and night) to preclude entry by birds.

To minimize impacts from general camping:

- a. Camp supplies and water jugs will be aligned with ample space between rows so that small birds cannot become entrapped.
- b. Storage jugs will always be capped.
- c. Burn barrels will be attended at all times when burning trash. When burn barrels are not in use, any vents or rust-eaten holes in the barrel or lid will be covered with rocks or other objects.
- d. For stability reasons, buckets will not be stacked more than two high. All personnel will watch for leaning buckets or water jugs and level the surface beneath leaning buckets, if necessary.
- e. Birds will not be fed or allowed access to human food because dependency on the camp food by these birds may result in adverse impacts to them during or after camping periods.
- f. Camp gear shall be checked daily during the nesting season to ensure finches are not building nests on or under camping gear.

Quarantine to Avoid Transport of Invasive Species

In addition to the measures described above, personnel working in the Monument must follow terrestrial quarantine protocols for moving between islands and packing for field camps (see

Appendix 1). These measures will minimize the potential for the introduction of non-native plant or insect taxa to the Monument. These strict quarantine measures will decrease the potential that invasive taxa will become established and modify the habitat for Laysan finch or green sea turtles.

STATUS AND ENVIRONMENTAL BASELINE OF THE SPECIES

Laysan Finch

Species Description

The Laysan finch is a member of the *Fringillidae* family with an overall length of 6 to 6.5 in (15 to 16 cm). It is one of four remaining finch-billed Hawaiian honeycreepers and is closely related to the smaller Nihoa finch. The Laysan finch is a large honeycreeper with a heavy bill. Males have yellow plumage with a whitish belly and a grey neck, while females are generally duller in color with brown streaking.

Listing Status

The Laysan finch was federally listed as endangered in 1967 (Service 1967).

Historical and Current Distribution

When discovered on Laysan in 1890, Laysan finches were considered “exceedingly common.” Visitors to Laysan circa 1915 described the species as “abundant” and estimated 2,700 in 1911 and 4,000 in 1915. However, Laysan finches declined sharply after the vegetation on Laysan virtually disappeared subsequent to rabbit introduction circa 1903. As few as 100 Laysan finches may have remained in 1923 (Service 2008). Rabbit extirpation by members of the Tanager Expedition in 1923 undoubtedly saved the Laysan finch from extinction. An estimated 1,000 Laysan finches in 1936 increased to 5,000 by 1950. Service surveys in the 1970s and 1980s suggested as many as 10,000. Laysan finches were translocated to an island in Pearl and Hermes Atoll in 1967. There were 108 birds left on Laysan that year, which grew to an estimated 523 by 1983 (Service 2008).

Ecology

Laysan finches lay their eggs generally late April to early June in clumps of bunchgrass, though other nesting sites, such as holes in rocky areas and even buildings (formerly present on Laysan), have been documented. *Eragrostis* spp. is currently the most common bunchgrass and most common nest site for shallow-cup nests averaging three eggs (range two to four). Nests are usually located several centimeters above the ground, centered in a grass clump, and well concealed. Incubation is about 16 days and the nestling period 15 days. Fledging is often in late July or early August (Service 2008).

Threats

Threats to Laysan finch are: 1) degradation and loss of habitat resulting from invasive alien species; 2) demographic effects of environmental stochasticity on small isolated populations; and 3) global warming and sea level rise that would increase storm frequency and magnitude increasing rainfall and wave height in Hawaiian Islands National Wildlife Refuge. In recent years, monotypic stands of the invasive plant *Verbesina encelioides* have been documented

replacing much of the native vegetation on the Southeast Island of Pearl, thus reducing nesting and foraging resources for Laysan finches (Service 2008).

Environmental Baseline

The Laysan finch population on Laysan Island has been monitored on an annual basis since 1966 (except 1980–1982). The estimated 44-year average Laysan finch population size was 10,029 (Underwood 2013) with population appearing stable and most likely at carrying capacity. Population estimates have ranged from >20,000 in 1976 to approximately 3,600 finches in 2007. The population at Pearl and Hermes Atoll was estimated as 329 in 2010, down from 600 to 900 in 2003 and 1,105 in 2002 (Service 2008).

EFFECTS OF THE ACTION

Laysan Finch

The Laysan finch is a highly inquisitive bird that constantly inspects and probes all types of objects. While this behavior may benefit the species in its natural environment, it can be problematic in human-altered environments. The Laysan finch does not appear innately wary of manmade items, possibly because it evolved in isolation from human-altered environments. Situations that one would not normally think of as hazards to wildlife become sources of Laysan finch mortality such as drowning, entanglement and entrapment. Both NMFS and the Service maintain camps at Laysan Island. In addition to the camp at Laysan, NMFS personnel set up field camps when they are working on the islands at Pearl and Hermes Atoll. Since Laysan finches are tame to human presence, they enter these field camps in search of food and water. Unintentional mortality or serious injury of Laysan finches has occurred in the past, and in all likelihood will occur in the future. Past mortalities resulted from events such as drowning in camp containers filled with water, becoming trapped in camp tents and entanglement in loose strings and netting. In May 2009, seven to ten Laysan finches flew out to the R/V Oscar Elton Sette as it was taking researchers to an islet in the Pearl and Hermes Atoll. It is thought the birds may have flown out to the ship in search of food and water as these resources were scarce on the island. Unfortunately, several of the birds flew down the smokestack of the ship and one was killed. This is the first known occurrence of this behavior and subsequently it is believed this was an anomalous event. This is another example of the type of odd behavior exhibited by these birds that can lead to unanticipated mortality (Flint 2009, pers. comm.). In 2009, the Service issued incidental take of up to 10 Laysan finch mortalities over a five-year period in a Biological Opinion analyzing NMFS research of Hawaiian monk seals on Pearl and Laysan (Service 2009b); eight mortalities have occurred to date (Johanos 2011). Of those 8 in 2011, five Laysan finches died at Pearl and Hermes during a single incident after a lid was left off a pallet tub and then accumulated rainwater. In response to these unfortunate incidences, the HMSRP has reviewed its training protocols for staff working at Laysan Island and Pearl and Hermes, and placed a renewed emphasis on the avoidance and minimization measures described below. The March 2011 tsunami may have affected the Laysan finch on Laysan, but no carcasses were found (Rehkemper 2011). There were no lethal takes of Laysan finches in 2012.

The conservation measures described in the project description will reduce the risk of inadvertent mortality due to drowning, entanglement and/or entrapment of Laysan finches at the campsite.

In addition, reducing the risk by eliminating problematic situations such as turning over buckets and not stacking camp materials will reduce the potential for inadvertent mortality of Laysan finch. The conservation measures outlined in this biological opinion to minimize the risk of harm to Laysan finches have been followed by the researchers for several years. There has been a decrease in the number of Laysan finch mortalities associated with the campsites in recent years due to the strict adherence to these measures (Rehkemper 2009, pers. comm.).

Based on the bird's inquisitive nature and lack of fear of humans, it is imperative that researchers try to anticipate situations that may result in take of Laysan finches and use their best judgment to avoid potential situations that may lead to Laysan finch mortality. As demonstrated in the past, when experiencing water and food stress, these birds will exhibit unusual behavior when interacting with humans that has resulted in mortality. Researchers, in coordination with Refuge and Service biologists, will be able to decrease finch mortality by adaptively modifying activities or camp sites if and when a new situation arises that harms Laysan finch.

Invasive Species

The quarantine measures required for persons working in the Monument will minimize the potential for introducing non-native plant and insect taxa within the Monument. As demonstrated in numerous insular habitats, the unintentional introduction of non-native taxa has had unintended and devastating consequences for insular biota (Cuddihy and Stone 1990). It is already thought that the introduction of *Verbesina encelioides* has altered the ecology of Pearl and Hermes Reef to such an extent that Laysan finches are affected by the change in vegetation composition and structure. Since the researchers have been and will continue to strictly adhere to the quarantine requirements as outlined in Appendix 1, the likelihood of introduction of other non-native taxa is greatly reduced. This measure also reduces the risk that researchers will negatively impact Laysan finch through the introduction of invasive taxa.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, local or private actions that are reasonably certain to occur within the area of action subject to consultation. Future Federal actions will be subject to the consultation requirements established in section 7 of the Act and, therefore, are not considered cumulative for the proposed action. The Service maintains a camp on Laysan Island and in the past there have been occasional Laysan finch mortalities in the vicinity of the camp as a result of human actions. The Service is unaware of any other future State, local, or private actions that are reasonably certain to occur within the action area covered in this Biological Opinion and that would not be subject to consultation.

CONCLUSION

After reviewing the current status of the Laysan finch, the environmental baseline for the action area, the effects of the proposed action and the cumulative effects, it is the Service's Biological Opinion that implementation of the proposed action is not likely to jeopardize the continued

survival and recovery of the Laysan finch in the wild. No critical habitat has been designated for this species; therefore, none will be affected.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulations promulgated pursuant to section 4(d) of the Act prohibit the take of endangered or threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2) of the Act, taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

AMOUNT OR EXTENT OF TAKE

Based on Laysan finch mortality associated with human activity on Laysan and the islands at Pearl and Hermes Atoll in the past, it is the Service's opinion no more than two Laysan finch will be taken in the form of mortality per year, and a total of 20 individuals per decade as a result of HMSRP research and monk seal recovery activities.

The Service will not refer the incidental take of any migratory bird for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §703-712), if such take is in compliance with the terms and conditions specified herein.

Effect of the Take

The take of two Laysan finches annually represents a small fraction of the approximately 10,029 birds on Laysan. The take would not be of sufficient size or magnitude to have population level effects. We have determined that this level of anticipated take is not likely to jeopardize the survival or recovery of the Laysan finch.

Reasonable and Prudent Measures

The reasonable and prudent measures given below, with their implementing terms and conditions, are designed to minimize the impacts of incidental take that might otherwise result from the proposed actions. If, during the course of the action, the level of incidental take is exceeded, such incidental take represents new information requiring reinitiation of consultation and review of

the reasonable and prudent measures provided. In addition, the action that caused the taking must cease; the action agency must immediately provide an explanation of the causes of the

taking; and must review with the Service the need for possible modification of the reasonable and prudent measures. The following reasonable and prudent measure is necessary and appropriate to minimize the effect of take on Laysan finch.

1. NMFS shall minimize the potential for harassment, harm, or mortality of Laysan finch.

Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, the Service and any subsequent project applicant, must ensure compliance with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are nondiscretionary.

The following terms and conditions implement reasonable and prudent measure number one.

1. If any unforeseen activity or action results in the harm or mortality of Laysan finches, all practicable means will be taken to apply avoidance or minimization measures to reduce the risk of additional take from that activity.
2. All Laysan finch mortalities that are a result of actions which are associated with research activities described above shall be reported to our office within five (5) days of the incident.
3. If an incidental death occurs that has not been addressed in this Biological Opinion, the Service will be contacted as soon as logistically feasible to discuss the cause of the mortality and determine the most appropriate method to avoid future mortalities from this new risk factor.
4. Dead Laysan finches will be sent to Dr. Thierry M. Work at the National Wildlife Health Center, Honolulu Field Station (U.S. Geological Survey-Biological Resources Discipline) for a necropsy. The method of shipment and preservation will be determined in coordination with Dr. Work.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. The term "conservation recommendations" has been defined as suggestions from the Service regarding discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat or regarding the development of information. The recommendations provided here relates only to the proposed action and do not necessarily represent complete fulfillment of the agency's 7(a)(1) responsibilities for these species.

1. As described above, *Verbesina encelioides* has invaded several islands within the Monument and has decreased the utility of these invaded islands as habitats for many bird species. The Service recommends the personnel implementing monk seal research and enhancement activities learn to identify *V. encelioides* and document its presence on each island. If the plant is identified where it has not been documented in the past, the plants

should be photographed and their locations mapped or marked by GPS. This information should be shared with Mr. Barry Stieglitz, Project Leader for the Hawaiian and Pacific Islands National Wildlife Refuges and Northwestern Hawaiian Islands Marine National Monument.

REINITIATION-CLOSING STATEMENT

This concludes formal consultation on this action. As required in 50 CFR § 402.16, reinitiation of consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operation causing such take must cease pending reinitiation.

As stated in the Conclusion (above), the Service's finding of non-jeopardy is based in large part on the conservation measures. Should there be a failure to carry out any or all of the described measures, or if the measures are not effective, or if these measures are modified in any way without Service coordination, reinitiation of consultation will be required. If you have any questions regarding this Biological Opinion, please contact Aaron Nadig at (808) 792-9400.

Sincerely,



Jess Newton
Acting Deputy Field Supervisor:
Geographic Division

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Appendix 1

Appendix 1: Terrestrial Quarantine Protocol

PAPAHANAUMOKUAKEA MARINE NATIONAL MONUMENT TERRESTRIAL QUARANTINE PROTOCOLS FOR MOVING BETWEEN ISLANDS AND ATOLLS AND PACKING FOR FIELD CAMPS

February 2008

The islands and atolls of the Papahānaumokuākea Marine National Monument (Monument) and the Hawaiian Islands National Wildlife Refuge are special places providing habitat for many rare, endemic plants and animals. Many of these species are formally listed as Endangered under the Endangered Species Act. Endemic plants and insects, and the predators they support, are especially vulnerable to the introduction of competing or consuming species. Such introductions may cause the extinction of island and reef endemics, or even the destruction of entire island ecosystem or reef ecological communities. Notable local examples include the introduction of rabbits to Laysan Island in 1902, which caused the extinction of numerous plant and insect species, and three endemic land bird species; the introduction of rats to many Pacific Islands causing the elimination of many burrowing seabird colonies; the introduction of the annual grass, sandbur, to Laysan Island where it has crowded out native bunch grass thus, eliminating nesting habitat for the Endangered Laysan finch; and, the introduction and proliferation of numerous ant species throughout the Pacific Islands to the widespread detriment of endemic plant and insect species.

Several of the islands within the Monument are especially pristine, and as a result are rich in rare and special plants and animals. Nihoa Island has at least 17 endemic and rare insect species, five endangered plants and two endangered birds. Necker Island has endangered plants and 11 endemic insects. Laysan Island has endangered plants, nine endemic arthropods and the endangered Laysan finch and Laysan duck. Other islands in the Monument, such as Lisianski, and islands in Atolls such as Pearl and Hermes Reef and French Frigate Shoals provide homes for a variety of endemic and/or endangered species and require special protection from alien species.

Other Pacific Island such as Kure and the “high islands” (Oahu, Hawaii, Maui, Kauai, etc.) as well as, certain islands within Midway Atoll, Pearl and Hermes Reef and French Frigate Shoals have plants and/or animals that are of high risk for introduction to the relatively pristine islands discussed above. Of special concerns are snakes, rats, cats, dogs, ants and a variety of other insect and plant species. Harmful plant species of highest concern that we know of are *Verbesina encelioides*, *Cenchrus echinatus*, and *Setaria verticillata*.

The Co-trustees are responsible for the management and protection of the islands, reefs and wildlife of the Monument. No one is permitted to set foot within the Monument without the express permission of the Co-trustees through the permitting process. Because of the above concerns, the following restrictions on the movement of personnel and materials throughout the Monument exist.

Definitions:

New Off the shelf and never used anywhere but the island in question.

Clothing All apparel, shoes, and socks, over and under garments.

Soft Gear All gear such as daypacks, fanny packs, packing foam or similar material, camera bags, camera/binocular straps, microphone covers, nets, holding or weighing bags, bedding, tents, luggage, or any fabric or material capable of harboring seeds, spores, or insects.

Frozen Sealed in a clean or new container and put in a freezer for at least 48 hours to kill any insects or animals and damage any seeds that may be harbored within.

The following conditions and rules apply to the all islands within the Monument with the exception of those at French Frigate Shoals and Midway Atoll:

General Rules:

1. Regardless of origin or destination, inspect and clean all equipment, supplies, etc., just prior to any trip to the Monument. Carefully clean all clothing, footwear and soft gear following use to minimize risk of cross contamination of materials between islands.
2. Pack supplies in plastic buckets with fitted lids or other sealable metal or plastic containers so they can be thoroughly cleaned inside and out. Cardboard is not permitted on the islands. Cardboard boxes disintegrate in a short time and harbor seeds, animals, etc., which cannot be easily found or removed. Wood is not permitted unless sealed on all surfaces. Wooden boxes can also harbor insects and seeds and therefore are only allowed if they are well constructed (tight fitting seams are required). All wood must be treated, and inside and outside surfaces must be painted or varnished to provide a smooth, cleanable finish that seals all holes.
3. Freeze or tarp and fumigate then seal all equipment (clothes, books, tents, everything) just prior to departure. Food and cooking items need not be fumigated but should be cleaned and frozen, if freezable. Cameras, binoculars, radios, and other electronic equipment must be thoroughly cleaned, including internal inspection whenever possible, but do not need to be frozen or fumigated. Such equipment can only be packed in wooden crates if treated as in #2 above. Any containers must contain new, clean packing materials and be frozen or fumigated.
4. At present, Tern Island is the singular exception to the above rule, having less stringent rules due to the large number of previously established alien species. Careful inspection of all materials and containers is still required. However, it is acceptable to use wooden and cardboard containers for transporting supplies to Tern Island. Also, there is no requirement for freezing or fumigating items disembarked at Tern. Although requirements for Tern Island are more lax, the Monument is still concerned about the possibilities of new introductions. Do not wear clothing to Tern Island that has been worn at Pearl and Hermes, Midway Atoll or Kure Atoll.

5. To avoid transport of seeds from within the boats used between island and atolls in the Monument the following steps must be taken. For islands with safe or sandy landing conditions, one should keep quarantine shoes/socks inside quarantine containers until the island is reached. One should go ashore bare foot, and then don the quarantine shoes. Non-quarantine shoes should be removed in the small boat, put into a bucket or some kind of sealed container, and left enclosed in that container until the person departs the island. The sealed container, if clean on the outside, may be taken ashore, but should not be opened ashore. For landings which are rocky, rough, and relatively unsafe (such as Mokumanamana and Nihoa) for safety reasons, quarantine shoes should be donned when inside the small boats, but care should be taken to look for seeds and insects which may be in the small boat and ensure they do not get ashore.

Rules Regarding Clothing and Soft Gear:

1. Any personnel landing boats at any island should have clean clothes and shoes.
2. Any personnel going ashore at any island and moving inshore from the immediate area in which waves are breaking at the time of landing must have new footwear, new or island specific clothes and new or island specific soft gear. All must be frozen for at least 48 hours prior to landing.
3. At the discretion of the local FWS representative, personnel from the NOAA ships or any other vessel servicing the Monument may be allowed on shore to visit pre-designated areas for guided tours. For such tours, personnel must have new footwear, new clothes and new soft gear all frozen for at least 48 hours prior to landing.
4. Any personnel entering any vegetated area, regardless of how sparse the vegetation, must have new footwear, new clothes and new soft gear all frozen for at least 48 hours prior to landing.
5. Clothing or gear coming off Kure and Midway should never be moved to any of the other refuge islands. During transit, clothing and gear coming off Kure and Midway must be carefully sequestered to avoid contamination of gear bound for cleaner islands. Special care must be taken to avoid contaminating gear storage areas and quarters aboard transporting vessels with seeds or insects from these islands.

Rules Regarding Food:

1. All fresh food is prohibited.
2. Tomatoes (any variety), ray sunflower seeds, alfalfa seeds, mustard seeds.
3. Bulk dried fruits are allowed but should be frozen solid for at least one day to kill any insects.
4. Seeds from sprouting species such as alfalfa, mustard and cress, commonly used for sprouted greens, could potentially become established and cannot be brought to the islands. Other species, such as mung beans, soy beans, and radishes, would not likely to survive on the islands and can be used for fresh greens.
5. Soil can contain many seeds, eggs, larvae, etc., and cannot be transported to or between islands.
6. All other food that can be safely frozen (this does not apply to food in cans or glass jars) must be packaged in air tight containers just as all other gear and frozen for 48 hours.

Additional Rules for Travel to Nihoa and Necker (Mokumanamana) Islands:

Nihoa and Mokumanamana are the most pristine locations in the Monument. Nihoa is home to the highest number of federally listed endangered species in the Monument. Many areas of these small rugged islands are inaccessible. Introduction of any alien species could have disastrous results in a very short time. It would be almost impossible to mount any kind of control or eradication program on these islands should an alien species become established. Because of these reasons, access to Nihoa and Mokumanamana are strictly limited, and rules governing entry are more stringent. Access to Nihoa and Mokumanamana by permittees will only be allowed under the accompaniment and supervision of a U.S. Fish and Wildlife Service (Service) Representative. The representative, who shall be appointed by the U.S. Fish and Wildlife Service Monument Superintendent, will work with permittees to assure careful compliance with all rules for inspection, handling and preparation of equipment. The Service Representative will have the authority to control and limit access to various parts of the island to protect animals, plants and archaeological sites, especially endangered species. The Service Representative will have the authority to disallow access to the island, or order an immediate departure from the island if conditions for working on the island are not met or are violated in any way.

1. All field equipment made out of fabric material or wood must be new and never previously used in the Northwestern or main Hawaiian Islands. Equipment previously purchased or made for use on Nihoa and Mokumanamana that has been carefully sealed and stored while away from Nihoa and Mokumanamana, and not used elsewhere, may also be brought onto the island. Rules for freezing and/or fumigating are as described for other sites in the Monument (see above).
2. Clothing, footwear (shoes, slippers, socks, etc.), daypacks (soft gear) must be new, unused, or previously only used on Nihoa (or Mokumanamana) and carefully sealed and stored while off of the island. Hard gear such as camera and equipment must be thoroughly cleaned and inspected.

Additional Rules for Travel Within Pearl and Hermes Atoll:

In recent years *Verbesina encelioides* has been introduced to Southeast Island within Pearl and Hermes Atoll. This noxious weed has taken over a large portion of the island. To prevent the further spread of this weed to the other islands within this atoll the following precaution must be taken:

1. Every person should have one set of quarantine gear and clothing for Southeast Island and one set of quarantine gear and clothing for all other islands in the atoll. For instance the same clothing, and if needed camping gear, may be used at North and Seal Kittery, but anything used at southeast needs to stay off all other islands in the atoll. Do not use the outer islet clothing and gear on Southeast Island.
2. Carefully inspect small boats and their associated equipment when traveling between islands at Pearl and Hermes Atoll. Since folks likely take one anchor ashore and put one anchor in the water there is potential for seed dispersal on anchor lines as well as from within the small boats. This needs to be watched very carefully.

*Coastal Zone Management Act
Correspondence*



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1110
Honolulu, Hawaii 96814-4700
(808) 944-2200 • Fax (808) 973-2941

APR 08 2013

Mr. Leo Asuncion, Manager
Hawaii Coastal Zone Management Program
Department of Business, Economic Development, and Tourism
P.O. Box 2359
Honolulu, HI 96804

Dear Mr. Asuncion:

In coordination with the National Marine Fisheries Service (NMFS), Pacific Islands Regional Office, the NMFS Pacific Islands Fisheries Science Center has submitted a permit application to conduct a suite of Hawaiian monk seal recovery activities under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA). This ESA-MMPA permit application has been submitted to the NMFS Office of Protected Resources. We have evaluated the recovery activities described in the permit application and have determined that issuance of the ESA-MMPA permit is consistent to the maximum extent practicable with the enforceable policies of the approved Coastal Zone Management Program of the State of Hawaii. This consistency determination is submitted in compliance with the federal consistency regulations, 15 C.F.R. Part 930.

The application is for a 5-year permit to conduct research and enhancement activities designed to help recover the endangered Hawaiian monk seal. A copy of the permit application is enclosed for your reference and additional information regarding the permit application and the proposed recovery activities may be viewed online at:
<http://www.nmfs.noaa.gov/pr/permits/monkseal16632.htm>.

The research activities proposed in the permit application are intended to identify impediments to recovery, inform the design of conservation (or enhancement) measures, and evaluate those measures. These research activities include, but are not limited to: visual and photographic monitoring, tagging, health screening, foraging studies, deworming research, experimental translocation, behavioral modification research, and vaccination research.

Enhancement activities proposed in the permit application are designed to improve the survival and reproductive success of individual monk seals, with the intent to improve subpopulation and overall species' status. These enhancement activities include deworming, translocation, hazing and removal of aggressive adult male seals that harm or kill other seals, disentangling, dehooking, treating injured seals in the wild, behavioral modification, vaccination, and supplemental feeding of post-release rehabilitated seals.



Types of seal translocations proposed include translocation within the NWHI, within the MHI, and from the MHI to the NWHI. Translocation from the NWHI for release in the MHI as part of a two-stage translocation program is not included in the permit application.

Because Hawaiian monk seals have an expansive natural range, the geographic area in which the proposed research and enhancement activities could be conducted includes almost all shorelines and nearshore waters throughout the Hawaiian Archipelago, including the Northwestern Hawaiian Islands (NWHI) and main Hawaiian Islands (MHI). Nevertheless, the actual spatial “footprint” of the activities themselves would be quite small in comparison, and the activities would rarely occur repeatedly in any one location. The activities would also be quite limited in terms of intensity and duration. Only a limited number of staff (usually less than 10) and only one or two vehicles and/or small vessels would be involved in conducting any of the activities, and the activities would usually be completed in one hour or less. In addition, none of the activities would entail alteration of any structure, shoreline, or seafloor substrate, nor would any activity entail any new restriction on resource use or access. All of these factors, which we believe limit potential adverse effects on coastal uses and resources, were considered in reaching our consistency determination.

Before and during implementation of the activities proposed in the permit application, NMFS intends to conduct a suite of measures designed, in part, to mitigate potential adverse effects on coastal uses and resources that might result from implementing the proposed activities. These mitigation measures, which were also considered in our consistency determination, include:

- Avoiding, to the maximum extent practicable, implementation in areas known to be used extensively for recreational, cultural, historic, and/or economic purposes.
- Developing a *Management Plan for Hawaiian Monk Seals in the Main Hawaiian Islands* using a participatory planning methodology.
- Seeking regular advice from a *Hawaiian Monk Seal Recovery Team*, composed of experts in relevant topics, including fishing, ocean recreation, ocean industry, and cultural protocols.
- Ensuring staff training in recognition and avoidance of cultural resources and historic properties.
- Developing protocols regarding management, handling and removal of monk seals that enter fishponds.
- Conducting education and outreach regarding the proposed activities and other aspects of Hawaiian monk seal conservation and biology.
- Maintaining close coordination with relevant federal, state and county agencies.

We also note that the proposed activities, which are intended to promote the recovery of Hawaiian monk seals, appear to be consistent with Hawaii’s *Ocean Resources Management Plan* (2009). The proposed activities appear to be particularly relevant to the following strategic action: “Enhance the conservation of Hawaii’s marine protected

species, unique habitats and biological diversity.” Conservation of Hawaiian monk seals is mentioned specifically in the section of the plan that discusses this strategic action.

We look forward to coordinating with you and your staff on your agency’s review of this consistency determination. Please contact Jeff Walters at (808) 944-2235 or jeff.walters@noaa.gov if there are any comments or questions.

Sincerely,

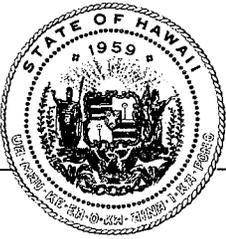
A handwritten signature in black ink, appearing to read "M. D. Tosatto", with a stylized flourish at the end.

Michael D. Tosatto
Administrator

Enclosure

cc: John Nakagawa, Hawaii CZMP

*Response by State of Hawai'i
CZM Program*



**OFFICE OF PLANNING
STATE OF HAWAII**

NEIL ABERCROMBIE
GOVERNOR

JESSE K. SOUKI
DIRECTOR
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Ref. No. P-13949

April 16, 2013

Mr. Michael D. Tosatto, Regional Administrator
Pacific Islands Regional Office
National Marine Fisheries Service
1601 Kapiolani Boulevard, Suite 1110
Honolulu, Hawaii 96814-4700

Attention: Mr. Jeff Walters

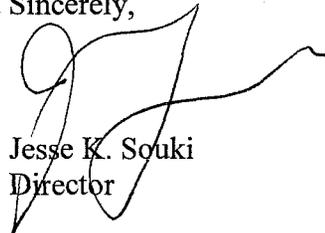
Dear Mr. Tosatto:

Subject: Hawaii Coastal Zone Management (CZM) Program Federal Consistency
Review for Hawaiian Monk Seal Recovery Activities

The Hawaii CZM Program has reviewed the proposal by the National Marine Fisheries Service (NMFS), Pacific Islands Fisheries Science Center, to conduct various Hawaiian monk seal recovery activities under the Endangered Species Act and the Marine Mammal Protection Act. We will not be responding to the NMFS coastal consistency determination for the proposed activities due to the preemption of Hawaii CZM enforceable policies that are relevant to the taking of marine mammals. (See the attached letter from Jane C. Luxton, NOAA General Counsel, to Frank R. Jimenez, General Counsel of the Navy, June 20, 2008.)

Thank you for coordinating with the Hawaii CZM Program. If you have any questions, please call John Nakagawa of our CZM Program at 587-2878.

Sincerely,



Jesse K. Souki
Director

Enclosure

c: Department of Land and Natural Resources,
Division of Aquatic Resources (w/o enclosure)

*National Historic Preservation Act
Section 106 Consultation -
Determination Letter to SHPO*



U.S. DEPARTMENT OF COMMERCE
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NOV 12 2013

Mr. William J. Aila, Jr.
Hawaii State Historic Preservation Officer
Department of Land and Natural Resources
1151 Punchbowl St.
Honolulu, HI 96713

Dear Mr. Aila:

The purpose of this letter is to transmit the determination of the National Marine Fisheries Service (NMFS) regarding our consultation pursuant to Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. § 740f, implementing 36 C.F.R. Pt. 800 (2008), for our proposed undertaking to implement a suite of Hawaiian monk seal recovery actions.

NMFS has completed the consultation process under NHPA Section 106, and has made a determination of no historic properties affected. This means that we have found there are historic properties present in the area in which the undertaking will occur, but the undertaking will have no effect, as described in 36 C.F.R. Pt. 800.16.(i), upon the historic properties.

The enclosed report is provided to present a summary of our NHPA Section 106 compliance process as well as to serve as documentation, as specified in 36 C.F.R. Pt. 800.11.(d), of our determination of no historic properties affected. Descriptions of the undertaking and its area of potential effects are provided in Sections 4 and 2 of the report, respectively. Descriptions of the steps taken to identify historic properties are presented in Sections 3 and 7 of the report, which describe the research methodology and consultation process, respectively. The basis for determining that no historic properties are affected is presented in Sections 8 and 9 of the report.

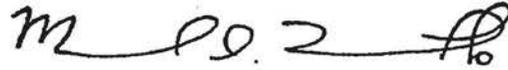
As specified in 36 C.F.R. Pt. 800.4.(d)(1), we are notifying all consulting parties of our determination (via transmittal of a letter and the enclosed report) and making the documentation (i.e., the enclosed report) available to the public via our website.

As indicated in 36 C.F.R. Pt. 800.4.(d)(1), if we do not hear from you within 30 days of your receipt of this letter and enclosed documentation, we will assume there is no objection to our determination.



We appreciate your and your staff's efforts during this NHPA Section 106 compliance process. Please contact Jeff Walters, at (808) 944-2235 or jeff.walters@noaa.gov, if there are any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "M. D. Tosatto". The signature is fluid and cursive, with a large initial "M" and a distinct "Tosatto" ending.

Michael D. Tosatto
Regional Administrator

Enclosure

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