



Prepared for:
 National Oceanic and Atmospheric Administration
 National Marine Fisheries Service

Programmatic Environmental Impact Statement

Chapter 1: Purpose & Need

Final PEIS for Hawaiian Monk Seal Recovery Actions

March 2014



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1.0 *PURPOSE AND NEED*

1.1 *INTRODUCTION*

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Services (NMFS) is the Federal agency responsible for management of Hawaiian monk seals, 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.*). NMFS funds, permits, and conducts research and enhancement activities on Hawaiian monk seals in the Northwestern Hawaiian Islands (NWHI) and Main Hawaiian Islands (MHI). The Hawaiian monk seal population has experienced a prolonged decline. In 1976, NMFS listed Hawaiian monk seals as “endangered” under the ESA (41 Federal Register [FR] 51611) and “depleted” under the MMPA. The most recent (2010) best estimate of total abundance is 1,212 seals (Carretta *et al.*, 2013). A detailed description of Hawaiian monk seals is included in Section 3.3.1.

As required under Section 4 of the ESA, NMFS published a Recovery Plan for the species in 1983, which was revised in 2007. Numerous threats to the survival of Hawaiian monk seals are identified in the Recovery Plan including, but not limited to, starvation, predation of pups by sharks, entanglement in marine debris, and threatened terrestrial habitat due to sea level rise. Low juvenile survival over the past two decades is the primary cause of the population’s decline. There is insufficient recruitment into the breeding population, and the population decline will likely continue without intervention. Potential disease outbreaks could be devastating to the population. Enhancement activities are being considered to improve juvenile survival and the overall health of the population.

NMFS administers funds that have been designated by Congress and allocated within NMFS’ annual budget for the purpose of implementing recovery actions on Hawaiian monk seals. Using these funds, NMFS implements various management, research, and enhancement activities for recovery of the species.

The intent of this Programmatic Environmental Impact Statement (PEIS) is to evaluate, in compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and the NOAA Administrative Order (NAO) 216-6, the potential direct, indirect, and cumulative impacts on the human environment of the alternative approaches to implementing recovery actions, including research and enhancement activities and the subset of actions requiring permits, under the Hawaiian monk seal recovery program.

1.2

PURPOSE AND NEED FOR ACTION

The purpose of implementing recovery activities (research and enhancement) for Hawaiian monk seals is to promote the recovery of the species population to levels at which ESA protection is no longer needed. Section 4(f) of the ESA (15 U.S.C. 1533(f) requires the development and implementation of recovery plans, except where such plans will not promote the conservation of the species. The proposed activities in this PEIS have been identified as recovery actions in the Hawaiian Monk Seal Recovery Plan (NMFS 2007).

The need for this action is rooted in fundamental biological and ecological factors that are now limiting the population. A comprehensive research program enables NMFS to recognize, and possibly quantify, factors limiting the population in order to designate appropriate actions to minimize human-induced impacts and other factors affecting seal survival. Data and analyses derived from research lead to improved decision-making, and strategic management and enhancement activities that promote population recovery, prevent harm, and avoid jeopardy or continued disadvantage to the species as required under the ESA. Research and monitoring will continue to play a key role in determining whether enhancement activities achieve their desired outcomes.

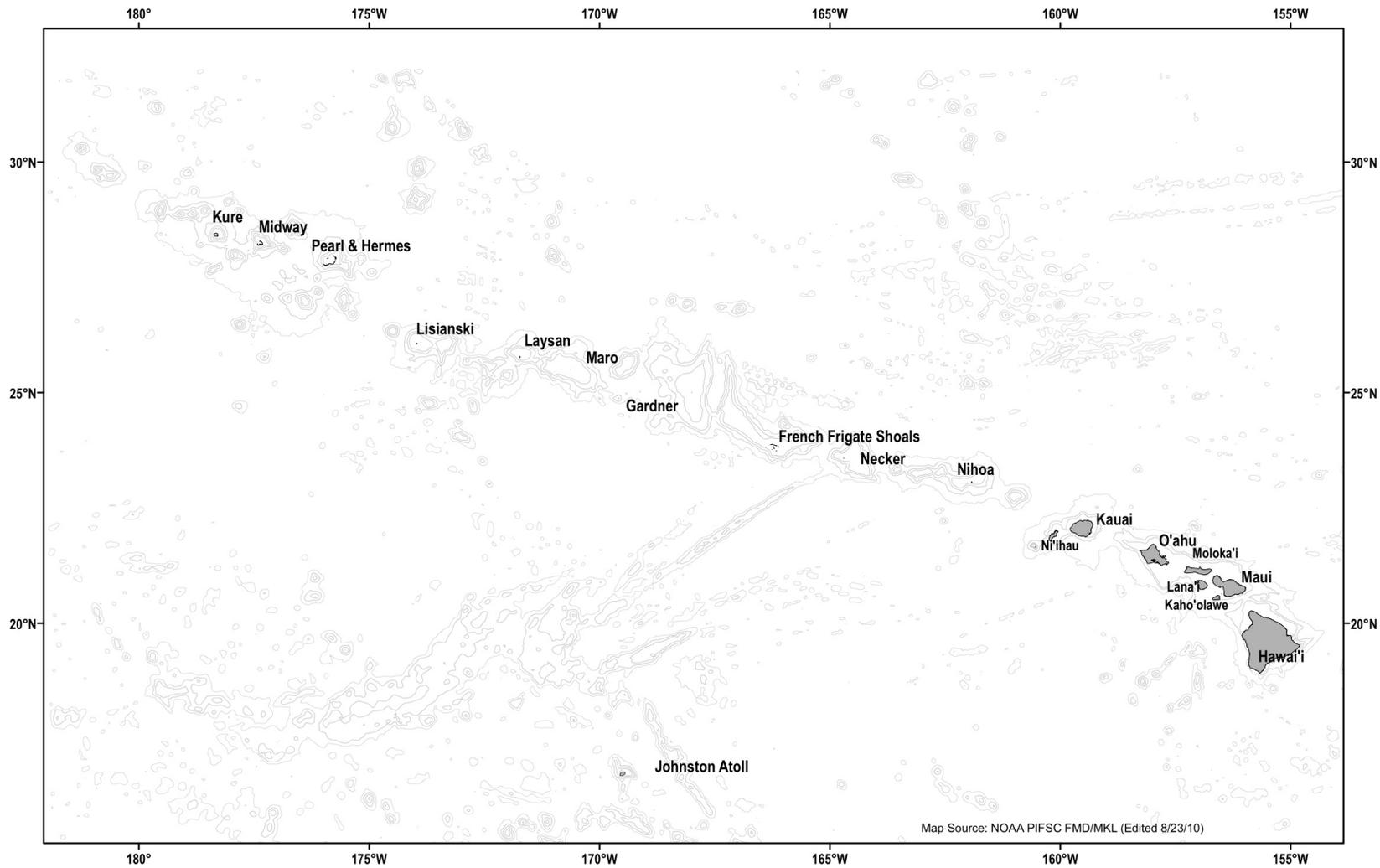
1.3

DESCRIPTION OF THE PROJECT AREA

The Project Area for this PEIS encompasses the range where Hawaiian monk seals are found throughout the Hawaiian Archipelago including the NWHI, MHI and Johnston Atoll (Figure 1.3-1). More specifically, the Project Area includes portions of the open ocean and nearshore environment where monk seals may be found as well as the shorezone of the islands, islets and atolls that make up the Hawaiian Archipelago and Johnston Atoll. For the purposes of this project, the shore zone generally includes those terrestrial areas 5 meters (m) inland from the line where the shore meets the sea. In addition, secondary use areas, such as research field camps in the NWHI, are also considered for inclusion in the analysis.

In the NWHI, monk seals have six main reproductive sites including Kure Atoll, Midway Atoll, Pearl and Hermes Reef, Lisianski Island, Laysan Island, and French Frigate Shoals. Necker and Nihoa Islands have smaller breeding sub-populations, and monk seals have been observed at Gardner Pinnacles and Maro Reef. Monk seals are also found throughout the MHI where the population appears to be increasing (NMFS 2007). A more detailed description of the distribution of monk seals is provided in Section 3.3.1.

Figure 1.3-1 Project Area Map



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1.4

CURRENT RESEARCH AND ENHANCEMENT AND ASSOCIATED PERMITS

MMPA-ESA Permit No. 10137 (as amended) issued to the NMFS Pacific Islands Fisheries Science Center (PIFSC) authorizes research and enhancement activities on Hawaiian monk seals as summarized below.

The PIFSC is authorized to undertake the following activities annually through June 2014 when the permit will expire:

- **Harassment takes**¹ at any location in the Hawaiian Archipelago and Johnston Atoll for research and enhancement purposes:
 - **Monitoring:** 1,440 seals of any age/sex may be closely approached for monitoring activities via ground, aerial or vessel (includes photo-ID and unmanned aerial and amphibious vehicles, installation/maintenance of remote camera systems);
 - **Incidental harassment:** 200 seals of any age/sex may be incidentally disturbed during all other research and enhancement activities; and
 - **Bleach marking:** 1,315 seals may be approached and bleach marked.
- **Capture takes**¹ at locations specified for each activity:
 - **Flipper tagging for population monitoring:** 556 seals of any size or sex except lactating females and nursing pups may be captured, restrained, flipper and Passive Integrated Transponder (PIT) tagged, measured, and flipper plugs sampled; this includes retagging; locations include Hawaiian Archipelago and Johnston Atoll.

¹ Take as defined in the ESA means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to do any of those things. Take as defined in the MMPA means to harass, hunt, capture, kill or attempt to do any of those things. Harassment is further defined in the MMPA as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment), or that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild (Level B harassment).

- **Sonic tags for monitoring shark predation:** up to 35 weaned pups at French Frigate Shoals may have sonic tags applied, concurrent with and on a flipper tag, annually for up to three years.
- **Health screening and foraging instrumentation research:** 70 healthy seals and 30 unhealthy seals of any age/sex excluding lactating females with pups and nursing pups may be captured, restrained, sedated, sampled for health and disease screening (swabs, blood, blubber biopsies, whisker sampling), measured, weighed, ultrasound measurements taken, and flipper and PIT tagged if necessary; of the healthy seals, 60 may also be instrumented with external telemetry/tracking devices; location is the Hawaiian Archipelago.
- **Translocation for enhancement:** immature seals may be translocated as follows:
 - 20 nursing pups of either sex that are abandoned or have been switched between two lactating females may be captured, restrained by hand or net, and relocated to a prospective foster mother or their natural mother, respectively; multiple attempts may occur to successfully unite pups with appropriate mothers; locations include the Hawaiian Archipelago and Johnston Atoll.
 - 35 weaned pups of either sex may be captured, restrained by hand or net, sedated, sampled for health and disease screening, instrumented, and relocated via boat, vehicle or aircraft from a high risk area (*e.g.*, known shark predation) to a low risk area within the same island or atoll in the NWHI or Johnston Atoll; translocations in the MHI may be to a different location on the same island or to a different island in the MHI; locations include the Hawaiian Archipelago and Johnston Atoll.
 - 6 weaned pups in subpopulations where juvenile survival is low may be translocated to subpopulations with higher rates of juvenile survival; seals may only be translocated among subpopulations within the NWHI.
- **De-worming research:** 200 seals of either sex, up to age 3 years, may be captured, weighed, treated for intestinal parasites, and have ultrasound measurements taken; treatment animals may include those captured for health assessments or foraging studies; location is the Hawaiian Archipelago, although the preponderance of activities occurs in the NWHI.
- **Disentanglement/de-hooking for enhancement:** as warranted, seals may be disentangled and de-hooked to prevent injury or death; location is the Hawaiian Archipelago and Johnston Atoll.

- **Specimen collection and import/export for research:** necropsies may be performed on all carcasses; samples (molt, scat, spew, urine, placentae) may be collected opportunistically from beaches; samples may be exported and re-imported for analysis (worldwide); location of necropsies and sample collection is the Hawaiian Archipelago and Johnston Atoll. After necropsy, tissue may be used as bait to mitigate shark predation when conducting permitted shark removals.

The following activities are authorized in the Hawaiian Archipelago and at Johnston Atoll over the 5-year duration of the permit (valid through June 2014):

- **Adult male removal for enhancement:** 10 adult males may be translocated, removed into permanent captivity, or euthanized to enhance survival of immature animals and adult females.
- **Euthanasia for research:** 10 moribund seals of any age/sex may be humanely euthanized or die incidental to handling during health assessments.
- **Incidental mortality during research and enhancement activities:** 4 incidental mortalities may occur during research and enhancement activities over 5 years, with no more than 2 occurring in a single year.

MMPA-ESA Permit No. 932-1905/MA-009526 issued to the NMFS Marine Mammal Health and Stranding Response Program (MMHSRP) authorizes enhancement activities on wild monk seals and research and enhancement activities on captive and rehabilitating monk seals through June 2014; an amendment to extend the duration of the permit to June 2015 is in-process.

The following is authorized under the MMHSRP permit, as warranted, to respond to emergencies. Note: the term “emergencies” generally refers to health emergencies involving marine mammals and includes, but is not limited to, stranding events, entanglements, disease outbreaks, and exposure to biotoxins.

- Response (including ground, aerial and vessel surveys), rescue, rehabilitation, and release of stranded seals;
- Health-related research on captive and rehabilitating seals (excluding vaccination research); and
- Hazing or translocating seals away from imminently harmful situations.

Certain activities authorized under PIFSC Permit No. 10137 are also authorized under the MMHSRP permit. These include, but are not limited to:

- Disentanglement/de-hooking;
- Euthanasia of moribund seals;
- Incidental harassment and incidental mortality; and

- Specimen collection (*e.g.*, necropsies).

Coordination between PIFSC and the MMHSRP for activities authorized under both permits is discussed in Section 1.9.3.

1.5 ***FEDERAL LAWS AND ASSOCIATED PERMITS AND AUTHORIZATIONS APPLICABLE TO HAWAIIAN MONK SEAL RESEARCH AND ENHANCEMENT ACTIVITIES***

This section summarizes federal laws applicable to Hawaiian monk seals research and enhancement activities, and federal permits, licenses, approvals, and consultation requirements for implementing the Preferred Alternative (Alternative 3).

1.5.1 ***National Environmental Policy Act***

NEPA (42 U.S.C. 4321 *et seq.*) requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. NEPA is applicable to “major” federal actions affecting the quality of the human environment. A major federal action is an activity that is fully or partially funded, regulated, conducted or approved by a federal agency. NMFS’ issuance of research and enhancement permits represents federal approval and regulation of activities. Federal funding is necessary for the PIFSC to conduct the recovery actions. Procedural requirements under NEPA are provided in the Council on Environmental Quality’s (CEQ) implementing regulations ([40 Code of Federal Regulations \[CFR\] Parts 1500-1508](#)).

NMFS has, through NAO 216-6, established agency procedures for complying with NEPA and implementing regulations issued by the CEQ. NAO 216-6 specifies that issuance of scientific research permits under the MMPA and ESA is among a category of actions that are generally exempted (categorically excluded) from further environmental review, except under extraordinary circumstances.

When a proposed action that would otherwise be categorically excluded is the subject of public controversy based on potential environmental consequences, has uncertain environmental impacts or unknown risks, establishes a precedent or decision in principle about future proposals, may result in cumulatively significant impacts, or may have an adverse effect upon endangered or threatened species or their habitats, preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required. NMFS is preparing a PEIS for the proposed action, as further discussed in Section 1.6.

1.5.2

Endangered Species Act

The ESA (16 U.S.C. 1531 *et seq.*) was established to conserve and protect threatened and endangered species. Section 2 of the ESA sets forth the purposes and policy of the Act, which include providing a means to conserve endangered and threatened species' ecosystems and providing programs for the conservation of such species. It is the policy of the ESA that all federal agencies must seek to conserve threatened and endangered species and use their authorities to further the purposes of the ESA.

Section 4(f) of the ESA requires NMFS to develop and implement a recovery plan for the conservation and survival of this critically-endangered species. NMFS' proposed action includes implementation of recovery actions identified in the Hawaiian Monk Seal Recovery Plan (NMFS 2007), with the goal of conserving and recovering the species.

Section 7 of the ESA requires consultation with the appropriate federal agency (either NMFS or the United States Fish and Wildlife Service [USFWS]) for federal actions that "may affect" a listed species or adversely modify critical habitat. NMFS' issuance of a permit and carrying out research and enhancement activities affecting ESA-listed species or designated critical habitat, directly or indirectly, are federal actions subject to these consultation requirements. NMFS is required to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat for such species. Such determinations must be made using the best scientific and commercial data available. Regulations specifying the procedural requirements for these consultations are found at [50 CFR Part 402](#).

Appendix A includes correspondence regarding consultation under Section 7 of the ESA for effects to NMFS and USFWS species. Each agency completed Biological Opinions. NMFS concluded in its Biological Opinion that the implementation of the proposed 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 (NMFS 2014). The USFWS concluded in its Biological Opinion that implementation of the proposed action would not likely jeopardize the continued existence of Laysan finch (*Telespyza cantans*) (USFWS 2014). No critical habitat has been designated for this species; therefore, none will be affected (USFWS 2014).

Section 9 of the ESA prohibits the take of endangered and threatened species unless a lawful exception is made, such as by issuance of a permit.

Under Section 10(a)(1)(a) of the ESA, NMFS may grant permits to take ESA-listed species for scientific purposes or for the purpose of enhancing the survival of the

species. In consideration of the ESA's definition of conserve, which indicates an ultimate goal of bringing a species to the point where listing under the ESA is no longer necessary (for example, the species is recovered), permits issued pursuant to Section 10 of the ESA must be for activities that are likely to further the conservation of the affected species. The NMFS PIFSC applied for a scientific research and enhancement permit (File No. 16632) pursuant to Section 10(a)(1)(A) of the ESA to carry out activities described in Alternative 3 (Preferred). Public notice of receipt the application for a new 5-year permit was published in the *Federal Register* on March 1, 2013 for a 45 day comment period (78 FR 13863).

NMFS' regulations implementing the permit provisions of the ESA can be found at [50 CFR Part 222](#). Regulations specifying requirements for issuance of ESA scientific research and enhancement permits are found at [50 CFR 222.308](#). According to 50 CFR 222.308(b), permits for endangered marine mammals must be issued according to MMPA regulations ([50 CFR Part 216](#)).

Section 10(d) of the ESA requires that, for NMFS to issue permits under Section 10(a)(1)(A) of the ESA, the Agency must find that the permit:

- Was applied for in good faith;
- If exercised will not operate to the disadvantage of the species; and
- Will be consistent with the purposes and policy in Section 2 of the ESA.

Section 11(a)(3) of the ESA states that "no civil penalty shall be imposed if it can be shown by a preponderance of the evidence that the defendant committed an act based on a good faith belief that he was acting to protect himself or herself, a member of his or her family, or any other individual from bodily harm, from any endangered or threatened species" (U.S. Code, Title 16, Chapter 35, §1540 (a)(3)).

1.5.3

Marine Mammal Protection Act

The MMPA (16 U.S.C. 1361 *et seq.*) prohibits takes of all marine mammals in the United States (U.S.) (including territorial seas) with few exceptions. Permits for *bona fide*² scientific research on marine mammals and permits to enhance the

² The MMPA defines bona fide research as "scientific research on marine mammals, the results of which - (A) likely would be accepted for publication in a refereed scientific journal; (B) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or (C) are likely to identify, evaluate, or resolve conservation problems."

survival or recovery of a species, issued under Section 104 of the MMPA, are two such exceptions. The NMFS PIFSC has applied for a scientific research and enhancement permit (File No. 16632) pursuant to Section 104 of the MMPA [and Section 10(a)(1)(A) of the ESA] to carry out activities described in Alternative 3 (Preferred). As noted above, public notice of receipt the application was published in the *Federal Register* on March 1, 2013 (78 FR 13863).

NMFS' Office of Protected Resources (OPR) issues permits for research and enhancement of Hawaiian monk seals. These permits must specify:

- The number and species of marine mammals authorized to be taken or imported;
- The manner (for example, methods, including but not limited to, capture, care, and transportation), location, and duration of the activities; and
- Any other terms or conditions NMFS deems appropriate.

Applications for MMPA permits must be reviewed by the Marine Mammal Commission (MMC). NMFS may issue a permit under Section 104 of the MMPA if the activities are consistent with the purposes of the MMPA and applicable regulations at [50 CFR Part 216](#). NMFS must also find that the manner of taking is "humane"³ as defined in the MMPA. If lethal taking of a marine mammal is requested, the applicant must demonstrate that using a non-lethal method is not feasible. For depleted species such as Hawaiian monk seals, NMFS must also determine activities resulting in lethal take will directly benefit the species or otherwise fulfill a critically important research need. Persons permitted to take marine mammals must submit reports on activities undertaken each year.

Under Section 104 of the MMPA, a permit may be issued for enhancing the survival or recovery of Hawaiian monk seals if the activity:

- Is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species; and
- The activity is consistent with the Hawaiian monk seal recovery plan (NMFS 2007).

Regulations specifying general issuance requirements for permits issued under Section 104 of the MMPA ([50 CFR 216.34](#)) and specific requirements for issuance

³ The MMPA defines humane in the context of taking a marine mammal, as "that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved."

of scientific research and enhancement permits ([50 CFR 216.41](#)) are included in Section 2.11.

Section 109(h) of the MMPA authorizes Federal, State and local government employees, or NMFS Stranding Agreement holders, to take a marine mammal in a humane manner (including euthanasia) if it is for:

- The protection or welfare of the individual animal;
- The protection of public health and welfare; or
- The nonlethal removal of nuisance animals.

NMFS regulations implementing MMPA Section 109(h) are found at [50 CFR 216.22](#) and [50 CFR 216.27](#). For threatened and endangered marine mammals, an ESA Section 10(a)(1)(A) enhancement permit is also required to undertake such activities. Therefore, such activities on ESA-listed species must be consistent with the ESA and carried out to enhance the survival of the species.

Also under the MMPA, it is not unlawful for persons to use NMFS-approved methods to deter a marine mammal from endangering personal safety [Section 101(a)(4)(A)] or take a marine mammal if imminently necessary in self-defense or to save the life of a person in immediate danger [Section 101(c)].

1.5.4

National Historic Preservation Act

The goal of the National Historic Preservation Act (NHPA) (16 U.S.C. 470 *et seq.*) is to empower Federal agencies to act as responsible stewards of U.S. cultural resources when agency actions affect historic properties. The NHPA established the Advisory Council on Historic Preservation (ACHP), an independent Federal agency that promotes the preservation, enhancement, and productive use of our nation's historic resources, and advises the President and Congress on national historic preservation policy. The NHPA also authorized the Secretary of the Interior to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture.

Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. In carrying out their responsibilities under Section 106, NHPA requires that Federal agencies consult with Indian tribes and Native Hawaiian Organizations that attach traditional religious and cultural significance to eligible or listed historic properties that may be affected by the agency's actions. The intent of the consultation is to identify historic properties potentially affected by the undertaking and to seek ways to avoid, minimize, or mitigate any adverse effects

on those properties.

The Federal Code that implements the NHPA (36 C.F.R. §§ 800 *et seq.*) specifies the process for Section 106 consultation. The provision for consultation required under Section 106 applies when a project 1) includes a federal or federally licensed action, and 2) the action has the potential to affect properties that are listed in or are eligible for listing in the National Register of Historic Places.

NMFS has determined that the proposed Federal agency actions to recover the Hawaiian monk seal have the potential to affect listed or eligible historic properties. In fulfilling its responsibilities under Section 106 of the NHPA NMFS undertook a program of consultation with Native Hawaiian Organizations (NHO) and individuals that attach traditional religious and cultural significance to eligible or listed historic properties that have the potential to be affected by the undertaking associated with monk seal recovery as outlined in this PEIS. The intent of the consultation was to identify historic properties potentially affected by the undertaking and to seek ways to avoid, minimize, or mitigate any adverse effects on those properties.

The NHPA Section 106 consultation was completed in compliance with the NHPA and a determination of no historic properties affected was made. NMFS completed a separate document (Appendix B), describing the results of the Section 106 consultation process. This document was sent to the Hawaii State Historic Preservation Officer (SHPO) on November 12, 2013 (see Appendix A). No response was received from SHPO. On November 14, 2013, NMFS made the report available to the public, via its website:

http://www.fpir.noaa.gov/PRD/prd_hms_how_noaa_helps.html#hms_management. The document describing the NHPA 106 process (Appendix B) was also sent to all consulting parties on November 19, 2013.

1.5.5

Magnuson-Stevens Fishery Conservation and Management Act

Under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), Congress defined Essential Fish Habitat (EFH) as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity” (16 U.S.C. 1802(10)). The EFH provisions of the MSFCMA offer resource managers a means to accomplish the goal of giving heightened consideration to fish habitat in resource management. NMFS OPR is required to consult with NMFS Office of Habitat Conservation for any action it authorizes (such as, research permits), funds, or undertakes, or proposes to authorize, fund, or undertake that may adversely affect EFH. This includes renewals, reviews or substantial revisions of actions.

NMFS has determined that the proposed activities will not affect designated EFH. Activities described in the alternatives are directed at Hawaiian monk seals and do not affect fish habitat. The activities do not involve alteration of substrate as no activities that could affect substrate, such as trawling, would occur. No other interactions with physical features of ocean and coastal habitat that could affect EFH would occur during research and enhancement activities.

1.5.6 Coastal Zone Management Act

Congress enacted the Coastal Zone Management Act (CZMA) (16 U.S.C. 1451 *et seq.*) to protect the coastal environment from growing demands associated with residential, recreational, commercial and industrial uses (such as, State and Federal offshore oil and gas development). Coastal states with an approved Coastal Zone Management Plan, which defines permissible land and water use within the state's coastal zone, can review Federal actions, licenses or permits for "Federal consistency." Federal consistency is the requirement that those Federal permits and licenses likely to affect any land/water use or natural resources of the coastal zone be consistent with the State program's enforceable policies.

The State of Hawai'i law for implementing the federal CZMA is Hawai'i Revised Statutes (HRS) 205A: Coastal Zone Management. The following state enforceable policies are potentially applicable to the activities in Alternative 3 (Preferred):

- HRS 195D and HAR 13-124: Conservation of Aquatic Life, Wildlife, and Land Plants (endangered species);
- HRS Chapter 6E: Historic Preservation; and
- HRS 342D and HAR 11-54: Water Pollution and Water Quality Standards.

Implementation of any of the alternatives would be conducted in a manner consistent with Hawaii's Coastal Zone Management Program in accordance with Section 307(c)(1) of the CZMA. A letter to this effect was sent to the State of Hawaii for comment on April 8, 2013 and a response was received on April 16, 2013 (see Appendix A). In the letter received on April 16, 2013, the Hawaii CZM Program indicated they would 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.

1.5.7 National Marine Sanctuaries Act

The National Marine Sanctuaries Act (NMSA) (32 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce to designate and manage areas of the marine environment with special national significance. The National Marine Sanctuary Program, operating under the NMSA and administered by NOAA's National

Ocean Service (NOS) has the authority to issue special use permits for research activities that would occur within a National Marine Sanctuary. Obtaining special use permits is the responsibility of individual researchers. However, as a courtesy, the NMFS OPR consults with NOS when proposed permitted activities would occur in or near a National Marine Sanctuary. The NMFS OPR sent a copy of the PIFSC permit application (File No. 16632) to NOS during the public comment period (78 FR 13863) and no comments were received from NOS.

1.5.8 *Migratory Bird Treaty Act*

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712) was enacted to ensure protection of shared migratory bird resources. The MBTA prohibits the take, possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase or barter, of any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit. The responsibilities of Federal agencies to protect migratory birds are set forth in Executive Order 13186 (see below). USFWS is the lead agency for migratory birds. The USFWS issues permits for takes of migratory birds for activities such as scientific research, education, and depredation control, but does not issue permits for incidental take of migratory birds. Thus, no MBTA permits are necessary.

1.5.9 *Convention on International Trade in Endangered Species of Wild Fauna*

The Convention on International Trade in Endangered Species (CITES) is an international agreement between governments with the goal of ensuring international trade in specimens of wild animals and plants does not threaten their survival. All import, export, re-export and introduction from the sea of species covered by CITES must be authorized through a licensing system. In the U.S., the USFWS is the Management Authority for CITES. Obtaining CITES permits from the USFWS is the responsibility of individual researchers prior to import or export of CITES-listed species.

1.5.10 *Animal Welfare Act*

The Animal Welfare Act (AWA) (7 U.S.C. 2131-2156) sets forth standards and certification requirements for the humane handling, care, treatment and transportation of mammals. Each research facility is required to establish an Institutional Animal Care and Use Committee (IACUC), which reviews study areas and animal facilities for compliance with the AWA standards. The IACUC also reviews research protocols and provides written approvals for those that comply with AWA requirements. Enforcement of these requirements for non-federal facilities is under jurisdiction of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service. For federal research facilities, the head of the federal agency is responsible for ensuring compliance with the AWA

requirements. It is the responsibility of researchers to seek and secure IACUC reviews and approvals for their research and adhere to other requirements of the AWA related to care and transport of marine mammals. NMFS researchers applying for permits must submit with a permit application verification of IACUC approval and the protocols reviewed by the IACUC. The NMFS PIFSC submitted with their permit application File No. 16632 such verification. Additional information on IACUC requirements is provided in Section 2.11.7.

1.5.11 *Administrative Procedure Act*

The Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) is the law under which federal regulatory agencies, including NMFS, create the rules and regulations necessary to implement and enforce major legislative acts such as the MMPA and ESA. The APA also provides for judicial review of agency final actions and regulations. Under the APA, courts may set aside agency actions as arbitrary and capricious, an abuse of discretion, unconstitutional, beyond statutory authority, unsupported by substantial evidence or unwarranted by the facts.

A decision by NMFS to issue or deny a permit is subject to judicial review based upon the administrative record. For this reason, NMFS maintains a thorough written record documenting the information reviewed and relied upon in making its conclusions, as well as a written record of the process by which the information was used.

1.5.12 *Executive Orders*

An Executive Order (EO) is an order having the force of law issued by the president of the U.S. to the army, navy, or other part of the executive branch of the government. An EO directs federal agencies in the execution of congressionally established laws or Executive policies. The following Presidential EOs are relevant to this analysis.

1.5.12.1 *Executive Order 12898 - Environmental Justice*

EO 12898 requires Federal agencies to consider the impacts of their actions on minority and low-income populations. Section 4.8.6 addresses such impacts.

1.5.12.2 *Executive Order 13089 - Coral Reef Protection*

EO 13089 requires Federal agencies whose actions may affect U.S. coral reef ecosystems to:

- a. Identify their actions that may affect U.S. coral reef ecosystems;

- b. Use their programs and authorities to protect and enhance the conditions of such ecosystems; and
- c. To the extent permitted by law, ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems.

Coral species in the project area are described in Section 3.3.7, and potential impacts from the various alternatives and mitigation to prevent impacts to these species are provided in Section 4.7.7.

1.5.12.3 *Executive Order 13112 - Invasive Species*

EO 13112 requires Federal agencies to use authorities to prevent introduction of invasive species, respond to and control invasions in a cost-effective and environmentally-sound manner, and to provide for restoration of native species and habitat conditions in ecosystems that have been invaded. Section 3.3.9 provides information on invasive species in the Hawaiian Archipelago relative to the proposed action and associated project area. Section 4.7.8 describes the potential effects of the various alternatives on introduction or spread of invasive species.

1.5.12.4 *Executive Order 13158 - Marine Protected Areas*

EO 13158 requires Federal agencies to identify actions that affect natural or cultural resources within marine protected areas (MPA). It further requires Federal agencies, in taking such actions, to avoid harm to the natural and cultural resources that are protected by an MPA. Section 3.4.11 describes the Papahānaumokuākea Marine National Monument in the NWHI, one of the world's largest MPAs. The effects of the various alternatives to the resources within the Monument are described in Chapter 4.

1.5.12.5 *Executive Order 13186 - Responsibilities of Federal Agencies to Protect Migratory Birds*

Several international, bilateral conventions on migratory birds, of which the U.S. is a co-signatory, impose substantive obligations on the U.S. for the conservation of migratory birds and their habitats. Through the MBTA, the U.S. has implemented these migratory bird conventions with respect to the U.S. This EO directs executive departments and agencies to take certain actions to further implement the MBTA. Section 4.7.6 discusses mitigation measures required for the conservation of migratory birds and their habitats.

1.6

WHY A PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT IS NEEDED

Research and enhancement activities on Hawaiian monk seals considered in this PEIS require NMFS funding, permitting and execution, all of which constitute federal actions requiring NEPA compliance. A PEIS is typically a broad-scale environmental evaluation that examines a program, such as Hawaiian monk seal recovery actions, on a program level as well as analyzing specific research and enhancement procedures. A PEIS may be used to evaluate an ongoing program and alternative directions that the program may take in the future.

To streamline the NEPA process and avoid repetition, the CEQ regulations encourage federal agencies to develop a tiered approach to their analyses (40 CFR 1502.20). For example, future research and enhancement activities would be evaluated, in part, based on the analyses presented in this PEIS. This allows subsequent Memorandums, Categorical Exclusions, EAs or EISs to incorporate much of the detailed analyses presented herein as a means of streamlining (40 CFR 1500.4[I]).

To satisfy NEPA, a Memorandum would be prepared for future research and enhancement activities that fall within the range of activities analyzed in this PEIS. Site-specific activities will be evaluated against the analyses presented herein for future NEPA compliance and the appropriate level of NEPA review will be completed accordingly, as described in Chapter 5. Should NMFS need to evaluate potential effects of a new procedure not currently analyzed in this PEIS, or a procedure that may need to be expanded on or modified, the agency would tier a Categorical Exclusion, EA, or EIS.

NMFS' own guidelines, NAO 216-6 Section 5.09a, state that "a programmatic environmental review should analyze the broad scope of actions within a policy or programmatic context by defining the various programs and analyzing the policy alternatives under consideration and the general environmental consequences of each (alternative)" (NOAA 1999).

1.7

RELATED NATIONAL ENVIRONMENTAL POLICY ACT DOCUMENTS THAT INFLUENCE THE SCOPE OF THIS ENVIRONMENTAL IMPACT STATEMENT

Section 1508.25 of CEQ's guidance on NEPA states that the scope of an individual EIS may depend on its relationship to other EAs or EISs and the evaluations considered therein. NEPA documents that have recently been published that influence the scope (in other words, issues considered) of this PEIS are described briefly in Table 1.7-1. To streamline the NEPA process and avoid duplication, pertinent information presented in these previous evaluations has been incorporated by reference where appropriate in this PEIS as cited. In

addition, the analysis of cumulative effects presented in Chapter 4 of this document includes the activities listed below.

Table 1.7-1 Related NEPA Documents That Influence the Scope of this PEIS

Title	Year	Issues Evaluated	Associated Permit (if applicable)
EA on Issuance of Permits for Research and Enhancement on Threatened and Endangered Captive Pinnipeds	2006	<p>Issuance of scientific research and enhancement permits under Section 104 of the MMPA and Section 10(a)(1)(A) of the ESA to facilities maintaining captive ESA-listed pinnipeds.</p> <p>A Finding of No Significant Impact (FONSI) for research and enhancement activities was signed in 2006.</p>	NMFS Permit Nos. 116-1786, 455-1760, 881-1745, 898-1764
EA on Issuance of a Permit for Field Research and Enhancement Activities on the Endangered Hawaiian Monk Seal	2009	<p>Issuance of Permit No. 10137 to the NMFS Pacific Islands Fisheries Science Center Marine Mammal Research Program to conduct field research and enhancement activities on Hawaiian monk seals to support recovery efforts.</p> <p>A FONSI for research and enhancement activities was signed in 2009. Two supplemental EAs were prepared and FONSIs signed in 2010.</p>	NMFS Permit 10137 as amended (Current Permit active through June 2014)
Programmatic Environmental Impact Statement on the Marine Mammal Health and Stranding Response Program	2009	<p>NMFS national oversight and collaboration of the MMHSRP including the following activities specific to Hawaiian monk seals:</p> <ul style="list-style-type: none"> • Response, rescue, rehabilitation, and release of stranded seals; • Health-related research on captive and rehabilitating seals (excluding vaccination research); and • Hazing or translocating seals away from imminently harmful situations; and • Translocation of MHI seals in imminent danger or otherwise for their protection. <p>The Record of Decision for the MMHRP PEIS was signed in 2009.</p> <p>http://www.nmfs.noaa.gov/pr/health/eis.htm</p>	NMFS Permit 932-1905

Title	Year	Issues Evaluated	Associated Permit (if applicable)
Environmental Assessment (EA) Issuance of Annual Conservation and Management Permits to NMFS PIFSC PSD and PIRO PRD for Conducting Hawaiian Monk Seal Conservation and Management Activities in PMNM	2012	<p>NMFS PIFSC proposed action analyzed in this EA included (1) monitoring Galapagos sharks adjacent to seal pupping areas and (2) conducting fishing activities to lethally remove up to 18 Galapagos sharks observed near seal pupping areas.</p> <p>A FONSI for research activities to reduce shark predation was signed in 2012.</p>	PMNM Permit 2013-017

1.8 ***REQUIRED DECISIONS AND OTHER AGENCIES INVOLVED IN THIS ANALYSIS***

NMFS must decide if issuing permits and permit amendments for conducting research and enhancement on Hawaiian monk seals would be consistent with the purposes and policies of the MMPA, ESA, and their implementing regulations.

Although NMFS has sole jurisdiction for issuance of research and enhancement permits for Hawaiian monk seals, NMFS consults with the MMC, NOAA’s NOS, the USFWS, and other pertinent federal and state agencies in reviewing permit applications. In addition, other agency permits for access to lands and waters around the Hawaiian Archipelago are required for Hawaiian monk seal research and enhancement and are subject to separate NEPA compliance. However, other agencies may also choose to formally adopt this PEIS by publishing a separate Record of Decision (ROD). If another federal or state agency adopts this PEIS, NMFS does not represent that this document satisfies state HRS Chapter 343 requirements. Section 1.5 provides an overview of permits, authorizations and consultations necessary for monk seal research and enhancement activities.

1.8.1 ***Cooperating Agencies***

Lead agencies, such as NMFS, preparing a NEPA document are required to do so in cooperation with other federal, state, and/or local agencies with jurisdiction by law or with special expertise with respect to an environmental impact involved in the proposal (40 CFR 1508.5). Outside of the scoping process, this cooperation can be formalized between the lead agency and another agency with a Memorandum of Understanding that formalizes the cooperating agency status and responsibilities.

On September 14, 2010, NMFS invited the USFWS and the Hawai’i Department of Land and Natural Resources (DLNR) to be cooperating agencies in the PEIS

process. In a letter dated April 19, 2011, DLNR declined the invitation to be a cooperating agency. The USFWS also declined the invitation to be a cooperating agency. In correspondence with NMFS in the fall of 2011, USFWS stated “USFWS does not have, nor does it expect, any major concerns regarding either the process or the proposed work addressed in the PEIS.” Cooperating agency correspondence is included in Appendix A.

1.8.2 Commenting Agencies

After release of the Draft PEIS in August 2011, an invitation to an Agency Meeting was provided to multiple federal, state and local agencies that were considered to have interest in the proposed action. This purpose of this meeting was to provide these agencies with an opportunity to comment on the document. The Agency Meeting was held at the NMFS PIRO offices September 12, 2010; 11 agency representatives attended (Table 1.8-1 Agency Meeting Attendees). Coordination with these agencies has continued throughout the PEIS process.

Agencies such as the United States Coast Guard (USCG) D14, USFWS, NOS including NOAA Sanctuaries, National Park Service (NPS), and others, dedicate resources each year to assisting NMFS in protecting Hawaiʻian monk seals including coordinating with the Marine Mammal Stranding Response Network working under the MMHSRP permit when monk seals become entangled or stranded. The MMHSRP permit is separate from the research and enhancement permit analyzed in this PEIS, as described in Section 1.9.

Table 1.8-1 Agency Meeting Attendees

Agencies
Federal Agencies
NOAA Hawaiʻian Islands Humpback Whale National Marine Sanctuary
NOAA National Ocean Service, Papahānaumokuākea Marine National Monument
U.S. Navy, Naval Facilities Engineering Command, Hawaiʻi
U.S. Navy, Pacific Fleet
Western Pacific Regional Fishery Management Council
State of Hawaiʻi Agencies
Department of Land and Natural Resources, Division of Aquatic Resources
Department of Health, Environmental Management Division
Department of Transportation, Harbors Division

1.9 *NOAA ACTIONS NOT INCLUDED WITHIN THE SCOPE OF THIS PEIS*

During public scoping meetings and public comment hearings, many stakeholders expressed confusion about whether monk seal critical habitat, NOAA Sanctuary actions or other NOAA initiatives in the Pacific Islands were part of this project. This section is provided to help clarify confusion about these projects. Each of the subsections in 1.9 references the cumulative impact assessment in Chapter 4 where these actions are considered in the analysis.

NOAA is currently undertaking other management actions within or near the Project Area that are not within the scope of this PEIS. While these projects are considered separate federal actions, the PEIS project team is coordinating with managers responsible for these other projects. This coordination allows NMFS to share information about the PEIS that may be pertinent to other projects as well as gain an understanding of how other activities may influence the decision-making process for Hawaiian monk seal research and enhancement actions. Descriptions of these other NOAA actions follow.

1.9.1 *National Marine Fisheries Service Hawaiian Monk Seal Critical Habitat Revision*

Critical habitat was originally designated in 1986 (51 FR 16047; April 30, 1986), and revised shortly thereafter in 1988 (53 FR 18988; May 26, 1988). The current revision uses new information, available since the 1988 designation, to describe monk seal habitat needs.

On July 9, 2008, NMFS received a petition to revise the Hawaiian monk seal critical habitat designation under the ESA to include additional areas in the NWHI and new areas in the MHI. In accordance with procedures outlined in the ESA (16 U.S.C. 1533), NMFS found that a revision was warranted and announced its intent to revise Hawaiian monk seal critical habitat on June 12, 2009 (74 FR 27988). Critical Habitat is defined under the ESA (16 U.S.C. 1532) and may include the following:

- Specific areas within the geographical area occupied by the species at the time of listing, on which are found those physical or biological features essential to conservation, and which may require special management considerations or protection; and
- Specific areas outside the geographical area occupied by the species if the areas are determined essential for conservation.

On June 2, 2011 (76 FR 32026) NMFS proposed to revise critical habitat for the monk seal by extending the current designation in the NWHI and by designating new areas in the MHI. While critical habitat is essential to the recovery of the species, evaluation and subsequent revisions to habitat areas is considered a

federal action separate from research and enhancement activities covered in this PEIS.

Existing monk seal critical habitat is described in more detail as part of the environmental baseline (Chapter 3) and is evaluated as part of the cumulative effects assessment presented in Chapter 4. Additional information about the critical habitat revision process can be found at:

<http://www.nmfs.noaa.gov/pr/species/mammals/pinnipeds/hawaiianmonkseal.htm>.

1.9.2 *National Ocean Service Hawaiian Islands Humpback Whale National Marine Sanctuary Management Plan Review*

The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS) was established in 1992 as a marine sanctuary to protect the winter breeding, calving and nursing range of the largest Pacific population of the endangered humpback whale (*Megaptera novaeangliae*). HIHWNMS is managed by the NOAA NOS, Office of National Marine Sanctuaries (ONMS), under the National Marine Sanctuaries Act (NMSA) in co-management partnership with the State of Hawai'i DLNR. Additional information about the HIHWNMS is provided in Section 3.4.11.

The purposes and policies of the National Marine Sanctuaries Act (NMSA, 16 U.S.C. 1434(e)) requires NOAA to periodically review and evaluate the implementation of management plans and goals for each national marine sanctuary. Accordingly, NOAA must revise management plans and regulations as necessary to ensure that national marine sanctuaries continue to best conserve, protect, and enhance nationally significant living and cultural resources. The current management plan review began in 2010, and the process will result in a new management plan for the sanctuary. The management plan review process will help to evaluate gaps in existing marine conservation efforts in Hawai'i, and identify potential roles for the sanctuary in future management. The target for completing a draft revised management plan is late 2013, and a final revised plan is targeted for completion in 2014.

As part of the review process, Sanctuary management engaged the Sanctuary Advisory Council (SAC) for recommendations to address priority issues identified during a 90-day public scoping period that was held in summer of 2010. In January 2012, the SAC recommended that the HIHWNMS future management plan adopt an integrated approach to management that considers the entire ecosystem, including Hawaiian monk seals. The Sanctuary management will consider this and other recommendations in developing the revised management plan, with additional opportunities for public input. NMFS and the Sanctuary would coordinate closely on any issues related to Hawaiian monk seals. NMFS will continue to coordinate with the

HIHWNMS management review team to discuss details of the PEIS and Sanctuary Management Plan.

While HIHWNMS management changes are separate from actions considered in this PEIS, the HIHWNMS is located within the PEIS Project Area. Therefore, anticipated Sanctuary management changes will be considered as part of the cumulative effects assessment presented in Chapter 4 of this PEIS. Additional information about the HIHWNMS Management Plan revision can be found at: <http://hawaiihumpbackwhale.noaa.gov/>.

1.9.3 *National Marine Fisheries Service Marine Mammal Health and Stranding Response Program*

As discussed in Section 1.4, the NMFS MMHSRP currently has a permit (MMPA-ESA Permit No. 932-1905/MA-009526) for activities specifically related to marine mammal (including Hawaiian monk seal) health and stranding response. The PIRO Stranding Coordinator, working under the MMHSRP permit coordinates closely with PIFSC on Hawaiian monk seal research and enhancement activities to ensure efforts undertaken to protect seals are not duplicative and are in the best interest of seals. While information from the MMHSRP PEIS has been incorporated by reference, the scope of this PEIS does not include all stranding and response activities. Captive care is currently covered under the MMHSRP PEIS (<http://www.nmfs.noaa.gov/pr/health/eis.htm>) as a tool for rehabilitating seals that need medical assistance due to such things as entanglement, illness, or other injuries.

Vaccinations of seals, while in temporary captive care for rehabilitation under the MMHSRP permit, are proposed under Alternatives 3 and 4 in this PEIS to be conducted under the PIFSC research and enhancement permit. In addition, some seals kept in temporary captive care under the MMHSRP permit could receive supplemental feeding after they have been released from captivity. Post-release supplemental feeding would be covered under the research and enhancement activities proposed under Alternatives 3 and 4 of this PEIS. This PEIS analyzes quarantine and disease screening procedures necessary for some translocations.

In general, all response activities in the MHI for seals in need of protection or medical attention are carried out under the MMHSRP permit in coordination with PIFSC. However, if PIFSC is conducting health assessment research in the MHI and discovers a captured seal needs to have a hook removed, this could all be done under the PIFSC permit to minimize the need for a second capture. PIRO and PIFSC share resources (equipment and personnel) to accomplish rescues and conduct necropsies in the MHI under the MMHSRP permit. PIFSC currently conducts all disentanglements and necropsies in the NWHI under Permit No. 10137.

1.9.4

National Marine Fisheries Service Hawaiian Monk Seal Community-Based Activities, Education and Outreach

In addition to the recovery actions presented in this PEIS, NMFS will continue or initiate several community-based activities supporting monk seal recovery.

These activities, which are described in more detail in Section 5.6, include:

- Engaging the Hawaiian Monk Seal Recovery Team, pursuant to the ESA, to obtain advice regarding recovery program development, implementation and evaluation from a wide variety of subject matter experts.
- Developing and implementing a strategic plan for managing monk seals in MHI using a community-based, participatory planning methodology.
- Developing and implementing an outreach plan designed to enhance public understanding and support for recovery actions through both overarching and specific outreach strategies.
- Supporting a grant program for partnership projects designed to enhance community participation in Hawaiian monk seal recovery.
- Developing and implementing additional program activities that incorporate community feedback into Hawaiian monk seal research and enhancement activities.

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