

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6625
Washington, DC 20230

11/16/2005

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of a new information collection received on 07/01/2005.

TITLE: Coral Reef Economic Valuation Pretest

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITH CHANGE

OMB NO.: 0648-0531

EXPIRATION DATE: 05/31/2006

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	0	0	0
New	200	100	0
Difference	200	100	0
Program Change		100	0
Adjustment		0	0

TERMS OF CLEARANCE:

This ICR is approved for pre-test only. NOAA must demonstrate the adequacy of their proposed methodology for a full-scale survey that would have policy uses.

OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

Supporting Statement for Paperwork Reduction Act Submission:

Coral Reef Economic Valuation Study

OMB CONTROL No. 0648-xxxx

**U.S. Department of Commerce
National Ocean and Atmospheric Administration
National Ocean Service
Special Projects Office and Damage Assessment Center
1305 East West Highway, SSMC4, 9th floor
Silver Spring, MD 20910**

**Contact: Dr. Vernon R. (Bob) Leeworthy
(301) 713-3000 ext. 138
Bob.Leeworthy@noaa.gov**

November 16, 2005

Table of Contents (continued)

Table of Contents

A. JUSTIFICATION..... 6

 1. Explain the circumstances that make the collection of information necessary..... 6

 2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with applicable NOAA Information Quality Guidelines..... 9

 How..... 9

 Development of Pretest Survey Instrument..... 10

Instrument Development..... 10

 Survey concept formulation..... 10

 Focus groups..... 10

 Cognitive interviews..... 11

 Scientific fact review..... 11

 Peer review..... 11

The Survey Instrument..... 11

 General Instructions to KN Operations..... 12

 Instructions/Warm-up to KN Panel..... 12

 Part 1: Survey Set-up..... 12

 Part 2: Introduction..... 12

 Part 3: Overfishing..... 13

 Part 4: Ship Accidents..... 15

 Part 5: Choice Questions/Follow-up Evaluation..... 15

 Experimental Design..... 16

 Use of Illustrations..... 17

 Use of Stated Choice Questions..... 18

Table of Contents (continued)

Survey Mode.....	21
Pretest.....	21
By Whom.....	22
How Frequently.....	23
Purpose.....	23
How Collection Complies with NOAA Information Quality Guidelines.....	24
Utility.....	24
Objectivity.....	24
Integrity.....	24
3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.....	25
Automated, Electronic Data Collection.....	25
4. Describe efforts to identify duplication.....	26
5. If the collection of information involves small business or other small entities, describe the methods used to minimize burden.....	26
6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or conducted less frequently.....	26
7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.....	27
8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to submission.....	27
9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.....	27
10. Describe any assurance of confidentiality provided to the respondent and the basis for assurance in statute, regulation, or agency policy.....	28
Knowledge Networks Procedures.....	28
11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.....	30

Table of Contents (continued)

12. Provide an estimate in hours of the burden of the collection of information.....	30
13. Provide an estimate of the total annual cost burden to the respondent or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).....	31
14. Provide estimates of annualized cost to the Federal government.....	31
15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of OMB 83-I.....	31
16. For collections whose results will be published, outline the plans for and publication.....	32
17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.....	32
18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.....	32
B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHONDS.....	33
1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used.....	33
This application is for the pretest only.....	33
2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use periodic collection cycles to reduce burden.....	33
Sample Frame and Sample Selection.....	34
Evidence of Representativeness of KN Panel Samples.....	37
Sample Size.....	38
3. Describe the methods used to maximize response rates and to deal with nonresponse.....	40
4. Describe any tests of procedures or methods to be undertaken.....	42

Table of Contents (continued)

5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.....	42
References.....	43
Attachment A: Coral Reef Survey Instrument.....	50
Attachment B: Knowledge Networks Panel Members Bill of Rights.....	77
Attachment C: Knowledge Networks Quality Assurance Procedures.....	79
Attachment D: Illustrations.....	84
Attachment E: Authorities	88
Attachment F: Federal Register Notification.....	206

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The National Oceanic and Atmospheric Administration (NOAA) is a member of the U.S. Coral Reef Task Force (CRTF), which was established in June 1998 through Executive Order 13089. As a member of the CRTF, and in support of the U.S. Coral Reef Initiative, NOAA has significant responsibilities for managing U.S. coral reef habitats and undertaking scientific studies to better manage the nation's coral reef resources. In March 2000, the task force approved the first-ever National Action Plan to Conserve Coral Reefs pursuant to the Coral Reef Conservation Act (16 USC 6401-6409). The Action Plan identifies 13 major goals, including five that the current research addresses: (1) conduct strategic research, (2) understand the social and economic factors of coral reef ecosystems, (3) improve the use of marine protected areas, (4) restore damaged reefs and (5) improve outreach and education about coral reef ecosystems. In support of NOAA's fulfillment of these goals, this study is designed to develop a survey instrument to elicit economic values for Hawaiian coral reef ecosystems at the national level. The overall objective of this project is to develop economically valid and reliable national estimates of individuals' values for alternative Hawaiian coral reef protection and improvement options.

NOAA currently manages three National Marine Sanctuaries (NMS) with coral reef resources under the National Marine Sanctuaries Act (16 USC 1431, et seq), the Florida Keys National Marine Sanctuary (FKNMS), the Flower Gardens Bank National Marine Sanctuary (FGBNMS), and the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS). This latter NMS is located in the Main Hawaiian Islands (MHI). In addition, NOAA has responsibility for the Hawaiian Islands Coral Ecosystem Reserve located in the Northwestern Hawaiian Islands (NWHI), which was created by Executive Order No. 13178 and modified in Executive Order No. 13196. The Hawaiian Islands Coral Ecosystem Reserve is currently going through the process of being designated as the Nation's 14th National Marine Sanctuary.

NOAA also has the authority to conduct research and expand the use of Marine Protected Areas under the Marine Protected Areas Executive Order (EO) No. 13158. Section 4 (7) specifically mentions the assessment of the economic effects of preferred management solutions, which this information request specifically addresses. Section 8 also instructs the Department of Commerce (NOAA is the part of the Department of Commerce given the authority to implement EO 13158 for the Department of Commerce) to coordinate efforts with the States, territories and other countries.

The FKNMS was the first NMS to use zoning concepts for management. The FKNMS currently has 24 areas with "no-take" status. The FKNMS calls the areas Sanctuary Preservation Areas and Ecological Reserves, but in the realm of "Marine Protected Areas", areas with no-take status are generally being referred to as "marine reserves". Marine reserves are expanding in use throughout the NMSs as a management tool. In completing the socioeconomic impact analyses for the National Environmental Policy Act (NEPA, 42 USC 4321 et seq), the Regulatory Impact Review (RIR) and the Regulatory Flexibility Act (RFA), there were no studies available to provide estimates of the nonuse or passive economic use values for the Tortugas Ecological Reserve, a 151 nautical square mile no-take area in the FKNMS. NOAA was forced to use a policy analysis simulation, which utilized lower bound conservative assumptions about the potential value of the proposed no-take area to provide the public, managers and other policy

makers with some estimate of the nonuse or passive economic use value of no-take areas, especially for coral reef ecosystems. Policy analysis simulation revealed that nonuse or passive economic use values were potentially the largest economic values of the proposed no-take areas and were potentially larger than all other direct use values combined, especially for the uses that would be displaced (i.e. fishing activities). See Leeworthy and Wiley (1999) for the policy analysis simulation on nonuse or passive economic use values for the Tortugas Ecological Reserve.

There are many competing uses of coral reef ecosystems and managers are often faced with making decisions on how to allocate resources to accommodate these uses. The National Marine Sanctuaries Act directs NOAA to manage NMSs for both conservation and preservation purposes. Sometimes these two purposes come into conflict. Designation of no-take areas addresses both purposes, but leads to allocations of use because consumptive users are displaced from the no-take areas. It is argued that even consumptive users can benefit from no-take areas in the long-term through replenishment or spillover effects. With no-take areas, National preservation values come into conflict with local use values. Usually there is adequate information to quantify the short-term losses from displacement as a result of the no-take areas, but no available information to represent National preservation values. This lack of information on the nonuse or passive economic use value of coral reefs limits the representation of National values for coral reef ecosystems and for no-take areas.

NOAA's National Ocean Service (NOS) developed a national assessment of existing literature under NOAA's Coral Reef Initiative, now consolidated into NOAA's Coral Reef Conservation Program. NOS found approximately 50 studies, reviewed them, and created an annotated bibliography along with a database containing the estimated values in support of benefits transfer applications. The bibliography can be found at <http://www8.nos.noaa.gov/core/index.aspx?PubType=CoralReef>. The database contains market economic values associated with coral reef uses (e.g., sales/output, income, tax revenues, employment) and nonmarket economic use value (consumer's surplus and producer's surplus). In this review of the literature, we found there has not been a single study of the nonuse or passive economic use value for coral reefs or no-take areas.

NOAA also has responsibility for recovering monetary compensation (damage assessment) from responsible parties, when coral reefs are damaged. NOAA also then has responsibility of restoring damaged coral reefs (restoration). Under the Oil Pollution Act (33 USC 2701 et seq), NOAA has the authority to conduct damage assessments to recover monetary compensation for damages to coral reefs caused by the release, or threat of release, of oil and to develop and implement restoration plans for the coral reefs. NOAA and the States have co-trustee responsibilities for damage assessment and restoration. For damages to coral reefs other than from oil spills, NOAA's jurisdiction is limited to coral reefs within NMSs under the National Marine Sanctuary Act (16 USC 1431, et seq). So, for those coral reefs outside of NMSs, States have trustee responsibilities for damage assessment and restoration. NOAA is a "science agency" and part of NOAA's Mission is to provide science (including social science) information to the broader public for management of the Nation's coastal and ocean resources.

The information that will be developed in this proposed survey will provide scientific information to assist NOAA in future damage assessment cases and restoration efforts and will also assist States in better management of coral reefs.

Coral reef ecosystems cover less than 1% of the ocean floor but provide a place to live and find food for about one-fourth of all ocean species, including fish, dolphins, sea turtles, seals, shrimp, octopuses, sea snails, sea plants, and sea birds. About 10% of all coral reef ecosystems in U.S. waters are found around the Main Hawaiian Islands (MHI) and the Northwestern Hawaiian Islands (NWHI). The NWHI consist of many small, mostly uninhabited islands that stretch 1,500 miles northwest of the MHI and are one of the few large coral reef ecosystems in the world in a natural condition.

Coral reefs are valuable as they support nearshore commercial, recreational, and subsistence fisheries. They serve important functions as atoll island foundations, natural protective structures along the coast by dampening of waves, sources of beach sand, and sources of aggregate for construction. Coral reefs are also of vital importance to the tourism sector, providing recreation opportunities for snorkeling and scuba diving.

Coral reefs support subsistence, commercial, and recreational fishing. The proportion of catch made up by reef-associated species is difficult to assess, but has been estimated at 15% of coastal fish landings (Berg et al., 1998). In the Philippines, coral reef fisheries provide livelihood for more than 1 million small-scale fishers who contribute almost \$1 billion annually to the country's economy (White et al., 2000). Additional values for reefs come from ornamental fish collection. Reefs also support other valuable aquatic life. De Groot (1992) conducted a study in the Galapagos valuing this service.

Reefs also have value because they protect the shoreline (and associated infrastructure) by dampening waves. This disturbance regulation/shoreline protection service has been valued in Fiji (Sistro, 1997), in the Philippines (Spurgeon, 1992), and in the Society Islands (Aubanel, 1993).

In addition, reefs are a readily accessible source of aggregate for construction. However, coral mining is thought to be occurring at unsustainable rates in some locations, and the values of reefs as aggregate in the future are uncertain (Feresi et al., 1999). In Indonesia, it has been estimated that coral mining yields net benefits that are significantly less than the net losses it causes in fisheries value, coastal protection value, tourism value, forest damage, and lost food resources and biodiversity (Cesar et al., 1997).

Bell et al. (1998) estimated economic values of artificial reefs in northwestern Florida, and Johns et al. (2001) estimated reef values in southeastern Florida for both artificial and natural reefs. Both studies include estimates of market and nonmarket economic use values. The southeastern Florida study found that natural reefs, especially coral reefs, are more valuable than artificial reefs. Johns et al. give separate estimates for existing artificial and natural reefs, including the willingness to pay (WTP) for new artificial reefs. A recent study of regional economic impact from coral reef users in Hawaii (Cesar et al., 2001) estimated the economic benefit provided by those users to the local Hawaiian economy.

All the studies just cited have dealt exclusively with *use values*. At least since the publication of Krutilla's seminal article, "Conservation Reconsider," in the *American Economic Review* in 1967, economists have recognized that people need not be current users of an environmental asset to hold positive values for it. Krutilla (1967) argued that people might hold what would later come to be called *nonuse values* (also "passive-use," "existence," and "intrinsic" values) for environmental

preservation. Plausible motives for holding such values include maintenance of options for future use, bequests to one's heirs or future generations more generally, altruism toward nature and/or others who are users, and valuation of nature as nature (stewardship). (Krutilla, 1967; Krutilla and Fisher, 1975; McConnell, 1983; Boyle and Bishop, 1987; Smith, 1987, 1990; Mitchell and Carson, 1989; Bishop and Welsh, 1992; Carson et al., 1999). Over the years following publication of Krutilla's paper, recognition that natural assets may have nonuse as well as use values led to a revised conception of environmental values, the total valuation framework (Randall and Stoll, 1983; Bishop et al., 1987; Randall, 1987, 1991). Total valuation is now standard fare in texts on environmental valuation (see, for example, Garrod and Willis 1999; Freeman 2003; and Champ et al. 2003). Freeman (2003, p. 137) has concluded, "The hypothesis of nonuse values has gained wide acceptance among economists working in the field of environmental and resource economics" The potential relevance of nonuse values has also been recognized in the courts (D.C. Circuit Court of Appeals, *Ohio v. U.S. Department of the Interior* (880 F.2d 432 [1989])). That all past studies addressing coral reef ecosystems have been limited to use values leaves a potentially large gap in our understanding of the total economic values associated with coral reefs ecosystems. Our goal in this research is to take a major step toward filling this gap.

This information collection request is for the pretest to precede the full survey implementation for estimating the total economic value for Hawaii's coral reef ecosystem. *NOAA deems the results of the "pretest" as inappropriate for policy/management use. The pretest will be used only to help design the full survey.*

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with applicable NOAA Information Quality Guidelines.

How the information will be collected

This request is to conduct a small-scale pretest of an internet-based survey instrument that has been designed to estimate public preferences and economic valuation of the Hawaiian coral reef ecosystem on the national level. A national sample of 200 panel members from Knowledge Networks, Inc. will be used.

The main focus of this study is on public preferences and valuation of the Hawaiian coral reef ecosystem on a national level. The results will provide important information to the State of Hawaii's resource managers as well as to NOAA and other federal agencies that are actively managing the resources of Hawaii associated with coral reefs. To ensure that the information being developed is as useful as possible, these managers, and other stakeholders, have been involved in the design and development process undertaken to date.

The goal is to obtain estimates of the general U.S. population's preferences and willingness-to-pay (WTP) to protect coral reef ecosystems in the Main Hawaiian Islands (MHI) and the Northwestern Hawaiian Islands (NWHI). The survey will focus on overfishing and ship groundings, which are among the most widespread threats to the reef ecosystems. Three methods of protection are presented in the survey: 1) restoration of the coral reef ecosystems of the MHI through the establishment of a special category of Marine Protected Areas (MPAs) known as

Marine Reserves or no-take areas; 2) prevention of future decline in the overall health of coral ecosystems from overfishing in the NWHI, including areas within the boundaries of the Northwestern Hawaiian Island Ecosystem Reserve, as established by President Clinton in Executive Order 13178 and as modified in Executive Order 13196; and 3) restoration of coral habitats after vessel grounding events. The survey uses a stated choice framework to evaluate an individual's willingness to trade off these actions against each other at a cost and against taking no action. The survey has gone through extensive design, development, and qualitative research. The survey is now at the stage where it can be pretested using a national sample.

The study effort involves three main phases. Phase 1, the current phase, is to develop a survey instrument, undertake qualitative research through focus groups and cognitive one-on-one interviews, and implement a small-scale pretest of the survey instrument after Office of Management and Budget (OMB) approval. Phase 2 of this project is to administer the developed and pretested survey instrument from Phase 1 to a full-scale representative national sample (Main Survey), develop a cleaned dataset of the survey results, and report summary statistics. Phase 3 of the effort is analysis of the survey data, including estimation of values for the coral reef protection and improvement scenarios, and development of a final study report. ***Details relating primarily to Phase 1 only are presented below, since this application is to conduct the pretest.*** After the pretest is completed a second submission will be sent for OMB approval to conduct Phase 2, the Main Survey.

Development of Pretest Survey Instrument. The research team followed standard survey design procedures, including qualitative testing, to develop an effective survey instrument. There are two main steps in Phase 1:

- ˘ instrument development
- ˘ instrument pretest

Instrument Development. In developing the current survey instrument, we followed standard survey research practices, protocols and procedures. The five main components of instrument development for this study were as follows:

1. Survey concept formulation: The overall study goals were refined in early stages of the project through interviews with key stakeholder groups, including federal and state resource managers and members of the U.S. Coral Reef Task Force. These initial interviews allowed us to identify key information needs and potential uses of the study results. At critical points throughout the study, we continue to update the key stakeholders on the status of the study.

2. Focus groups: Structured focus groups were used in early stages of the survey development. Six focus groups of between seven and nine participants each were conducted at three different locations across the United States (Honolulu, Hawaii; San Diego, California; Madison, Wisconsin) to develop basic survey concepts and refine the research team's understanding of the general population's understanding of coral reef ecosystems, potential threats to reef health, and commonly accepted terminology. These focus groups helped define the types and amount of information necessary for respondents to effectively understand the range of coral reef protection and improvement scenarios being developed. Based on the results of these focus groups, we developed the draft survey instrument.

3. *Cognitive interviews*: After developing the draft survey instrument, we conducted cognitive interviews with respondents individually. Cognitive interviews are a standard survey development tool designed to evaluate a subject's understanding of the draft instrument and allow for in-depth debriefing on how well the different elements of the instrument are working in real time. Two rounds of cognitive interviews were held in Denver, Colorado and Rockville, Maryland. In Denver, eight interviews were completed and in Rockville nine interviews were completed. Subjects were asked to complete a written version and then were debriefed in cognitive interviews to test the major components of the survey. A subset of the respondents was asked to follow a verbal protocol interview process to explain their thought process during the survey. These cognitive interviews were designed to test cognitive burden, test alternative wording options, identify areas of difficulty with the survey design, and test respondent's ability to complete the survey. Based on the results of each round of interviews, we revised the survey instrument to incorporate appropriate changes.

4. *Scientific fact review*: After the last round of cognitive interviews, coral reef resource managers and researchers reviewed the survey instrument to ensure that the scientific facts were accurately presented. The results of this review led to minor changes, but no major revisions to the instrument were found to be necessary.

5. *Peer review*: The survey instrument underwent formal peer review by outside experts in nonmarket valuation and survey research at two key stages during development: before the cognitive interviews and after the scientific fact review. It is anticipated that peer review will continue throughout the survey development and implementation process.

Based on the results of the survey design and review process, the research team believes that the survey instrument is ready to be pretested.

The Survey Instrument. The survey instrument is presented in Attachment A. The attached version is different from the executable, for which an on-line address will be provided as soon as all the screens have been programmed correctly (a difference in format not content). We designed the survey to obtain adequate levels of information about Hawaiian coral reef ecosystems, the problems facing such ecosystems, and potential management actions that might be undertaken to help protect and restore coral reefs.

The information is divided into sections of questions designed to encourage review and consideration of survey information and provide feedback on respondents' preferences based on the information they have been presented up to the specific point. The survey instrument presents the latest information on Hawaiian coral reef ecosystems, alternative management options, and likely impacts of implementing those options. To ensure that the information is accurate, numerous coral reef researchers reviewed the survey instrument.

The overall survey is divided into seven parts, with the first numbered part being Part 1 – Set-up: General Instructions/Warm-up, setup, introduction, overfishing, ship accidents, choice questions/follow-up evaluation questions. Each of the parts is discussed in detail below. For purposes of review and comment, the version in Attachment A has labels for Screens, where the information and/or questions will appear on the on-line executable version, and question numbers. The question numbers will not appear in the pre-test application; they are used only to track comments and suggestions in the review process. The question numbers are not continuous (some

skips) because some questions have been deleted based on peer review. We maintain the current numbers for review/tracking purposes.

General Instructions to KN Operations:

The first page will not appear in the application. This is a tracking sheet for internal operations at Knowledge Networks (KN). The General Instructions to the KN Operations begin on the second page. These instructions layout several features/capabilities that the researchers/funding agencies want KN to implement in the on-line executable version of the questionnaire.

Instructions/Warm-up to KN Panel: (Screens 1 through Screens 2D-2)

Screen1 begins the survey with the KN Panel members. The survey is presented with and without audio (some panel members may not have audio capability). Screens 1 and Screens 2A test whether the panel member has audio capability to determine which version of the survey they will get. Question S2A asks if the panel member heard the music for testing audio capability and informs panel members that some instructions are given by audio with a reminder to please turn-up their audio.

Warm-up: (Screen 2D; Questions Q2D-1 and Q2D-2)

Questions Q2D-1 and Q2D-2 are from the General Social Survey (GSS) and are placed at the beginning of the survey to serve both as a warm-up to the survey and to provide information to help evaluate potential differences between the respondents and the general public. Half the sample randomly receives Q2D-1 and half the sample randomly receives Q2D-2.

Part 1: Survey Setup (Screens 3A through 3C)

Part 1 gives the initial explanation of the purpose of the survey and why the respondent's opinions are important. It explicitly identifies NOAA as a U.S. government agency funding the survey. The NOAA logo will be prominently displayed on the initial screen of the survey. At the bottom of Screen 3A, the panel member (respondent) is informed that their participation is voluntary and are provided an opportunity to get more information. Respondents wanting more information are sent to Screen 3B, where information is provided about the KN policies regarding survey participation and efforts to protect their privacy (see KN Bill of Rights in Attachment B). Respondents are also provided an 800 telephone number should they have any questions, as well as a telephone number to contact the Human Subjects Committee and the University of Wisconsin. The latter is provided since Professor Richard Bishop is a Principal Investigator on this project.

Screen 3C informs respondents that this survey will include presentation of pictures and maps and informs them that they can move forward or backward in the survey through links provided on the lower left corner of each screen, and return to wherever they were in the survey before linking to information.

Part 2: Introduction (Screens 3D through 12; Questions Q1 to Q6)

The introduction contains information about coral reefs and coral reef ecosystems, and identifies some of the general issues associated with coral reef protection. The general information

describes what a coral reef ecosystem is and where coral reefs are found, highlighting the types of marine animals found on and near coral reefs. This information is followed by questions Q1 through Q3, which ask whether the respondent has seen, heard about, or visited coral reefs in the past, and, if so, where. The responses can be used to differentiate survey respondents by their level of previous familiarity with coral reefs.

After Q3, this section gives detailed information about the locations of coral reefs in Florida and Hawaii, the main coral reefs in the United States. Maps and general descriptions are provided for the MHI and the NWHI. The introductory section ends with questions Q5, Q5a and Q6, which address the issues of whether respondents have either lived or visited Hawaii in the past and whether they might live or visit Hawaii in the future. These questions will be used to segment those whose values might include direct economic use value versus those whose values would hold pure passive economic use value.

Screen 12 provides four pictures of reefs and reef fish and other sea life found on Hawaii's coral reefs. The pictures are used to provide a transition between answering questions and providing the next bit of information. Two key pieces of information in this portion of the survey are that Hawaiian coral reefs are unique in the number of species of fish that occur nowhere else, and that there is a distinction between the MHI and NWHI reefs. In particular, the NWHI reefs are identified as being in a remote location and still in a relatively unaltered natural state.

Part 3: Overfishing (Screens 13A through 17D; Questions 9 through Q11b)

In the section above on "Instrument Development", we explained generally how the concepts were developed and the process used. Here we address, in more detail, how the policy/management problems were identified and selected for treatment in the survey.

We first reviewed a great deal of available documents on the management of Hawaii's coral reef ecosystems, including fishery management plans. Local Action Strategies included in NOAA's Coral Reef Conservation Program were also reviewed. We then developed a list of policy/management problems. This list included sedimentation from development; nutrient pollution from agriculture and development and corresponding algal growth and smothering of coral reefs; direct impacts of tourist/recreational uses such as anchoring damage or damage from other touching by snorkelers or scuba divers; boat/ship groundings; and overfishing.

We then presented the list to the science panel and managers and asked them to identify the main policy/management problems. Our Science Panel and managers were in consensus that the most important issue in Hawaii and coral reef management was the issue of overfishing and that no-take areas was one of the most important management tools for addressing the problem.

The science panel provided information on what would be provided by different levels of protection stated in terms of percent of coral reef ecosystems managed under no-take status. During focus group discussions, people accepted that overfishing occurs, and thus more discussion about why was not required. Also, people accepted that the estimates of how fisheries would recover were scientists "best estimates". People understood there could be variation/uncertainty but thought it **not** useful to be presented with ranges of estimates.

No-take areas were considered by the science panel and managers as a potential solution to overfishing because traditional fishery management was not working. The National Marine

Fishery Service (NMFS) is mandated under the Magnusson-Stevens Fishery Management Act to address sustainable fisheries. However, NMFS doesn't manage all the fisheries in Hawaii. The State of Hawaii has jurisdiction for many species in State territorial waters. Current fishery management regimes are not effectively addressing overfishing according to our science panel and provide much of the justification for the current no-take areas in the MHI.

Sanchirico and Wilen (2001) and Sanchirico (2004, 2005) have addressed the issue of no-take areas as a fishery management tool using bioeconomic models. In Sanchirico and Wilen (2001), they show how under certain conditions, no-take areas can be a benefit to the commercial fisheries. Key conditions were that the replenishment/spillover effect exceeds the congestion effect. In Sanchirico (2004, 2005), metapopulation models are used to evaluate different management regimes. No-take areas are evaluated under rational fishery management (rent maximization addressing open access problems) versus existing management strategies (non rent maximization not addressing open access problems) with respect to net impact on the fisheries. Findings over simulation over a wide range of model parameters is that under rational fishery management, there are no fisheries benefits of no-take areas (there are benefits to nonconsumptive users and non users, but these are not addressed). Under non rational management (existing and planned management in Hawaii), there are benefits of no-take areas to the fisheries. This is consistent with our science panel's conclusion about no-take areas as a fishery management tool.

This section of the survey instrument introduces overfishing as the first of the two main threats to coral reef health in the Hawaiian Islands. The section first describes what is meant by "overfishing" and the ways that it can affect reef health. It distinguishes between the types and effects of overfishing in the MHI and the NWHI. The main distinction is that overfishing has already had a large impact on the reefs in the MHI, whereas commercial fishing is likely to lead to overfishing problems in the reefs of the NWHI over the next 20 to 30 years if left unchecked. This distinction allows respondents to evaluate their preferences in Part 5 between reducing existing injuries from overfishing in the more heavily impacted MHI, versus preventing potential future injury in the more pristine NWHI.

The solution to the overfishing problem is then described as the implementation of no-fishing zones. No-fishing zones are described and the survey then informs subjects that this management tool has been successfully implemented in other places such as Florida to help improve coral reef health. Respondents are told that other activities such as recreational diving can still occur in no-fishing zones. The associated costs of developing no-fishing zones, including additional government spending, potential loss of commercial fishing jobs, and displacement of recreational fishing, are also described in this section. Question Q9 is then presented, which asks respondents about these three issues. This question serves two purposes. First, it breaks up the presentation of important information and second, it provides some information to assess their preferences for protecting coral reefs.

The survey describes two proposals to develop no-fishing zones, one in the MHI and one in the NWHI. Each proposal is presented in terms of the specific actions that would be taken, the time frame of those actions, and the overall expected effect on the coral reef health. Each proposal description explains some of the benefits and costs of developing no-fishing zones in each area.

Screens 1 6A through 1 6D address the MHI. Illustrations are provided for comparing current

conditions of the coral reefs compared with estimated conditions after a few years of protection.

The section ends with questions Q10a and Q10b. Q10a asks respondents to provide their opinions regarding support of or opposition to the development of no-fishing zones in the MHI. Q10b allows for the respondent to give an open-ended written response on the issue.

Screens 17A through 17D, address the NWHI. Again, illustrations are provided comparing current conditions versus what the reefs might look like in 20 to 30 years without the protection.

The section ends with questions Q11a and Q11b. Q11a asks respondents to provide their opinion of whether or not they oppose or support the development of no-fishing zones in the NWHI. Q11b allows for the respondent to give an open-ended written response on the issue.

Part 4: Ship Accidents (Screens 19A through 21B; Questions Q13 to Q14b)

Part 4 introduces the second of the two main threats to coral reef health in the Hawaiian Islands: ship accidents. Ship accidents occur relatively frequently in the Hawaiian Islands, on average about 10 reported accidents a year, and can have significant impacts in a localized area of the reef. This section describes the most common locations and effects of ship groundings in the Hawaiian Islands, and highlights the fact that natural recovery of the reefs from these grounding events can typically take 50 years or more. During this time, a reef's health, and many of the coral reef-associated activities such as snorkeling and diving can be affected.

Potential management actions that would help the reef recover much more quickly (10 years rather than 50 years) are described, as is the fact that the restoration would be costly.

The grounding scenario, which describes overall much smaller impacts on ecosystem health than those associated with overfishing, is included to help elicit a range of values for the types of management actions that are available to help improve the coral reef health in the Hawaiian Islands. This section explains that these actions have been successful in other locations, such as Florida, in restoring the reefs in a much shorter period of time compared to natural recovery. Again, as with the overfishing solution, the respondents are given the pros and cons of this management action. Illustrations are provided comparing the current conditions of coral reefs in the MHI and conditions immediately following a ship strike (damaged reef).

Question Q13 asks respondents about their knowledge of ship groundings and provides a transition between describing the problem and the solution.

The section ends with a questions Q14a and Q14b asking respondents to provide their opinions as to regarding spending public money for this type of restoration.

Part 5: Choice Questions/Follow-up Evaluation (Screens 22A through 30; Questions 15 to 20 and D1 and D2)

In Part 5, respondents are asked to identify which, if any, of the management actions discussed they prefer. The three management actions (no-fishing zones in the MHI, no-fishing zones in the NWHI, and restoration of ship accident damages) are summarized, and a series of stated-choice questions is asked. Each stated choice question asks respondents to choose between three alternatives, with each alternative described in terms of management actions and cost to the respondent's household in the form of increased federal income taxes. "Alternative A" is always

the status quo: no new no-fishing zones in the MHI or the NWHI, no additional efforts to restore vessel grounding damages, and no additional taxes. Alternatives B and C pose some combination of management actions beyond the status quo and some increase in taxes. Respondents are asked to specify which of these three alternatives is their most preferred and their least preferred. As respondents move from one stated choice question to the next, Alternatives B and C change to reflect various combinations of management actions. For the pretest, each respondent will be asked three stated choice questions to keep respondent fatigue within reasonable bounds.

Asking respondents to identify both their most preferred and least preferred alternative provides a complete ranking of all the alternatives in each choice set. Complete rankings provide potent information on preferences that will be very useful in data analysis and value estimation.

This part ends with Q19, which elicits additional information from respondents on why they chose their specific alternatives as most or least preferred. In particular this information can be used to help distinguish between true zero values and protest answers. In addition, it allows the research team to better understand the overall confidence that respondents had in their answers and whether or not respondents were taking the choice task seriously. Q20 asks if anyone in the household paid any federal income taxes in 2004. This will be used to assess the use of federal income taxes as a payment vehicle.

On Screen 28, respondents are given an opportunity to provide an open-ended response on their views about coral reefs and their responses to the survey. This is followed by questions D1 and D2, which ask for information on the equipment used by panel members to participate in the survey. This will allow assessment of differences in survey responses by capabilities in receiving survey information.

Our plan is to administer the survey using the Internet mode pioneered by Knowledge Networks (see below). This will involve an already recruited national sample. Since Knowledge Networks already has sociodemographic data on their panel members, there is no need for the sociodemographic questions that usually appear at the end of surveys.

Experimental Design. Experimental design refers to the selection of attribute levels within and across choice question alternatives. The choice questions here present three alternatives with Alternative A always presenting the “status quo alternative” (no actions and no added cost), and Alternatives B and C presenting different combinations of doing more and spending more (action alternatives). The use of a status quo and two action alternatives, and the selection of most preferred and least preferred alternatives, allow respondents to always opt out of doing more and spending more, and provides increased statistical efficiency by comparing multiple alternatives. The use of three alternative choice sets has been tested for this and other surveys and found to work well with respondents.

In this study there are 3 programs (no-fishing zones for the MHI, no-fishing zones for the NWHI, and ship injury recovery programs), each with two levels (current program, increased program). As a result, there are only 21 possible choice sets (different combination of programs in action Alternatives B and C). Thus we have a low level of complexity compared to many choice experiments.

For the pretest, our experimental design is motivated by two objectives: (1) evaluating the overall functioning of the choice questions, and (2) evaluating the required cost ranges to

consider for each program and in total (at what values do few respondents select a program as preferred to the status quo program at \$0 cost).

Given the pretest sample size, the pretest is limited to 6 survey versions, with respondents randomly assigned to a version. Next, dollar amounts were assigned by version: some versions had low costs and others medium and higher costs (based on preliminary interviews and a range of \$0 to \$100 to be tested in the pretest) to balance the design across the dollar range of interest.

Use of Illustrations. The survey is designed to solicit preferences from the general public on three coral reef conservation programs: 1) increasing the no-fishing zones around the MHI from 1% to 25% of coral reef ecosystems, 2) increasing the no-fishing zones around the NWHI from 5% to 50% of coral reef ecosystems, and 3) restoring five acres of coral injuries caused by ship groundings annually. Obtaining reliable expressions of individual's preferences for these programs requires that the respondents have an accurate understanding of the potential future status of coral reef ecosystems with and without these three programs. This data collection effort is complicated by several factors. First, it is expected that the majority of the general public has never visited a coral reef ecosystem, and, thus, is likely to be unfamiliar with this habitat type. Given the complexity of the ecosystem, it is unlikely that the general public could develop a mental image of the habitat by solely relying on the textual information contained in the instrument. Second, because of the lack of direct personal experience with the habitat, it is expected that coral reef ecosystem conservation will be an issue of low salience for a majority of the general public. Third, the instrument contains significant technical detail on the potential habitat changes that would result with and without the three programs. If the general public is unlikely to be able to form a detailed mental image of a generic coral reef ecosystem, they cannot be expected to picture the fine distinctions that would result from the three conservation programs based solely on the textual descriptions.

To address these three challenges, a series of six professionally developed, color illustrations have been included in the instrument. These illustrations, appearing as one pair per conservation program, depict how a specific reef location may appear with and without each management option. There are several benefits of including illustrations in the instrument. First, for those respondents unfamiliar with coral reefs, the illustrations provide a visual complement to the textual information. This visual component will likely strengthen their understanding of the habitat of interest. Second, by interspersing graphics amongst the mostly text-based instrument, respondents may be more likely to maintain interest and focus on completing the questionnaire. This tendency will act to increase both the survey's response rate and the accuracy of our data collection as the respondents will be more engaged with the instrument. Finally, and most importantly, illustrations permit the researchers to accurately display the potential different states of the environment with and without the three programs in manner that can be comprehended by all respondents.

The first pair of illustrations is designed to show the potential effects of increasing no-fishing zones around the MHI from 1% to 25% of coral reef ecosystems after a few years. The first illustration depicts the potential view of the reef if the status quo of 1% no-fishing zones is maintained, and the second illustration captures the potential view with no-fishing expansion to 25%. As compared with the status quo image, the second illustration contains a greater number of fish, larger fish, the presence of fish schools in the background, and less benthic macro algae.

The second pair of illustrations shows the potential effects of increasing the no-fishing zones around the NWHI from 5% to 50% of coral reef ecosystems in 20-30 years. The third illustration (first of the second pair) depicts a potential scene from a NWHI reef if the status quo of 5% no-fishing zones is maintained, and the fourth (second illustration of the second pair) shows the potential improvements associated with expanding no-fishing zones to 50% of the coral reef ecosystem. As compared with the status quo illustration, the improved scenario contains a greater number of fish, a greater number of macro invertebrates, and an increase in the number of fish schools. Unlike the first pair of illustrations, there is no change in the abundance of benthic macro algae. It should be noted that the status quo NWHI image (illustration #3) contains a greater number and diversity of fish than the improved MHI image (illustration #2), which is consistent with scientific opinion of the likely impacts of no-fishing zone expansion in the two regions.

The third pair of illustrations shows the potential effects of restoring five acres of coral injuries caused by ship groundings annually. The fifth illustration (first of the third pair) depicts the same location as shown in the first pair for the MHI. This illustrates the status of the coral reef ecosystem today, as opposed to the potential future renditions shown in the first pair. The number of fish and abundance of benthic macro algae in the fifth image falls between the 1% and 25% no-fishing zone images of the first pair. The sixth illustration (second of the third pair) shows how the current MHI scene would change immediately following a ship grounding of medium size. The illustration contains a hull scar of crushed coral fragments, with larger pieces of coral rubble forming berms to either side of the scar. The large coral heads have been fractured and there is a decrease in the number of fish present at the location. This illustration is consistent with photographs of coral reef ship groundings from the Florida Keys.

Use of Stated Choice Questions. Stated choice methods have been identified as a useful tool to better understand the public's preferences and values for environmental amenities that are not traded in markets. While there is some use of coral reef ecosystems around the MHI, protection of coral reefs in both the MHI and the NWHI has a large public good component. No markets are available to study the value to the general U.S. population of protecting and restoring these coral reef ecosystems. Stated choice methods also allow for the evaluation of a full range of management alternatives, including alternatives currently in force and novel combinations of management alternatives like those being considered for implementation in Hawaii.

Stated choice methods are well established in the literature on environmental economics. This approach evolved from conjoint analysis, a method used extensively in marketing and transportation research (Louviere et al., 2000).¹ Conjoint analysis requires respondents to rank or rate multiple alternatives where each alternative is characterized by multiple characteristics (e.g., Johnson et al., 1995; Roe et al., 1996; Holmes and Adamowicz, 2003). Choice questions require respondents to choose the most preferred alternative (a partial ranking) from multiple alternative goods (i.e., a choice set), where the alternatives within a choice set is differentiated by their characteristics.

There are many desirable aspects of stated choice questions, not the least of which is the nature of the choice being made. Choosing the most preferred alternative from some set of alternatives is a common experience. Morikawa et al. (1990) note that responses to choice questions often contain useful information on tradeoffs among characteristics. Quoting from Mathews et al. (1997), stated choice "models provide valuable information for restoration decisions by identifying the

characteristics that matter to anglers and the relative importance of different characteristics that might be included in a fishing restoration program.” Johnson et al. (1995) note, “The process of evaluating a series of pair wise comparisons of attribute profiles encourages respondents to explore their preferences for various attribute combinations.” Choice questions encourage respondents to concentrate on the tradeoffs between characteristics rather than to take a position for or against an initiative or policy. Adamowicz et al. (1996) note that the repeated nature of choice questions makes it difficult to behave strategically.

As mentioned previously, choice questions allow for the construction of goods characterized by characteristics levels that currently do not exist. This feature is particularly useful in marketing studies when the purpose is to estimate preferences for proposed goods where various characteristics can be manipulated in arriving at final product designs.² For example, Beggs et al. (1981) assess the potential demand for electric cars. Similarly, researchers estimating the value of environmental goods are often valuing a good or condition that does not currently exist, e.g., a marine protected area around coral reef systems.

Choice questions, rankings, and ratings are increasingly used to estimate the value of environmental goods. For example, Magat et al. (1988) and Viscusi et al. (1991) estimate the value of reducing health risks; Adamowicz et al. (1994, 1997, and 2003), Breffle et al. (forthcoming), and Morey et al. (1999a) estimate recreational site choice models for moose hunting, fishing, and mountain biking; Breffle and Rowe (2002) estimate the value of broad ecosystem attributes (e.g., water quality, wetlands habitat); Adamowicz et al. (1996) estimate the value of enhancing the population of a threatened species; Layton and Brown (1998) estimate the value of mitigating forest loss resulting from global climate change; and Morey et al. (1999b) estimate WTP for monument preservation in Washington, DC. In each of these studies, a price (e.g., tax or a measure of travel costs) is included as one of the characteristics of each alternative so that preferences for the other characteristics can be measured in terms of dollars. Other

1. Cattin and Wittink (1982) and Wittink and Cattin (1989) survey the commercial use of conjoint analysis, which is widespread. For survey articles and reviews of conjoint analysis, see Louviere (1988, 1992), Green and Srinivasan (1990), and Batsell and Louviere (1991). Transportation planners use choice questions to determine how commuters would respond to a new mode of transportation or a change in an existing mode. Hensher (1994) gives an overview of choice questions applied in transportation.

2. Louviere (1994) provides an overview of choice questions applied in marketing.

examples of choice questions to value environmental commodities include Swait et al. (1998), who compare prevention versus compensation programs for oil spills, and Mathews et al. (1997) and Ruby et al. (1998), who ask anglers to choose between two saltwater fishing sites as a function of their characteristics.

Alternatively, a number of environmental studies have used ratings, in which survey respondents rate the degree to which they prefer one alternative over another. For example, Opaluch et al. (1993) and Kline and Wichelns (1996) develop a utility index for the characteristics associated with potential noxious facility sites and farmland preservation, respectively. Johnson and Desvousges (1997) estimate WTP for various electricity generation scenarios using a rating scale in which respondents indicate their strength of preference for one of two alternatives within each choice set. Other environmental examples include Rae (1983), Lareau and Rae (1998), Krupnick and Cropper (1992), Gan and Luzar (1993), and Mackenzie (1993). Adamowicz et al. (1997) provide an overview of choice and ranking experiments applied to environmental valuation, and

argue that choice questions better predict actual choices than do rating questions because choice questions mimic the real choices individuals are continuously required to make, whereas individuals rank and rate much less often.³

Choice and rating questions characterize the alternatives in terms of a small number of characteristics. For example, Opaluch et al. (1993) characterize noxious facilities in terms of seven characteristics; Adamowicz et al. (1997) use six characteristics to describe recreational hunting sites; Johnson and Desvousges (1997) use nine characteristics to describe electricity generation scenarios; Mathews et al. (1997) use seven characteristics to describe fishing sites; Morey et al. (1999a) use six characteristics to describe mountain bike sites; and Morey et al. (1999b) use two characteristics to characterize monument preservation programs.

Focus groups and cognitive interviews conducted during the design phase of this project showed that a solid foundation exists for the application of stated choice methods to the valuation of Hawaiian coral reef ecosystems. The study subjects demonstrated a rudimentary understanding of coral reefs and ecosystems based on schooling, nature programs, reading, and in some cases personal experience. While many people had not personally visited coral reefs, or planned to ever directly use them, they could understand both how the reefs were useful to others and their ecological functions. Additionally, while the NWHI a unique coral reef ecosystem with very limited direct use, respondents often knew of specific locations within the archipelago (e.g., Midway Island) and could easily understand and accept the potential threats to this relatively pristine system. We were able to build on this understanding with sufficient specific information about the situation in the Hawaiian Islands to allow most subjects to feel comfortable in expressing their preferences among alternatives. We also found that most subjects had little or no difficulty with choice questions involving three alternatives and could identify their most preferred and least preferred alternatives. This allowed us to go beyond the conventional approach of asking about two alternatives to gain some of the richness of ranking questions without forcing the subject to come up with potentially artificial ranking for larger numbers of alternatives. In particular, three-alternative choice questions allow us to include the no-action alternative in all the choice sets. This avoids the problems associated with forcing respondents to choose between two alternatives, neither of which they find particularly desirable compared to doing and spending nothing more.

³. See, for example, Louviere and Woodward (1983), Louviere (1988), and Elrod et al. (1992).

Survey Mode. We propose to use a Knowledge Networks Web-enabled panel based on a nationally representative, list-assisted, random digit-dial (RDD) sample drawn from all 10-digit telephone numbers in the United States.

We will use a standing panel Web-based approach to overcome a set of problems inherent in the research. As was revealed in the focus groups and cognitive interviews conducted as part of this research project, most Americans have some familiarity with coral reefs through nature programs and other sources, but it will be necessary to convey more information to subjects than they could easily comprehend if it were built into a simple telephone survey. Furthermore, while some Americans are interested in and concerned about coral reefs, many others are not. Hence, we rejected the option of recruiting by telephone using RDD and following up with a mail survey, since the low salience of the topic to many respondents could potentially lead to an extremely low response rate. There would be no way to separate nonrespondents into those who simply lack sufficient interest in coral reefs (and hence have near-zero values) from those who did not respond for other reasons, such as an inability to deal with large amounts of written information. We have concluded that a Knowledge Networks Web-enabled survey will be superior to a telephone or telephone-mail survey for the following reasons:

- A Knowledge Networks panel will come closer to representing the U.S. population than a telephone or telephone-mail survey with a low response rate.
- We can use pictures, graphical materials, voice-over, and other tools to more effectively communicate information to respondents, and to ease respondent burden and maintain interest among those for whom coral reef issues are of low salience.
- We can easily and seamlessly make later questions conditional on responses to earlier ones. Skip patterns are the approach to this problem in mail surveys and they often cause difficulties. The effectiveness of the stated choice questions can be enhanced by making the attributes of the alternatives in later questions conditional on the choices made earlier ones.
- We can avoid potential problems that can arise when respondents skip around in a mail instrument (e.g., reading ahead to stated choice questions before digesting the information needed to answer them).
- Experimental treatments can easily and independently be randomized among respondents.
- We can track all stages of recruitment into the panel to provide a solid basis for evaluating the representativeness of the sample in a more detailed way than can be accomplished with most other survey implementation methods.

In addition, sampling is cost-effective for reaching both the main sample and, if desired, a subsample of coral reef users.

Pretest. The pretest will consist of implementing a small-scale survey with a sample of U.S. households (approximately 200). The survey will be administered to a random sample of the Knowledge Networks survey panel. The pretest is designed to provide information on two key issues in the survey development: administering the survey under full field implementation conditions; and, developing bid values for the monetary attribute of the survey. As is standard in survey development, the current bid values in the survey are based on results of the focus groups

and cognitive interviews and the research team's previous experience with nonmarket valuation of public goods. The final bid range for implementation with the full study will be based on results of this information and results of the pretest.

The pretest will be administered in two phases. The first phase is designed to ensure that all survey programming, skip patterns, and other survey design efforts are working properly. At completion of the first 50 surveys, the results will be analyzed to ensure compliance with established quality assurance control measures (See Attachment C for the KN Quality Assurance Procedures). Upon successful completion of Stage 1 of the pretest, Stage 2 will be administered to the final 150 sample respondents. This sample size is feasible within the project's budget given the selected implementation mode, and will provide sufficiently large numbers of observations for conducting simple summary statistical analyses of the data (means, medians, standard deviations, maximums, and minimums). In this way, we will be able to test the performance of the instrument and develop the bid values for the final survey.

Pretest findings will be included in the future supplemental statement to OMB for implementation of the final survey instrument.

Participants in the development and administration of the information collection

The research team comprises experienced researchers from the fields of nonmarket valuation and survey research:

Norman Meade, NOAA
Vernon (Bob) Leeworthy, NOAA
Tony Penn, NOAA Steve Thur, NOAA
David Chapman, Stratus Consulting Inc.
Robert Rowe, Stratus Consulting Inc.
Richard Bishop, University of Wisconsin-Madison
Roger Tourangeau, University of Maryland

Peer review team:

Richard Carson, University of California at San Diego
Stanley Presser, University of Maryland

In addition, the team has relied extensively on federal, state, and university coral reef researchers and managers to develop foundation information for the survey and check specific facts about coral reef health and effects of protection mechanisms:

Alan Friedlander, PhD
Fisheries Ecologist, Oceanic Institute, Waimanalo, Hawaii
Representing NOAA's National Centers for Coastal and Ocean Science

Steven O. Rohmann, PhD
Coral Mapping
NOAA/NOS/Special Projects

Richard Grigg, PhD
Professor of Oceanography

University of Hawaii

Charles Birkeland, PhD
Biologist
University of Hawaii

Paul Jokiel, PhD
Biologist/Coral Ecologist
University of Hawaii

David Gulko, PhD
Biologist/Coral Ecologist
Hawaii Department of Land & Natural Resources
Division of Aquatic Resources

Athleen Clark, PhD
Manager
Hawaii Department of Land & Natural Resources
Division of Aquatic Resources

Kim Holland, PhD
Biologist/Coral Ecologist
University of Hawaii

Mike Hamnett, PhD
Director, Hawaii Coral Reef Initiative Research Program
University of Hawaii

Knowledge Networks, Inc. will conduct the pretest through a sub-contract from Stratus Consulting, Inc. of Boulder, Colorado. Stratus Consulting, Inc. is under contract to NOAA to conduct the Hawaiian Coral Reef Valuation Study.

Frequency of the information collection

The pretest is a one-time application.

Purpose

The purpose of the pretest is to help design a final survey instrument to be implemented on a National sample of approximately 2000 Knowledge Network, Inc. panel members to estimate the total economic value of Hawaii's coral reef ecosystem, with special emphasis on the value of no-take areas as a management tool and the value of small changes in coral reefs to support damage assessments and restoration efforts. In particular, the pretest will gather a sufficient number of responses to evaluate the information presentation, reliability, internal consistency, response variability, and other properties of a newly developed survey.

A separate detailed supplemental statement will be produced for the full survey implementation, analysis, and reporting.

HOW COLLECTION COMPLIES WITH NOAA INFORMATION QUALITY GUIDELINES

Utility. The overall study goals were refined in early stages of the project through interviews with key stakeholder groups, including federal and state resource managers and members of the U.S. Coral Reef Task Force. These initial interviews allowed us to identify key information needs and potential uses of the study results. At critical points throughout the study, we continue to update the key stakeholders on the status of the study. This ensures that all information developed from this project will be transparent to all members of the public.

The information developed in this project will support management of coral reef ecosystems by federal, state and other agencies. Specifically, this project will provide estimates of the total economic value of Hawaii's coral reef ecosystems (including the non-use or passive economic use value) from a National sample of U.S. households. Further, the total economic value of the use of marine protected areas (especially no-take areas) will be estimated. These estimates will not only strengthen management of existing MPAs, but also support the creation of new MPAs. In addition, this information will support NOAA and State agencies in their co-trustee responsibilities in recovering monetary damages from responsible parties when coral reef ecosystems are damaged (damage assessment) and to then restore damaged reefs (restoration).

The pretest being detailed in this application will allow NOAA to further refine the survey instrument for the full survey implementation as to information presentation, reliability, internal consistency, response variability, and other properties of a newly developed survey. This will ensure that the information obtained from the full survey will be of the highest quality.

Objectivity. In developing the survey instrument we are following state-of-the-art practices. Focus groups, cognitive interviews, scientific fact peer review, and peer review of survey sample design and non-market economic valuation methods have been conducted while designing the current survey instrument. Internal and external peer review will be conducted on all project products (e.g. survey instruments, sample designs, analyses and reports). Peer review will ensure the information collected is accurate, reliable and unbiased and the information reported to the public is accurate, clear, complete and unbiased. In our answer to the section on "By Whom", we detail the internal and external peer reviewers.

Integrity. The survey will conform to the Privacy Act of 1974 (5 USC 552a.). A separate file will be provided to all panel members in the survey, which will contain the following statement:

Your participation in this survey is voluntary. All responses are confidential and any material identifying you will not be provided to anyone outside of Knowledge Networks. Also see the Knowledge Networks Bill of Rights.

The Knowledge Networks Bill of Rights is included here as Attachment B. For a full discussion of the Knowledge Networks procedures for protecting confidentiality and privacy of information see Question 10 below.

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the proceeding paragraphs, the information has utility. NOAA Ocean Service (NOS) will retain control over the information and

safeguard it from improper access, modification, and destruction, consistent with NOAA standards of confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Automated, Electronic Data Collection. Respondents participate in the surveys using either a home-based personal computer connected to the Internet or an Internet-connected family television set and an infrared keyboard. All Web-enabled panel surveys are self-administered, which allows respondents to complete the surveys at their convenience, in the comfort and privacy of home. The electronic survey system supports the inclusion of video, audio, and 3-D graphics in the questionnaire. Respondents can break off and return to complete an interview during a second or later session. The electronic data collection tracks how long respondents spend on each screen.

The data capture survey system, owned by Knowledge Networks (KN), was designed to meet the specific needs of web-based surveys. The system supports all types of questions commonly used in complex, computer-based interviewing systems. The system uses advanced scripting techniques for customization of individual questions to meet the needs of researchers proposing innovative designs. The question types that are supported by the data capture platform include, but are not limited to, the following:

- single select
- multiple select
- single/multiple select questions in combination with open-ended questions
- horizontal scales (4-11 points)
- vertical scales (4-11 points)
- dynamic graphical support for scales (display of scales based on respondent attributes such as age)
- dynamic “thermometers” that respondents slide up and down to record an attitude
- drop-down menus
- grids (example: five columns by five rows) with single select and multiple select questions
- complex graphics such as horizontal scales displaying candidates’ issue positions on a

scale

- multimedia: video, audio files, digital photographs.

The system also supports the importation of data from the KN internal profile database of respondent characteristics (such as demographic information) to inform question logic, question wording, etc.

See the section “Survey Mode” in answer to Question 2 for justification of using the KN internet technology for this application.

The results of the pretest will not be made public except for inclusion in the supplemental statement in applying for OMB Approval of the full survey implementation. All results of the final survey implementation will be made public by posting all project results on the NOAA website in pdf format (<http://marineeconomics.noaa.gov>).

4. Describe efforts to identify duplication.

NOAA’s National Ocean Service (NOS) developed a national assessment of existing literature under NOAA’s Coral Reef Initiative. NOS found approximately 50 studies, reviewed them, and created an annotated bibliography along with a database containing the estimated values in support of benefits transfer applications. The bibliography can be found at <http://www8.nos.noaa.gov/core/index.aspx?PubType=CoralReef>. The database contains market economic values associated with coral reef uses (e.g., sales/output, income, tax revenues, employment) and nonmarket economic use value (consumer’s surplus and producer’s surplus). In this review of the literature, we found there has not been a single study of the nonuse or passive economic use value for coral reefs or no-take areas.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This collection does not include collection of information involving small businesses or other small entities.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If this collection is not conducted, NOAA will not be able to provide representation of National values in the management of Hawaii’s coral reef ecosystems. This will further impede efforts to strengthen management of existing Marine Protected Areas (MPAs), especially no-take areas, and the establishment of new MPAs as mandated under EO 13158. NOAA would be further limited in carrying out its trustee responsibility to recover monetary damages from responsible parties that damage coral reefs and follow-up efforts to restore damaged reefs. In addition, NOAA would be limited in providing important scientific information to assist States and territories in the management of coral reef ecosystems (especially the State of Hawaii) and to support the State of Hawaii’s co-trustee responsibilities in damage assessment cases. Thus, without the information on nonuse or passive economic use value of Hawaii’s coral reef

ecosystems, it is highly likely that National welfare will be adversely affected since optimal allocation of the use of these resources (coral reef ecosystem) is not likely to be achieved.

This is a one-time collection for the pretest to design the full survey implementation, which will also be a one-time collection.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

This collection is expected to achieve net survey response rates of less than 60 percent. Specifically, we expect net response rates of about 30 percent; this is due to the multi-stage construction of the Knowledge Networks Panel. We expect 75-80 percent completion rate by the Knowledge Networks Panel (see answer to Question 2 in Section B below). The Random Digit Dialing telephone recruitment into the Knowledge Network Panel explains the net reduction to 30 percent expected response rate. See answer to Question 9 below on the use of incentives as a way of increasing response rates and Part B, Question 2, which addresses the representativeness of KN internet panels.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice (see Attachment D) was published on January 14, 2005 and the comment period closed on March 15, 2005. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

Two types of respondent incentives are provided: survey-specific and nonsurvey-specific incentives:

Nonsurvey-specific incentives are used to maintain a high degree of panel loyalty and to prevent attrition from the panel. For the households provided with Internet appliances and an Internet connection, their incentive is the hardware and Internet service. For households using their own personal computers and Internet service, Knowledge Networks enrolls the panelists into a points program that is analogous to a "frequent flyer" card in that respondents are credited with points in proportion to their regular participation in surveys. Panelists receive cash-equivalent checks approximately every four to six months in amounts reflecting their level of participation in the panel, which commonly results in distributions of \$4 to \$6 per month.

The KN survey-specific incentives are provided to respondents as a result of one of two conditions: 1) the survey is expected to require more than 20 minutes of time to complete, or 2) there is an unusual request being made of the respondent, such as specimen collection, the

viewing of a specific television program, or completion of a daily diary. In these kinds of circumstances, panelists are being asked to participate in ways that are more burdensome than initially described to respondents during the panel recruitment stage. For the Coral Reef Protection Survey, an incentive will be provided because the survey is expected to require 20 or more minutes to complete. Extra encouragement will be required because the survey will require participants to read and digest more information than is the case in other types of surveys and because the topic of the survey will be of limited salience for significant numbers of people. Respondents who participate in the survey will be credited with 10,000 points, which equates to \$10, which will be mailed to them at a later date.

Inclusion of an incentive acts as a sign of goodwill on the part of study sponsors and encourages reciprocity by the respondent. Singer (2002) provides a review of the use of incentives in surveys. In summary, her findings show that giving respondents a small monetary incentive increases response rates. KN has analyzed the predictors of survey completion rates of studies conducted using its web-enabled panel. A multivariate analysis based on approximately 500 KN surveys attempted to predict the effect of respondent incentives on survey completion rates while controlling for length of field period, sample composition, use of video in the instrument, and other factors. The effect of respondents' incentives is significant at $p < .01$ level for both \$5 and \$10 cash-equivalent incentives. Use of a \$5 incentive increased response by 4 percentage points and a \$10 incentive increased response by 6 percentage points. Internal KN research has demonstrated that incentives increase the survey completion rate by approximately 5 percentage points. The increase is larger for young adults and Hispanics.

These measures will provide a survey completion rate between 75% and 80%.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Knowledge Networks, Inc. will conduct the survey for NOAA under sub-contract to Stratus Consulting, Inc. Neither Stratus Consulting, Inc. nor NOAA or anyone else will receive any data that can be used to identify a survey participant. Knowledge Network, Inc. procedures to protect confidentiality and privacy are described below.

Knowledge Networks Procedures. Survey responses are confidential, with identifying information never revealed without respondent approval. When surveys are assigned to panel members, they receive notice in their password protected e-mail account that the survey is available for completion. Surveys are self-administered and accessible any time of day for a designated period. Participants can complete a survey only once. Members may leave the panel at any time, and receipt of the WebTV and Internet service is not contingent on completion of any particular survey.

All KN panelists, when joining the panel, are given a copy of the Privacy and Term of Use Policy. In the privacy terms, there is a section called the "Panel Member Bill of Rights," which summarizes the confidentiality and privacy protections for panelists and explains that respondents can decide whether to participate in the panel or to answer any survey questions. The Bill of Rights is also available electronically at all times to panelists via the panel member website. The Bill of Rights is presented in Attachment B.

Below is a summary of the measures that have been taken to meet the needs for privacy and confidentiality from the point of data access and information technology.

First, all employees of Knowledge Networks are required to sign a confidentiality agreement requiring them to keep confidential all personally identifiable information regarding panel members. Knowledge Networks warrants that all employees are bound to protect the privacy and confidentiality of all personal information provided by respondents, and very few employees actually have access to any confidential data. The only employees who have access to this information — personally identifiable information about panel members — are those with a direct need to know. Therefore, the only persons with access are the following:

- Database and IT administrators with access to computer servers for the purpose of maintaining the computers systems at Knowledge Networks.
- Staff members in the Panel Relations department that have direct contact with panel members as part of the inbound and outbound call center operations. These staff members are responsible for troubleshooting any problems panelists might be having with their equipment or software related to survey administration, incentive fulfillment, and panel management.
- Staff members of the Statistics department have access to personally identifying information to draw samples for the various surveys conducted at Knowledge Networks.

All personally identifying records are kept secured in a separate office in the Informational Technology section of the main offices in Menlo Park, California, and all data transfers from WebTV units and personal computers (both used for survey administration) to the main servers pass through a firewall. Knowledge Networks never provides any respondent personal identifiers to any client or agency without the explicit and informed consent provided by the sampled panel members. Unless explicitly permitted as documented in a consent form, no personally identifying information will be provided to any parties outside Knowledge Networks in combination with the survey response data.

All electronic survey data records are stored in a secured database that does not contain personally identifying information. The staff members in the Panel Relations and Statistics departments, who have access to the personally identifying information, do not have access to the survey response data. Meanwhile, the staff members with access to the survey response data, with the exception of the aforementioned database and IT administrators who must have access to maintain the computer systems, do not have access to the personally identifying information. The secured database contains field-specific permissions that restrict access to the data by type of user, as described above, preventing unauthorized access.

Only an incremented ID number identifies the survey response data. The personally identifying information is stored in a separate database that is accessible only to persons with a need to know, as described above.

The survey data extraction system exports survey data identified only by the panel member ID number. This ensures individual panel member anonymity. The data analysts with access to the survey data extraction system, as they do not have access to personally identifying information, cannot join survey data to personally identifying data. Panel Relations and Statistics staffs do not

have access to the survey data extraction system, and therefore cannot join survey data to personally identifying data.

As part of its work with Research Triangle Institute International on a survey conducted in support of Food and Drug Administration (FDA) applications, Knowledge Networks implemented Good Clinical Practice guidelines to ensure compliance with FDA requirements for systems documentation and privacy of stored survey data. Consequently, a system of standard operating procedures is in place for documenting all processes relating to maintaining confidentiality and privacy of the identities of panel members.

Knowledge Networks retains the survey response data in its secure database after the completion of a project. These data are retained for purposes of operational research, such as studies of response rates and for the security of customers who might request at a later time additional analyses, statistical adjustments, or statistical surveys that would require re-surveying research subjects as part of validation or longitudinal surveys.

The survey will conform to the Privacy Act of 1974 (5 USC 552a.). A separate file will be provided to all panel members in the survey, which will contain the following statement:

Your participation in this survey is voluntary. All responses are confidential and any material identifying you will not be provided to anyone outside of Knowledge Networks. Also see the Knowledge Networks Bill of Rights.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions of a sensitive nature asked in this survey.

12. Provide an estimate in hours of the burden of the collection of information.

Estimated Number of Respondents:

- A. Pretest (this supporting statement): 200 (67 annualized over three years)
- B. Full Survey (subsequent supporting statement): 2,000

Estimated Time Per Response:

- A. Pretest: 30 minutes
- B. Full Survey: 30 minutes

Estimated Total Burden Hours:

- A. Pretest: 100 hours
- B. Full Survey: 1,000 hours
- C. Total: 1,100 hours

The pre-test total will be 100 hours and will be a one-time application taking less than one month.

Dr. Robert Rowe of Stratus Consulting, Inc, developed the above estimates of burden hours. Dr. Rowe has extensive experience with similar survey instruments. Based on the actual average time needed to complete the pretest, burden hours may be revised in the Supporting Statement for the full survey.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

No additional cost burden will be imposed on respondents aside from the burden hours indicated above.

14. Provide estimates of annualized cost to the Federal government.

Project Phase	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total
1. Questionnaire & Sample Design						
a. Stratus Contract	\$80k	\$80k	\$30k	\$20k	\$0	\$210k
b. Steven Thur Contract	\$5k	\$5k	\$5k	\$5k	\$0	\$20k
c. NOAA Personnel Travel	\$5k	\$5k	\$5k	\$5k	\$0	\$20k
d. Peer Review	\$5k	\$5k	\$5k	\$5k	\$0	\$20k
2. Full Survey Implementation						
a. Stratus Contract				\$270k		\$270k
b. Peer Review				\$5k		\$5k
3. Analysis & Reporting						
a. Stratus Contract					\$250k	\$250k
b. Steven Thur Contract					\$5k	\$5k
c. Peer Review					\$5k	\$5k
Total Project	\$95k	\$95k	\$45k	\$310k	\$260k	\$805k

The entire project is spread over five fiscal years. The contract with Stratus Consulting, Inc. includes all sub-contracts to support questionnaire & sample design, full survey implementation, analysis & reporting, and some peer review. Other peer review is being paid for independently by NOAA. Steven Thur is a NOAA contract employee and a portion of his time is allocated to this project. Dollars are reported in thousands of dollars (\$80k means \$80,000).

The cost for the pretest development, administration and analysis will total \$235,000, or \$78,333 annualized over the three-year period of FY2003 – FY2005 in the table above.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

The OMB83-I had annualized the estimate of burden based on three-year expiration. However, the pretest is a one-time application and will take less than one month, so the total burden hours should be 100 hours (200 observations at 30 minutes per observation).

16. For collections whose results will be published, outline the plans for tabulation and publication.

The results of the pretest will be tabulated using simple summary statistical analyses of the data (means, medians, standard deviations, maximums, and minimums). This will then be incorporated, along with analyses of the appropriate range of bid values in the stated choice questions and other survey instrument design issues, in the supplemental statement for the full survey, which will be submitted to OMB for separate approval. The supplemental statement for the full survey will include details on the methods of analysis, plans for tabulation and publication of project results. All project reports will be posted on line on the NOAA website (<http://marineeconomics.noaa.gov>) in pdf. All data files will be documented and distributed via CD-ROM and/or on-line on the NOAA website.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Will display OMB Approval Number and Expiration data on survey instrument.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions to Item 19 of the OMB Form 83-i.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

(If your collection does not employ statistical methods, just say that and delete the following five questions from the form at.)

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.

This application is for the pretest only. The main survey sample frame is the Civilian Non-institutionalized population of the United States over the age of 18, as defined by the universe of U.S. households that can be contacted by telephone (106 million households in 2000). The U.S. Department of Commerce, Bureau of the Census recommends the use of this sub-population when extrapolating results of surveys that are based on a sample either contacted or developed from random digit dialing telephone populations. The pretest will consist of implementing a small-scale survey with a sample of U.S. households (approximately 200). The pretest survey will be administered to a random sample of the Knowledge Networks survey panel. The pretest will be administered in two phases. The first phase is designed to ensure that all survey programming, skip patterns, and other survey design efforts are working properly. At completion of the first 50 surveys, the results will be analyzed to ensure compliance with established quality assurance control measures as described in Part A, Question 2, "How the information will be collected" section, "Pretest" subsection. Upon successful completion of Stage 1 of the pretest, Stage 2 will be administered to the final 150 sample respondents. This sample size is feasible within the project's budget given the selected implementation mode, and will provide sufficiently large numbers of observations for conducting simple summary statistical analyses of the data (means, medians, standard deviations, maximums, and minimums). In this way, we will be able to test the performance of the instrument and develop the bid values for the final survey.

We expect 75-80 percent completion rate by the Knowledge Networks Panel (see answer to Question 2 below). Given the multiple stage construction of the Knowledge Networks panel, cumulative response rates using AAPOR's most stringent approach to calculating net response rates, are expected in the range of 10 percent..

2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.

Even though this application is for the pretest only, we describe the sample frame, sample selection process, and the process for selecting the sample size that will generally be followed in the full survey implementation

Sample Frame and Sample Selection. The main survey sample frame is the Civilian Non-institutionalized population of the United States over the age of 18, as defined by the universe of U.S. households that can be contacted by telephone (106 million households in 2000). The U.S. Department of Commerce, Bureau of the Census recommends the use of this sub-population when extrapolating results of surveys that are based on a sample either contacted or developed from random digit dialing telephone populations. We are also considering whether to administer the final survey to a special subsample of coral reef users, since they are likely to be a very small part of the sample from the general population and yet are a group of citizens that are likely to be particularly interested in coral reef protection and restoration.

The Knowledge Network (KN) panel sample is selected using directory-listed, random digit dialing telephone method, providing a probability-based starting sample of U.S. telephone households (96% of population). The web-enabled panel comprises both Internet and non-Internet households; KN supplies the non-Internet households with an Internet appliance and Internet connection. Table 1 compares the demographic characteristics of the U.S. population and “active” KN panelists for January 2005. KN will provide a sample for this study that will be equally representative of the U.S. population.

Table 1: Demographics of Knowledge Networks Panel - January 2005

		Knowledge Networks Adult Panel	Adult U.S. Population (November 2004 CPS)
Gender	Male	48.0%	48.1%
	Female	52.0%	51.9%
Age	18-24	10.4%	12.9%
	25-34	20.1%	18.1%
	35-44	21.7%	20.0%
	45-54	19.1%	19.3%
	55-64	14.8%	13.6%
	65 or over	13.9%	16.1%
Race	White Only	79.6%	81.9%
	Black Only	12.4%	11.5%
	American Indian, Alaskan Native Only	1.7%	0.8%
	Asian Only	3.2%	4.3%
	Hawaiian or Pacific Islander Only	0.1%	0.2%
	2+ Races	3.1%	1.3%
Hispanic Ethnicity	Hispanic	11.0%	12.6%
	Non-Hispanic	89.0%	87.4%
Employment Status	In the Labor Force	61.4%	66.0%
	<i>Working full-time</i>	48.7%	55.4%
	<i>Working part-time</i>	12.6%	10.6%
	Not in the Labor Force	38.6%	34.0%
Marital Status	Married	57.7%	57.2%
	Not married	42.3%	42.8%
Housing Ownership*	Own	64.6%	67.5%
	Rent/Other	35.4%	32.5%
Level of Education	Less than High School Diploma	14.4%	15.4%
	High School Diploma or Equivalent	32.7%	31.8%
	Some College	21.3%	19.3%
	Associate Degree	6.7%	8.0%
	Bachelor's Degree or Beyond	24.8%	25.5%
Household Income	Under \$10,000	9.4%	7.6%
	\$10,000-\$24,999	19.6%	17.5%
	\$25,000-\$49,999	32.8%	28.4%
	\$50,000-\$74,999	19.8%	20.1%
	\$75,000 or more	18.5%	26.5%
Census Region	Northeast	18.8%	19.0%
	Midwest	21.9%	22.4%
	South	35.8%	35.8%
	West	23.4%	22.8%
Internet Access**	Any Connection Speed	59.0%	56.9%
	Broadband	21.1%	21.0%

1. For this report, the Knowledge Networks Panel of active, profiled members has been weighted by the selection probabilities in the stratified design for recruiting Panel Members over the telephone using Random Digit Dialing. The data are weighted to reduce the effects of non-response and non-coverage.

2. Estimates were calculated using CPS November 2004 microdata available on the www.census.gov website. The data are weighted using CPS final weights.

* National housing statistics are from the 2001 American Housing Survey.

** National Internet coverage statistics are from the Fall 2004 KN/SRI Home Technology Monitor.

The sampling approach for this project is designed to increase the demographic similarities between the completed interviews and the U.S. Census population benchmarks by factoring demographic groups' estimated response rates into the initial sample draw. For this particular survey, the likelihood of demographic groups giving consistent/valid answers to the stated choice questions is also factored into the initial sample draw, based on past experience. Essentially, by over sampling groups that tend to have a lower response and consistency rate and under sampling groups that tend to have a higher response and consistency rate, the demographics of our respondents will mirror the Census demographic benchmarks closely.

The following steps would be involved in this sampling approach:

1. We will first construct 576 cells using the following variables:

- Age:
 - 18-24
 - 25-34
 - 35-44
 - 45-54
 - 55-64
 - 65+
- Education:
 - Less than high school
 - High school
 - Some college
 - College degree +
- Ethnicity:
 - Hispanic
 - Non-Hispanic
- Race
 - White
 - Black
 - Other
- Gender
 - Male
 - Female

- Household income
 - Less than 75K
 - 75K+
2. We will calculate the percentage of each of the 576 cells in the final sample. For example, cell 1 (age 18-24, less than high school, Hispanic, white, male, less than \$75,000) will have a final percentage of $0.17174019 * 0.209653669 * 0.126887867 * 0.795123199 * 0.509358856 * 0.739527257 = 0.001368381$. Each cell will be assigned a percentage in this manner.
 3. We will then multiply the percentages assigned to each cell by the desired size of the total sample. This will provide us the number of cases to randomly select for each cell.
 4. We will round the products to the next closest integers. The cells that are rounded to zero are excluded from the sampling frame, as we must have a minimum value of one panel member in each cell. In the end, we obtain the number of cells and the number of people in the desired sample.

Evidence of Representativeness of KN Panel Samples. Cameron and DeShazo (2004) developed an application of the Heckman selection correction procedure using the RDD sample frame as the base did not support the hypothesis that attitudes toward regulatory issues are correlated with propensity to participate in a KN panel survey. This test supports the hypothesis that self-selection bias is not an important factor in KN panel surveys on the subject area of attitudes towards government regulation.

Huber et al. (2004) developed an application of the Heckman selection procedure using the KN panel sample as the base did not support the hypothesis that valuations of water quality are highly correlated with the propensity to participate in a KN panel survey. The use of the Heckman selection correction procedure resulted in an adjusted estimate of -6.16%. This test supports the hypothesis that self-selection bias is not an important factor in KN panel surveys on the subject area of valuations of public goods such water quality.

Valuation results of an ecological public good were independent of respondent panel characteristics such as time in panel; time to complete survey, and high likelihood of quitting panel (Huber et al., 2004).

The demographic characteristics of the KN panel sample are comparable to the demographic characteristics of high-quality RDD surveys. Krosnick and Chang (2001) found that, on average, RDD and KN's respondents were different demographically with the Census estimates by 4.0 and 4.3 percentage points, respectively, compared to Harris Interactive's 8.7 percentage points difference. The percentages for each sample are the average differences across all demographic variables when compared to the Census estimates. In this sense, the RDD and KN respondents were comparable in sample composition and closer to matching the general population as Harris Interactive's online respondents.

The validity of survey estimates based on KN-collected data has been assessed and affirmed in the area of health research by researchers at Stanford University (see Baker et al., 2003b; drafted in

support of Baker et al., 2003a).

In our pretest, we propose to evaluate the resulting sample for potential non-response bias through simple comparisons to available Census data. In addition, responses to questions Q2D-1 and Q2D-2, pulled from the General Social Survey, will be evaluated for similarities with the national General Social Survey results for comparisons of attitudes toward environmental and public policy issues. As stated above, questions Q2D-1 and Q2D-2 are from the General Social Survey (GSS) and can be used to help evaluate potential attitudinal differences between our Knowledge Networks Panel and the general public. This is another check we can conduct to investigate potential non-representativeness of our sample with the population frame of interest due to survey non-response.

Sample Size. The intended number of completed surveys for the full survey will be approximately 2,000. This sample size, plus the sample of 200 for the pretest, will be feasible within the project's budget given the selected implementation mode, and will provide sufficiently large numbers of observations for conducting statistical analyses.

In analysis of stated choice data, the question of how large the sample size should be to get statistically significant results is common, but often difficult to answer. The question itself raises a number of important issues (Orne, 1998):

- What is being measured (e.g., preferences for a product versus differences in preferences across people)?
- What level of confidence is important for the conclusions to be meaningful?
- What methodology do you intend to use?

This particular study also presents a number of potential issues to consider when developing the specific alternatives for the choice questions, especially issues relating to the limited number of alternative scenarios to be valued.⁴

Determining the minimum sample size needed is partially based on statistics, but may also be largely based on heuristics and experience. The available statistical literature on stated choice sample sizes is quite limited (personal communication, W. Adamowicz, University of Alberta, 12/30/04). For example, in Louviere et al.'s (2000) 400-page book, *Stated Choice Methods: Analysis and Application*, only about 10 pages are devoted to sample size.

Both Orne (1998) and Louviere et al. (2000) demonstrate that, for estimating the probability of the respondent choosing some alternative, the minimum sample size for a given level of precision is a function of the choice probability itself, making the computation tautological and circular. They also show mathematically that the optimal or minimum sample size is decreasing in the number of replications or tasks (that is, choice questions) for each respondent. Orne (1998) also shows mathematically that the sample size is a decreasing function of the number of alternatives presented in each choice question, but increasing in the number of levels of the choice-question attributes (for example, dummy variables that take on one of two values require a sample size

smaller than a study with a variable taking on 10 values). Furthermore, if preference heterogeneity exists in the sample (that is, there are different kinds of people who care differently about characteristics), a larger sample size will be needed (Orne, 1998; Louviere et al., 2000), because more sets of preference parameters must be estimated.

“Rules of thumb” for selecting sample size exist. For example, Sawtooth Software, a developer of software popular for designing choice sets, recommends the following formula for choice-based methods to obtain the minimum sample size:

$$(n * t * a)/c \geq 500,$$

4. Not including the cost characteristic, there are eight scenarios to be valued because three attributes are dummy variables and each take on one of only two levels ($2 \times 2 \times 2 = 8$).

where:

- n** • = minimum number of respondents
- t** = the number of tasks or “replications”
- a** • = the number of alternatives per task (not including “none” or the “status quo”)
- c** • = number of “analysis cells.”

When considering main effects, *c* is equal to the largest number of levels for any *one* attribute. If considering all two-way interactions, *c* is equal to the largest product of levels of any two attributes (Orne, 1998).

For the coral reef study, if interactions are to be included, and the price variable takes on one of five values, the minimum sample size is 833 ($= (500 * 10)/(2 * 3)$).

Orne (1998) also states that sample sizes for conjoint studies “generally range from 150 to 1,200 respondents.” Investigating heterogeneity of preferences among respondents necessitates a larger sample size. If the purpose is to estimate preferences for different groups, the *minimum* sample size for any group, based on another rule of thumb, is about 200. Thus, if segmentation into four groups is expected (based on pretesting or some other method), then the minimum sample size should be 800. Given the small number of choice scenarios, sample size around design will probably not be an issue given the goal of 2,000 completed surveys (personal communication, W. Adamowicz, University of Alberta, 12/30/04).⁵

In summary, approximately 800 finished surveys is expected to be the minimum number required to allow for interactions (and not just main effects) and to investigate heterogeneity (as opposed to assuming that everyone has the same preferences, which has the potential to bias the results) in the coral valuation study. We believe that a substantially larger sample (such as 2,000 finished surveys, or a 150% increase over the minimum) would provide a reasonable cushion to allow for any desired level of model flexibility.

3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.

Knowledge Networks will employ the practices for the Coral Reef Protection Survey that have been employed successfully on other projects that have required OMB approval:

- field period of 3 to 4 weeks
- respondent incentives of \$10 for participation

⁵ According to Dr. Adamowicz, researchers often target 20-50 respondents per survey version, where there might be 16 versions. This implies a sample size of approximately 300 to 800. However, this does not take into account that the number of choice questions in the coral reef study is small (three). Again, this is the third time the target number of about 800 respondents has appeared.

- use of the federal agency name in the e-mail invitation
- e-mail reminders
- telephone reminder calls to nonresponders.

Two types of respondent incentives are provided: survey-specific and nonsurvey-specific incentives:

Nonsurvey-specific incentives are used to maintain a high degree of panel loyalty and to prevent attrition from the panel. For the households provided Internet appliances and an Internet connection, their incentive is the hardware and Internet service. For households using their own personal computers and Internet service, Knowledge Networks enrolls the panelists into a points program that is analogous to a “frequent flyer” card in that respondents are credited with points in proportion to their regular participation in surveys. Panelists receive cash-equivalent checks approximately every four to six months in amounts reflecting their level of participation in the panel, which commonly results in distributions of \$4 to \$6 per month.

The survey-specific incentives are provided to respondents as a result of one of two conditions: 1) the survey is expected to require more than 20 minutes of time to complete, or 2) there is an unusual request being made of the respondent, such as specimen collection, the viewing of a specific television program, or completion of a daily diary. In these kinds of circumstances, panelists are being asked to participate in ways that are more burdensome than initially described to respondents during the panel recruitment stage. For the Coral Reef Protection Survey, an incentive will be provided because the survey is expected to require 20 or more minutes to complete. Extra encouragement will be required because the survey will require participants to read and digest more information than is the case in other types of surveys and because the topic of the survey will be of limited salience for significant numbers of people. Respondents who participate in the survey will be credited with 10,000 points, which equates to \$10, which will be mailed to them at a later date.

Inclusion of an incentive acts as a sign of goodwill on the part of study sponsors and encourages reciprocity by the respondent. Singer (2002) provides a review of the use of incentives in surveys. In summary, her findings show that giving respondents a small monetary incentive increases response rates. KN has analyzed the predictors of survey completion rates of studies conducted using its web-enabled panel. A multivariate analysis based on approximately 500 KN surveys attempted to predict the effect of respondent incentives on survey completion rates while controlling for length of field period, sample composition, use of video in the instrument, and other factors. The effect of respondents’ incentives is significant at $p < .01$ level for both \$5 and \$10 cash-equivalent incentives. Use of a \$5 incentive increased response by 4 percentage points and by 6 percentage points for surveys using a \$10 incentive. Internal KN research has demonstrated that incentives increase the survey completion rate by approximately 5 percentage points. The increase is larger for young adults and Hispanics.

These measures will provide a survey completion rate between 75% and 80%. In addition, for the full survey, a nonresponse follow-up study methodology can be employed, in conjunction with a weighted response rate method, to increase total cumulative response rate to

approximately 30%.

4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.

This application is to conduct a pretest to test and possibly improve the final survey instrument to be implemented in a large-scale survey.

5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

Stratus Consulting, Inc. of Boulder, Colorado was selected by NOAA to conduct the study through a competitive contract procedure. Dr. Robert Rowe, of Stratus, serves as the Project Manager and David Chapman, of Stratus serves as Project Technical Advisor. Both Rowe and Chapman have extensive experience in applied environmental and natural resource economics involving the use of statistical methods. Dr. Robert Rowe (303) 381-8000 David Chapman (303) 381-8289

Stratus Consulting, Inc. hired Professor Richard Bishop of the University of Wisconsin, Dept. of Agricultural and Applied Economics to serve as Principal Investigator. Professor Bishop is a well-known environmental and natural resource economist and has done many applied projects involving the use of statistical methods.

Professor Richard Bishop (608) 262-8916

Stratus Consulting, Inc. hired Dr. Roger Tourangeau, Director of the University of Maryland Survey Research Center to advise on sampling design issues, including statistical issues in sample design.

Dr. Roger Tourangeau (301) 314-7984

Stratus Consulting, Inc. is in the process of entering a contract with Knowledge Networks, Inc. to conduct the pretest and full survey. Mike Dennis, Vice President and Managing Director of Government and Academic Research of Knowledge Networks, has provided full documentation of Knowledge Network Methods.

Mike Dennis (650) 289-2160

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Attachment A – Coral Reef Survey Instrument

- [Coral Reef Protection Study]
 - November 3, 2005
 -

Note: The change request log can be deleted, if you do not require it.

Change Request Log (Operations Please Disregard) Note: Do not change Question numbers after Version 1; to add new question, use alpha characters (e.g., 3a, 3b, 3c)					
Author	Version	Description of Change (Q#, plus change)	Approval Name	Date Apprv'd	Completed (Y/N)

- [Coral Reef Protection Study]
 - November 3, 2005
 - - Questionnaire -

[Screen 1]

On the following screen, you will hear a short music file. The music is not related to the subject matter of this survey. It is only used to find out whether your Internet device allows you to hear audio files.

Before you proceed, please make sure that the speakers of your Internet device are turned on.

[SCREEN 2A] [RADIO] [EMBED = "TEST.MP3, AUTOSTART=TRUE]

S2A. Did you hear the music file?

Select one answer only.

- Yes** [If yes, show Screen 2b]
- No** [If no, skip to Screen 2D]
- Not sure** [If don't know, skip to Screen 2D]

[SCREEN 2B] [DISPLAY]
[IF S2A =1]

Later in this survey, some instructions are given with additional audio explanations. Please have your audio turned on to receive these instructions. Please read each screen carefully, even if audio is provided.

[SCREEN 2D GRID] [RANDOM HALF SAMPLE FOR Q2D-1 AND Q2D-2]

Q2D-1

Before we begin with the details of this survey, we have one introductory question. We are faced with many problems in this country, none of which can be solved easily or inexpensively. Below are some of these problems. For each one, please indicate if you think we are spending too much money on it, about the right amount, or too little money on it.

Select one answer for each row in the grid

We are spending:

	about the right		
	too much	amount	too little
Space exploration.	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
The environment	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Health	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Assistance to big cities	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Law enforcement	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Drug rehabilitation	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Education	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>

Q2D-2

Before we begin with the details of this survey, we have one introductory question. We are faced with many problems in this country, none of which can be solved easily or inexpensively. Below are some of these problems. For each one, please indicate if you think we are spending too much money on it, about the right amount, or too little money on it.

Select one answer for each row in the grid

We are spending:

	about the right		
	too much	amount	too little
The space exploration program.	▼ 1 <input type="checkbox"/>	▼ 2 <input type="checkbox"/>	▼ 3 <input type="checkbox"/>
Improving and protecting the environment	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Improving and protecting the nation's health	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Solving the problems of the big cities	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Halting the rising crime rate	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Dealing with drug addition	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>
Improving the nation's education system	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>

[PART 1: SET-UP] [SCREEN 3A] [DISPLAY]

MANAGEMENT OPTIONS FOR CORAL REEFS IN HAWAII -- WHAT IS YOUR OPINION?

Coral reefs around Hawaii are being injured by human activities. The federal government is considering options to increase the protection of coral reefs around Hawaii, but it is not sure if it should do more because this will require more government spending paid for by taxpayers.

Even though you may not be familiar with this issue, as a taxpayer your opinions matter. We will provide you with information to help you answer the questions. Through this survey, government officials will consider your opinions, along with information from scientists and planners, when deciding what more, if anything, to do.

Your participation is voluntary. Click here for more information about your rights as a Knowledge Networks survey participant. *(if clicked – go to Screen 3B, else skip to Screen 3C)*



This survey is funded by the National Oceanic and Atmospheric Administration, which is a U.S. government agency charged with making decisions about coral reef management for the United States.

[Screen 3B if more information box on 3A is checked]

You may skip any questions that you do not wish to answer. You will not be disqualified from participation in other Knowledge Networks surveys. As always, your identity will not be reported or linked to any data resulting from the study. All of the terms and conditions described in the Knowledge Networks Privacy and Term of Use Policy that you received with your MSN TV[®] equipment are in effect. If you have questions about this survey, you may contact Knowledge Networks at (800) 782-6899.

[SCREEN 3C]

In this survey you will be presented information about coral reefs, including pictures and maps.

Later in this survey, if you wish, you can go back and review information and pictures by clicking the “Information” link that will be located in the lower left corner of your screen. When you are done reviewing information you can return to where you were in the survey.

[PART 2: INTRODUCTION]

[SCREEN 3D] [DISPLAY]

This image shows a coral reef ecosystem from Hawaii, with a variety of coral and fish.



Coral reefs are found throughout the world in warm ocean waters less than 300 feet deep.

- **Coral reefs** are underwater ridges or clumps of the connected skeletons of millions of small animals called corals.
- **Coral reef ecosystems** include the coral reefs, neighboring areas of sea bottom, ocean waters, and many kinds of fish, plants and animals.
- **Coral reef ecosystems** provide a place to live and find food for many ocean species including fish, sea turtles, seals, dolphins, shrimp, octopuses, sea snails, sea plants and sea birds.

[SCREEN 4: RADIO BUTTONS]

Q1 How often, if at all, have you read about or seen TV programs about coral reefs, either in the U.S. waters or elsewhere?

Select one answer only

- Never
- Sometimes, but not often
- Often
- Very often

[SCREEN 5: RADIO]

Q2 How many times have you been to a coral reef in the U.S. or elsewhere (for example to fish, snorkel, scuba dive, or view marine life)?

Select one answer only

- Never
- Once
- A few times (2-4 times)
- Several times (5-10)
- Many times (more than 10 times)

[SCREEN 6: CHECK BOX]

[IF Q2>1]

Q3 Check each location where you have visited a coral reef.

Select all answers that apply

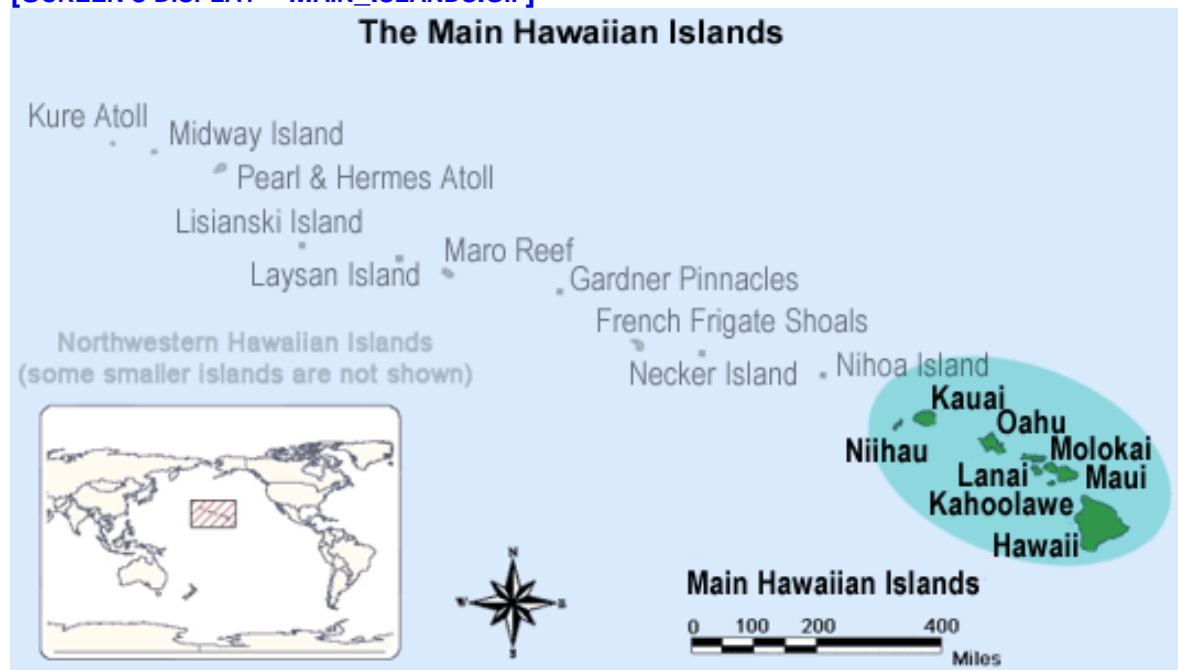
- Florida
- Puerto Rico or the U.S. Virgin Islands
- Other Caribbean, Gulf of Mexico, or Atlantic Ocean locations
- Hawaii
- Pacific Ocean locations other than Hawaii
- Other (specify: _____)

[SCREEN 7, DISPLAY]

About 10% of coral reef ecosystems in the U.S. are found around the Hawaiian Islands; most of the rest are found around Florida.

The Hawaiian Islands are commonly grouped into the Main Hawaiian Islands and the Northwestern Hawaiian Islands, as shown on the next screen.

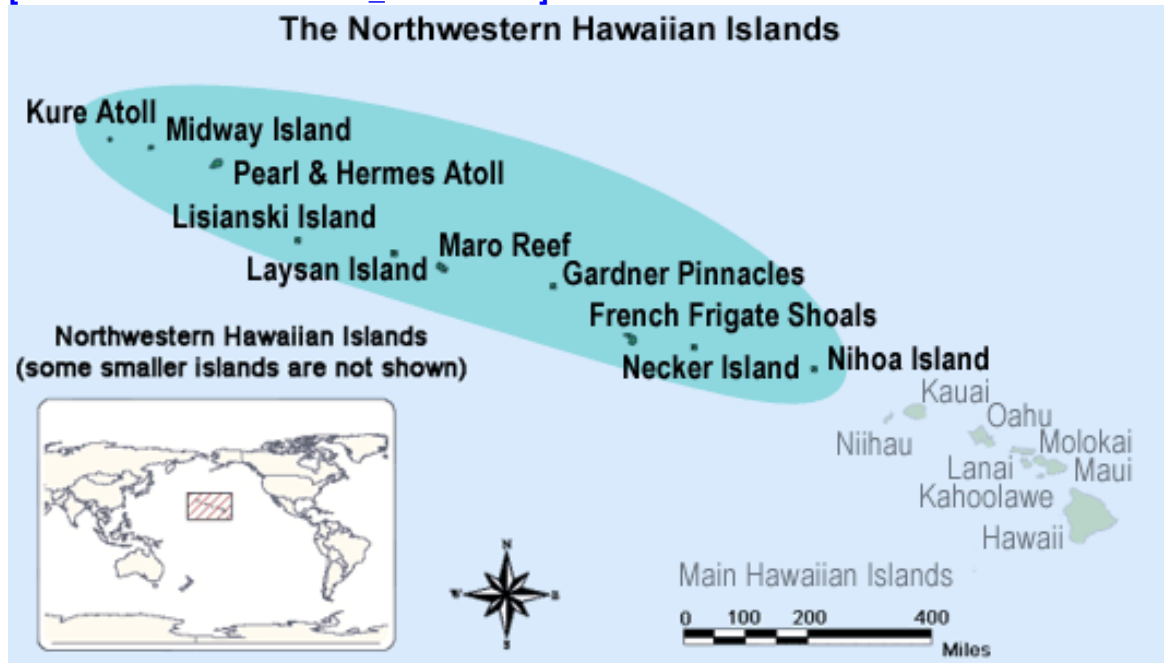
[SCREEN 8 DISPLAY = MAIN_ISLANDS.GIF]



The Main Hawaiian Islands are eight larger islands, where nearly all of Hawaii's people live.

- These islands are surrounded by about 300,000 acres of shallow water coral reef ecosystems.
- These coral reefs are heavily used for recreation (fishing, boating, diving and snorkeling), commercial fishing, and for cultural and religious activities by native Hawaiian people.

[SCREEN 9 DISPLAY NORTH_ISLANDS.GIF]



The Northwestern Hawaiian Islands consist of many small, mostly uninhabited islands that stretch 1,500 miles northwest of the Main Hawaiian Islands (about the same distance as from Miami to Boston).

- These islands are surrounded by about 400,000 acres of shallow water coral reef ecosystems.
- Except for a small amount of commercial fishing and military activities (at Midway), there are few human activities here.

[SCREEN 10A, RADIO]

Q5 Have you ever lived in Hawaii?

Select one answer only

Yes

No

[SCREEN 10B, RADIO]

[IF Q5=2 OR -1]

Q5a Have you ever visited Hawaii?

Select one answer only

Yes

No

[SCREEN 11, RADIO]

Q6 In the next 10 years, how likely is it that you will go to Hawaii?

Select one answer only

- Not at all likely
- Somewhat likely
- Very likely
- Almost certain
- Don't know

[SCREEN 12, DISPLAY]

Scenes from coral reefs around Hawaii.



Schools of fish live near reefs.



Sea urchins are common in Hawaii.



A variety of shallow coral.



Giant Trevally are often seen in Hawaiian waters.

[Screen 12]

The coral reef ecosystems around the Hawaiian Islands are unique.

- One-fourth to one-half of the many corals, fish, and other marine species found around the Hawaiian Islands are found nowhere else in the world.
- The Northwestern Hawaiian Island coral reefs are in a nearly natural condition; there are few large coral reef ecosystems anywhere in the world that remain so untouched by humans.

[PART 3: OVERFISHING]

[SCREEN 13A]
[DISPLAY]

OVERFISHING

Overfishing injures Hawaiian coral reef ecosystems. Overfishing occurs when more fish are caught than an ecosystem can renew.

Around the Main Hawaiian Islands, overfishing is widespread.

- After decades of heavy fishing, total annual catches of reef fish have fallen by about 90%.
- Few fish grow to be large. Large fish are prized for eating.
- Fish reproduction is low because there are fewer large fish. Large female fish produce more eggs.
- There are fewer plant-eating fish that keep algae from smothering the coral reefs. The coral reef is less able to support other marine life and less able to recover from other stresses like storms or pollution.

[SCREEN 13B]
[DISPLAY]

Around the Northwestern Hawaiian Islands:

- **Currently, there is very little fishing around the Northwestern Hawaiian Islands.**
- **Hence, the coral reef ecosystems are in a natural condition with many more fish and a larger variety of fish than around the Main Hawaiian Islands.**
- **Many large fish, seals, and other species at the top of the food chain still live here, whereas they have almost disappeared from the Main Hawaiian Islands.**
- **In 20 to 30 years, increases in commercial fishing are expected to lead to overfishing problems like around the Main Hawaiian Islands.**

[SCREEN 13C]
[DISPLAY]

The following drawings represent current conditions in the Main Hawaiian Islands and Northwestern Hawaiian Islands:

Current conditions at
the Main Hawaiian Islands

[Maincurrent.jpg](#)

Current conditions at
the Northwestern Hawaiian Islands

[Nwcurrent.jpg](#)

[SCREEN 14A]
[DISPLAY]

AN OVERFISHING SOLUTION: NO-FISHING ZONES

No-fishing zones are areas of the ocean where fishing is not permitted. Areas are set aside where fishing is not allowed, while nearby areas remain open to fishing.

- **The number, size, and variety of fish increase inside the zones. More fish means that there are also more seals, sea birds and other marine life.**
- **As fish numbers increase inside no-fishing zones, they migrate and increase the number, average size, and varieties of fish in nearby areas where fishing is allowed.**
- **Snorkeling, diving and other activities that don't harm fish are allowed in no-fishing zones.**
- **No-fishing zones have been effective in rebuilding coral reef ecosystems around Florida.**

[SCREEN 14B]
[DISPLAY]

However, no-fishing zones:

- **Temporarily result in lost commercial fishing jobs, at least until the number of fish increase in nearby areas.**
- **Cause a relocation of recreational fishing from the no-fishing zones.**
- **Require federal government spending on enforcement because most of these reefs are managed by the federal government. Because the areas are large, the cost of planes, boats and people can be high.**

[SCREEN 14C, GRID]

Q9 From strongly agree to strongly disagree, how do you feel about these statements?

Select one answer from each row in the grid

	Strongly agree ▼	Somewhat agree ▼	Neither agree nor disagree ▼	Somewhat disagree ▼	Strongly disagree ▼
Protecting jobs of commercial fishermen is more important than protecting coral reefs.....	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Protecting recreational fishing is more important than protecting coral reefs.....	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
It is important for the government to take an active role in trying to protect Hawaiian coral reefs.....	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

[SCREEN 15]
[Display]

OPTIONS TO INCREASE NO-FISHING ZONES IN HAWAII

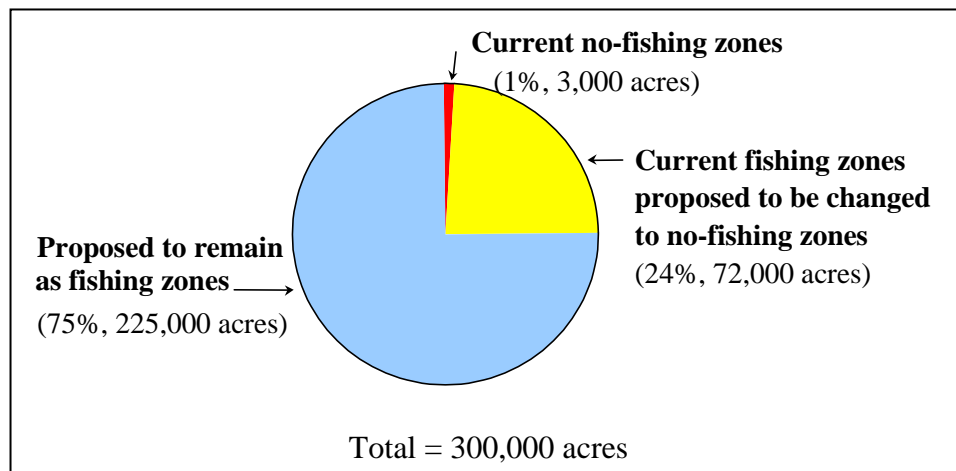
There are many possible options for increasing no-fishing zones in Hawaii. Two options are:

- **Around the Main Hawaiian Islands: increase no-fishing zones from the current 1% up to a new level of 25% of the coral reef ecosystems.**
- **Around the Northwestern Hawaiian Islands: increase no-fishing zones from the current 5% up to a new level of 50% of the coral reef ecosystems.**

More details about these options are shown on the next screen.

[SCREEN 16A] [DISPLAY]

Main Hawaiian Islands Option: Increase no-fishing zones from current 1% up to 25% of the coral reef ecosystems



[SCREEN 16B] [DISPLAY]

Some arguments for increasing no-fishing zones around the Main Hawaiian Islands:

- Beginning in three to five years after no-fishing zones are established, scientists expect that fish catches will begin to increase in nearby areas where fishing is allowed.
- Within 10 years, they expect total catches of reef fish around the Main Hawaiian Islands to increase by about 50%, coming close to levels of 25 years ago.
- The entire coral reef ecosystem would be healthier, support more marine life, improve the quality of recreation, and improve religious and cultural uses by native Hawaiians.

Some arguments against increasing no-fishing zones around the Main Hawaiian Islands:

- The costs can be high. Most of the costs will be paid by all of us from increased federal government spending, which will be required for the foreseeable future if overfishing is to be permanently reduced.
- While fish catch will increase in the long-run, recreational and commercial fishing will be hurt for several years.

[SCREEN 16C]

**COMPARING CORAL REEF CONDITIONS AROUND THE
MAIN HAWAIIAN ISLANDS**

Condition if no-fishing areas are kept at 1% of the coral reefs

Conditions within 10 years if no-fishing areas are expanded to 25% of the coral reefs

[maindegraded.jpg](#)

[mainimproved.jpg](#)

[SCREEN 16D RADIO] [SHOW Q10A AND B ON THE SAME SCREEN]

Q10a Given the arguments for and against, how do you feel about increasing federal taxes to expand no-fishing zones around the Main Hawaiian Islands?

Select one answer only

Strongly oppose	Somewhat oppose	Neither oppose or support	Somewhat support	Strongly support
1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

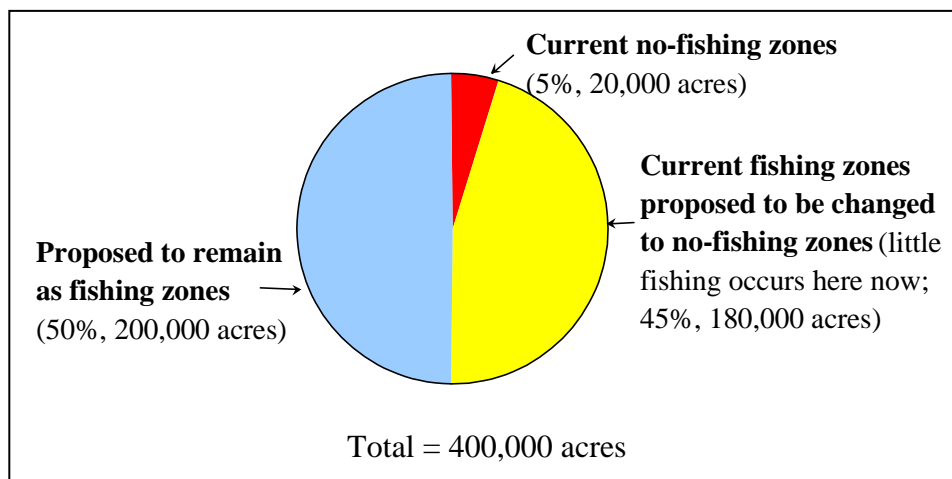
[TEXT BOX]

Q10b If you have any brief comments to add to your response to this question, please add them here.

Type in the answer

[Screen 17A] [Display]

Northwestern Hawaiian Islands Option: Increase no-fishing zones from the current 5% up to 50% of the coral reef ecosystems.



[SCREEN 17B] [DISPLAY]

Some arguments for increasing no-fishing zones around the Northwestern Hawaiian Islands:

- Prevents overfishing. Otherwise, fishing is expected to increase in the Northwestern Hawaiian Islands, with overfishing problems developing in 20 to 30 years.
- Protects these coral reef ecosystems in a natural condition for at least 100 years, with more fish, many large fish, and more seals and other species.
- Preserves the option for high quality recreational uses, cultural uses, and scientific research in the future.

Some arguments against no-fishing zones around the Northwestern Hawaiian Islands:

- Controls could be enacted later if and when it is clear that overfishing is becoming a problem, so restrictions should not be put in place now.
- The costs can be high. Most of the costs will be paid by all of us from increased federal government spending.

[SCREEN 17C]

**COMPARING FUTURE CORAL REEF CONDITIONS AROUND THE
NORTHWESTERN HAWAIIAN ISLANDS**

Conditions if no-fishing areas are
kept at 5% of the coral reefs

[nwdegraded.jpg](#)

Conditions in 20-30 years if no-
fishing areas are expanded to 50% of the
coral reefs

[nwcurrent.jpg](#)

[SCREEN 17D RADIO]

[SHOW Q11A AND B ON THE SAME SCREEN]

Q11a Given the arguments for and against, how do you feel about increasing federal taxes to expand no-fishing zones around the Northwestern Hawaiian Islands?

Select one answer only

Strongly oppose	Somewhat oppose	Neither oppose or support	Somewhat support	Strongly support
1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

[TEXT BOX]

Q11b If you have any brief comments to add to your response to this question, please add them here.

Type in the answer

[SCREEN 18, RADIO WAS DROPPED – THERE IS NO SCREEN 18]

PART 4: SHIP ACCIDENTS

[SCREEN 19A]

Ship Accidents

Ship accidents are another important cause of injuries to Hawaiian coral reefs.

On average, about 10 accidents occur each year where private and commercial boats and ships lose control, often in storms, and injure Hawaiian coral reefs.

- These accidents usually occur around the Main Hawaiian Islands, where most ship traffic occurs.
- Severe injuries to the coral usually range from a few square feet to an acre (an acre is about the size of a football field).
- In an average year, a total of about 5 acres of coral reefs are injured around the Main Hawaiian Islands.
- Nature typically takes up to 50 years to fully repair these injuries, which means that activities like fishing, diving, and snorkeling are affected for many years during recovery.

[SCREEN 19B]

Current Conditions of Main Hawaiian
Coral Reefs

[maincurrent.jpg](#)

Effects of Ship Accidents on Coral
Reefs

[shipstrike.jpg](#)

[SCREEN 19C, RADIO]

Q13 Have you ever heard about, read about, or seen where ship accidents have injured coral reefs in Hawaii or elsewhere?

Select one answer only.

- Yes
- No
- Don't know

[SCREEN 20] [DISPLAY]

Actions can be taken to help coral reefs recover faster after ship accidents, such as planting living coral from coral farms into injured areas, and restoring injured coral that is still alive.

- **With repairs, injured coral reefs typically recover in about 10 years, rather than in up to 50 years with natural recovery.**
- **These types of repairs have been successful around Florida and elsewhere.**
- **While boat and ship owners are required to pay for such repairs, often it is not possible to find which ship caused the injuries or to collect from its owner.**

[SCREEN 21A] [DISPLAY]

The federal government, with the State of Hawaii, is considering a program to repair ship injuries to coral reefs. About 10 sites, totaling about 5 acres, would be repaired each year.

Some arguments for a coral reef repair program:

- **These sites would recover in about 10 years, rather than in 50 years with natural recovery.**
- **This program would help maintain Hawaii's coral reef ecosystems and would reduce the impacts from ship accidents to recreation and other activities.**

Some arguments against a coral reef repair program:

- **Since the Main Hawaiian Islands have about 300,000 acres of coral reefs, 5 acres injured by ship accidents each year is only a small percentage.**
- **Because these coral reefs are managed by the federal government, most of the costs will be paid by all U.S. taxpayers. Ship owners and the State of Hawaii would also help pay the costs.**

[SCREEN 21B, RADIO] [SHOW Q14A AND B ON THE SAME SCREEN]

Q14a Given the arguments for and against, how do you feel about increasing federal taxes to restore coral reefs injured by ships around the Main Hawaiian Islands?

Select one answer only

Strongly oppose	Somewhat oppose	Neither oppose or support	Somewhat support	Strongly support
1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

[TEXT BOX]

Q14b If you have any brief comments to add to your response to this question, please add them here.

Type in the answer

PART 5: CHOICE QUESTIONS

[SCREEN 22A] TEXT IN ITALICS = TEXT FOR THOSE WITH NO AUDIO. FOR THOSE WITH AUDIO – TEXT IS SPOKEN AND NOT REPEATED ON THE SCREEN.

Which Alternatives Do You Prefer?

[IF SA=1] This sentence only for those with audio, otherwise don't display. For the next few screens you will be provided with some audio instructions. Please make sure your audio is turned on.

The following questions ask you to rank alternative programs that have different combinations of actions to protect and restore coral reefs ecosystems around Hawaii, at different costs to you.

[SCREEN 22B] [SHOW TEXT IN ITALICS IF SA ~ = 1]

In each question, Alternative A lists the current actions and expected results.

In Row 1: The Main Hawaiian Islands no-fishing zones are kept at the current 1% of the coral reefs. The number of fish and the quality of the reef will continue to decline. (short pause)

In Row 2: The Northwestern Hawaiian Islands no-fishing zones are kept at the current 5% of the coral reefs. Overfishing and reduced reef quality will start to occur in 20 to 30 years. (short pause)

In Row 3: Ship injuries to Hawaiian coral reefs, mostly around the Main Hawaiian Islands, are not repaired. Currently, ships accidents injure about 5 acres each year. Nature takes up to 50 years to repair the injuries. (short pause)

The last row shows the additional costs to your household each year: With the current program, there will be no additional actions, and therefore no added federal taxes paid by you to protect and restore coral reef ecosystems in Hawaii. (short pause)

When you are finished reviewing this table click on the continue button

	<u>Alternative A</u> Current program
<u>Main Islands no-fishing zones:</u> % of reef protected.	1% protected. Declining marine life.
<u>Northwestern Islands no-fishing zones:</u> % of reef protected.	5% protected. Overfishing will occur in 20 to 30 years
<u>Ship injuries to coral reefs</u> About 5 acres/year total.	No repairs Injuries last up to 50 years
<u>Added taxes to your household each year</u>	\$0

[SCREEN 22C] [SHOW TEXT IN ITALICS IF SA ~ = 1; ALT C VARIES BY VERSION]

This table again shows the current program in Alternative A.

Alternatives B and C do more and cost more. The highlighted boxes show where more actions are proposed compared to the current program.

For example, in Alternative B

- *(Row 1) No fishing zones around the Main Hawaiian Islands are increased to 25% of the coral reefs. This results in more fish and other marine life on these reefs and 50% more fish catch once the ecosystems recover.*
- *(Row 2) No fishing zones around the Northwestern Hawaiians Islands are increased to 50% of the coral reefs. This protects the ecosystem from overfishing and helps maintain abundant marine life throughout the Northwestern Islands for at least 100 years.*
- *(Row 3) Ship injuries would be repaired – resulting in injuries recovering in about 10 years rather than 50 years.*

	<u>Alternative A</u> Current program	<u>Alternative B</u>	<u>Alternative C</u>
<u>Main Islands no-fishing zones:</u> % of reef protected.	1% protected Declining marine life.	25% Protected 50% more fish. Better reef health.	25% protected Increases fish 50%. Improves reef health.
<u>Northwestern Islands no-fishing zones:</u> % of reef protected.	5% protected Overfishing will occur in 20-30 years	50% protected Maintain a natural ecosystem.	5% protected Overfishing will occur in 20-30 years
<u>Ship injuries to coral reefs:</u> About 5 acres/year total.	No repairs Injuries last up to 50 years	Repair injuries Injuries last up to 10 years	No repairs Injuries last up to 50 years
<u>Added taxes to your household each year</u>	\$0	\$80	\$30

In alternative B, the increased actions would increase your federal taxes each year by the amount shown at the bottom. Remember, if you spend money for this, it won't be available to buy other goods and services.

Alternative C shows another combination of actions that do more and cost more. Since scientists are still working on the alternatives and the costs, the next questions cover a range of possible alternatives and costs. Remember these costs would be paid each year for the foreseeable future.

When you are finished reviewing this table click on the continue button (This is the end of audio)

[SCREEN 23; ALT C VARIES BY VERSION]

[DO NOT ALLOW THE SAME ANSWER BEING CHECKED FOR MOST AND LEAST PREFERRED.]

Q15 Here are the alternatives we just reviewed. After considering the results, and the costs to you under each alternative, please check which of the three alternatives is your most preferred, and which is your least preferred.

If you do not want to do more and spend more on protecting Hawaiian coral reefs, you should check Alternative A as your preferred choice.

	<u>Alternative A</u> Current program	<u>Alternative B</u>	<u>Alternative C</u>
<u>Main Islands no-fishing zones:</u> % of reef protected.	1% protected Declining marine life.	25% Protected 50% more fish. Better reef health.	25% protected 50% more fish. Better reef health.
<u>Northwestern Islands no-fishing zones:</u> % of reef protected.	5% protected Overfishing will occur in 20-30 years	50% protected Maintain a natural ecosystem.	5% protected Overfishing will occur in 20-30 years
<u>Ship injuries to coral reefs:</u> About 5 acres/year total.	No repairs Injuries last up to 50 years	Repair injuries Injuries last up to 10 years	No repairs Injuries last up to 50 years
<u>Added taxes to your household each year</u>	\$0	\$80	\$30
Which alternative is your <u>most preferred</u>?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Which alternative is your <u>least preferred</u>?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[SCREEN 23B TEXT BOX]

Q16 Please provide a brief comment that helps us understand why you chose the alternative [Answer to Q15A] as most preferred and [Answer to Q15B] as least preferred in the previous question.

Type in the answer

(SCREEN 24; ALT B, ALT C VARY BY VERSION)

[DO NOT ALLOW THE SAME ANSWER BEING CHECKED FOR MOST AND LEAST PREFERRED]

Q17 Which of these three alternatives do you most prefer and least prefer? Check your most preferred and least preferred alternatives at the bottom.

	<u>Alternative A</u> Current program	<u>Alternative B</u>	<u>Alternative C</u>
<u>Main Islands no-fishing zones:</u> % of reef protected.	1% protected Declining marine life.	1% protected Declining marine life.	1% protected Declining marine life.
<u>Northwestern Islands no-fishing zones:</u> % of reef protected.	5% protected Overfishing likely in 20-30 years	50% protected Maintains a natural ecosystem.	5% protected Overfishing likely in 20-30 years.
<u>Ship injuries to coral reefs</u> About 5 acres/year total.	No repairs Injuries last up to 50 years	Repair injuries Injuries last up to 10 years	Repair injuries Injuries last up to 10 years
Added taxes to your household each year	\$0	\$50	\$10
Which alternative is your <u>most preferred</u>?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Which alternative is your <u>least preferred</u>?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[Screen 25; Alt B, Alt C vary by version]

[DO NOT ALLOW THE SAME ANSWER BEING CHECKED FOR MOST AND LEAST PREFERRED]

Q18 Which of these three alternatives do you most prefer and least prefer? Check your most preferred and least preferred alternatives at the bottom.

	<u>Alternative A</u> Current program	<u>Alternative B</u>	<u>Alternative C</u>
<u>Main Islands no-fishing zones:</u> % of reef protected.	1% protected Declining marine life.	25% protected 50% more fish. Better reef health.	1% protected Declining marine life.
<u>Northwestern Islands no-fishing zones:</u> % of reef protected.	5% protected Overfishing will occur in 20-30 years	50% protected Maintains a natural ecosystem.	50% protected Maintains a natural ecosystem.
<u>Ship injuries to coral reefs</u> About 5 acres/year total.	No repairs Injuries last up to 50 years	No repairs Injuries last up to 50 years	No repairs Injuries last up to 50 years
<u>Added taxes to your household each year</u>	\$0	\$70	\$40
Which alternative is your <u>most preferred</u>?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Which alternative is your <u>least preferred</u>?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[Screen 26, Grid ON TWO SCREENS 4+3]

Q19 We would like to learn more about how you reacted to the questions that asked you to choose between various combinations of no-fishing zones and ship accident repair programs. From strongly agree to strongly disagree, how do you feel about these statements?

Select one answer for each row in the grid

	Strongly agree ▼	Somewhat agree ▼	Neither agree nor disagree ▼	Somewhat disagree ▼	Strongly disagree ▼
Costs should not be a factor when protecting the environment.....	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
I found it difficult to select my most preferred alternative.	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
There was not enough information for me to make informed decisions about doing more to protect coral reefs in Hawaii.....	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
I was concerned that the federal government cannot effectively manage coral reefs.....	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
I should not have to pay more federal taxes to protect coral reefs around Hawaii	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
The public's views as expressed in this survey should be important to the government when it chooses how to manage coral reefs in Hawaii.....	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

In general, on a scale of 1 to 10, how certain are you that you would be willing to pay the increased taxes listed in the alternatives you preferred in each choice, where 10 is very certain and 1 is very uncertain? [put in 1 to 10 scale where 10 is very certain and 1 is very uncertain]

[SCREEN 27, radio]

Q20 Did anyone in your household pay any federal income taxes last year, 2004, such as by having taxes withheld from wages, retirement income or money received, or by sending money to the federal government with a tax form?

Select one answer

- Yes
- No
- Not Sure

[SCREEN 28]

We would like to get some additional information from you about this survey. (Allow for the information review links to show up during these questions)

Please think about the length of time it took you to complete the survey.

Do you think the time needed to complete the survey was too long? Yes No

Please add any comments you have on the length of the survey (text box)

[SCREEN 29]

[For those respondents that had audio]

Please think about the audio information provided.

Did you find the audio presentation useful, or would you rather have read the same information? (radio button)

I found the audio useful

I would have preferred to read the material rather than listened to it.

Do you think that additional audio instructions or descriptions would be helpful? Yes No

If Yes: Where do you think additional audio instruction would be helpful? (text box)

[SCREEN 30]

Please think about the portion of the survey where you chose your most and least preferred alternatives.

Did you find the instructions for this section clear? Yes No

If No: What was confusing about the instructions? (text box)

Was it difficult to choose your most preferred alternatives? Yes No

If yes: What was difficult about these choices? (text box)

Was it difficult to choose your least preferred alternatives? Yes No

If yes: What was difficult about these choices? (text box)

[SCREEN 31]

Would you like to provide any overall comments on the survey? Yes No

If yes, text box

[SCREEN 31, TEXT BOX]

Please add any other comments you would like to make to help us understand your views about coral reefs in Hawaii and your responses to this survey.

[SCREEN 32, RADIO]

[IF XPANEL=1]

[PROMPT IF SKIP]

D1. Are you taking this survey via a WebTV or a personal computer (PC)?

WebTV

PC

[SCREEN 33 RADIO]

[IF D1=2 OR XPANEL=2]

D2. How is your computer (i.e., the computer via which you are taking this survey) connecting to the Internet?

Dialup modem

ISDN line

Cable modem

Digital Subscriber Line (DSL)

Wireless

Satellite dish

T1 / T3 line

[SCREEN 34]

[TO BE VIEWED AFTER SURVEY RESPONSES ARE SUBMITTED]

To be sure we are clear ...

The National Oceanic and Atmospheric Administration, in cooperation with other federal and state agencies, is looking at ways to help protect coral reef ecosystems around the Hawaiian Islands. A wide variety of options are possible, in addition to the ones discussed in this survey. Any future decisions on specific protection and enhancement alternatives will take into consideration the views of the public, the results of scientific studies and advice of marine and other scientific experts.

Attachment B — Knowledge Networks Panel Members Bill of Rights

Confidentiality Agreement with Panelists

Survey responses are confidential, with identifying information never revealed without respondent approval. When surveys are assigned to panel members, they receive notice in their password protected e - mail account that the survey is available for completion. Surveys are self-administered and accessible any time of day for a designated period. Participants can complete a survey only once. Members may leave the panel at any time, and receipt of the WebTV and Internet service is not contingent on completion of any particular survey.

All KN panelists, when joining the panel, are given a copy of the Privacy and Term of Use Policy. In the privacy terms, there is a section called the “Panel Member Bill of Rights” which summarizes the confidentiality and privacy protections for panelists and explains that respondents can decide whether to participate in the panel or to answer any survey questions. The Bill of Rights is also available electronically at all times to panelists via the panel member website. The “Bill of Rights” is below:

Knowledge Networks Panel Member Bill of Rights

- We are researchers, not telemarketers Here’s what we can promise you:
- Knowledge Networks will never try to sell you anything. We operate under the standards set by the Council of American Research Organizations (CASRO) [www.casro.org] and our website is approved by TRUSTe.
- Your survey responses and information are provided to our clients in an anonymous form, unless you have given your express permission.
- Occasionally, we may contact you to validate responses. We will never misrepresent ourselves, nor what we are doing.
- Your decision about participating in the Knowledge Networks Panel or responding to specific questions will be respected without question.
- We will do our best to be sure your participation on the Knowledge Networks Panel is a pleasant experience. We will provide ongoing support and technical advice as needed.
- All equipment and connection to the Internet is free to Active Panel Members. Among other

topics, the privacy terms also explains the security that is used by Knowledge Networks:

Knowledge Networks uses advanced security measures to protect against the loss, issue and alteration of the information under our control. All Panel Members are required to use passwords and usernames. Our web server supports SSL (Secure Socket Layer) Encryption security technology. All access to our database is restricted to portals only we control.

Below I describe in summary form the measures that have been taken to meet the needs for privacy and confidentiality from the point of data access and information technology.

First, all employees of Knowledge Networks are required to sign a confidentiality agreement requiring them to keep confidential all personally identifiable information regarding Panel Members. Knowledge Networks warrants that all employees are bound to protect the privacy and confidentiality of all personal information provided by respondents, and very few employees actually have access to any confidential data. The only employees who have access to this information – personally identifying information about panel members – are those with a direct need to know. Therefore, the only persons with access are the following:

- Database and IT administrators with access to computer servers for the purpose of maintaining the computers systems at Knowledge Networks;
- Staff members in the Panel Relations department that have direct contact with panel members as part of the inbound and outbound call center operations. These staff members are responsible for troubleshooting any problems panelists might be having with their equipment or software related to survey administration, incentive fulfillment, and panel management.
- Staff members of the Statistics department have access to personally identifying information in order to draw samples for the various surveys we conduct at Knowledge Networks.

All personally identifying records are kept secured in a separate office in the Informational Technology section of the main offices in Menlo Park, CA, and all data transfers from WebTV units and personal computers (both used for survey administration) to the main servers pass through a firewall. Knowledge Networks never provides any respondent personal identifiers to any client or agency without the explicit and informed consent provided by the sampled Panel Members. Unless explicitly permitted as documented in a consent form, no personally identifying information will be provided to any parties outside Knowledge Networks in combination with the survey response data.

All electronic survey data records are stored in a secured database that does not contain personally identifying information. The staff members in the Panel Relations and Statistics departments, who have access to the personally identifying information, do not have access to the survey response data. Meanwhile, the staff members with access to the survey response data, with the exception of the aforementioned database and IT administrators who must have access to maintain the computer systems, do not have access to the personally identifying information. The secured database contains field-specific permissions that restrict access to the data by type of user, as described above, preventing unauthorized access.

The survey response data are identified only by an incremented ID number. The personally identifying information are stored in a separate database that is accessible only to persons with a need to know, as described above.

The survey data extraction system exports only anonymized survey data identified only by the Panel Member ID number. The data analysts with access to the survey data extraction system, as they do not have access to personally identifying information, cannot join survey data to personally identifying data. Panel Relations and Statistics staff do not have access to the survey data extraction system, and therefore cannot join survey data to personally identifying data.

As part of its work with Research Triangle Institute International on survey conducted in support of FDA applications, Knowledge Networks has implemented Good Clinical Practice guidelines to assure compliance with FDA requirements for systems documentation and privacy of stored survey data. Consequently, a system of standard operating procedures is in place for documenting all processes relating to maintaining confidentiality and privacy of the identities of panel members.

Knowledge Networks retains the survey response data in its secure database after the completion of a project. These data are retained for purposes of operational research, such as studies of response rates and for the security of our customers who might request at a later time additional analyses, statistical adjustments, or statistical surveys that would require re-surveying research subjects as part of validation or longitudinal surveys.

ATTACHMENT C: Knowledge Networks Quality Assurance

Procedures OVERVIEW

Once a survey has been scripted and pre-quality controlled Operations and programming, the survey is turned over to Client Services for Quality Control (QC) prior to being assigned to the Panel. The objective of Quality Control is to ensure that all Knowledge Network surveys are free of any error and appropriate for distribution to panel members.

PRE-QC

Research Services will complete a review prior to releasing a survey script for QC. This pre-QC is completed by a Project Manager or Project Assistant and will not be a thorough test of the instrument. It will consist of:

- Going through a few iterations through the survey to test for any easily apparent errors. This could include formatting, missing questions, images or incorrect major functionality. Extensive logic checks will not be done. The purpose is for a fast inspection, not to replicate QC.
- Confirming the names and values of SAMVARs listed in the script against those specified on the questionnaire and in SurveyMan.

Conducting a variable data check to confirm that variable(s) appear for each question. Data capture is not tested, only that those variables exist in the data file necessary to capture the survey's information.

QUALITY CONTROL

Final Quality Control begins once all the changes originating from the client review and pre-QC are completed. Research Services will notify the Project Manager by email when a questionnaire is ready for QC.

QC is conducted against the final version of the questionnaire. A word document reflecting all changes prior to QC is the ultimate benchmark for script evaluation. Once a script is in QC, there should be no further changes to the questionnaire.

- The latest version of the questionnaire will be available in SurveyMan. It is the CS team's responsibility to make certain that any and all changes requested during scripting & pre-QC are reflected in a final version, stored in SurveyMan,forQC. QC will generally, but not necessarily follow this order:

Review word document

If the person conducting the QC check is not familiar with the project, reviewing the final word document prior to performing any test cases allows QC to become familiar with the questions, overall flow, and purpose of the survey.

Review logic flow

Using the flow chart (if one was produced) and word document, the person conducting QC will become familiar with all possible skip patterns and filtering questions. Understanding this information before attempting any test cases will make the QC process more efficient.

Review behavior of sample variables (SAMVARS)

If the survey uses any sample variables, QC must be aware of the behavior each variable entails. This does not include the Standard Demo SAMVARS; it only applies to SAMVARS that control logic in the script. Again, this behavior should be outlined on the word document of the survey.

- The standard coding for a binary SAMVAR is “1” = Do not show; “2” = “Show.”

Identify the key questions and skip logic that require special attention

Once the logic flow and behavior of sample variables is understood, the QC analyst can properly assess all possible outcomes of the survey and plan their approach for testing.

Perform test cases on computer⁶

Enough test cases must be conducted to investigate all the paths a PM could take through the survey. Check to make sure that someone who screens out is correctly directed to screen out questions. Enough test cases should also be done to check that all randomized or rotated elements are being shown. If there are a large number of such elements, a subset of test cases can be completed.

After making a complete review of the instrument, any concerns that the QC analyst has about the survey should be relayed in ONE well-organized email to Survey-script and (if applicable) the Project Manager along with a revised version of the questionnaire, if necessary. If the project manager is not doing the QC, he/she should reply to both the analyst and to Survey-script indicating which items should be changed and how they should be corrected.

Research Services will make all scripting changes. CS should not make changes to the script.

CS will make all questionnaire changes resulting from QC in the word document using the “Track Changes” option.

All versions of the questionnaire, including the final word document must be stored in Survey Man.

Re-test for corrections

After all concerns have been addressed and changes have been made to the script, the QC analyst should re-test the NQ9 version of the survey on the PC. This test case should verify that all changes have been made correctly.

Test on Web TV

A final review of the survey must be performed on the WebTV to check for the appearance of images, sound, and visual quality of videos, and the

layout of grids and/or other graphics. Several test cases should be done to verify that everything is working correctly.

Check the email subject, email body, and Member Page name in Survey Man Confirm that an appropriate email subject and body have been entered into SurveyMan. The email subject should not ask a question (Ex: What do you like to drink?) because Panel Members tend to respond via email instead of opening the survey. Incentives should not be mentioned in the email invitation; if they are, the survey must not be chainable. Check that all other aspects of the Assignment specifications in Survey Man are correct including dates, number of completes, etc.

Final Steps

When you are completely satisfied that the survey looks and functions the way it should and that you have tested all permutations of the logic, send an email to Survey-Test with the following information:

- This survey is ready to be assigned to production with Time and Date
- Include Project, SNO (or SNOs), and ANO (or ANOs)
- Include any non-standard SAM VARs
- Include the name of any videos included
- Incentives, if any
- If the person sending the email is not the person who QCd the survey, include the name of the person who completed QC.

POST-QC

When QC is completed, Research Services will take the final steps necessary to assign the survey to production and to the Panel. At this point Research Services will assume that everything in SurveyMan is the final and correct information needed to assign this survey.

Perform Data Verification⁷

To verify that all data are captured and labeled correctly, a sample survey must be performed on the computer. The answers are recorded on the word doc. The collected data are then compared to the answers on the word doc, checking for any discrepancies.

Assign to Production

The original scripter will handle this if available. If not available, another scripter or an OTL will assign to production

Final check that email subject and body are correct and appropriate as they will appear to the Panel Members.

The final check will be done on WebTV to confirm that the email invitation appears properly. This step does not need to be done for of-panel surveys.

Complete Assignment process

Mark QC task completed in SurveyMan; send email to Stat, Survey-script, and CS team letting them know that the survey is ready for Panel assignment. Include the following information:

- This survey is ready to be assigned to the Panel with Time and Date
- Include Project, SNO (or SNOs):
- ANO (or ANOs):
- Include any non-standard SAMVARs:
- Videos:
- Assign:
- Incentive:
- QCd by: (Client Service)
- Production assignment and data check: (Ops)

Enter final project/script documentation into

SurveyMan 24-hour Datacheck

As the name indicates, this datacheck should occur the day after assignment to the panel. If the survey was assigned to a small sample, the check should be done when there are enough cases collected to test all paths in the survey.

The purpose of the 24-hour datacheck, aside from verifying that cases are actually being completed, is to check that the logic of the survey is working correctly. A basic check or survey with simple or no logic can be checked using toplines; any complex logic requires SPSS.

Toplines:

- If they have not already done so, request that the scripter delete the default topline analysis and create one that excludes all QC cases
- In NQ9, from the project's script page, select "Data Extraction"
- Select relevant dataset and click "Update"
- Click "Topline Analysis"
- Click on the hyperlink "Production".
 - If there are two "Production" toplines, do not use the one labeled: (Topline analysis compiled against Production Dataset).
- If asked to recompile toplines, answer "Yes" and Continue.

SPSS Summary:

- Load the Extraction script, if one exists. Otherwise use the Main
 - Extract production closed & open data and syntax (if not already provided)
 - Run SPSS data
- If using the Extraction script, check that all data labels are descriptive and the are

no superfluous variables

- Verify that Questions shown to all Panel Members are seen by all
- .. Filtered questions are shown to the correct number of respondents. Check the number of “Not Asked” values against the number of cases that gave answer(s) to preceding question(s) that would cause the question to not be asked. This may require selecting only certain cases and running additional frequencies/cross-tabs
 - Only screenout cases have the Incentive variables (1 = Screenout, 2 = Main completed) set to 1 (SCREENER)
 - Additional data-only variables exist and are correctly populated, if applicable
 - Open-end responses are being recorded. If 1 or more cases should have seen an open-end question, confirm in the open-end file that 1 or more cases did see it (will contain a response or _na_). Do not worry about matching MNOs unless you feel this is essential

Attachment D: Illustrations



Main Hawaiian Islands Current Conditions



Northwest Hawaiian Islands Current Conditions



Main Hawaiian Islands Degraded Conditions



Main Hawaiian Islands Improved Conditions



Northwest Hawaiian Islands Degraded Conditions



Northwest Hawaiian Islands Current Conditions



Main Hawaiian Islands Current Conditions



Main Hawaiian Islands Ship Grounding

Attachment E: Authorities

Presidential Documents

Title 3—**Executive Order 13089 of June 11, 1998****The President****Coral Reef Protection**

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the Clean Water Act of 1977, as amended (33 U.S.C. 1251, *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451, *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*), National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, *et seq.*), National Marine Sanctuaries Act, (16 U.S.C. 1431, *et seq.*), National Park Service Organic Act (16 U.S.C. 1, *et seq.*), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-ee), and other pertinent statutes, to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment, it is hereby ordered as follows:

Section 1. Definitions. (a) “U.S. coral reef ecosystems” means those species, habitats, and other natural resources associated with coral reefs in all maritime areas and zones subject to the jurisdiction or control of the United States (e.g., Federal, State, territorial, or commonwealth waters), including reef systems in the south Atlantic, Caribbean, Gulf of Mexico, and Pacific Ocean. (b) “U.S. Coral Reef Initiative” is an existing partnership between Federal agencies and State, territorial, commonwealth, and local governments, nongovernmental organizations, and commercial interests to design and implement additional management, education, monitoring, research, and restoration efforts to conserve coral reef ecosystems for the use and enjoyment of future generations. The existing U.S. Islands Coral Reef Initiative strategy covers approximately 95 percent of U.S. coral reef ecosystems and is a key element of the overall U.S. Coral Reef Initiative. (c) “International Coral Reef Initiative” is an existing partnership, founded by the United States in 1994, of governments, intergovernmental organizations, multilateral development banks, nongovernmental organizations, scientists, and the private sector whose purpose is to mobilize governments and other interested parties whose coordinated, vigorous, and effective actions are required to address the threats to the world’s coral reefs.

Sec. 2. Policy. (a) All Federal agencies whose actions may affect U.S. coral reef ecosystems shall: (a) identify their actions that may affect U.S. coral reef ecosystems; (b) utilize 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.

(b) Exceptions to this section may be allowed under terms prescribed by the heads of Federal agencies:

- (1) during time of war or national emergency;
- (2) when necessary for reasons of national security, as determined by the President;
- (3) during emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution; or
- (4) in any case that constitutes a danger to human life or a real threat to vessels, aircraft, platforms, or other man-made structures at sea, such as cases of *force majeure* caused by stress of weather or other act of God.

Sec. 3. *Federal Agency Responsibilities.* In furtherance of section 2 of this order, Federal agencies whose actions affect U.S. coral reef ecosystems, shall, subject to the availability of appropriations, provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, including, but not limited to, measures reducing impacts from pollution, sedimentation, and fishing. To the extent not inconsistent with statutory responsibilities and procedures, these measures shall be developed in cooperation with the U.S. Coral Reef Task Force and fishery management councils and in consultation with affected States, territorial, commonwealth, tribal, and local government agencies, nongovernmental organizations, the scientific community, and commercial interests.

Sec. 4. *U.S. Coral Reef Task Force.* The Secretary of the Interior and the Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, shall co-chair a U.S. Coral Reef Task Force ("Task Force"), whose members shall include, but not be limited to, the Administrator of the Environmental Protection Agency, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of State, the Secretary of Transportation, the Director of the National Science Foundation, the Administrator of the Agency for International Development, and the Administrator of the National Aeronautics and Space Administration. The Task Force shall oversee implementation of the policy and Federal agency responsibilities set forth in this order, and shall guide and support activities under the U.S. Coral Reef Initiative ("CRI"). All Federal agencies whose actions may affect U.S. coral reef ecosystems shall review their participation in the CRI and the strategies developed under it, including strategies and plans of State, territorial, commonwealth, and local governments, and, to the extent feasible, shall enhance Federal participation and support of such strategies and plans. The Task Force shall work in cooperation with State, territorial, commonwealth, and local government agencies, nongovernmental organizations, the scientific community, and commercial interests.

Sec. 5. *Duties of the U.S. Coral Reef Task Force.* (a) *Coral Reef Mapping and Monitoring.* The Task Force, in cooperation with State, territory, commonwealth, and local government partners, shall coordinate a comprehensive program to map and monitor U.S. coral reefs. Such programs shall include, but not be limited to, territories and commonwealths, special marine protected areas such as National Marine Sanctuaries, National Estuarine Research Reserves, National Parks, National Wildlife Refuges, and other entities having significant coral reef resources. To the extent feasible, remote sensing capabilities shall be developed and applied to this program and local communities should be engaged in the design and conduct of programs.

(b) *Research.* The Task Force shall develop and implement, with the scientific community, research aimed at identifying the major causes and consequences of degradation of coral reef ecosystems. This research shall include fundamental scientific research to provide a sound framework for the restoration and conservation of coral reef ecosystems worldwide. To the extent feasible, existing and planned environmental monitoring and mapping programs should be linked with scientific research activities. This Executive order shall not interfere with the normal conduct of scientific studies on coral reef ecosystems.

(c) *Conservation, Mitigation, and Restoration.* The Task Force, in cooperation with State, territorial, commonwealth, and local government agencies, nongovernmental organizations, the scientific community and commercial interests, shall develop, recommend, and seek or secure implementation of measures necessary to reduce and mitigate coral reef ecosystem degradation and to restore damaged coral reefs. These measures shall include solutions to problems such as land-based sources of water pollution, sedimentation, detrimental alteration of salinity or temperature, over-fishing, over-use, collection of coral reef species, and direct destruction caused by activities such as recreational and commercial vessel traffic and treasure salvage. In developing these measures, the Task Force shall review existing legislation

to determine whether additional legislation is necessary to complement the policy objectives of this order and shall recommend such legislation if appropriate. The Task Force shall further evaluate existing navigational aids, including charts, maps, day markers, and beacons to determine if the designation of the location of specific coral reefs should be enhanced through the use, revision, or improvement of such aids.

(d) *International Cooperation.* The Secretary of State and the Administrator of the Agency for International Development, in cooperation with other members of the Coral Reef Task Force and drawing upon their expertise, shall assess the U.S. role in international trade and protection of coral reef species and implement appropriate strategies and actions to promote conservation and sustainable use of coral reef resources worldwide. Such actions shall include expanded collaboration with other International Coral Reef Initiative ("ICRI") partners, especially governments, to implement the ICRI through its Framework for Action and the Global Coral Reef Monitoring Network at regional, national, and local levels.

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



THE WHITE HOUSE,

June 11, 1998.

[FR Doc. 98-16161

Filed 6-15-98; 8:45 am]

Billing code 3195-01-P

Presidential Documents

Executive Order 13158 of May 26, 2000

Marine Protected Areas

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*), National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-ee), National Park Service Organic Act (16 U.S.C. 1 *et seq.*), National Historic Preservation Act (16 U.S.C. 470 *et seq.*), Wilderness Act (16 U.S.C. 1131 *et seq.*), Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*), Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), Marine Mammal Protection Act (16 U.S.C. 1362 *et seq.*), Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*), National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), Outer Continental Shelf Lands Act (42 U.S.C. 1331 *et seq.*), and other pertinent statutes, it is ordered as follows:

Section 1. Purpose. This Executive Order will help protect the significant natural and cultural resources within the marine environment for the benefit of present and future generations by strengthening and expanding the Nation's system of marine protected areas (MPAs). An expanded and strengthened comprehensive system of marine protected areas throughout the marine environment would enhance the conservation of our Nation's natural and cultural marine heritage and the ecologically and economically sustainable use of the marine environment for future generations. To this end, the purpose of this order is to, consistent with domestic and international law: (a) strengthen the management, protection, and conservation of existing marine protected areas and establish new or expanded MPAs; (b) develop a scientifically based, comprehensive national system of MPAs representing diverse U.S. marine ecosystems, and the Nation's natural and cultural resources; and (c) avoid causing harm to MPAs through federally conducted, approved, or funded activities.

Sec. 2. Definitions. For the purposes of this order: (a) "Marine protected area" means any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein.

(b) "Marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.

(c) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

Sec. 3. MPA Establishment, Protection, and Management. Each Federal agency whose authorities provide for the establishment or management of MPAs shall take appropriate actions to enhance or expand protection of existing MPAs and establish or recommend, as appropriate, new MPAs. Agencies implementing this section shall consult with the agencies identified in subsection 4(a) of this order, consistent with existing requirements.

Sec. 4. National System of MPAs. (a) To the extent permitted by law and subject to the availability of appropriations, the Department of Commerce and the Department of the Interior, in consultation with the Department

of Defense, the Department of State, the United States Agency for International Development, the Department of Transportation, the Environmental Protection Agency, the National Science Foundation, and other pertinent Federal agencies shall develop a national system of MPAs. They shall coordinate and share information, tools, and strategies, and provide guidance to enable and encourage the use of the following in the exercise of each agency's respective authorities to further enhance and expand protection of existing MPAs and to establish or recommend new MPAs, as appropriate:

- (1) science-based identification and prioritization of natural and cultural resources for additional protection;
- (2) integrated assessments of ecological linkages among MPAs, including ecological reserves in which consumptive uses of resources are prohibited, to provide synergistic benefits;
- (3) a biological assessment of the minimum area where consumptive uses would be prohibited that is necessary to preserve representative habitats in different geographic areas of the marine environment;
- (4) an assessment of threats and gaps in levels of protection currently afforded to natural and cultural resources, as appropriate;
- (5) practical, science-based criteria and protocols for monitoring and evaluating the effectiveness of MPAs;
- (6) identification of emerging threats and user conflicts affecting MPAs and appropriate, practical, and equitable management solutions, including effective enforcement strategies, to eliminate or reduce such threats and conflicts;
- (7) assessment of the economic effects of the preferred management solutions; and
- (8) identification of opportunities to improve linkages with, and technical assistance to, international marine protected area programs.

(b) In carrying out the requirements of section 4 of this order, the Department of Commerce and the Department of the Interior shall consult with those States that contain portions of the marine environment, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, tribes, Regional Fishery Management Councils, and other entities, as appropriate, to promote coordination of Federal, State, territorial, and tribal actions to establish and manage MPAs.

(c) In carrying out the requirements of this section, the Department of Commerce and the Department of the Interior shall seek the expert advice and recommendations of non-Federal scientists, resource managers, and other interested persons and organizations through a Marine Protected Area Federal Advisory Committee. The Committee shall be established by the Department of Commerce.

(d) The Secretary of Commerce and the Secretary of the Interior shall establish and jointly manage a website for information on MPAs and Federal agency reports required by this order. They shall also publish and maintain a list of MPAs that meet the definition of MPA for the purposes of this order.

(e) The Department of Commerce's National Oceanic and Atmospheric Administration shall establish a Marine Protected Area Center to carry out, in cooperation with the Department of the Interior, the requirements of subsection 4(a) of this order, coordinate the website established pursuant to subsection 4(d) of this order, and partner with governmental and non-governmental entities to conduct necessary research, analysis, and exploration. The goal of the MPA Center shall be, in cooperation with the Department of the Interior, to develop a framework for a national system of MPAs, and to provide Federal, State, territorial, tribal, and local governments with the information, technologies, and strategies to support the system. This

national system framework and the work of the MPA Center is intended to support, not interfere with, agencies' independent exercise of their own existing authorities.

(f) To better protect beaches, coasts, and the marine environment from pollution, the Environmental Protection Agency (EPA), relying upon existing Clean Water Act authorities, shall expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment. Such regulations may include the identification of areas that warrant additional pollution protections and the enhancement of marine water quality standards. The EPA shall consult with the Federal agencies identified in subsection 4(a) of this order, States, territories, tribes, and the public in the development of such new regulations.

Sec. 5. Agency Responsibilities. Each Federal agency whose actions affect the natural or cultural resources that are protected by an MPA shall identify such actions. To the extent permitted by law and to the maximum extent practicable, each Federal agency, in taking such actions, shall avoid harm to the natural and cultural resources that are protected by an MPA. In implementing this section, each Federal agency shall refer to the MPAs identified under subsection 4(d) of this order.

Sec. 6. Accountability. Each Federal agency that is required to take actions under this order shall prepare and make public annually a concise description of actions taken by it in the previous year to implement the order, including a description of written comments by any person or organization stating that the agency has not complied with this order and a response to such comments by the agency.

Sec. 7. International Law. Federal agencies taking actions pursuant to this Executive Order must act in accordance with international law and with Presidential Proclamation 5928 of December 27, 1988, on the Territorial Sea of the United States of America, Presidential Proclamation 5030 of March 10, 1983, on the Exclusive Economic Zone of the United States of America, and Presidential Proclamation 7219 of September 2, 1999, on the Contiguous Zone of the United States.

Sec. 8. General. (a) Nothing in this order shall be construed as altering existing authorities regarding the establishment of Federal MPAs in areas of the marine environment subject to the jurisdiction and control of States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and Indian tribes.

(b) This order does not diminish, affect, or abrogate Indian treaty rights or United States trust responsibilities to Indian tribes.

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



THE WHITE HOUSE,
May 26, 2000.



Federal Register

Thursday,
December 7, 2000

Part X

The President

Executive Order 13178—Northwestern
Hawaiian Islands Coral Reef Ecosystem
Reserve

Presidential Documents

Title 3—**Executive Order 13178 of December 4, 2000****The President****Northwestern Hawaiian Islands Coral Reef Ecosystem Re-serve**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~part of the sanctuary. In designating and managing the~~

sanctuary, the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (f) of this section.

(f) *Council.* After considering input from the Secretary of the Interior and Governor of the State of Hawaii, the Secretary shall establish a Coral Reef Ecosystem Reserve Council pursuant to section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) to provide advice and recommendations on the Reserve Operations Plan and designation and management of any sanctuary. The Council shall include:

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

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

(A) Marine mammal science.

(B) Coral reef ecology.

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

(D) Oceanography.

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

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

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

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

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

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

(8) One citizen-at-large representative.

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

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

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

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

(a) The seaward boundary of the Reserve is 50nm from the approximate center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Island. Where the areas are not contiguous, parallel lines drawn tangent to and connecting those semi-circles of the 50nm areas that lie around such areas shall delimit the remainder of the Reserve.

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

(c) The Reserve boundary is generally depicted on the map attached to this order. The Secretary, after consultation with the Governor of the State

of Hawaii, may make technical modifications to the boundary of the Reserve, including providing straight-line boundaries for the Reserve for clarity and ease of identification, as appropriate.

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

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

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

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

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

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

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

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

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

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

(1) Exploring for, developing, or producing oil, gas, or minerals;

(2) Having a vessel anchored on any living or dead coral with an anchor, an anchor chain, or an anchor rope when visibility is such that the seabed can be seen;

(3) Drilling into, dredging, or otherwise altering the seabed; or constructing, placing, or abandoning any structure, material, or other matter on the seabed, except as an incidental result of anchoring vessels;

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

(5) Removal, moving, taking, harvesting, or damaging any living or nonliving Reserve resources, except as provided under paragraph (a) of this section and sections 8(a) and 9 of this order.

(c) The Secretary may conduct, or authorize by permit the activities listed in subparagraphs (b)(3)-(5) of this section to the extent that they are necessary for research, monitoring, education, or management activities that further the Management Principles of section 4 of this order.

Sec. 8. Reserve Preservation Areas.

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

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

(A) Nihoa Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 10fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(B) Necker Island, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 20fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(C) French Frigate Shoals;

(D) Gardner Pinnacles, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 10fm, unless and until the Secretary determines otherwise after adequate public review and comment;

(E) Maro Reef, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue seaward of a mean depth of 20fm, unless and until the Secretary determines otherwise after adequate public review and comment;

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

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

(H) Pearl and Hermes Atoll; and

(I) Kure Island.

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

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

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

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

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

(E) Raita Bank; and

(F) Pioneer Bank, provided that bottomfishing in accordance with the requirements of section 7(a)(1) of this order shall be allowed to continue, unless

and until the Secretary determines otherwise after adequate public review and comment.

(b) **Activities Prohibited Within Reserve Preservation Areas.**

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

(A) Commercial and recreational fishing;

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

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

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

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

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

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

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

Sec. 10. *National Wildlife Refuges.*

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

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

(c) The Secretary of the Interior, through the U.S. Fish and Wildlife Service, shall coordinate with the Secretary and the Governor of the State

of Hawaii, as provided under section 5(b) of this order, to ensure coordinated protection and management among the Reserve, Refuges, and State, consistent with relevant authorities.

Sec. 11. Administration and Judicial Review.

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

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

(c) *National Security and Emergency Actions.* Consistent with applicable law, nothing in this order is intended to apply to military activities (including those carried out by the United States Coast Guard), including military exercises, conducted within or in the vicinity of the Reserve, consistent with the requirements of Executive Orders 13089 of June 11, 1998, and 13158 of May 26, 2000. Further, nothing in this order is intended to restrict the Department of Defense from conducting activities necessary during time of war or national emergency, or when necessary for reasons of national security as determined by the Secretary of Defense, consistent with applicable law. In addition, consistent with applicable law, nothing in this order shall limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

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

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

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

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



THE WHITE HOUSE,
December 4, 2000.

Presidential Documents

Executive Order 13196 of January 18, 2001

Final Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



THE WHITE HOUSE,
January 18, 2001.

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

The following is a summary of the final changes made to Executive Order 13178 as amended by Executive Order 13196:

1. Conservation measures. The following summarize the changes to certain conservation measures (sec. 7 of Executive Order 13178)--

A. Existing trolling for pelagic species by currently permitted bottomfishers is now clearly allowed in the Reserve.

B. The caps for commercial fishing have been revised to make clear that for bottomfishing, the annual aggregate level for each permitted bottomfisher shall be that permittee's individual average take over the 5 years preceding the date of Executive Order 13178 (Dec. 4, 2000), and to clarify that the one-time reasonable increase to the total aggregate for the use of two native Hawaiian bottomfishing permits is to be in furtherance of the principles of the Reserve.

C. Certain exceptions to the restriction on discharges into the Reserve has been revised to clarify that such excepted discharges must be in compliance with the Federal Water Pollution Control Act.

2. Reserve Preservation Areas - the following are changes made to the Reserve Preservation Areas (section 8 of Executive Order 13 178)--

A. The exceptions for commercial bottomfishing in certain Reserve Preservation Areas are expanded to also allow trolling for pelagic species by permitted bottomfishers and recreational trolling for pelagic species.

B. The area within Reserve Preservation Areas where commercial bottomfishing, trolling for pelagic species by permitted bottomfishers, and recreational trolling for pelagic species may be conducted is revised to be seaward of a mean depth of 25 fathoms for Nihoa Island, Necker Island, Gardner Pinnacles, Maro Reef, and Lisianski Island.

C. Commercial bottomfishing, trolling for pelagic species by permitted bottomfishers, and recreational trolling for pelagic species is now allowed for five years in the first bank west of St. Rogatien Bank, east of Gardner Pinnacles, and Raita Bank. Such bottomfishing and trolling will only continue after five years if it is determined that continuation of such activities will have no adverse impact on the resources of these banks.

THE NATIONAL MARINE SANCTUARIES ACT

16 U.S.C. 1431 ET. SEQ., as amended by Public Law 106-513

Sec. 301. FINDINGS, PURPOSES, AND POLICIES; ESTABLISHMENT OF SYSTEM.

(a) FINDINGS. --The Congress finds that--

(1) this Nation historically has recognized the importance of protecting special areas of its public domain, but these efforts have been directed almost exclusively to land areas above the high-water mark;

(2) certain areas of the marine environment possess conservation, recreational, ecological, historical, scientific, educational, cultural, archeological, or esthetic qualities which give them special national, and in some instances, international, significance;

(3) while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the conservation and management of special areas of the marine environment; and

(4) a Federal program which establishes areas of the marine environment which have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities as national marine sanctuaries managed as the National Marine Sanctuary System will-

(A) improve the conservation, understanding, management, and wise and sustainable use of marine resources;

(B) enhance public awareness, understanding, and appreciation of the marine environment; and

(C) maintain for future generations the habitat, and ecological services, of the natural assemblage of living resources that inhabit these areas.

(b) PURPOSES AND POLICIES. --The purposes and policies of this title are--

(1) to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System;

(2) to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

(3) to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes;

(4) to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System;

(5) to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas;

(6) to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

(7) to develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

(8) to create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques; and

(9) to cooperate with global programs encouraging conservation of marine resources.

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

Sec. 302. DEFINITIONS

As used in this title, the term--

(1) "Draft management plan" means the plan described in section 304(a)(1)(C)(v);

(2) "Magnuson-Stevens Act" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(3) "marine environment" means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law;

(4) "Secretary" means the Secretary of Commerce;

(5) " State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States;

(6) "damages" includes--

(A) compensation for--

(i)(I) the cost of replacing, restoring, or acquiring the equivalent of a sanctuary resource; and (II) the value of the lost use of a sanctuary resource pending its restoration or replacement or the acquisition of an equivalent sanctuary resource; or

(ii) the value of a sanctuary resource if the sanctuary resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired;

(B) the cost of damage assessments under section 312(b)(2);

(C) the reasonable cost of monitoring appropriate to the injured, restored, or replaced resources;

(D) the cost of curation and conservation of archeological, historical, and cultural sanctuary resources; and

(E) the cost of enforcement actions undertaken by the Secretary in response to the destruction or loss of, or injury to, a sanctuary resource;

(7) "response costs" means the costs of actions taken or authorized by the Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risks of such destruction, loss, or injury, including costs related to seizure forfeiture, storage, or disposal arising from liability under section 312;

(8) "sanctuary resource" means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary;

(9) "exclusive economic zone" means the exclusive economic zone as defined in the Magnuson-Stevens Act; and

(10) 'System' means the National Marine Sanctuary System established by section

301. Sec. 303. SANCTUARY DESIGNATION STANDARDS

(a) STANDARDS.--The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary determines that--

(1) the designation will fulfill the purposes and policies of this title;

(2) the area is of special national significance due to-

(A) its conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities;

(B) the communities of living marine resources it harbors; or

(C) its resource or human-use values;

(3) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

(4) designation of the area as a national marine sanctuary will facilitate the objectives in subparagraph (3); and

(5) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.

(b) FACTORS AND CONSULTATIONS REQUIRED IN MAKING DETERMINATIONS AND FINDINGS.--

(1) Factors.--For purposes of determining if an area of the marine environment meets the standards set forth in subsection (a), the Secretary shall consider--

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

(B) the area's historical, cultural, archaeological, or paleontological significance;

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

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

(E) the existing State and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purposes and policies of this title;

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

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

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

(I) the socioeconomic effects of sanctuary designation;

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

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

(L) the value of the area as an addition to the System. (2) Consultation.--In making determinations and findings, the Secretary shall consult with--

(A) the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Secretaries of State, Defense, Transportation, and the Interior, the Administrator, and the heads of other interested Federal agencies;

(C) the responsible officials or relevant agency heads of the appropriate State and local government entities, including coastal zone management agencies, that will or are likely to be affected by the establishment of the area as a national marine sanctuary;

(D) the appropriate officials of any Regional Fishery Management Council established by section 302 of the Magnuson-Stevens Act (16 U.S.C. 1852) that may be affected by the proposed designation; and

(E) other interested persons.

Sec. 304. PROCEDURES FOR DESIGNATION AND IMPLEMENTATION

(a) SANCTUARY PROPOSAL.--

(1) Notice.--In proposing to designate a national marine sanctuary, the Secretary shall--

(A) issue, in the Federal Register, a notice of the proposal, proposed regulations that may be necessary and reasonable to implement the proposal, and a summary of the draft management plan;

(B) provide notice of the proposal in newspapers of general circulation or electronic media in the communities that may be affected by the proposal; and

(C) no later than the day on which the notice required under subparagraph (A) is submitted to Office of the Federal Register, submit a copy of that notice and the draft sanctuary designation

documents prepared pursuant to section 304(a)(2), including an executive summary, to the Committee on Resources of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Governor of each State in which any part of the proposed sanctuary would be located.

(2) Sanctuary Designation Documents.- The Secretary shall prepare and make available to the public sanctuary designation documents on the proposal that include the following:

(A) A draft environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(B) A resource assessment that documents-

(i) present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial, governmental, or recreational uses;

(ii) after consultation with the Secretary of the Interior, any commercial, governmental, or recreational resource uses in the areas that are subject to the primary jurisdiction of the Department of the Interior; and

(iii) information prepared in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, on any past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary. Public disclosure by the Secretary of such information shall be consistent with national security regulations.

(C) A draft management plan for the proposed national marine sanctuary that includes the following:

(i) The terms of the proposed designation.

(ii) Proposed mechanisms to coordinate existing regulatory and management authorities within the area.

(iii) The proposed goals and objectives, management responsibilities, resource studies, and appropriate strategies for managing sanctuary resources of the proposed sanctuary, including interpretation and education, innovative management strategies, research, monitoring and assessment, resource protection, restoration, enforcement, and surveillance activities.

(iv) An evaluation of the advantages of cooperative State and Federal management if all or part of the proposed sanctuary is within the territorial limits of any State or is superjacent to the subsoil and seabed within the seaward boundary of a State, as that boundary is established under the Submerged Lands Act (43 U.S.C. 1301 et seq.).

(v) An estimate of the annual cost to the Federal Government of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education.

(vi) The proposed regulations referred to in paragraph (1)(A).

(D) Maps depicting the boundaries of the proposed sanctuary.

(E) The basis for the determinations made under section 303(a) with respect to the area.

(F) An assessment of the considerations under section 303 (b)(1).

(3) Public Hearing.--No sooner than thirty days after issuing a notice under this subsection, the Secretary shall hold at least one public hearing in the coastal area or areas that will be most affected by the proposed designation of the area as a national marine sanctuary for the purpose of receiving the views of interested parties.

(4) Terms of Designation. --The terms of designation of a sanctuary shall include the geographic area proposed to be included within the sanctuary, the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value, and the types of activities that will be subject to regulation by the Secretary to protect those characteristics. The terms of designation may be modified only by the same procedures by which the original designation is made.

(5) Fishing Regulations.--The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this title and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved, and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

(6) Committee Action. --After receiving the documents under subsection (a)(1)(C), the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate may each hold hearings on the proposed designation and on the matters set forth in the documents. If within the forty-five day period of continuous session of

Congress beginning on the date of submission of the documents, either Committee issues a report concerning matters addressed in the documents, the Secretary shall consider this report before publishing a notice to designate the national marine sanctuary.

(b) TAKING EFFECT OF DESIGNATIONS.--

(1) Notice.--In designating a national marine sanctuary, the Secretary shall publish in the Federal Register notice of the designation together with final regulations to implement the designation and any other matters required by law, and submit such notice to the Congress. The Secretary shall advise the public of the availability of the final management plan and the final environmental impact statement with respect to such sanctuary. The Secretary shall issue a notice of designation with respect to a proposed national marine sanctuary site not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the Federal Register under regulations issued under this Act, or shall publish not later than such date in the Federal Register findings regarding why such notice has not been published. No notice of designation may occur until the expiration of the period for Committee action under subsection (a)(6). The designation (and any of its terms not disapproved under this subsection) and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless in the case of a natural [sic] marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.

(2) Withdrawal of Designation.-- If the Secretary considers that actions taken under paragraph (1) will affect the designation of a national marine sanctuary in a manner that the goals and objectives of the sanctuary or System cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation or not certified under paragraph (1) shall take effect.

(3) Procedures.-- In computing the forty-five-day periods of continuous session of Congress pursuant to subsection (a)(6) and paragraph (1) of this subsection--

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House of Congress is not in session because of an adjournment of more than three days to a day certain are excluded.

(c) ACCESS AND VALID RIGHTS.--

(1) Nothing in this title shall be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license, or right of subsistence use or of access that is in existence on the date of designation of any national marine sanctuary.

(2) The exercise of a lease, permit, license, or right is subject to regulation by the Secretary consistent with the purposes for which the sanctuary is designated.

(d) INTERAGENCY COOPERATION.--

(1) Review of Agency Actions.--

(A) In General.--Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Secretary.

(B) Agency Statements Required.-- Subject to any regulations the Secretary may establish each Federal agency proposing an action described in subparagraph (A) shall provide the Secretary with a written statement describing the action and its potential effects on sanctuary resources at the earliest practicable time, but in no case later than 45 days before the final approval of the action unless such Federal agency and the Secretary agree to a different schedule.

(2) Secretary's Recommended Alternatives.--If the Secretary finds that a Federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall (within 45 days of receipt of complete information on the proposed agency action) recommend reasonable and prudent alternatives, which may include conduct of the action elsewhere, which can be taken by the Federal agency in implementing the agency action that will protect sanctuary resources.

(3) Response to Recommendations. --The agency head who receives the Secretary's recommended alternatives under paragraph (2) shall promptly consult with the Secretary on the alternatives. If the agency head decides not to follow the alternatives, the agency head shall provide the Secretary with a written statement explaining the reasons for that decision.

(4) FAILURE TO FOLLOW ALTERNATIVE.- If the head of a Federal agency takes an action other than an alternative recommended by the Secretary and such action results in the destruction of, loss of, or injury to a sanctuary resource, the head of the agency shall promptly prevent and mitigate further damage and restore or replace the sanctuary resource in a manner approved by the Secretary.

(e) REVIEW OF MANAGEMENT PLANS.--Not more than 5 years after the date of designation of any national marine sanctuary, and thereafter at intervals not exceeding 5 years, the Secretary shall evaluate the substantive progress toward implementing the management plan and goals for the sanctuary, especially the effectiveness of site-specific management techniques and strategies, and shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this title. This review shall include a prioritization of management objectives.

(f) LIMITATION ON DESIGNATION OF NEW SANCTUARIES. -

(1) FINDING REQUIRED.- The Secretary may not publish in the Federal Register any sanctuary designation notice or regulations proposing to designate a new sanctuary, unless the Secretary has published a finding that--

- (A) the addition of a new sanctuary will not have a negative impact on the System; and
- (B) sufficient resources were available in the fiscal year in which the finding is made to--
 - (i) effectively implement sanctuary management plans for each sanctuary in the System; and
 - (ii) complete site characterization studies and inventory known sanctuary resources, including cultural resources, for each sanctuary in the System within 10 years after the date that the finding is made if the resources available for those activities are maintained at the same level for each fiscal year in that 10 year period.

(2) DEADLINE- If the Secretary does not submit the findings required by paragraph (1) before February 1, 2004, the Secretary shall submit to the Congress before October 1, 2004, a finding with respect to whether the requirements of subparagraphs (A) and (B) of paragraph 1 have been met by all existing sanctuaries.

(3) LIMITATION ON APPLICATION- Paragraph (1) does not apply to any sanctuary designation documents for--

- (A) a Thunder Bay National Marine Sanctuary; or
- (B) a Northwestern Hawaiian Islands National Marine Sanctuary.

Sec. 305. APPLICATION OF REGULATIONS AND INTERNATIONAL NEGOTIATIONS

(a) REGULATIONS. --This title and the regulations issued under section 304 shall be applied in accordance with generally recognized principles of international law, and in accordance with the treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States, unless in accordance with--

- (1) generally recognized principles of international law;
- (2) an agreement between the United States and the foreign state of which the person is a citizen; or
- (3) an agreement between the United States and the flag state of a foreign vessel, if the person is a crewmember of the vessel.

(b) NEGOTIATIONS.--The Secretary of State, in consultation with the Secretary, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of any national marine sanctuary and to promote the purposes for which the sanctuary is established.

(c) INTERNATIONAL COOPERATION. --The Secretary, in consultation with the Secretary of State and other appropriate Federal agencies, shall cooperate with other governments and international organizations in the furtherance of the purposes and policies of this title and consistent with applicable regional and multilateral arrangements for the protection and management of special marine areas.

Sec. 306. PROHIBITED ACTIVITIES It

is unlawful for any person to--

(1) destroy, cause the loss of, or injure any sanctuary resource managed under law or regulations for that sanctuary;

(2) possess, sell, offer for sale, purchase, import, export, deliver, carry, transport, or ship by any means any sanctuary resource taken in violation of this section;

(3) interfere with the enforcement of this title by--

(A) refusing to permit any officer authorized to enforce this title to board a vessel, other than a vessel operated by the Department of Defense or United States Coast Guard, subject to such person's control for the purposes of conducting any search or inspection in connection with the enforcement of this title;

(B) resisting, opposing, impeding, intimidating, harassing, bribing, interfering with, or forcibly assaulting any person authorized by the Secretary to implement this title or any such authorized officer in the conduct of any search or inspection performed under this title; or

(C) knowingly and willfully submitting false information to the Secretary or any officer authorized to enforce this title in connection with any search or inspection conducted under this title; or

(4) violate any provision of this title or any regulation or permit issued pursuant to this title.

Sec. 307. ENFORCEMENT

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

(b) POWERS OF AUTHORIZED OFFICERS. --Any person who is authorized to enforce this title may--

(1) board, search, inspect, and seize any vessel suspected of being used to violate this title or any regulation or permit issued under this title and any equipment, stores, and cargo of such vessel;

(2) seize wherever found any sanctuary resource taken or retained in violation of this title or any regulation or permit issued under this title;

- (3) seize any evidence of a violation of this title or of any regulation or permit issued under this title;
- (4) execute any warrant or other process issued by any court of competent jurisdiction;
- (5) exercise any other lawful authority; and
- (6) arrest any person, if there is reasonable cause to believe that such a person has committed an act prohibited by section 306(3).

(c) CRIMINAL OFFENSES-

(1) OFFENSES.- A person is guilty of an offense under this subsection if the person commits any act prohibited by section 306(3).

(2) PUNISHMENT.- Any person that is guilty of an offense under this subsection--

(A) except as provided in subparagraph (B), shall be fined under title 18, United States Code, imprisoned for not more than 6 months, or both; or

(B) in the case of a person who in the commission of such an offense uses a dangerous weapon, engages in conduct that causes bodily injury to any person authorized to enforce this title or any person authorized to implement the provisions of this title, or places any such person in fear of imminent bodily injury, shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.

(d) CIVIL PENALTIES.--

(1) Civil penalty. --Any person subject to the jurisdiction of the United States who violates this title or any regulation or permit issued under this title shall be liable to the United States for a civil penalty of not more than \$100,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(2) Notice.--No penalty shall be assessed under this subsection until after the person charged has been given notice and an opportunity for a hearing.

(3) In Rem Jurisdiction.--A vessel used in violating this title or any regulation or permit issued under this title shall be liable in rem for any civil penalty assessed for such violation. Such penalty shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(4) Review of Civil Penalty. --Any person against whom a civil penalty is assessed under this subsection may obtain review in the United States district court for the appropriate district by filing a complaint in such court not later than 30 days after the date of such order.

(5) Collection of Penalties.--If any person fails to pay an assessment of a civil penalty under this section after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) Compromise or Other Action by Secretary.--The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is or may be imposed under this section.

(e) FORFEITURE.--

(1) In General.--Any vessel (including the vessel's equipment, stores, and cargo) and other item used, and any sanctuary resource taken or retained, in any manner, in connection with or as a result of any violation of this title or of any regulation or permit issued under this title shall be subject to forfeiture to the United States pursuant to a civil proceeding under this subsection. The proceeds from forfeiture actions under this subsection shall constitute a separate recovery in addition to any amounts recovered as civil penalties under this section or as civil damages under section 312. None of those proceeds shall be subject to set-off.

(2) Application of the Customs Laws.--The Secretary may exercise the authority of any United States official granted by any relevant customs law relating to the seizure, forfeiture, condemnation, disposition, remission, and mitigation of property in enforcing this title.

(3) Disposal of Sanctuary Resources.--Any sanctuary resource seized pursuant to this title may be disposed of pursuant to an order of the appropriate court or, if perishable, in a manner prescribed by regulations promulgated by the Secretary. Any proceeds from the sale of such sanctuary resource shall for all purposes represent the sanctuary resource so disposed of in any subsequent legal proceedings.

(4) Presumption. --For the purposes of this section there is a rebuttable presumption that all sanctuary resources found on board a vessel that is used or seized in connection with a violation of this title or of any regulation or permit issued under this title were taken or retained in violation of this title or of a regulation or permit issued under this title.

(f) PAYMENT OF STORAGE, CARE, AND OTHER COSTS.--

(1) Expenditures.--

(A) Notwithstanding any other law, amounts received by the United States as civil penalties, forfeitures of property, and costs imposed under paragraph (2) shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(B) Amounts received under this section for forfeitures and costs imposed under paragraph (2) shall be used to pay the reasonable and necessary costs incurred by the Secretary to provide temporary storage, care, maintenance, and disposal of any sanctuary resource or other property seized in connection with a violation of this title or any regulation or permit issued under this title.

(C) Amounts received under this section as civil penalties and any amounts remaining after the operation of subparagraph (B) shall be used, in order of priority, to--

(i) manage and improve the national marine sanctuary with respect to which the violation occurred that resulted in the penalty or forfeiture;

(ii) pay a reward to any person who furnishes information leading to an assessment of a civil penalty, or to a forfeiture of property, for a violation of this title or any regulation or permit issued under this title; and

(iii) manage and improve any other national marine sanctuary.

(2) Liability for Costs.--Any person assessed a civil penalty for a violation of this title or of any regulation or permit issued under this title, and any claimant in a forfeiture action brought for such a violation, shall be liable for the reasonable costs incurred by the Secretary in storage, care, and maintenance of any sanctuary resource or other property seized in connection with the violation.

(g) SUBPOENAS.--In the case of any hearing under this section which is determined on the record in accordance with the procedures provided for under section 554 of title 5, United States Code, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, electronic files, and documents, and may administer oaths.

(h) USE OF RESOURCES OF STATE AND OTHER FEDERAL AGENCIES.—The Secretary shall, whenever appropriate, use by agreement the personnel, services, and facilities of State and other Federal departments, agencies, and instrumentalities, on a reimbursable or nonreimbursable basis, to carry out the Secretary's responsibilities under this section.

(i) COAST GUARD AUTHORITY NOT LIMITED.--Nothing in this section shall be considered to limit the authority of the Coast Guard to enforce this or any other Federal law under section 89 of title 14, United States Code.

(j) INJUNCTIVE RELIEF.--If the Secretary determines that there is an imminent risk of destruction or loss of or injury to a sanctuary resource, or that there has been actual destruction or loss of, or injury to, a sanctuary resource which may give rise to liability under section 312, the Attorney General, upon request of the Secretary, shall seek to obtain such relief as may be necessary to abate such risk or actual destruction, loss, or injury, or to restore or replace the sanctuary resource, or both. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

(k) AREA OF APPLICATION AND ENFORCEABILITY.--The area of application and enforceability of this title includes the territorial sea of the United States, as described in Presidential Proclamation 5928 of December 27, 1988, which is subject to the sovereignty of the United States, and the United States exclusive economic zone, consistent with international law.

(l) NATIONWIDE SERVICE OF PROCESS.- In any action by the United States under this title, process may be served in any district where the defendant is found, resides, transacts business, or has appointed an agent for the service of process.

SEC. 308. REGULATIONS.

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

Sec. 309. RESEARCH, MONITORING, AND EDUCATION.

(a) IN GENERAL- The Secretary shall conduct, support, or coordinate research, monitoring, evaluation, and education programs consistent with subsections (b) and (c) and the purposes and policies of this title.

(b) RESEARCH AND MONITORING.-

(1) IN GENERAL.- The Secretary may--

(A) support, promote, and coordinate research on, and long-term monitoring of, sanctuary resources and natural processes that occur in national marine sanctuaries, including exploration, mapping, and environmental and socioeconomic assessment;

(B) develop and test methods to enhance degraded habitats or restore damaged, injured, or lost sanctuary resources; and

(C) support, promote, and coordinate research on, and the conservation, curation, and public display of, the cultural, archeological, and historical resources of national marine sanctuaries.

(2) AVAILABILITY OF RESULTS.- The results of research and monitoring conducted, supported, or permitted by the Secretary under this subsection shall be made available to the public.

(c) EDUCATION-

(1) IN GENERAL.- The Secretary may support, promote, and coordinate efforts to enhance public awareness, understanding, and appreciation of national marine sanctuaries and the System. Efforts supported, promoted, or coordinated under this subsection must emphasize the conservation goals and sustainable public uses of national marine sanctuaries and the System.

(2) EDUCATIONAL ACTIVITIES. - Activities under this subsection may include education of the general public, teachers, students, national marine sanctuary users, and ocean and coastal resource managers.

(d) INTERPRETIVE FACILITIES. -

(1) IN GENERAL.- The Secretary may develop interpretive facilities near any national marine sanctuary.

(2) FACILITY REQUIREMENT.- Any facility developed under this subsection must emphasize the conservation goals and sustainable public uses of national marine sanctuaries by providing the public with information about the conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities of the national marine sanctuary.

(e) CONSULTATION AND COORDINATION. - In conducting, supporting, and coordinating research, monitoring, evaluation, and education programs under subsection (a) and developing interpretive facilities under subsection (d), the Secretary may consult or coordinate with Federal, interstate, or regional agencies, States or local governments.

Sec. 310. SPECIAL USE PERMITS

(a) ISSUANCE OF PERMITS. --The Secretary may issue special use permits which authorize the conduct of specific activities in a national marine sanctuary if the Secretary determines such authorization is necessary--

(1) to establish conditions of access to and use of any sanctuary resource; or

(2) to promote public use and understanding of a sanctuary resource.

(b) PUBLIC NOTICE REQUIRED. - The Secretary shall provide appropriate public notice before identifying any category of activity subject to a special use permit under subsection (a).

(c) PERMIT TERMS. --A permit issued under this section--

(1) shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;

(2) shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;

(3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and

(4) shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

(d) FEES.--

(1) Assessment and Collection.--The Secretary may assess and collect fees for the conduct of any activity under a permit issued under this section.

(2) Amount. --The amount of a fee under this subsection shall be equal to the sum of--

(A) costs incurred, or expected to be incurred, by the Secretary in issuing the permit;

(B) costs incurred, or expected to be incurred, by the Secretary as a direct result of the conduct of the activity for which the permit is issued, including costs of monitoring the conduct of the activity; and

(C) an amount which represents the fair market value of the use of the sanctuary resource.

(3) Use of Fees. --Amounts collected by the Secretary in the form of fees under this section may be used by the Secretary--

(A) for issuing and administering permits under this section; and

(B) for expenses of managing national marine sanctuaries.

(4) WAIVER OR REDUCTION OF FEES. - The Secretary may accept in-kind contributions in lieu of a fee under paragraph (2)(C), or waive or reduce any fee assessed under this subsection for any activity that does not derive a profit from the access to or use of sanctuary resources.

(e) VIOLATIONS. --Upon violation of a term or condition of a permit issued under this section, the Secretary may--

(1) suspend or revoke the permit without compensation to the permittee and without liability to the United States;

(2) assess a civil penalty in accordance with section 307; or

(3) both.

(f) REPORTS. --Each person issued a permit under this section shall submit an annual report to the Secretary not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

(g) FISHING.--Nothing in this section shall be considered to require a person to obtain a permit under this section for the conduct of any fishing activities in a national marine sanctuary.

Sec. 311. COOPERATIVE AGREEMENTS, DONATIONS, AND ACQUISITIONS

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

(b) AUTHORIZATION TO SOLICIT DONATIONS.--The Secretary may enter into such agreements with any nonprofit organization authorizing the organization to solicit private donations to carry out the purposes and policies of this title.

(c) DONATIONS.--The Secretary may accept donations of funds, property, and services for use in designating and administering national marine sanctuaries under this title. Donations accepted under this section shall be considered as a gift or bequest to or for the use of the United States.

(d) ACQUISITIONS. --The Secretary may acquire by purchase, lease, or exchange, any land, facilities, or other property necessary and appropriate to carry out the purposes and policies of this title

(e) USE OF RESOURCES OF OTHER GOVERNMENT AGENCIES.- The Secretary may, whenever appropriate, enter into an agreement with a State or other Federal agency to use the personnel, services, or facilities of such agency on a reimbursable or nonreimbursable basis, to assist in carrying out the purposes and policies of this title.

(f) AUTHORITY TO OBTAIN GRANTS.- Notwithstanding any other provision of law that prohibits a Federal agency from receiving assistance, the Secretary may apply for, accept, and use grants from other Federal agencies, States, local governments, regional agencies, interstate agencies, foundations, or other persons, to carry out the purposes and policies of this title.

Sec. 312. DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES (a)

LIABILITY FOR INTEREST.--

(1) Liability to UNITED STATES.--Any person who destroys, causes the loss of, or injures any sanctuary resource is liable to the United States for an amount equal to the sum of--

(A) the amount of response costs and damages resulting from the destruction, loss, or injury; and

(B) interests on that amount calculated in the manner described under section 1005 of the Oil Pollution Act of 1990.

(2) Liability In Rem.--Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(3) Defenses.--A person is not liable under this subsection if that person establishes that--

(A) the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;

(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law;
or

(C) the destruction, loss, or injury was negligible.

(4) Limits to Liability.-- Nothing in sections 4281-4289 of the Revised Statutes of the United States or section 3 of the Act of February 13, 1893, shall limit the liability of any person under this title.

(b) RESPONSE ACTIONS AND DAMAGE ASSESSMENT. -

(1) Response Actions.--The Secretary may undertake or authorize all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources, or to minimize the imminent risk of such destruction, loss, or injury.

(2) Damage Assessment.--The Secretary shall assess damages to sanctuary resources in accordance with section 302(6).

(c) CIVIL ACTIONS FOR RESPONSE COSTS AND DAMAGES.—

(1) The Attorney General, upon request of the Secretary, may commence a civil action against any person or vessel who may be liable under subsection (a) for response costs and damages. The Secretary, acting as trustee for sanctuary resources for the United States, shall submit a request for such an action to the Attorney General whenever a person may be liable for such costs or damages.

(2) An action under this subsection may be brought in the United States district court for any district in which-

(A) the defendant is located, resides, or is doing business, in the case of an action against a person;

(B) the vessel is located, in the case of an action against a vessel; or

(C) the destruction of, loss of, or injury to a sanctuary resource occurred.

(d) USE OF RECOVERED AMOUNTS. --Response costs and damages recovered by the Secretary under this section shall be retained by the Secretary in the manner provided for in section 107(f)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9607(f)(1)), and used as follows:

(1) RESPONSE COSTS.- Amounts recovered by the United States for costs of response actions and damage assessments under this section shall be used, as the Secretary considers appropriate--

(A) to reimburse the Secretary or any other Federal or State agency that conducted those activities; and

(B) after reimbursement of such costs, to restore, replace, or acquire the equivalent of any sanctuary resource.

(2) OTHER AMOUNTS.- All other amounts recovered shall be used, in order of priority--

(A) to restore, replace, or acquire the equivalent of the sanctuary resources that were the subject of the action, including for costs of monitoring and the costs of curation and conservation of archeological, historical, and cultural sanctuary resources;

(B) to restore degraded sanctuary resources of the national marine sanctuary that was the subject of the action, giving priority to sanctuary resources and habitats that are comparable to the sanctuary resources that were the subject of the action; and

(C) to restore degraded sanctuary resources of other national marine sanctuaries.

(3) Federal-State Coordination. --Amounts recovered under this section with respect to sanctuary resources lying within the jurisdiction of a State shall be used under paragraphs (2)(A) and (B) in accordance with the court decree or settlement agreement and an agreement entered into by the Secretary and the Governor of that State.

(e) STATUTE OF LIMITATIONS- An action for response costs or damages under subsection (c) shall be barred unless the complaint is filed within 3 years after the date on which the Secretary completes a damage assessment and restoration plan for the sanctuary resources to which the action relates.

SEC. 313. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary--

(1) to carry out this title--

(A) \$32,000,000 for fiscal year 2001;

(B) \$34,000,000 for fiscal year 2002;

(C) \$36,000,000 for fiscal year 2003;

(D) \$38,000,000 for fiscal year 2004;

(E) \$40,000,000 for fiscal year 2005; and

(2) for construction projects at national marine sanctuaries, \$6,000,000 for each of fiscal years 2001, 2002, 2003, 2004, and 2005.

Sec. 314. U.S.S. MONITOR ARTIFACTS AND MATERIALS

(a) CONGRESSIONAL POLICY. -- In recognition of the historical significance of the wreck of the United States ship Monitor to coastal North Carolina and to the area off the coast of North Carolina known as the Graveyard of the Atlantic, the Congress directs that a suitable display of artifacts and materials from the United States ship Monitor be maintained permanently at an appropriate site in coastal North Carolina. [P.L. 102-5 87 authorized a grant for the acquisition of space in Hatteras Village, NC, for display of artifacts and administration and operations of the Monitor National Marine Sanctuary.

(b) DISCLAIMER. --This section shall not affect the following:

(1) Responsibilities Of Secretary. --The responsibilities of the Secretary to provide for the protection, conservation, and display of artifacts and materials from the United States ship Monitor.

(2) Authority Of Secretary. --The authority of the Secretary to designate the Mariner's Museum, located at Newport News, Virginia, as the principal museum for coordination of activities referred to in paragraph (1).

Sec. 315. ADVISORY COUNCILS

(a) ESTABLISHMENT.--The Secretary may establish one or more advisory councils (in this section referred to as an 'Advisory Council') to advise and make recommendations to the Secretary regarding the designation and management of national marine sanctuaries. The Advisory Councils shall be exempt from the Federal Advisory Committee Act.

(b) MEMBERSHIP.--Members of the Advisory Councils may be appointed from among--

(1) persons employed by Federal or State agencies with expertise in management of natural resources;

(2) members of relevant Regional Fishery Management Councils established under section 302 of the Magnuson-Stevens Act; and

(3) representatives of local user groups, conservation and other public interest organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.

(c) LIMITS ON MEMBERSHIP. --For sanctuaries designated after the date of enactment of the National Marine Sanctuaries Program Amendments Act of 1992, the membership of Advisory Councils shall be limited to no more than 15 members.

(d) STAFFING AND ASSISTANCE. --The Secretary may make available to an Advisory Council any staff, information, administrative services, or assistance the Secretary determines are reasonably required to enable the Advisory Council to carry out its functions.

(e) PUBLIC PARTICIPATION AND PROCEDURAL MATTERS. --The following guidelines apply with respect to the conduct of business meetings of an Advisory Council:

(1) Each meeting shall be open to the public, and interested persons shall be permitted to present oral or written statements on items on the agenda.

(2) Emergency meetings may be held at the call of the chairman or presiding officer.

(3) Timely notice of each meeting, including the time, place, and agenda of the meeting, shall be published locally and in the Federal Register, except that in the case of a meeting of an Advisory Council established to provide assistance regarding any individual national marine sanctuary the notice is not required to be published in the Federal Register.

(4) Minutes of each meeting shall be kept and contain a summary of the attendees and matters discussed.

Sec. 316. ENHANCING SUPPORT FOR NATIONAL MARINE SANCTUARIES

(a) AUTHORITY. - The Secretary may establish a program consisting of--

(1) the creation, adoption, and publication in the Federal Register by the Secretary of a symbol for the national marine sanctuary program, or for individual national marine sanctuaries or the System;

(2) the solicitation of persons to be designated as official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

(3) the designation of persons by the Secretary as official sponsors of the national marine sanctuary program or of individual sanctuaries;

(4) the authorization by the Secretary of the manufacture, reproduction, or other use of any symbol published under paragraph (1), including the sale of items bearing such a symbol, by official sponsors of the national marine sanctuary program or of individual national marine sanctuaries;

(5) the creation, marketing, and selling of products to promote the national marine sanctuary program, and entering into exclusive or nonexclusive agreements authorizing entities to create, market or sell on the Secretary's behalf;

(6) the solicitation and collection by the Secretary of monetary or in-kind contributions from official sponsors for the manufacture, reproduction or use of the symbols published under paragraph (1);

(7) the retention of any monetary or in-kind contributions collected under paragraphs (5) and (6) by the Secretary; and

(8) the expenditure and use of any monetary and in-kind contributions, without appropriation, by the Secretary to designate and manage national marine sanctuaries.

Monetary and in-kind contributions raised through the sale, marketing, or use of symbols and products related to an individual national marine sanctuary shall be used to support that sanctuary.

(b) **CONTRACT AUTHORITY.**-- The Secretary may contract with any person for the creation of symbols or the solicitation of official sponsors under subsection (a).

(c) **RESTRICTIONS.**-- The Secretary may restrict the use of the symbols published under subsection (a), and the designation of official sponsors of the national marine sanctuary program or of individual national marine sanctuaries to ensure compatibility with the goals of the national marine sanctuary program.

(d) **PROPERTY OF UNITED STATES.**-- Any symbol which is adopted by the Secretary and published in the Federal Register under subsection (a) is deemed to be the property of the United States.

(e) **PROHIBITED ACTIVITIES.**-- It is unlawful for any person--

(1) designated as an official sponsor to influence or seek to influence any decision by the Secretary or any other Federal official related to the designation or management of a national marine sanctuary, except to the extent that a person who is not so designated may do so;

(2) to represent himself or herself to be an official sponsor absent a designation by the Secretary;

(3) to manufacture, reproduce, or otherwise use any symbol adopted by the Secretary under subsection (a)(1), including to sell any item bearing such a symbol, unless authorized by the Secretary under subsection (a)(4) or subsection (f); or

(4) to violate any regulation promulgated by the Secretary under this section.

(f) **COLLABORATIONS.** The Secretary may authorize the use of a symbol adopted by the Secretary under subsection (a)(1) by any person engaged in a collaborative effort with the Secretary to carry out the purposes and policies of this title and to benefit a national marine sanctuary or the System.

(g) **AUTHORIZATION FOR NON-PROFIT PARTNER ORGANIZATION TO SOLICIT SPONSORS.** -

(1) **IN GENERAL.**- The Secretary may enter into an agreement with a non-profit partner organization authorizing it to assist in the administration of the sponsorship program established

under this section. Under an agreement entered into under this paragraph, the Secretary may authorize the non-profit partner organization to solicit persons to be official sponsors of the national marine sanctuary system or of individual national marine sanctuaries, upon such terms as the Secretary deems reasonable and will contribute to the successful administration of the sanctuary system. The Secretary may also authorize the non-profit partner organization to collect the statutory contribution from the sponsor, and, subject to paragraph (2), transfer the contribution to the Secretary.

(2) REIMBURSEMENT FOR ADMINISTRATIVE COSTS. - Under the agreement entered into under paragraph (1), the Secretary may authorize the non-profit partner organization to retain not more than 5 percent of the amount of monetary contributions it receives from official sponsors under the agreement to offset the administrative costs of the organization in soliciting sponsors.

(3) PARTNER ORGANIZATION DEFINED. - In this subsection, the term `partner organization' means an organization that--

(A) draws its membership from individuals, private organizations, corporation, academic institutions, or State and local governments; and

(B) is established to promote the understanding of, education relating to, and the conservation of the resources of a particular sanctuary or 2 or more related sanctuaries.

SEC. 318. DR. NANCY FOSTER SCHOLARSHIP PROGRAM.

(a) ESTABLISHMENT.- The Secretary shall establish and administer through the National Ocean Service the Dr. Nancy Foster Scholarship Program. Under the program, the Secretary shall award graduate education scholarships in oceanography, marine biology or maritime archeology, to be known as Dr. Nancy Foster Scholarships.

(b) PURPOSES- The purposes of the Dr. Nancy Foster Scholarship Program are--

(1) to recognize outstanding scholarship in oceanography, marine biology, or maritime archeology, particularly by women and members of minority groups ; and

(2) to encourage independent graduate level research in oceanography, marine biology, or maritime archeology.

(c) AWARD. - Each Dr. Nancy Foster Scholarship--

(1) shall be used to support graduate studies in oceanography, marine biology, or maritime archeology at a graduate level institution of higher education; and

(2) shall be awarded in accordance with guidelines issued by the Secretary.

(d) DISTRIBUTION OF FUNDS. - The amount of each Dr. Nancy Foster Scholarship shall be provided directly to a recipient selected by the Secretary upon receipt of certification that the

recipient will adhere to a specific and detailed plan of study and research approved by a graduate level institution of higher education.

(e) FUNDING- Of the amount available each fiscal year to carry out this title, the Secretary shall award 1 percent as Dr. Nancy Foster Scholarships.

(f) SCHOLARSHIP REPAYMENT REQUIREMENT- The Secretary shall require an individual receiving a scholarship under this section to repay the full amount of the scholarship to the Secretary if the Secretary determines that the individual, in obtaining or using the scholarship, engaged in fraudulent conduct or failed to comply with any term or condition of the scholarship.

(g) MARITIME ARCHEOLOGY DEFINED- In this section the term 'maritime archeology' includes the curation, preservation, and display of maritime artifacts.

**33 USC 2701 et seq. – Complete Text of the Oil Pollution Act (Prince William
Sound Provisions Omitted)**

§ 2701. Definitions

For the purposes of this chapter, the term--

- (1) "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;
- (2) "barrel" means 42 United States gallons at 60 degrees fahrenheit;
- (3) "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from an incident;
- (4) "claimant" means any person or government who presents a claim for compensation under this subchapter;
- (5) "damages" means damages specified in section 2702(b) of this title, and includes the cost of assessing these damages;
- (6) "deepwater port" is a facility licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524);
- (7) "discharge" means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;
- (8) "exclusive economic zone" means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as "eastern special areas" in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990;
- (9) "facility" means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes;
- (10) "foreign offshore unit" means a facility which is located, in whole or in part, in the territorial sea or on the continental shelf of a foreign country and which is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the seabed beneath the foreign country's territorial sea or from the foreign country's continental shelf;
- (11) "Fund" means the Oil Spill Liability Trust Fund, established by section 9509 of Title 26;
- (12) "gross ton" has the meaning given that term by the Secretary under part J of Title 46 [46 U.S.C.A. § 14101 et seq.];
- (13) "guarantor" means any person, other than the responsible party, who provides evidence of financial responsibility for a responsible party under this chapter;
- (14) "incident" means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil;

(15) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe;

(16) "lessee" means a person holding a leasehold interest in an oil or gas lease on lands beneath navigable waters (as that term is defined in section 1301(a) of Title 43) or on submerged lands of the Outer Continental Shelf, granted or maintained under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.);

(17) "liable" or "liability" shall be construed to be the standard of liability which obtains under section 1321 of this title;

(18) "mobile offshore drilling unit" means a vessel (other than a self-elevating lift vessel) capable of use as an offshore facility;

(19) "National Contingency Plan" means the National Contingency Plan prepared and published under section 1321(d) of this title, as amended by this Act, or revised under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9605);

(20) "natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government;

(21) "navigable waters" means the waters of the United States, including the territorial sea;

(22) "offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(23) "oil" means oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act;

(24) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(25) the term "Outer Continental Shelf facility" means an offshore facility which is located, in whole or in part, on the Outer Continental Shelf and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf;

(26) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

- (27) "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body;
- (28) "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340) or applicable State law;
- (29) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce;
- (30) "remove" or "removal" means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;
- (31) "removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident;
- (32) "responsible party" means the following:

(A) Vessels

In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(B) Onshore facilities

In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(C) Offshore facilities

In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act (43 U.S.C. 1301-1356) for the area in which the facility is located (if the holder is a different person than the lessee or permittee), except a Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(D) Deepwater ports

In the case of a deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501-1524), the licensee.

In the case of a pipeline, any person owning or operating the pipeline.

(F) Abandonment

In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility.

(33) "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(34) "tank vessel" means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that--

(A) is a vessel of the United States;

(B) operates on the navigable waters; or

(C) transfers oil or hazardous material in a place subject to the jurisdiction of the United States;

(35) "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles;

(36) "United States" and "State" mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States; and

(37) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.

§ 2702. Elements of liability

(a) In general

Notwithstanding any other provision or rule of law, and subject to the provisions of this chapter, each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in subsection (b) that result from such incident.

(b) Covered removal costs and damages

(1) Removal costs

The removal costs referred to in subsection (a) of this section are--

(A) all removal costs incurred by the United States, a State, or an Indian tribe under subsection (c), (d), (e), or (l) of section 1321 of this title, as amended by this Act, under the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.), or under State law; and

(B) any removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.

(2) Damages

The damages referred to in subsection (a) of this section are the following:

(A) Natural resources

Damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee.

(B) Real or personal property

Damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.

(C) Subsistence use

Damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of the resources.

(D) Revenues

Damages equal to the net loss of taxes, royalties, rents, fees, or net profit shares due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by the Government of the United States, a State, or a political subdivision thereof.

(E) Profits and earning capacity

Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant.

(F) Public services

Damages for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil, which shall be recoverable by a State, or a political subdivision of a State.

(c) Excluded discharges

This subchapter does not apply to any discharge--

- (1) permitted by a permit issued under Federal, State, or local law;
- (2) from a public vessel; or
- (3) from an onshore facility which is subject to the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.).

(d) Liability of third parties

(1) In general

(A) Third party treated as responsible party

Except as provided in subparagraph (B), in any case in which a responsible party establishes that a discharge or threat of a discharge and the resulting removal costs and damages were caused solely by an act or omission of one or more third parties described in section 2703(a)(3) of this title (or solely by such an act or omission in combination with an act of God or an act of war), the third party or parties shall be treated as the responsible party or parties for purposes of determining liability under this subchapter.

(B) Subrogation of responsible party

If the responsible party alleges that the discharge or threat of a discharge was caused solely by an act or omission of a third party, the responsible party--

- (i) in accordance with section 2713 of this title, shall pay removal costs and damages to any claimant; and
- (ii) shall be entitled by subrogation to all rights of the United States Government and the claimant to recover removal costs or damages from the third party or the Fund paid under this subsection.

(2) Limitation applied

(A) Owner or operator of vessel or facility

If the act or omission of a third party that causes an incident occurs in connection with a vessel or facility owned or operated by the third party, the liability of the third party shall be subject to the limits provided in section 2704 of this title as applied with respect to the vessel or facility.

(B) Other cases

In any other case, the liability of a third party or parties shall not exceed the limitation which would have been applicable to the responsible party of the vessel or facility from

which the discharge actually occurred if the responsible party were liable.

§ 2703. Defenses to liability

(a) Complete defenses

A responsible party is not liable for removal costs or damages under section 2702 of this title if the responsible party establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs were caused solely by--

- (1) an act of God;
- (2) an act of war;
- (3) an act or omission of a third party, other than an employee or agent of the responsible party or a third party whose act or omission occurs in connection with any contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail), if the responsible party establishes, by a preponderance of the evidence, that the responsible party--
 - (A) exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances; and
 - (B) took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions; or
- (4) any combination of paragraphs (1), (2), and (3).

(b) Defenses as to particular claimants

A responsible party is not liable under section 2702 of this title to a claimant, to the extent that the incident is caused by the gross negligence or willful misconduct of the claimant.

(c) Limitation on complete defense

Subsection (a) of this section does not apply with respect to a responsible party who fails or refuses--

- (1) to report the incident as required by law if the responsible party knows or has reason to know of the incident;
- (2) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or
- (3) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 1321 of this title, as amended by this Act, or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

§ 2704. Limits on liability

Except as otherwise provided in this section, the total of the liability of a responsible party under section 2702 of this title and any removal costs incurred by, or on behalf of, the responsible party, with respect to each incident shall not exceed--

- (1) for a tank vessel, the greater of--
 - (A) \$1,200 per gross ton; or

- (B)(i) in the case of a vessel greater than 3,000 gross tons, \$10,000,000; or
- (ii) in the case of a vessel of 3,000 gross tons or less, \$2,000,000;
- (2) for any other vessel, \$600 per gross ton or \$500,000, whichever is greater;
- (3) for an offshore facility except a deepwater port, the total of all removal costs plus \$75,000,000; and
- (4) for any onshore facility and a deepwater port, \$350,000,000.

(b) Division of liability for mobile offshore drilling units

(1) Treated first as tank vessel

For purposes of determining the responsible party and applying this chapter and except as provided in paragraph (2), a mobile offshore drilling unit which is being used as an offshore facility is deemed to be a tank vessel with respect to the discharge, or the substantial threat of a discharge, of oil on or above the surface of the water.

(2) Treated as facility for excess liability

To the extent that removal costs and damages from any incident described in paragraph (1) exceed the amount for which a responsible party is liable (as that amount may be limited under subsection (a)(1) of this section), the mobile offshore drilling unit is deemed to be an offshore facility. For purposes of applying subsection (a)(3) of this section, the amount specified in that subsection shall be reduced by the amount for which the responsible party is liable under paragraph (1).

(c) Exceptions

(1) Acts of responsible party

Subsection (a) of this section does not apply if the incident was proximately caused by--

- (A) gross negligence or willful misconduct of, or
- (B) the violation of an applicable Federal safety, construction, or operating regulation by,

the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party (except where the sole contractual arrangement arises in connection with carriage by a common carrier by rail).

(2) Failure or refusal of responsible party

Subsection (a) of this section does not apply if the responsible party fails or refuses--

- (A) to report the incident as required by law and the responsible party knows or has reason to know of the incident;

(B) to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities; or

(C) without sufficient cause, to comply with an order issued under subsection (c) or (e) of section 1321 of this title, as amended by this Act, or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.).

(3) OCS facility or vessel

Notwithstanding the limitations established under subsection (a) of this section and the defenses of section 2703 of this title, all removal costs incurred by the United States Government or any State or local official or agency in connection with a discharge or substantial threat of a discharge of oil from any Outer Continental Shelf facility or a vessel carrying oil as cargo from such a facility shall be borne by the owner or operator of such facility or vessel.

(4) Certain tank vessels

Subsection (a)(1) shall not apply to--

(A) a tank vessel on which the only oil carried as cargo is an animal fat or vegetable oil, as those terms are used in section 2720 of this title; and

(B) a tank vessel that is designated in its certificate of inspection as an oil spill response vessel (as that term is defined in section 2101 of Title 46), and that is used solely for removal.

(d) Adjusting limits of liability

(1) Onshore facilities

Subject to paragraph (2), the President may establish by regulation, with respect to any class or category of onshore facility, a limit of liability under this section of less than \$350,000,000, but not less than \$8,000,000, taking into account size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility.

(2) Deepwater ports and associated vessels

(A) Study

The Secretary shall conduct a study of the relative operational and environmental risks posed by the transportation of oil by vessel to deepwater ports (as defined in section 3 of the Deepwater Port Act of 1974 (33 U.S.C. 1502)) versus the transportation of oil by vessel to other ports. The study shall include a review and analysis of offshore lightering practices used in connection with that transportation, an analysis of the volume of oil transported by vessel using those practices, and an analysis of the frequency and volume of oil discharges which occur in connection with the use of those practices.

(B) Report

Not later than 1 year after August 18, 1990, the Secretary shall submit to the Congress a report on the results of the study conducted under subparagraph (A).

(C) Rulemaking proceeding

If the Secretary determines, based on the results of the study conducted under this subparagraph (A), that the use of deepwater ports in connection with the transportation of oil by vessel results in a lower operational or environmental risk than the use of other ports, the Secretary shall initiate, not later than the 180th day following the date of submission of the report to the Congress under subparagraph (B), a rulemaking proceeding to lower the limits of liability under this section for deepwater ports as the Secretary determines appropriate. The Secretary may establish a limit of liability of less than \$350,000,000, but not less than \$50,000,000, in accordance with paragraph (1).

(3) Periodic reports

The President shall, within 6 months after August 18, 1990, and from time to time thereafter, report to the Congress on the desirability of adjusting the limits of liability specified in subsection (a) of this section.

(4) Adjustment to reflect Consumer Price Index

The President shall, by regulations issued not less often than every 3 years, adjust the limits of liability specified in subsection (a) of this section to reflect significant increases in the Consumer Price Index.

§ 2705. Interest; partial payment of claims

(a) General rule

The responsible party or the responsible party's guarantor is liable to a claimant for interest on the amount paid in satisfaction of a claim under this chapter for the period described in subsection (b) of this section. The responsible party shall establish a procedure for the payment or settlement of claims for interim, short-term damages. Payment or settlement of a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled shall not preclude recovery by the claimant for damages not reflected in the paid or settled partial claim.

(b) Period

(1) In general

Except as provided in paragraph (2), the period for which interest shall be paid is the period

beginning on the 30th day following the date on which the claim is presented to the responsible party or guarantor and ending on the date on which the claim is paid.

(2) Exclusion of period due to offer by guarantor

If the guarantor offers to the claimant an amount equal to or greater than that finally paid in satisfaction of the claim, the period described in paragraph (1) does not include the period beginning on the date the offer is made and ending on the date the offer is accepted. If the offer is made within 60 days after the date on which the claim is presented under section 2713(a) of this title, the period described in paragraph (1) does not include any period before the offer is accepted.

(3) Exclusion of periods in interests of justice

If in any period a claimant is not paid due to reasons beyond the control of the responsible party or because it would not serve the interests of justice, no interest shall accrue under this section during that period.

(4) Calculation of interest

The interest paid under this section shall be calculated at the average of the highest rate for commercial and finance company paper of maturities of 180 days or less obtaining on each of the days included within the period for which interest must be paid to the claimant, as published in the Federal Reserve Bulletin.

(5) Interest not subject to liability limits

(A) In general

Interest (including prejudgment interest) under this paragraph is in addition to damages and removal costs for which claims may be asserted under section 2702 of this title and shall be paid without regard to any limitation of liability under section 2704 of this title.

(B) Payment by guarantor

The payment of interest under this subsection by a guarantor is subject to section 2716(g) of this title.

§ 2706. Natural resources

(a) Liability

In the case of natural resource damages under section 2702(b)(2)(A) of this title, liability shall be--

(1) to the United States Government for natural resources belonging to, managed by,

controlled by, or appertaining to the United States;

(2) to any State for natural resources belonging to, managed by, controlled by, or appertaining to such State or political subdivision thereof;

(3) to any Indian tribe for natural resources belonging to, managed by, controlled by, or appertaining to such Indian tribe; and

(4) in any case in which section 2707 of this title applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such country.

(b) Designation of trustees

(1) In general

The President, or the authorized representative of any State, Indian tribe, or foreign government, shall act on behalf of the public, Indian tribe, or foreign country as trustee of natural resources to present a claim for and to recover damages to the natural resources.

(2) Federal trustees

The President shall designate the Federal officials who shall act on behalf of the public as trustees for natural resources under this chapter.

(3) State trustees

The Governor of each State shall designate State and local officials who may act on behalf of the public as trustee for natural resources under this chapter and shall notify the President of the designation.

(4) Indian tribe trustees

The governing body of any Indian tribe shall designate tribal officials who may act on behalf of the tribe or its members as trustee for natural resources under this chapter and shall notify the President of the designation.

(5) Foreign trustees

The head of any foreign government may designate the trustee who shall act on behalf of that government as trustee for natural resources under this chapter.

(c) Functions of trustees

(1) Federal trustees

The Federal officials designated under subsection (b)(2) of this section--

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the natural resources under their trusteeship;

(B) may, upon request of and reimbursement from a State or Indian tribe and at the Federal officials' discretion, assess damages for the natural resources under the State's or tribe's trusteeship; and

(C) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(2) State trustees

The State and local officials designated under subsection (b)(3) of this section--

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this chapter for the natural resources under their trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(3) Indian tribe trustees

The tribal officials designated under subsection (b)(4) of this section--

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this chapter for the natural resources under their trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(4) Foreign trustees

The trustees designated under subsection (b)(5) of this section--

(A) shall assess natural resource damages under section 2702(b)(2)(A) of this title for the purposes of this chapter for the natural resources under their trusteeship; and

(B) shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship.

(5) Notice and opportunity to be heard

Plans shall be developed and implemented under this section only after adequate public notice, opportunity for a hearing, and consideration of all public comment.

(d) Measure of damages

(1) In general

The measure of natural resource damages under section 2702(b)(2)(A) of this title is--

(A) the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources;

(B) the diminution in value of those natural resources pending restoration; plus

(C) the reasonable cost of assessing those damages.

(2) Determine costs with respect to plans

Costs shall be determined under paragraph (1) with respect to plans adopted under subsection (c) of this section.

(3) No double recovery

There shall be no double recovery under this chapter for natural resource damages, including with respect to the costs of damage assessment or restoration, rehabilitation, replacement, or acquisition for the same incident and natural resource.

(e) Damage assessment regulations

(1) Regulations

The President, acting through the Under Secretary of Commerce for Oceans and Atmosphere and in consultation with the Administrator of the Environmental Protection Agency, the Director of the United States Fish and Wildlife Service, and the heads of other affected agencies, not later than 2 years after August 18, 1990, shall promulgate regulations for the assessment of natural resource damages under section 2702(b)(2)(A) of this title resulting from a discharge of oil for the purpose of this chapter.

(2) Rebuttable presumption

Any determination or assessment of damages to natural resources for the purposes of this chapter made under subsection (d) of this section by a Federal, State, or Indian trustee in accordance with the regulations promulgated under paragraph (1) shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this chapter.

(f) Use of recovered sums

Sums recovered under this chapter by a Federal, State, Indian, or foreign trustee for natural resource damages under section 2702(b)(2)(A) of this title shall be retained by the trustee in a revolving trust account, without further appropriation, for use only to reimburse or pay costs incurred by the trustee under subsection (c) of this section with

respect to the damaged natural resources. Any amounts in excess of those required for these reimbursements and costs shall be deposited in the Fund.

(g) Compliance

Review of actions by any Federal official where there is alleged to be a failure of that official to perform a duty under this section that is not discretionary with that official may be had by any person in the district court in which the person resides or in which the alleged

damage to natural resources occurred. The court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party. Nothing in this subsection shall restrict any right which any person may have to seek relief under any other provision of law.

§ 2707. Recovery by foreign claimants

(a) Required showing by foreign claimants

(1) In general

In addition to satisfying the other requirements of this chapter, to recover removal costs or damages resulting from an incident a foreign claimant shall demonstrate that--

(A) the claimant has not been otherwise compensated for the removal costs or damages;
and

(B) recovery is authorized by a treaty or executive agreement between the United States and the claimant's country, or the Secretary of State, in consultation with the Attorney General and other appropriate officials, has certified that the claimant's country provides a comparable remedy for United States claimants.

(2) Exceptions

Paragraph (1)(B) shall not apply with respect to recovery by a resident of Canada in the case of an incident described in subsection (b)(4) of this section.

(b) Discharges in foreign countries

A foreign claimant may make a claim for removal costs and damages resulting from a discharge, or substantial threat of a discharge, of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign country, only if the discharge is from--

(1) an Outer Continental Shelf facility or a deepwater port;

(2) a vessel in the navigable waters;

(3) a vessel carrying oil as cargo between 2 places in the United States; or

(4) a tanker that received the oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.), for transportation to a place in the United States, and the discharge or threat occurs prior to delivery of the oil to that place.

(c) "Foreign claimant" defined

In this section, the term "foreign claimant" means--

(1) a person residing in a foreign country;

(2) the government of a foreign country; and

(3) an agency or political subdivision of a foreign country.

§ 2708. Recovery by responsible party

(a) In general

The responsible party for a vessel or facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, may assert a claim for removal costs and damages under section 2713 of this title only if the responsible party demonstrates that--

- (1) the responsible party is entitled to a defense to liability under section 2703 of this title; or
- (2) the responsible party is entitled to a limitation of liability under section 2704 of this title.

(b) Extent of recovery

A responsible party who is entitled to a limitation of liability may assert a claim under section 2713 of this title only to the extent that the sum of the removal costs and damages incurred by the responsible party plus the amounts paid by the responsible party, or by the guarantor on behalf of the responsible party, for claims asserted under section 2713 of this title exceeds the amount to which the total of the liability under section 2702 of this title and removal costs and damages incurred by, or on behalf of, the responsible party is limited under section 2704 of this title.

§ 2709. Contribution

A person may bring a civil action for contribution against any other person who is liable or potentially liable under this chapter or another law. The action shall be brought in accordance with section 2717 of this title.

§ 2710. Indemnification agreements

(a) Agreements not prohibited

Nothing in this chapter prohibits any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this chapter.

(b) Liability not transferred

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer liability imposed under this chapter from a responsible party or from any person who may be liable for an incident under this chapter to any other person.

(c) Relationship to other causes of action

Nothing in this chapter, including the provisions of subsection (b) of this section, bars a cause of action that a responsible party subject to liability under this chapter, or a guarantor, has or would have, by reason of subrogation or otherwise, against any person.

§ 2711. Consultation on removal actions

The President shall consult with the affected trustees designated under section 2706 of this title on the appropriate removal action to be taken in connection with any discharge of oil. For the purposes of the National Contingency Plan, removal with respect to any discharge shall be considered completed when so determined by the President in consultation with the Governor or Governors of the affected States. However, this determination shall not preclude additional removal actions under applicable State law.

§ 2712. Uses of Fund

(a) Uses generally

The Fund shall be available to the President for--

- (1) the payment of removal costs, including the costs of monitoring removal actions, determined by the President to be consistent with the National Contingency Plan--
 - (A) by Federal authorities; or
 - (B) by a Governor or designated State official under subsection (d) of this section;
- (2) the payment of costs incurred by Federal, State, or Indian tribe trustees in carrying out their functions under section 2706 of this title for assessing natural resource damages and for developing and implementing plans for the restoration, rehabilitation, replacement, or acquisition of the equivalent of damaged resources determined by the President to be consistent with the National Contingency Plan;
- (3) the payment of removal costs determined by the President to be consistent with the National Contingency Plan as a result of, and damages resulting from, a discharge, or a substantial threat of a discharge, of oil from a foreign offshore unit;
- (4) the payment of claims in accordance with section 2713 of this title for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages;
- (5) the payment of Federal administrative, operational, and personnel costs and expenses reasonably necessary for and incidental to the implementation, administration, and enforcement of this chapter (including, but not limited to, sections 2704(d)(2) of this title, 2706(e) of this title, 4107 of this Act, 4110 of this Act, 4111 of this Act, 4112 of this Act, 4117 of this Act, 2736 of this title, 8103 of this Act, and subchapter IV of this chapter) and subsections (b), (c), (d), (j), and (l) of section 1321 of this title, as amended by this Act, with respect to prevention, removal, and enforcement related to oil discharges, provided that--
 - (A) not more than \$25,000,000 in each fiscal year shall be available to the Secretary for operating expenses incurred by the Coast Guard;
 - (B) not more than \$30,000,000 each year through the end of fiscal year 1992 shall be available to establish the National Response System under section 1321(j) of this title, as amended by this Act, including the purchase and repositioning of oil spill removal equipment; and
 - (C) not more than \$27,250,000 in each fiscal year shall be available to carry out subchapter IV of this chapter.

(b) Defense to liability for Fund

The Fund shall not be available to pay any claim for removal costs or damages to a particular claimant, to the extent that the incident, removal costs, or damages are caused by the gross negligence or willful misconduct of that claimant.

(c) Obligation of Fund by Federal officials

The President may promulgate regulations designating one or more Federal officials who may obligate money in accordance with subsection (a) of this section.

(d) Access to Fund by State officials

(1) Immediate removal

In accordance with regulations promulgated under this section, the President, upon the request of the Governor of a State or pursuant to an agreement with a State under paragraph (2), may obligate the Fund for payment in an amount not to exceed \$250,000 for removal costs consistent with the National Contingency Plan required for the immediate removal of a discharge, or the mitigation or prevention of a substantial threat of a discharge, of oil.

(2) Agreements

(A) In general

The President shall enter into an agreement with the Governor of any interested State to establish procedures under which the Governor or a designated State official may receive payments from the Fund for removal costs pursuant to paragraph (1).

(B) Terms Agreements under this

paragraph--

- (i) may include such terms and conditions as may be agreed upon by the President and the Governor of a State;
- (ii) shall provide for political subdivisions of the State to receive payments for reasonable removal costs; and
- (iii) may authorize advance payments from the Fund to facilitate removal efforts.

(e) Regulations

The President shall--

- (1) not later than 6 months after August 18, 1990, publish proposed regulations detailing the manner in which the authority to obligate the Fund and to enter into agreements under

this subsection shall be exercised; and

(2) not later than 3 months after the close of the comment period for such proposed regulations, promulgate final regulations for that purpose.

(f) Rights of subrogation

Payment of any claim or obligation by the Fund under this chapter shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

(g) Audits

The Comptroller General shall audit all payments, obligations, reimbursements, and other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after August 18, 1990. The Comptroller General shall thereafter audit the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h) Period of limitations for claims

(1) Removal costs

No claim may be presented under this subchapter for recovery of removal costs for an incident unless the claim is presented within 6 years after the date of completion of all removal actions for that incident.

(2) Damages

No claim may be presented under this section for recovery of damages unless the claim is presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care, or in the case of natural resource damages under section 2702(b)(2)(A) of this title, if later, the date of completion of the natural resources damage assessment under section 2706(e) of this title.

(3) Minors and incompetents

The time limitations contained in this subsection shall not begin to run--

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for the incompetent.

(i) Limitation on payment for same costs

In any case in which the President has paid an amount from the Fund for any removal costs or damages specified under subsection (a) of this section, no other claim may be paid from the Fund for the same removal costs or damages.

(j) Obligation in accordance with plan

(1) In general

Except as provided in paragraph (2), amounts may be obligated from the Fund for the restoration, rehabilitation, replacement, or acquisition of natural resources only in accordance with a plan adopted under section 2706(c) of this title.

(2) Exception

Paragraph (1) shall not apply in a situation requiring action to avoid irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action.

(k) Preference for private persons in area affected by discharge

(1) In general

In the expenditure of Federal funds for removal of oil, including for distribution of supplies, construction, and other reasonable and appropriate activities, under a contract or agreement with a private person, preference shall be given, to the extent feasible and practicable, to private persons residing or doing business primarily in the area affected by the discharge of oil.

This subsection shall not be considered to restrict the use of Department of Defense resources.

§ 2713. Claims procedure

(a) Presentation

Except as provided in subsection (b) of this section, all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 2714(a) of this title.

(b) Presentation to Fund

(1) In general

Claims for removal costs or damages may be presented first to the Fund--

- (A) if the President has advertised or otherwise notified claimants in accordance with section 2714(c) of this title;
- (B) by a responsible party who may assert a claim under section 2708 of this title;
- (C) by the Governor of a State for removal costs incurred by that State; or
- (D) by a United States claimant in a case where a foreign offshore unit has discharged oil causing damage for which the Fund is liable under section 2712(a) of this title.

(2) Limitation on presenting claim

No claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim.

(c) Election

If a claim is presented in accordance with subsection (a) of this section and--

- (1) each person to whom the claim is presented denies all liability for the claim, or
- (2) the claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to section 2714(b) of this title, whichever is later,

the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

(d) Uncompensated damages

If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.

(e) Procedure for claims against Fund

The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims under this chapter against the Fund.

§ 2714. Designation of source and advertisement

(a) Designation of source and notification

When the President receives information of an incident, the President shall, where possible and appropriate, designate the source or sources of the discharge or threat. If a designated source is a vessel or a facility, the President shall immediately notify the responsible party

and the guarantor, if known, of that designation.

(b) Advertisement by responsible party or guarantor

(1) If a responsible party or guarantor fails to inform the President, within 5 days after receiving notification of a designation under subsection (a) of this section, of the party's or the guarantor's denial of the designation, such party or guarantor shall advertise the designation and the procedures by which claims may be presented, in accordance with regulations promulgated by the President. Advertisement under the preceding sentence shall begin no later than 15 days after the date of the designation made under subsection (a) of this section. If advertisement is not otherwise made in accordance with this subsection, the President shall promptly and at the expense of the responsible party or the guarantor involved, advertise the designation and the procedures by which claims may be presented to the responsible party or guarantor. Advertisement under this subsection shall continue for a period of no less than 30 days.

(2) An advertisement under paragraph (1) shall state that a claimant may present a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled and that payment of such a claim shall not preclude recovery for damages not reflected in the paid or settled partial claim.

(c) Advertisement by President

If

(1) the responsible party and the guarantor both deny a designation within 5 days after receiving notification of a designation under subsection (a) of this section,

(2) the source of the discharge or threat was a public vessel, or

(3) the President is unable to designate the source or sources of the discharge or threat under subsection (a) of this section,

the President shall advertise or otherwise notify potential claimants of the procedures by which claims may be presented to the Fund.

§ 2715. Subrogation

(a) In general

Any person, including the Fund, who pays compensation pursuant to this chapter to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other law.

(b) Interim damages

(1) In general

If a responsible party, a guarantor, or the Fund has made payment to a claimant for

interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, subrogation under subsection (a) of this section shall apply only with respect to the portion of the claim reflected in the paid interim claim.

(2) Final damages

Payment of such a claim shall not foreclose a claimant's right to recovery of all damages to which the claimant otherwise is entitled under this chapter or under any other law.

(c) Actions on behalf of Fund

At the request of the Secretary, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this chapter, and all costs incurred by the Fund by reason of the claim, including interest (including prejudgment interest), administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any responsible party or (subject to section 2716 of this title) guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the cost or damages for which the compensation was paid. Such an action shall be commenced against the responsible foreign government or other responsible party to recover any removal costs or damages paid from the Fund as the result of the discharge, or substantial threat of discharge, of oil from a foreign offshore unit.

§ 2716. Financial responsibility

(a) Requirement

The responsible party for--

- (1) any vessel over 300 gross tons (except a non-self-propelled vessel that does not carry oil as cargo or fuel) using any place subject to the jurisdiction of the United States; or
- (2) any vessel using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States;

shall establish and maintain, in accordance with regulations promulgated by the Secretary, evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subjected under section 2704(a) or (d) of this title, in a case where the responsible party would be entitled to limit liability under that section. If the responsible party owns or operates more than one vessel, evidence of financial responsibility need be established only to meet the amount of the maximum liability applicable to the vessel having the greatest maximum liability.

(b) Sanctions

- (1) Withholding clearance

The Secretary of the Treasury shall withhold or revoke the clearance required by section 91 of the Appendix to Title 46 of any vessel subject to this section that does not have the evidence of financial responsibility required for the vessel under this section.

(2) Denying entry to or detaining vessels

The Secretary may--

- (A) deny entry to any vessel to any place in the United States, or to the navigable waters, or
- (B) detain at the place,

any vessel that, upon request, does not produce the evidence of financial responsibility required for the vessel under this section.

(3) Seizure of vessel

Any vessel subject to the requirements of this section which is found in the navigable waters without the necessary evidence of financial responsibility for the vessel shall be subject to seizure by and forfeiture to the United States.

(c) Offshore facilities

(1) In general

(A) Evidence of financial responsibility required

Except as provided in paragraph (2), a responsible party with respect to an offshore facility that--

(i)(I) is located seaward of the line of ordinary low water along that portion of the coast that is in direct contact with the open sea and the line marking the seaward limit of inland waters; or

(II) is located in coastal inland waters, such as bays or estuaries, seaward of the line of ordinary low water along that portion of the coast that is not in direct contact with the open sea;

(ii) is used for exploring for, drilling for, producing, or transporting oil from facilities engaged in oil exploration, drilling, or production; and

(iii) has a worst-case oil spill discharge potential of more than 1,000 barrels of oil (or a lesser amount if the President determines that the risks posed by such facility justify it),

shall establish and maintain evidence of financial responsibility in the amount required under subparagraph (B) or (C), as applicable.

(B) Amount required generally

Except as provided in subparagraph (C), the amount of financial responsibility for offshore facilities that meet the criteria of subparagraph (A) is--

- (i) \$35,000,000 for an offshore facility located seaward of the seaward boundary of a State; or
- (ii) \$10,000,000 for an offshore facility located landward of the seaward boundary of a State.

(C) Greater amount

If the President determines that an amount of financial responsibility for a responsible party greater than the amount required by subparagraph (B) is justified based on the relative operational, environmental, human health, and other risks posed by the quantity or quality of oil that is explored for, drilled for, produced, or transported by the responsible party, the evidence of financial responsibility required shall be for an amount determined by the President not exceeding \$150,000,000.

(D) Multiple facilities

In a case in which a person is a responsible party for more than one facility subject to this subsection, evidence of financial responsibility need be established only to meet the amount applicable to the facility having the greatest financial responsibility requirement under this subsection.

(E) Definition

For the purpose of this paragraph, the seaward boundary of a State shall be determined in accordance with section 1301(b) of Title 43.

(2) Deepwater ports

Each responsible party with respect to a deepwater port shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party could be subjected under section 2704(a) of this title in a case where the responsible party would be entitled to limit liability under that section. If the Secretary exercises the authority under section 2704(d)(2) of this title to lower the limit of liability for deepwater ports, the responsible party shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability so established. In a case in which a person is the responsible party for more than one deepwater port, evidence of financial responsibility need be established only to meet the maximum liability applicable to the deepwater port having the greatest maximum liability.

(e) [FN1] Methods of financial responsibility

Financial responsibility under this section may be established by any one, or by any combination, of the following methods which the Secretary (in the case of a vessel) or the President (in the case of a facility) determines to be acceptable: evidence of insurance,

surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In promulgating requirements under this section, the Secretary or the President, as appropriate, may specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing evidence of financial responsibility to effectuate the purposes of this chapter.

(f) Claims against guarantor

(1) In general

Subject to paragraph (2), a claim for which liability may be established under section 2702 of this title may be asserted directly against any guarantor providing evidence of financial responsibility for a responsible party liable under that section for removal costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke--

- (A) all rights and defenses which would be available to the responsible party under this chapter;
- (B) any defense authorized under subsection (e) of this section; and
- (C) the defense that the incident was caused by the willful misconduct of the responsible party.

The guarantor may not invoke any other defense that might be available in proceedings brought by the responsible party against the guarantor.

(2) Further requirement

A claim may be asserted pursuant to paragraph (1) directly against a guarantor providing evidence of financial responsibility under subsection (c)(1) of this section with respect to an offshore facility only if--

- (A) the responsible party for whom evidence of financial responsibility has been provided has denied or failed to pay a claim under this chapter on the basis of being insolvent, as defined under section 101(32) of Title 11, and applying generally accepted accounting principles;
- (B) the responsible party for whom evidence of financial responsibility has been provided has filed a petition for bankruptcy under Title 11; or
- (C) the claim is asserted by the United States for removal costs and damages or for compensation paid by the Fund under this chapter, including costs incurred by the Fund for processing compensation claims.

(3) Rulemaking authority

Not later than 1 year after October 19, 1996, the President shall promulgate regulations to establish a process for implementing paragraph (2) in a manner that will allow for the orderly and expeditious presentation and resolution of claims and effectuate the purposes of

this chapter.

(g) Limitation on guarantor's liability

Nothing in this chapter shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceed, in the aggregate, the amount of financial responsibility which that guarantor has provided for a responsible party pursuant to this section. The total liability of the guarantor on direct action for claims brought under this chapter with respect to an incident shall be limited to that amount.

(h) Continuation of regulations

Any regulation relating to financial responsibility, which has been issued pursuant to any provision of law repealed or superseded by this chapter, and which is in effect on the date immediately preceding the effective date of this Act, is deemed and shall be construed to be a regulation issued pursuant to this section. Such a regulation shall remain in full force and effect unless and until superseded by a new regulation issued under this section.

(i) Unified certificate

The Secretary may issue a single unified certificate of financial responsibility for purposes of this chapter and any other law.

§ 271 6a. Financial responsibility civil penalties

(a) Administrative

Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of section 2716 of this title or the regulations issued under that section, or with a denial or detention order issued under subsection (c)(2) of that section, shall be liable to the United States for a civil penalty, not to exceed \$25,000 per day of violation. The amount of the civil penalty shall be assessed by the President by written notice. In determining the amount of the penalty, the President shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The President may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which had been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the President may refer the matter to the Attorney General for collection.

(b) Judicial

In addition to, or in lieu of, assessing a penalty under subsection (a) of this section, the President may request the Attorney General to secure such relief as necessary to compel compliance with this [FN1] section 2716 of this title, including a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant any

relief as the public interest and the equities of the case may require.

§ 2717. Litigation, jurisdiction, and venue

(a) Review of regulations

Review of any regulation promulgated under this chapter may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within 90 days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Jurisdiction

Except as provided in subsections (a) and (c) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this chapter, without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or injury or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for service of process. For the purposes of this section, the Fund shall reside in the District of Columbia.

(c) State court jurisdiction

A State trial court of competent jurisdiction over claims for removal costs or damages, as defined under this chapter, may consider claims under this chapter or State law and any final judgment of such court (when no longer subject to ordinary forms of review) shall be recognized, valid, and enforceable for all purposes of this chapter.

(d) Assessment and collection of tax

The provisions of subsections (a), (b), and (c) of this section shall not apply to any controversy or other matter resulting from the assessment or collection of any tax, or to the review of any regulation promulgated under Title 26.

(e) Savings provision

Nothing in this title shall apply to any cause of action or right of recovery arising from any incident which occurred prior to August 18, 1990. Such claims shall be adjudicated pursuant to the law applicable on the date of the incident.

(f) Period of limitations

(1) Damages

Except as provided in paragraphs (3) and (4), an action for damages under this chapter shall be barred unless the action is brought within 3 years after--

(A) the date on which the loss and the connection of the loss with the discharge in question are reasonably discoverable with the exercise of due care, or

(B) in the case of natural resource damages under section 2702(b)(2)(A) of this title, the date of completion of the natural resources damage assessment under section 2706(c) of this title.

(2) Removal costs

An action for recovery of removal costs referred to in section 2702(b)(1) of this title must be commenced within 3 years after completion of the removal action. In any such action described in this subsection, the court shall enter a declaratory judgment on liability for removal costs or damages that will be binding on any subsequent action or actions to recover further removal costs or damages. Except as otherwise provided in this paragraph, an action may be commenced under this subchapter for recovery of removal costs at any time after such costs have been incurred.

(3) Contribution

No action for contribution for any removal costs or damages may be commenced more than 3 years after--

(A) the date of judgment in any action under this chapter for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) Subrogation

No action based on rights subrogated pursuant to this chapter by reason of payment of a claim may be commenced under this chapter more than 3 years after the date of payment of such claim.

(5) Commencement

The time limitations contained herein shall not begin to run--

(A) against a minor until the earlier of the date when such minor reaches 18 years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

§ 2718. Relationship to other law

(a) Preservation of State authorities; Solid Waste Disposal Act

Nothing in this chapter or the Act of March 3, 1851 shall--

(1) affect, or be construed or interpreted as preempting, the authority of any State or political subdivision thereof from imposing any additional liability or requirements with respect to--

(A) the discharge of oil or other pollution by oil within such State; or

(B) any removal activities in connection with such a discharge; or

(2) affect, or be construed or interpreted to affect or modify in any way the obligations or liabilities of any person under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) or State law, including common law.

(b) Preservation of State funds

Nothing in this chapter or in section 9509 of Title 26 shall in any way affect, or be construed to affect, the authority of any State--

(1) to establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or

(2) to require any person to contribute to such a fund.

(c) Additional requirements and liabilities; penalties

Nothing in this chapter, the Act of March 3, 1851 (46 U.S.C. 183 et seq.), or section 9509 of Title 26, shall in any way affect, or be construed to affect, the authority of the United States or any State or political subdivision thereof--

(1) to impose additional liability or additional requirements; or

(2) to impose, or to determine the amount of, any fine or penalty (whether criminal or civil in nature) for any violation of law;

relating to the discharge, or substantial threat of a discharge, of oil.

(d) Federal employee liability

For purposes of section 2679(b)(2)(B) of Title 28, nothing in this chapter shall be construed to authorize or create a cause of action against a Federal officer or employee in the officer's or employee's personal or individual capacity for any act or omission while acting within the scope of the officer's or employee's office or employment.

§ 2719. State financial responsibility

A State may enforce, on the navigable waters of the State, the requirements for evidence of financial responsibility under section 2716 of this title.

§ 2720. Differentiation among fats, oils, and greases

(a) In general

Except as provided in subsection (c) of this section, in issuing or enforcing any regulation or establishing any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease under any Federal law, the head of that Federal agency shall--

(1) differentiate between and establish separate classes for--

(A) animal fats and oils and greases, and fish and marine mammal oils, within the meaning of paragraph (2) of section 61(a) of Title 13, and oils of vegetable origin, including oils from the seeds, nuts, and kernels referred to in paragraph (1)(A) of that section; and

(B) other oils and greases, including petroleum; and

(2) apply standards to different classes of fats and oils based on considerations in subsection (b) of this section.

(b) Considerations

In differentiating between the class of fats, oils, and greases described in subsection (a)(1)(A) of this section and the class of oils and greases described in subsection (a)(1)(B) of this section, the head of the Federal agency shall consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes.

(c) Exception

The requirements of this Act shall not apply to the Food and Drug Administration and the Food Safety and Inspection Service.

(d) Omitted

§ 2761. Oil pollution research and development program

(a) Interagency Coordinating Committee on Oil Pollution Research

(1) Establishment

There is established an Interagency Coordinating Committee on Oil Pollution Research (hereinafter in this section referred to as the "Interagency Committee").

(2) Purposes

The Interagency Committee shall coordinate a comprehensive program of oil pollution research, technology development, and demonstration among the Federal agencies, in cooperation and coordination with industry, universities, research institutions, State governments, and other nations, as appropriate, and shall foster cost-effective research

mechanisms, including the joint funding of research.

(3) Membership

The Interagency Committee shall include representatives from the Department of Commerce (including the National Oceanic and Atmospheric Administration and the National Institute of Standards and Technology), the Department of Energy, the Department of the Interior (including the Minerals Management Service and the United States Fish and Wildlife Service), the Department of Transportation (including the United States Coast Guard, the Maritime Administration, and the Research and Special Projects Administration), the Department of Defense (including the Army Corps of Engineers and the Navy), the Environmental Protection Agency, the National Aeronautics and Space Administration, and the United States Fire Administration in the Federal Emergency Management Agency, as well as such other Federal agencies as the President may designate.

A representative of the Department of Transportation shall serve as Chairman.

(b) Oil pollution research and technology plan

(1) Implementation plan

Within 180 days after August 18, 1990, the Interagency Committee shall submit to Congress a plan for the implementation of the oil pollution research, development, and demonstration program established pursuant to subsection (c) of this section. The research plan shall--

- (A) identify agency roles and responsibilities;
- (B) assess the current status of knowledge on oil pollution prevention, response, and mitigation technologies and effects of oil pollution on the environment;
- (C) identify significant oil pollution research gaps including an assessment of major technological deficiencies in responses to past oil discharges;
- (D) establish research priorities and goals for oil pollution technology development related to prevention, response, mitigation, and environmental effects;
- (E) estimate the resources needed to conduct the oil pollution research and development program established pursuant to subsection (c) of this section, and timetables for completing research tasks; and
- (F) identify, in consultation with the States, regional oil pollution research needs and priorities for a coordinated, multidisciplinary program of research at the regional level.

(2) Advice and guidance

The Chairman, through the Department of Transportation, shall contract with the National Academy of Sciences to--

- (A) provide advice and guidance in the preparation and development of the research plan;

and

(B) assess the adequacy of the plan as submitted, and submit a report to Congress on the conclusions of such assessment.

The National Institute of Standards and Technology shall provide the Interagency Committee with advice and guidance on issues relating to quality assurance and standards measurements relating to its activities under this section.

(c) Oil pollution research and development program

(1) Establishment

The Interagency Committee shall coordinate the establishment, by the agencies represented on the Interagency Committee, of a program for conducting oil pollution research and development, as provided in this subsection.

(2) Innovative oil pollution technology

The program established under this subsection shall provide for research, development, and demonstration of new or improved technologies which are effective in preventing or mitigating oil discharges and which protect the environment, including--

(A) development of improved designs for vessels and facilities, and improved operational practices;

(B) research, development, and demonstration of improved technologies to measure the ullage of a vessel tank, prevent discharges from tank vents, prevent discharges during lightering and bunkering operations, contain discharges on the deck of a vessel, prevent discharges through the use of vacuums in tanks, and otherwise contain discharges of oil from vessels and facilities;

(C) research, development, and demonstration of new or improved systems of mechanical, chemical, biological, and other methods (including the use of dispersants, solvents, and bioremediation) for the recovery, removal, and disposal of oil, including evaluation of the environmental effects of the use of such systems;

(D) research and training, in consultation with the National Response Team, to improve industry's and Government's ability to quickly and effectively remove an oil discharge, including the long-term use, as appropriate, of the National Spill Control School in Corpus Christi, Texas, and the Center for Marine Training and Safety in Galveston, Texas;

(E) research to improve information systems for decision-making, including the use of data from coastal mapping, baseline data, and other data related to the environmental effects of oil discharges, and cleanup technologies;

(F) development of technologies and methods to protect public health and safety from oil discharges, including the population directly exposed to an oil discharge;

(G) development of technologies, methods, and standards for protecting removal personnel, including training, adequate supervision, protective equipment, maximum exposure limits, and decontamination procedures;

(H) research and development of methods to restore and rehabilitate natural resources damage by oil discharges;

(I) research to evaluate the relative effectiveness and environmental impacts of bioremediation technologies; and

(J) the demonstration of a satellite-based, dependent surveillance vessel traffic system in Narragansett Bay to evaluate the utility of such system in reducing the risk of oil discharges from vessel collisions and groundings in confined waters.

(3) Oil pollution technology evaluation

The program established under this subsection shall provide for oil pollution prevention and mitigation technology evaluation including--

(A) the evaluation and testing of technologies developed independently of the research and development program established under this subsection;

(B) the establishment, where appropriate, of standards and testing protocols traceable to national standards to measure the performance of oil pollution prevention or mitigation technologies; and

(C) the use, where appropriate, of controlled field testing to evaluate real- world application of oil discharge prevention or mitigation technologies.

(4) Oil pollution effects research

(A) The Committee shall establish a research program to monitor and evaluate the environmental effects of oil discharges. Such program shall include the following elements:

(i) The development of improved models and capabilities for predicting the environmental fate, transport, and effects of oil discharges.

(ii) The development of methods, including economic methods, to assess damages to natural resources resulting from oil discharges.

(iii) The identification of types of ecologically sensitive areas at particular risk to oil discharges and the preparation of scientific monitoring and evaluation plans, one for each of several types of ecological conditions, to be implemented in the event of major oil discharges in such areas.

(iv) The collection of environmental baseline data in ecologically sensitive areas at particular risk to oil discharges where such data are insufficient.

(B) The Department of Commerce in consultation with the Environmental Protection Agency shall monitor and scientifically evaluate the long-term environmental effects of oil discharges if--

(i) the amount of oil discharged exceeds 250,000 gallons;

(ii) the oil discharge has occurred on or after January 1, 1989; and

(iii) the Interagency Committee determines that a study of the long-term environmental effects of the discharge would be of significant scientific value, especially for preventing or responding to future oil discharges.

Areas for study may include the following sites where oil discharges have occurred: the New York/New Jersey Harbor area, where oil was discharged by an Exxon underwater pipeline, the T/B CIBRO SAVANNAH, and the M/V BT NAUTILUS; Narragansett Bay where oil was discharged by the WORLD PRODIGY; the Houston Ship Channel where oil was discharged by the RACHEL B; the Delaware River, where oil was discharged by the PRESIDENTE RIVERA, and Huntington Beach, California, where oil was discharged by the AMERICAN TRADER.

(C) Research conducted under this paragraph by, or through, the United States Fish and Wildlife Service shall be directed and coordinated by the National Wetland Research

Center.

(5) Marine simulation research

The program established under this subsection shall include research on the greater use and application of geographic and vessel response simulation models, including the development of additional data bases and updating of existing data bases using, among others, the resources of the National Maritime Research Center. It shall include research and vessel simulations for--

- (A) contingency plan evaluation and amendment;
- (B) removal and strike team training;
- (C) tank vessel personnel training; and
- (D) those geographic areas where there is a significant likelihood of a major oil discharge.

(6) Demonstration projects

The United States Coast Guard, in conjunction with other such agencies in the Department of Transportation as the Secretary of Transportation may designate, shall conduct 4 port oil pollution minimization demonstration projects, one each with (A) the Port Authority of New York and New Jersey, (B) the Ports of Los Angeles and Long Beach, California, (C) the Port of New Orleans, Louisiana, and (D) ports on the Great Lakes for the purpose of developing and demonstrating integrated port oil pollution prevention and cleanup systems which utilize the information and implement the improved practices and technologies developed from the research, development, and demonstration program established in this section. Such systems shall utilize improved technologies and management practices for reducing the risk of oil discharges, including, as appropriate, improved data access, computerized tracking of oil shipments, improved vessel tracking and navigation systems, advanced technology to monitor pipeline and tank conditions, improved oil spill response capability, improved capability to predict the

flow and effects of oil discharges in both the inner and outer harbor areas for the purposes of making infrastructure decisions, and such other activities necessary to achieve the purposes of this section.

(7) Simulated environmental testing

Agencies represented on the Interagency Committee shall ensure the long-term use and operation of the Oil and Hazardous Materials Simulated Environmental Test Tank (OHMSETT) Research Center in New Jersey for oil pollution technology testing and evaluations.

(8) Regional research program

(A) Consistent with the research plan in subsection (b) of this section, the Interagency Committee shall coordinate a program of competitive grants to universities or other research institutions, or groups of universities or research institutions, for the purposes of conducting a coordinated research program related to the regional aspects of oil pollution, such as prevention, removal, mitigation, and the effects of discharged oil on regional environments. For the purposes of this paragraph, a region means a Coast Guard district as set out in part 3 of title 33, Code of Federal Regulations (1989).

(B) The Interagency Committee shall coordinate the publication by the agencies represented on the Interagency Committee of a solicitation for grants under this subsection. The application shall be in such form and contain such information as may be required in the published solicitation. The applications shall be reviewed by the Interagency

Committee, which shall make recommendations to the appropriate granting agency represented on the Interagency Committee for awarding the grant. The granting agency shall award the grants recommended by the Interagency Committee unless the agency decides not to award the grant due to budgetary or other compelling considerations and publishes its reasons for such a determination in the Federal Register. No grants may be made by any agency from any funds authorized for this paragraph unless such grant award has first been recommended by the Interagency Committee.

(C) Any university or other research institution, or group of universities or research institutions, may apply for a grant for the regional research program established by this paragraph. The applicant must be located in the region, or in a State a part of which is in the region, for which the project is proposed as part of the regional research program. With respect to a group application, the entity or entities which will carry out the substantial portion of the proposed research must be located in the region, or in a State a part of which is in the region, for which the project is proposed as part of the regional research program.

(D) The Interagency Committee shall make recommendations on grants in such a manner as to ensure an appropriate balance within a region among the various aspects of oil pollution research, including prevention, removal, mitigation, and the effects of discharged oil on regional environments. In addition, the Interagency Committee shall make recommendations for grants based on the following criteria:

(i) There is available to the applicant for carrying out this paragraph demonstrated research resources.

(ii) The applicant demonstrates the capability of making a significant contribution to regional research needs.

(iii) The projects which the applicant proposes to carry out under the grant are consistent with the research plan under subsection (b)(1)(F) of this section and would further the objectives of the research and development program established in this section.

(E) Grants provided under this paragraph shall be for a period up to 3 years, subject to annual review by the granting agency, and provide not more than 80 percent of the costs of the research activities carried out in connection with the grant.

(F) No funds made available to carry out this subsection may be used for the acquisition of real property (including buildings) or construction of any building.

(G) Nothing in this paragraph is intended to alter or abridge the authority under existing law of any Federal agency to make grants, or enter into contracts or cooperative agreements, using funds other than those authorized in this chapter for the purposes of carrying out this paragraph.

(9) Funding

For each of the fiscal years 1991, 1992, 1993, 1994, and 1995, \$6,000,000 of amounts in the Fund shall be available to carry out the regional research program in paragraph (8), such amounts to be available in equal amounts for the regional research program in each region; except that if the agencies represented on the Interagency Committee determine that regional research needs exist which cannot be addressed within such funding limits, such agencies may use their authority under paragraph (10) to make additional grants to meet such needs. For the purposes of this paragraph, the research program carried out by the Prince William Sound Oil Spill Recovery Institute established under section 2731 of this title, shall not be eligible to receive grants under this paragraph until the authorization

for funding under section 2736(b) of this title expires.

(10) Grants

In carrying out the research and development program established under this subsection, the agencies represented on the Interagency Committee may enter into contracts and cooperative agreements and make grants to universities, research institutions, and other persons. Such contracts, cooperative agreements, and grants shall address research and technology priorities set forth in the oil pollution research plan under subsection (b) of this section.

(11) In carrying out research under this section, the Department of Transportation shall continue to utilize the resources of the Research and Special Programs Administration of the Department of Transportation, to the maximum extent practicable.

(d) International cooperation

In accordance with the research plan submitted under subsection (b) of this section, the Interagency Committee shall coordinate and cooperate with other nations and foreign research entities in conducting oil pollution research, development, and demonstration activities, including controlled field tests of oil discharges.

(e) Biennial reports

The Chairman of the Interagency Committee shall submit to Congress every 2 years on October 30 a report on the activities carried out under this section in the preceding 2 fiscal years, and on activities proposed to be carried out under this section in the current 2 fiscal year period.

(f) Funding

Not to exceed \$22,000,000 of amounts in the Fund shall be available annually to carry out this section except for subsection (c)(8) of this section. Of such sums--

(1) funds authorized to be appropriated to carry out the activities under subsection (c)(4) of this section shall not exceed \$5,000,000 for fiscal year 1991 or \$3,500,000 for any subsequent fiscal year; and

(2) not less than \$3,000,000 shall be available for carrying out the activities in subsection (c)(6) of this section for fiscal years 1992, 1993, 1994, and 1995.

All activities authorized in this section, including subsection (c)(8) of this section, are subject to appropriations.

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[Page 376-394]

TITLE 15--COMMERCE AND FOREIGN TRADE

CHAPTER IX--NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT
OF COMMERCE

PART 990--NATURAL RESOURCE DAMAGE ASSESSMENTS

Subpart A--Introduction

Sec.

990.10 Purpose.

990.11 Scope.

990.12 Overview.

990.13 Rebuttable presumption.

990.14 Coordination.

990.15 Considerations to facilitate restoration.

Subpart B--Authorities

990.20 Relationship to the CERCLA natural resource damage assessment
regulations.

990.21 Relationship to the NCP.

990.22 Prohibition on double recovery.

990.23 Compliance with NEPA and the CEQ regulations.

990.24 Compliance with other applicable laws and regulations.

990.25 Settlement.

990.26 Emergency restoration.

990.27 Use of assessment procedures.

Subpart C--Definitions

990.30 Definitions.

Subpart D--Preassessment Phase

990.40 Purpose.

990.41 Determination of jurisdiction.

990.42 Determination to conduct restoration planning.

990.43 Data collection.

990.44 Notice of Intent to Conduct Restoration Planning.

990.45 Administrative record.

Subpart E--Restoration Planning Phase

990.50 Purpose.

990.51 Injury assessment--injury determination.

990.52 Injury assessment--quantification.

990.53 Restoration selection--developing restoration alternatives.

990.54 Restoration selection--evaluation of alternatives.

990.55 Restoration selection--developing restoration plans.

990.56 Restoration selection--use of a Regional Restoration Plan or existing restoration project.

Subpart F--Restoration Implementation Phase

990.60 Purpose.

990.61 Administrative record.

990.62 Presenting a demand.

990.63 Discounting and compounding.

990.64 Unsatisfied demands.

990.65 Opening an account for recovered damages.

990.66 Additional considerations.

Authority: 33 U.S.C. 2701 et seq.

Source: 61 FR 500, Jan. 5, 1996, unless otherwise noted.

Subpart A--Introduction

Sec. 990.10 Purpose.

The goal of the **Oil Pollution Act** of 1990 (OPA), 33 U.S.C. 2701 et seq., is to make the environment and public whole for injuries to natural resources and services resulting from an incident involving a discharge or substantial threat of a discharge of **oil** (incident).

This goal is achieved through the return of the injured natural resources and services to baseline and compensation for interim losses of such natural resources and services from the date of the incident until recovery. The purpose of this part is to promote expeditious and cost-effective restoration of natural resources and services injured as a result of an incident. To fulfill this purpose, this part provides a natural resource damage assessment process for developing a plan for restoration of the injured natural resources and services and pursuing implementation or funding of the plan by responsible parties. This part also provides an administrative process for involving interested parties

in the assessment, a range of assessment procedures for identifying and evaluating injuries to natural resources and services, and a means for selecting restoration actions from a reasonable range of alternatives.

Sec. 990.11 Scope.

The **Oil Pollution Act** of 1990 (OPA), 33 U.S.C. 2701 et seq., provides for the designation of federal, state, and, if designated by the Governor of the state, local officials to **act** on behalf of the public as trustees for natural resources and for the designation of Indian tribe and foreign officials to **act** as trustees for natural resources on behalf

[[Page 377]]

of, respectively, the tribe or its members and the foreign government. This part may be used by these officials in conducting natural resource damage assessments when natural resources and/or services are injured as a result of an incident involving an actual or substantial threat of a discharge of **oil**. This part is not intended to affect the recoverability

of natural resource damages when recoveries are sought other than in accordance with this part.

Sec. 990.12 Overview.

This part describes three phases of a natural resource damage assessment. The Preassessment Phase, during which trustees determine whether to pursue restoration, is described in subpart D of this part. The Restoration Planning Phase, during which trustees evaluate information on potential injuries and use that information to determine the need for, type of, and scale of restoration, is described in subpart

E of this part. The Restoration Implementation Phase, during which trustees ensure implementation of restoration, is described in subpart

F of this part.

Sec. 990.13 Rebuttable presumption.

Any determination or assessment of damages to natural resources made

by a Federal, State, or Indian trustee in accordance with this part shall have the force and effect of a rebuttable presumption on behalf of

the trustee in any administrative or judicial proceeding under OPA.

Sec. 990.14 Coordination.

(a) Trustees. (1) If an incident affects the interests of multiple trustees, the trustees should **act** jointly under this part to ensure that

full restoration is achieved without double recovery of damages. For joint assessments, trustees must designate one or more Lead Administrative Trustee(s) to **act** as coordinators.

(2) If there is a reasonable basis for dividing the natural resource damage assessment, trustees may **act** independently under this part, so long as there is no double recovery of damages.

(3) Trustees may develop pre-incident or incident-specific memoranda

of understanding to coordinate their activities.

(b) Response agencies. Trustees must coordinate their activities conducted concurrently with response operations with response agencies consistent with the NCP and any pre-incident plans developed under Sec. 990.15(a) of this part. Trustees may develop pre-incident memoranda

of understanding to coordinate their activities with response agencies.

(c) Responsible parties--(1) Invitation. Trustees must invite the responsible parties to participate in the natural resource damage assessment described in this part. The invitation to participate should be in writing, and a written response by the responsible parties is required to confirm the desire to participate.

(2) Timing. The invitation to participate should be extended to known responsible parties as soon as practicable, but not later than the

delivery of the ``Notice of Intent to Conduct Restoration Planning,'' under Sec. 990.44 of this part, to the responsible party.

(3) Agreements. Trustees and responsible parties should consider

entering into binding agreements to facilitate their interactions and resolve any disputes during the assessment. To maximize cost-effectiveness and cooperation, trustees and responsible parties should attempt to develop a set of agreed-upon facts concerning the incident and/or assessment.

(4) Nature and extent of participation. If the responsible parties accept the invitation to participate, the scope of that participation must be determined by the trustees, in light of the considerations in paragraph (c) (5) of this section. At a minimum, participation will include notice of trustee determinations required under this part, and notice and opportunity to comment on documents or plans that significantly affect the nature and extent of the assessment. Increased levels of participation by responsible parties may be developed at the mutual agreement of the trustees and the responsible parties. Trustees will objectively consider all written comments provided by the responsible parties, as well as any other recommendations or proposals that the responsible parties submit in writing to the Lead Administrative Trustee. Submissions by the responsible parties

[[Page 378]]

will be included in the administrative record. Final authority to make determinations regarding injury and restoration rest solely with the trustees. Trustees may end participation by responsible parties who, during the conduct of the assessment, in the sole judgment of the trustees, cause interference with the trustees' ability to fulfill their

responsibilities under OPA and this part.

(5) Considerations. In determining the nature and extent of participation by the responsible parties or their representatives, trustees may consider such factors as:

- (i) Whether the responsible parties have been identified;
- (ii) The willingness of responsible parties to participate in the assessment;
- (iii) The willingness of responsible parties to fund assessment activities;
- (iv) The willingness and ability of responsible parties to conduct assessment activities in a technically sound and timely manner and to be bound by the results of jointly agreed upon studies;
- (v) The degree of cooperation of the responsible parties in the response to the incident; and
- (vi) The actions of the responsible parties in prior assessments.

(6) Request for alternative assessment procedures. (i) The participating responsible parties may request that trustees use assessment procedures other than those selected by the trustees if the responsible parties:

(A) Identify the proposed procedures to be used that meet the requirements of Sec. 990.27 of this part, and provide reasons supporting

the technical adequacy and appropriateness of such procedures for the incident and associated injuries;

(B) Advance to the trustees the trustees' reasonable estimate of the cost of using the proposed procedures; and

(C) Agree not to challenge the results of the proposed procedures. The request from the responsible parties may be made at any time, but no

later than, fourteen (14) days of being notified of the trustees' proposed assessment procedures for the incident or the injury.

(ii) Trustees may reject the responsible parties' proposed assessment procedures if, in the sole judgment of the trustees, the proposed assessment procedures:

(A) Are not technically feasible;

(B) Are not scientifically or technically sound;

(C) Would inadequately address the natural resources and services of

concern;

(D) Could not be completed within a reasonable time frame; or

(E) Do not meet the requirements of Sec. 990.27 of this part.

(7) Disclosure. Trustees must document in the administrative record and Restoration Plan the invitation to the responsible parties to participate, and briefly describe the nature and extent of the responsible parties' participation. If the responsible parties' participation is terminated during the assessment, trustees must provide

a brief explanation of this decision in the administrative record and Restoration Plan.

(d) Public. Trustees must provide opportunities for public involvement after the trustees' decision to develop restoration plans or

issuance of any notices to that effect, as provided in Sec. 990.55 of this part. Trustees may also provide opportunities for public involvement at any time prior to this decision if such involvement may enhance trustees' decisionmaking or avoid delays in restoration.

Sec. 990.15 Considerations to facilitate restoration.

In addition to the procedures provided in subparts D through F of this part, trustees may take other actions to further the goal of expediting restoration of injured natural resources and services, including:

(a) Pre-incident planning. Trustees may engage in pre-incident planning activities. Pre-incident plans may identify natural resource damage assessment teams, establish trustee notification systems, identify support services, identify natural resources and services at risk, identify area and regional response agencies and officials, identify available baseline information, establish data management systems, and identify assessment funding

[[Page 379]]

issues and options. Potentially responsible parties, as well as all other members of the public interested in and capable of participating in assessments, should be included in pre-incident planning to the fullest extent practicable.

(b) Regional Restoration Plans. Where practicable, incident-specific restoration plan development is preferred, however, trustees may develop

Regional Restoration Plans. These plans may be used to support a claim under Sec. 990.56 of this part. Regional restoration planning may consist of compiling databases that identify, on a regional or watershed basis, or otherwise as appropriate, existing, planned, or proposed restoration projects that may provide appropriate restoration

alternatives for consideration in the context of specific incidents.

Subpart B--Authorities

Sec. 990.20 Relationship to the CERCLA natural resource damage assessment regulations.

(a) General. Regulations for assessing natural resource damages resulting from hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability **Act** of 1980, as amended (CERCLA), 42 U.S.C. 9601 et seq., and the Federal Water **Pollution Control Act** (Clean Water **Act**), 33 U.S.C. 1321 et seq., are codified at 43 CFR part 11. The CERCLA regulations originally applied to natural resource damages resulting from **oil** discharges as well as hazardous substance releases. This part supersedes 43 CFR part 11 with regard to **oil** discharges covered by OPA.

(b) Assessments commenced before February 5, 1996. If trustees commenced a natural resource damage assessment for an **oil** discharge under 43 CFR part 11 prior to February 5, 1996 they may complete the assessment in compliance with 43 CFR part 11, or they may elect to use this part, and obtain a rebuttable presumption.

(c) **Oil** and hazardous substance mixtures. For natural resource damages resulting from a discharge or release of a mixture of **oil** and hazardous substances, trustees must use 43 CFR part 11 in order to obtain a rebuttable presumption.

Sec. 990.21 Relationship to the NCP.

This part provides procedures by which trustees may determine appropriate restoration of injured natural resources and services, where such injuries are not fully addressed by response actions. Response actions and the coordination with damage assessment activities are conducted pursuant to the National **Oil** and Hazardous Substances **Pollution** Contingency Plan (NCP), 40 CFR part 300.

Sec. 990.22 Prohibition on double recovery.

When taking actions under this part, trustees are subject to the prohibition on double recovery, as provided in 33 U.S.C. 2706(d) (3) of OPA.

Sec. 990.23 Compliance with NEPA and the CEQ regulations.

(a) General. The National Environmental Policy **Act** (NEPA), 42 U.S.C. 4321 et seq. and Council on Environmental Quality (CEQ) regulations implementing NEPA, 40 CFR chapter V, apply to restoration actions by federal trustees, except where a categorical exclusion or other exception to NEPA applies. Thus, when a federal trustee proposes to take restoration actions under this part, it must integrate this part with NEPA, the CEQ regulations, and NEPA regulations promulgated by that federal trustee agency. Where state NEPA-equivalent laws may apply to state trustees, state trustees must consider the extent to which they must integrate this part with their NEPA-equivalent laws. The requirements and process described in this section relate only to NEPA and federal trustees.

(b) NEPA requirements for federal trustees. NEPA becomes applicable when federal trustees propose to take restoration actions, which begins with the development of a Draft Restoration Plan under Sec. 990.55 of this part. Depending upon the circumstances of the incident, federal trustees may need to consider early involvement of the public in restoration planning in order to meet their NEPA compliance requirements.

(c) NEPA process for federal trustees. Although the steps in the NEPA process may vary among different federal trustees, the process will generally involve the need to develop restoration

[[Page 380]]

plans in the form of an Environmental Assessment or Environmental Impact

Statement, depending upon the trustee agency's own NEPA regulations.

(1) Environmental Assessment. (i) Purpose. The purpose of an Environmental Assessment (EA) is to determine whether a proposed restoration action will have a significant (as defined under NEPA and Sec. 1508.27 of the CEQ regulations) impact on the quality of the human environment, in which case an Environmental Impact Statement (EIS) evaluating the impact is required. In the alternative, where the impact will not be significant, federal trustees must issue a Finding of No Significant Impact (FONSI) as part of the restoration plans developed under this part. If significant impacts to the human environment are anticipated, the determination to proceed with an EIS may be made as a result, or in lieu, of the development of the EA.

(ii) General steps. (A) If the trustees decide to pursue an EA, the trustees may issue a Notice of Intent to Prepare a Draft Restoration Plan/EA, or proceed directly to developing a Draft Restoration Plan/EA.

(B) The Draft Restoration Plan/EA must be made available for public review before concluding a FONSI or proceeding with an EIS.

(C) If a FONSI is concluded, the restoration planning process should

be no different than under Sec. 990.55 of this part, except that the Draft Restoration Plan/EA will include the FONSI analysis.

(D) The time period for public review on the Draft Restoration Plan/

EA must be consistent with the federal trustee agency's NEPA requirements, but should generally be no less than thirty (30) calendar days.

(E) The Final Restoration Plan/EA must consider all public comments on the Draft Restoration Plan/EA and FONSI.

(F) The means by which a federal trustee requests, considers, and responds to public comments on the Draft Restoration Plan/EA and FONSI must also be consistent with the federal agency's NEPA requirements.

(2) Environmental Impact Statement. (i) Purpose. The purpose of an Environmental Impact Statement (EIS) is to involve the public and facilitate the decisionmaking process in the federal trustees' analysis of alternative approaches to restoring injured natural resources and services, where the impacts of such restoration are expected to have significant impacts on the quality of the human environment.

(ii) General steps. (A) If trustees determine that restoration actions are likely to have a significant (as defined under NEPA and Sec. 1508.27 of the CEQ regulations) impact on the environment, they must issue a Notice of Intent to Prepare a Draft Restoration Plan/EIS. The notice must be published in the Federal Register.

(B) The notice must be followed by formal public involvement in the development of the Draft Restoration Plan/EIS.

(C) The Draft Restoration Plan/EIS must be made available for public review for a minimum of forty-five (45) calendar days. The Draft Restoration Plan/EIS, or a notice of its availability, must be published in the Federal Register.

(D) The Final Restoration Plan/EIS must consider all public comments on the Draft Restoration Plan/EIS, and incorporate any changes made to the Draft Restoration Plan/EIS in response to public comments.

(E) The Final Restoration Plan/EIS must be made publicly available for a minimum of thirty (30) calendar days before a decision is made on the federal trustees' proposed restoration actions (Record of Decision).

The Final Restoration Plan/EIS, or a notice of its availability, must be published in the Federal Register.

(F) The means by which a federal trustee agency requests, considers, and responds to public comments on the Final Restoration Plan/EIS must also be consistent with the federal agency's NEPA requirements.

(G) After appropriate public review on the Final Restoration Plan/ EIS is completed, a Record of Decision (ROD) is issued. The ROD summarizes the trustees' decisionmaking process after consideration of any public comments relative to the proposed restoration actions, identifies all restoration alternatives (including the preferred alternative(s)), and their environmental

[[Page 381]]

consequences, and states whether all practicable means to avoid or minimize environmental harm were adopted (e.g., monitoring and corrective actions) . The ROD may be incorporated with other decision documents prepared by the trustees. The means by which the ROD is made publicly available must be consistent with the federal trustee agency's NEPA requirements.

(d) Relationship to Regional Restoration Plans or an existing restoration project. If a Regional Restoration Plan or existing restoration project is proposed for use, federal trustees may be able to

tier their NEPA analysis to an existing EIS, as described in Secs. 1502.20 and 1508.28 of the CEQ regulations.

Sec. 990.24 Compliance with other applicable laws and regulations.

(a) Worker health and safety. When taking actions under this part, trustees must comply with applicable worker health and safety

considerations specified in the NCP for response actions.

(b) Natural Resources protection. When acting under this part, trustees must ensure compliance with any applicable consultation, permitting, or review requirements, including but not limited to: the Endangered Species **Act** of 1973, 16 U.S.C. 1531 et seq.; the Coastal Zone

Management **Act** of 1972, 16 U.S.C. 1451 et seq.; the Migratory Bird Treaty **Act**, 16 U.S.C. 703 et seq.; the National Marine Sanctuaries **Act**, 16 U.S.C. 1431 et seq.; the National Historic Preservation **Act**, 16 U.S.C. 470 et seq.; the Marine Mammal Protection **Act**, 16 U.S.C. 1361 et seq.; and the Archaeological Resources Protection **Act**, 16 U.S.C. 470 et seq.

Sec. 990.25 Settlement.

Trustees may settle claims for natural resource damages under this part at any time, provided that the settlement is adequate in the judgment of the trustees to satisfy the goal of OPA and is fair, reasonable, and in the public interest, with particular consideration of

the adequacy of the settlement to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources and services. Sums recovered in settlement of such claims, other than reimbursement of

trustee costs, may only be expended in accordance with a restoration plan, which may be set forth in whole or in part in a consent decree or other settlement agreement, which is made available for public review.

Sec. 990.26 Emergency restoration.

(a) Trustees may take emergency restoration action before completing

the process established under this part, provided that:

(1) The action is needed to avoid irreversible loss of natural resources, or to prevent or reduce any continuing danger to natural resources or similar need for emergency action;

(2) The action will not be undertaken by the lead response agency;

(3) The action is feasible and likely to succeed;

(4) Delay of the action to complete the restoration planning process

established in this part likely would result in increased natural resource damages; and

(5) The costs of the action are not unreasonable.

(b) If response actions are still underway, trustees must coordinate

with the On-Scene Coordinator (OSC), consistent with the NCP, to ensure that emergency restoration actions will not interfere with or duplicate ongoing response actions. Emergency restoration may not address residual

oil unless:

(1) The OSC's response is complete; or

(2) The OSC has determined that the residual **oil** identified by the trustee as part of a proposed emergency restoration action does not merit further response.

(c) Trustees must provide notice to identified responsible parties of any emergency restoration actions and, to the extent time permits, invite their participation in the conduct of those actions as provided in Sec. 990.14(c) of this part.

(d) Trustees must provide notice to the public, to the extent practicable, of these planned emergency restoration actions. Trustees must also provide public notice of the justification for, nature and extent of, and results of emergency restoration actions within a reasonable time frame after completion of such actions. The means by

[[Page 382]]

which this notice is provided is left to the discretion of the trustee.

[61 FR 500, Jan. 5, 1996, as amended at 67 FR 61492, Oct. 1, 2002]

Sec. 990.27 Use of assessment procedures.

(a) Standards for assessment procedures. Any procedures used pursuant to this part must comply with all of the following standards if

they are to be in accordance with this part:

(1) The procedure must be capable of providing assessment information of use in determining the type and scale of restoration appropriate for a particular injury;

(2) The additional cost of a more complex procedure must be reasonably related to the expected increase in the quantity and/or quality of relevant information provided by the more complex procedure; and

(3) The procedure must be reliable and valid for the particular incident.

(b) Assessment procedures available. (1) The range of assessment procedures available to trustees includes, but is not limited to:

(i) Procedures conducted in the field;

(ii) Procedures conducted in the laboratory;

(iii) Model-based procedures, including type A procedures identified

in 43 CFR part 11, subpart D, and compensation formulas/schedules; and

(iv) Literature-based procedures.

(2) Trustees may use the assessment procedures in paragraph (b) (1) of this section alone, or in any combination, provided that the standards in paragraph (a) of this section are met, and there is no double recovery.

(c) Selecting assessment procedures. (1) When selecting assessment procedures, trustees must consider, at a minimum:

(i) The range of procedures available under paragraph (b) of this section;

(ii) The time and cost necessary to implement the procedures;

(iii) The potential nature, degree, and spatial and temporal extent of the injury;

(iv) The potential restoration actions for the injury; and

(v) The relevance and adequacy of information generated by the procedures to meet information requirements of restoration planning.

(2) If a range of assessment procedures providing the same type and quality of information is available, the most cost-effective procedure must be used.

Subpart C--Definitions

For the purpose of this rule, the term:

Baseline means the condition of the natural resources and services that would have existed had the incident not occurred. Baseline data may

be estimated using historical data, reference data, control data, or data on incremental changes (e.g., number of dead animals), alone or in combination, as appropriate.

Cost-effective means the least costly activity among two or more activities that provide the same or a comparable level of benefits, in the judgment of the trustees.

CEQ regulations means the Council on Environmental Quality regulations implementing NEPA, 40 CFR chapter V.

Damages means damages specified in section 1002(b) of OPA (33 U.S.C. 1002(b)), and includes the costs of assessing these damages, as defined in section 1001(5) of OPA (33 U.S.C. 2701(5)).

Discharge means any emission (other than natural seepage), intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping, as defined in section 1001 (7) of OPA (33 U.S.C. 2701(7)).

Exclusive Economic Zone means the zone established by Presidential Proclamation 5030 of March 10, 1983 (3 CFR, 1984 Comp., p. 22), including the ocean waters of the areas referred to as ``eastern special

areas'' in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, as defined in section 1001(8) of OPA (33 U.S.C. 2701(8)).

Exposure means direct or indirect contact with the discharged **oil**.

Facility means any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes:

[[Page 383]]

exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting **oil**. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes, as defined in section 1001 (9) of OPA (33 U.S.C. 2701(9)).

Fund means the **Oil Spill Liability Trust Fund**, established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509), as defined in section 1001 (11) of OPA (33 U.S.C. 2701 (11)).

Incident means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of

discharge of **oil** into or upon navigable waters or adjoining shorelines or the Exclusive Economic Zone, as defined in section 1001(14) of OPA (33 U.S.C. 2701(14)).

Indian tribe (or tribal) means any Indian tribe, band, nation, or other organized group or community, but not including any Alaska Native regional or village corporation, which is recognized as eligible for the

special programs and services provided by the United States to Indians because of their status as Indians and has governmental authority over lands belonging to or controlled by the tribe, as defined in section 1001 (15) of OPA (33 U.S.C. 2701(15)).

Indirect costs means expenses that are jointly or commonly incurred to produce two or more products or services. In contrast to direct costs, indirect costs are not specifically identifiable with any of the products or services, but are necessary for the organization to function

and produce the products or services. An indirect cost rate, developed in accordance with generally accepted accounting principles, may be used

to allocate indirect costs to specific assessment and restoration activities. Both direct and indirect costs contribute to the full cost of the assessment and restoration, as provided in this part.

Injury means an observable or measurable adverse change in a natural resource or impairment of a natural resource service. Injury may occur directly or indirectly to a natural resource and/or service. Injury incorporates the terms ``destruction,'' ``loss,'' and ``loss of use'' as

provided in OPA.

Lead Administrative Trustee(s) (or LAT) means the trustee(s) who is selected by all participating trustees whose natural resources or services are injured by an incident, for the purpose of coordinating natural resource damage assessment activities. The LAT(s) should also facilitate communication between the OSC and other natural resource trustees regarding their activities during the response phase.

Legal costs means the costs of attorney actions performed for the purpose of assessment or developing a restoration plan, in accordance with this part.

(1) When making a determination of the nature of attorneys' actions for purposes of this definition, trustees must consider whether:

(i) The action comprised all or part of an action specified either in this part or in OPA section 1006(c);

(ii) The action was performed prior to, or in the absence of, the filing of litigation by or on behalf of the trustee in question to recover damages; and

(iii) The action was performed by an attorney who was working for or on behalf of the trustee agency, as opposed to a prosecutorial agency.

(2) If all of the criteria in paragraph (1) of this definition are met, the costs associated with attorney's actions are deemed assessment costs. If the criteria are not met, the trustee must explain why the action was not performed for the primary purpose of furthering litigation in order to support a characterization of the action as an assessment action.

(3) Examples of common or routine assessment actions that may be most appropriately performed by trustee attorneys, in accordance with this part, include, but are not limited to:

(i) Providing written and oral advice on the requirements of OPA, this part, and other applicable laws;

(ii) Preparing public notices, including the Notice of Intent to Conduct Restoration Planning issued to responsible parties and the Notice of Availability of Draft Restoration Plans;

(iii) Developing and managing administrative records;

(iv) Preparing binding agreements with potentially responsible parties in

[[Page 384]]

the context of the assessment, including study agreements, funding agreements, and restoration agreements;

(v) Preparing co-trustee cooperative agreements;

(vi) Preparing formal trustee determinations required under this part; and

(vii) Procuring title searches, title insurance,

and/or conservation

easements when property agreements are part of restoration packages.

NCP means the National **Oil** and Hazardous Substances **Pollution** Contingency Plan (National Contingency Plan) codified at 40 CFR part 300, which addresses the identification, investigation, study, and response to incidents, as defined in section 1001(19) of OPA (33 U.S.C. 2701 (19)).

Natural resource damage assessment (or assessment) means the process of collecting and analyzing information to evaluate the nature and extent of injuries resulting from an incident, and determine the restoration actions needed to bring injured natural resources and services back to baseline and make the environment and public whole for interim losses.

Natural resources means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the Exclusive Economic Zone), any state or local government or Indian tribe, or any foreign government, as defined in section 1001(20) of OPA (33 U.S.C. 2701(20)).

Navigable waters means the waters of the United States, including the territorial sea, as defined in section 1001(21) of OPA (33 U.S.C. 2701(21)).

NEPA means the National Environmental Policy **Act**, 42 U.S.C. 4321 et seq.

Oil means **oil** of any kind or in any form, including, but not limited to, petroleum, fuel **oil**, sludge, **oil** refuse, and **oil** mixed with wastes other than dredged spoil. However, the term does not include petroleum, including crude **oil** or any fraction thereof, that is specifically listed or designated as a hazardous substance under 42 U.S.C. 9601(14) (A) through (F), as defined in section 1001(23) of OPA (33 U.S.C. 2701(23)).

On-Scene Coordinator (or OSC) means the official designated by the U.S. Environmental Protection Agency or the U.S. Coast Guard to coordinate and direct response actions under the NCP, or the government official designated by the lead response agency to coordinate and direct

response actions under the NCP.

OPA means the **Oil Pollution Act** of 1990, 33 U.S.C. 2701 et seq.

Pathway means any link that connects the incident to a natural resource and/or service, and is associated with an actual discharge of **oil**.

Person means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body, as defined in section 1001(27) of OPA (33 U.S.C. 2701(27)).

Public vessel means a vessel owned or bareboat chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce, as defined in section 1001(29) of OPA (33 U.S.C. 2701(29)).

Reasonable assessment costs means, for assessments conducted under this part, assessment costs that are incurred by trustees in accordance with this part. In cases where assessment costs are incurred but trustees do not pursue restoration, trustees may recover their reasonable assessment costs provided they have determined that

assessment actions undertaken were premised on the likelihood of injury and need for restoration. Reasonable assessment costs also include: administrative costs, legal costs, and other costs necessary to carry out this part; monitoring and oversight costs; costs associated with public participation; and indirect costs that are necessary to carry out

this part.

Recovery means the return of injured natural resources and services to baseline.

Response (or remove or removal) means containment and removal of **oil**

or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines,

[[Page 385]]

and beaches, as defined in section 1001(30) of OPA (33 U.S.C. 2701(30)).

Responsible party means:

(a) Vessels. In the case of a vessel, any person owning, operating, or demise chartering the vessel.

(b) Onshore facilities. In the case of an onshore facility (other than a pipeline), any person owning or operating the facility, except a federal agency, state, municipality, commission, or political subdivision of a state, or any interstate body, that as the owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(c) Offshore facilities. In the case of an offshore facility (other than a pipeline or a deepwater port licensed under the Deepwater Port **Act** of 1974 (33 U.S.C. 1501 et seq.)), the lessee or permittee of the area in which the facility is located or the holder of a right of use and easement granted under applicable state law or the Outer Continental

Shelf Lands **Act** (43 U.S.C. 1301-1356) for the area in which the facility

is located (if the holder is a different person than the lessee or permittee), except a federal agency, state, municipality, commission, or

political subdivision of a state, or any interstate body, that as owner transfers possession and right to use the property to another person by lease, assignment, or permit.

(d) Deepwater ports. In the case of a deepwater port licensed under the Deepwater Port **Act** of 1974 (33 U.S.C. 1501-1524), the licensee.

(e) Pipelines. In the case of a pipeline, any person owning or operating the pipeline.

(f) Abandonment. In the case of an abandoned vessel, onshore facility, deepwater port, pipeline, or offshore facility, the persons who would have been responsible parties immediately prior to the abandonment of the vessel or facility, as defined in section 1001 (32) of

OPA (33 U.S.C. 2701(32)).

Restoration means any action (or alternative), or combination of actions (or alternatives), to restore, rehabilitate, replace, or acquire

the equivalent of injured natural resources and services. Restoration includes:

(a) Primary restoration, which is any action, including natural recovery, that returns injured natural resources and services to baseline; and

(b) Compensatory restoration, which is any action taken to compensate for interim losses of natural resources and services that occur from the date of the incident until recovery.

Services (or natural resource services) means the functions performed by a natural resource for the benefit of another natural resource and/or the public.

Trustees (or natural resource trustees) means those officials of the federal and state governments, of Indian tribes, and of foreign governments, designated under 33 U.S.C. 2706(b) of OPA.

United States and State means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam,

American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States, as defined in section 1001(36) of OPA (33 U.S.C. 2701(36)).

Value means the maximum amount of goods, services, or money an individual is willing to give up to obtain a specific good or service, or the minimum amount of goods, services, or money an individual is willing to accept to forgo a specific good or service. The total value of a natural resource or service includes the value individuals derive from direct use of the natural resource, for example, swimming, boating,

hunting, or birdwatching, as well as the value individuals derive from knowing a natural resource will be available for future generations.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation

on water, other than a public vessel, as defined in section 1001(37) of OPA (33 U.S.C. 2701(37)).

[61 FR 500, Jan. 5, 1996, as amended at 67 FR 61493, Oct. 1, 2002]

[[Page 386]]

Subpart D--Preassessment Phase

Sec. 990.40 Purpose.

The purpose of this subpart is to provide a process by which trustees determine if they have jurisdiction to pursue restoration under OPA and, if so, whether it is appropriate to do so.

Sec. 990.41 Determination of jurisdiction.

(a) Determination of jurisdiction. Upon learning of an incident, trustees must determine whether there is jurisdiction to pursue restoration under OPA. To make this determination, trustees must decide if:

(1) An incident has occurred, as defined in Sec. 990.30 of this part;

(2) The incident is not:

(i) Permitted under a permit issued under federal, state, or

local law; or

(ii) From a public vessel; or

(iii) From an onshore facility subject to the Trans-Alaska Pipeline Authority **Act**, 43 U.S.C. 1651, et seq.; and

(3) Natural resources under the trusteeship of the trustee may have been, or may be, injured as a result of the incident.

(b) Proceeding with preassessment. If the conditions listed in paragraph (a) of this section are met, trustees may proceed under this part. If one of the conditions is not met, trustees may not take additional action under this part, except action to finalize this determination. Trustees may recover all reasonable assessment costs incurred up to this point provided that conditions in paragraphs (a) (1) and (a) (2) of this section were met and actions were taken with the reasonable belief that natural resources or services under their trusteeship might have been injured as a result of the incident.

Sec. 990.42 Determination to conduct restoration planning.

(a) Determination on restoration planning. If trustees determine that there is jurisdiction to pursue restoration under OPA, trustees must determine whether:

(1) Injuries have resulted, or are likely to result, from the incident;

(2) Response actions have not adequately addressed, or are not expected to address, the injuries resulting from the incident; and

(3) Feasible primary and/or compensatory restoration actions exist to address the potential injuries.

(b) Proceeding with preassessment. If the conditions listed in paragraph (a) of this section are met, trustees may proceed under Sec. 990.44 of this part. If one of these conditions is not met, trustees may not take additional action under this part, except action to finalize this determination. However, trustees may recover all reasonable assessment costs incurred up to this point.

Sec. 990.43 Data collection.

Trustees may conduct data collection and analyses that are reasonably related to Preassessment Phase activities. Data collection and analysis during the Preassessment Phase must be coordinated with response actions such that collection and analysis does not interfere with response actions. Trustees may collect and analyze the following types of data during the Preassessment Phase:

(a) Data reasonably expected to be necessary to make a determination of jurisdiction under Sec. 990.41 of this part, or a determination to conduct restoration planning under Sec. 990.42 of this part;

(b) Ephemeral data; and

(c) Information needed to design or implement anticipated assessment

procedures under subpart E of this part.

Sec. 990.44 Notice of Intent to Conduct Restoration Planning.

(a) General. If trustees determine that all the conditions under Sec. 990.42(a) of this part are met and trustees decide to proceed with the natural resource damage assessment, they must prepare a Notice of Intent to Conduct Restoration Planning.

(b) Contents of the notice. The Notice of Intent to Conduct Restoration Planning must include a discussion of the trustees' analyses

under Secs. 990.41 and 990.42 of this part. Depending on information available at this point, the notice may include the trustees' proposed strategy to assess injury and determine the type and scale of restoration. The contents of a notice may vary, but will typically discuss:

(1) The facts of the incident;

[[Page 387]]

(2) Trustee authority to proceed with the assessment;

(3) Natural resources and services that are, or are likely to be, injured as a result of the incident;

(4) Potential restoration actions relevant to the expected injuries;

and

(5) If determined at the time, potential assessment procedures to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources and services.

(c) Public availability of the notice. Trustees must make a copy of the Notice of Intent to Conduct Restoration Planning publicly available.

The means by which the notice is made publicly available and whether public comments are solicited on the notice will depend on the nature and extent of the incident and various information requirements, and is left to the discretion of the trustees.

(d) Delivery of the notice to the responsible parties. Trustees must

send a copy of the notice to the responsible parties, to the extent known, in such a way as will establish the date of receipt, and invite responsible parties' participation in the conduct of restoration planning. Consistent with Sec. 990.14(c) of this part, the determination

of the timing, nature, and extent of responsible party participation will be determined by the trustees on an incident-specific basis.

Sec. 990.45 Administrative record.

(a) If trustees decide to proceed with restoration planning, they must open a publicly available administrative record to document the

basis for their decisions pertaining to restoration. The administrative record should be opened concurrently with the publication of the Notice of Intent to Conduct Restoration Planning. Depending on the nature and extent of the incident and assessment, the administrative record should include documents relied upon during the assessment, such as:

(1) Any notice, draft and final restoration plans, and public comments;

(2) Any relevant data, investigation reports, scientific studies, work plans, quality assurance plans, and literature; and

(3) Any agreements, not otherwise privileged, among the participating trustees or with the responsible parties.

(b) Federal trustees should maintain the administrative record in a manner consistent with the Administrative Procedure Act, 5 U.S.C. 551-59, 701-06.

Subpart E--Restoration Planning Phase

Sec. 990.50 Purpose.

The purpose of this subpart is to provide a process by which trustees evaluate and quantify potential injuries (injury assessment), and use that information to determine the need for and scale of restoration actions (restoration selection).

Sec. 990.51 Injury assessment--injury determination.

(a) General. After issuing a Notice of Intent to Conduct Restoration

Planning under Sec. 990.44 of this part, trustees must determine if injuries to natural resources and/or services have resulted from the incident.

(b) Determining injury. To make the determination of injury, trustees must evaluate if:

(1) The definition of injury has been met, as defined in Sec. 990.30 of this part; and

(2) (i) An injured natural resource has been exposed to the discharged **oil**, and a pathway can be established from the discharge to the exposed natural resource; or

(ii) An injury to a natural resource or impairment of a natural resource service has occurred as a result of response actions or a substantial threat of a discharge of **oil**.

(c) Identifying injury. Trustees must determine whether an injury has occurred and, if so, identify the nature of the injury. Potential categories of injury include, but are not limited to, adverse changes in: survival, growth, and reproduction; health, physiology and biological condition; behavior; community composition; ecological processes and functions; physical and chemical habitat quality or structure; and public services.

(d) Establishing exposure and pathway. Except for injuries resulting from response actions or incidents involving a substantial threat of a discharge of **oil**,

[[Page 388]]

directly or indirectly, to the discharged **oil** from the incident, and

estimate the amount or concentration and spatial and temporal extent of the exposure. Trustees must also determine whether there is a pathway linking the incident to the injuries. Pathways may include, but are not limited to, the sequence of events by which the discharged oil was transported from the incident and either came into direct physical contact with a natural resource, or caused an indirect injury.

(e) Injuries resulting from response actions or incidents involving a substantial threat of a discharge. For injuries resulting from response actions or incidents involving a substantial threat of a discharge of oil, trustees must determine whether an injury or an impairment of a natural resource service has occurred as a result of the

incident.

(f) Selection of injuries to include in the assessment. When selecting potential injuries to assess, trustees should consider factors

such as:

- (1) The natural resources and services of concern;
- (2) The procedures available to evaluate and quantify injury, and associated time and cost requirements;
- (3) The evidence indicating exposure;
- (4) The pathway from the incident to the natural resource and/or service of concern;
- (5) The adverse change or impairment that constitutes injury;
- (6) The evidence indicating injury;
- (7) The mechanism by which injury occurred;
- (8) The potential degree, and spatial and temporal extent of the injury;
- (9) The potential natural recovery period; and
- (10) The kinds of primary and/or compensatory restoration actions that are feasible.

Sec. 990.52 Injury assessment--quantification.

(a) General. In addition to determining whether injuries have resulted from the incident, trustees must quantify the degree, and spatial and temporal extent of such injuries relative to baseline.

(b) Quantification approaches. Trustees may quantify injuries in terms of:

- (1) The degree, and spatial and temporal extent of the injury to a natural resource;
- (2) The degree, and spatial and temporal extent of injury to a natural resource, with subsequent translation of that adverse change to a reduction in services provided by the natural resource; or
- (3) The amount of services lost as a result of the incident.

(c) Natural recovery. To quantify injury, trustees must estimate, quantitatively or qualitatively, the time for natural recovery without restoration, but including any response actions. The analysis of natural

recovery may consider such factors as:

- (1) The nature, degree, and spatial and temporal extent of injury;
- (2) The sensitivity and vulnerability of the injured natural resource and/or service;
- (3) The reproductive and recruitment potential;
- (4) The resistance and resilience (stability) of the affected environment;
- (5) The natural variability; and

(6) The physical/chemical processes of the affected environment.

Sec. 990.53 Restoration selection--developing restoration alternatives.

(a) General. (1) If the information on injury determination and quantification under Secs. 990.51 and 990.52 of this part and its relevance to restoration justify restoration, trustees may proceed with the Restoration Planning Phase. Otherwise, trustees may not take additional action under this part. However, trustees may recover all reasonable assessment costs incurred up to this point.

(2) Trustees must consider a reasonable range of restoration alternatives before selecting their preferred alternative(s). Each restoration alternative is comprised of primary and/or compensatory restoration components that address one or more specific injury(ies) associated with the incident. Each alternative must be designed so that,

as a package of one or more actions, the

[[Page 389]]

alternative would make the environment and public whole. Only those alternatives considered technically feasible and in accordance with applicable laws, regulations, or permits may be considered further under

this part.

(b) Primary restoration-- (1) General. For each alternative, trustees must consider primary restoration actions, including a natural recovery alternative.

(2) Natural recovery. Trustees must consider a natural recovery alternative in which no human intervention would be taken to directly restore injured natural resources and services to baseline.

(3) Active primary restoration actions. Trustees must consider an alternative comprised of actions to directly restore the natural resources and services to baseline on an accelerated time frame. When identifying such active primary restoration actions, trustees may consider actions that:

(i) Address conditions that would prevent or limit the effectiveness

of any restoration action;

(ii) May be necessary to return the physical, chemical, and/or biological conditions necessary to allow recovery or restoration of the injured natural resources (e.g., replacing substrate or vegetation, or modifying hydrologic conditions); or

(iii) Return key natural resources and services, and would be an effective approach to achieving or accelerating a return to baseline (e.g., replacing essential species, habitats, or public services that would facilitate the replacement of other, dependent natural resource or

service components).

(c) Compensatory restoration-- (1) General. For each alternative, trustees must also consider compensatory restoration actions to compensate for the interim loss of natural resources and services pending recovery.

(2) Compensatory restoration actions. To the extent practicable, when evaluating compensatory restoration actions, trustees must consider

compensatory restoration actions that provide services of the same type and quality, and of comparable value as those injured. If, in the judgment of the trustees, compensatory actions of the same type and quality and comparable value cannot provide a reasonable range of alternatives, trustees should identify actions that provide natural resources and services of comparable type and quality as those provided by the injured natural resources. Where the injured and replacement natural resources and services are not of comparable value, the scaling process will involve valuation of lost and replacement services.

(d) Scaling restoration actions-- (1) General. After trustees have identified the types of restoration actions that will be considered, they must determine the scale of those actions that will make the environment and public whole. For primary restoration actions, scaling generally applies to actions involving replacement and/or acquisition of

equivalent of natural resources and/or services.

(2) Resource-to-resource and service-to-service scaling approaches. When determining the scale of restoration actions that provide natural resources and/or services of the same type and quality, and of comparable value as those lost, trustees must consider the use of a resource-to-resource or service-to-service scaling approach. Under this approach, trustees determine the scale of restoration actions that will provide natural resources and/or services equal in quantity to those lost.

(3) Valuation scaling approach. (i) Where trustees have determined that neither resource-to-resource nor service-to-service scaling is appropriate, trustees may use the valuation scaling approach. Under the valuation scaling approach, trustees determine the amount of natural resources and/or services that must be provided to produce the same value lost to the public. Trustees must explicitly measure the value of injured natural resources and/or services, and then determine the scale of the restoration action necessary to produce natural resources and/or services of equivalent value to the public.

(ii) If, in the judgment of the trustees, valuation of the lost services is practicable, but valuation of the replacement natural resources and/or services cannot be performed within a reasonable time frame or at a reasonable cost, as determined by Sec. 990.27(a) (2)

[[Page 390]]

of this part, trustees may estimate the dollar value of the lost services and select the scale of the restoration action that has a cost equivalent to the lost value. The responsible parties may request that trustees value the natural resources and services provided by the restoration action following the process described in Sec. 990.14(c) of this part.

(4) Discounting and uncertainty. When scaling a restoration action, trustees must evaluate the uncertainties associated with the projected consequences of the restoration action, and must discount all service quantities and/or values to the date the demand is presented to the responsible parties. Where feasible, trustees should use risk-adjusted measures of losses due to injury and of gains from the restoration action, in conjunction with a riskless discount rate representing the consumer rate of time preference. If the streams of losses and gains cannot be adequately adjusted for risks, then trustees may use a discount rate that incorporates a suitable risk adjustment to the riskless rate.

[61 FR 500, Jan. 5, 1996, as amended at 67 FR 61493, Oct. 1, 2002]

Sec. 990.54 Restoration selection--evaluation of alternatives.

(a) Evaluation standards. Once trustees have developed a reasonable range of restoration alternatives under Sec. 990.53 of this part, they must evaluate the proposed alternatives based on, at a minimum:

(1) The cost to carry out the alternative;

(2) The extent to which each alternative is expected to meet the trustees' goals and objectives in returning the injured natural resources and services to baseline and/or compensating for interim losses;

(3) The likelihood of success of each alternative;

(4) The extent to which each alternative will prevent future injury as a result of the incident, and avoid collateral injury as a result of implementing the alternative;

(5) The extent to which each alternative benefits more than one natural resource and/or service; and

(6) The effect of each alternative on public health and safety.

(b) Preferred restoration alternatives. Based on an evaluation of the factors under paragraph (a) of this section, trustees must select a preferred restoration alternative(s). If the trustees conclude that two or more alternatives are equally preferable based on these factors, the trustees must select the most cost-effective alternative.

(c) Pilot projects. Where additional information is needed to identify and evaluate the feasibility and likelihood of success of restoration alternatives, trustees may implement restoration pilot projects. Pilot projects should only be undertaken when, in the judgment

of the trustees, these projects are likely to provide the information, described in paragraph (a) of this section, at a reasonable cost and in a reasonable time frame.

Sec. 990.55 Restoration selection--developing restoration plans.

(a) General. OPA requires that damages be based upon a plan developed with opportunity for public review and comment. To meet this requirement, trustees must, at a minimum, develop a Draft and Final Restoration Plan, with an opportunity for public review of and comment on the draft plan.

(b) Draft Restoration Plan. (1) The Draft Restoration Plan should include:

(i) A summary of injury assessment procedures used;

(ii) A description of the nature, degree, and spatial and temporal extent of injuries resulting from the incident;

(iii) The goals and objectives of restoration;

(iv) The range of restoration alternatives considered, and a discussion of how such alternatives were developed under Sec. 990.53 of this part, and evaluated under Sec. 990.54 of this part;

(v) Identification of the trustees' tentative preferred alternative (s);

(vi) A description of past and proposed involvement of the responsible parties in the assessment; and

(vii) A description of monitoring for documenting restoration effectiveness, including performance criteria that will be used to determine the success of restoration or need for interim corrective action.

(2) When developing the Draft Restoration Plan, trustees must establish

[[Page 391]]

restoration objectives that are specific to the injuries. These objectives should clearly specify the desired outcome, and the performance criteria by which successful restoration will be judged. Performance criteria may include structural, functional, temporal, and/ or other demonstrable factors. Trustees must, at a minimum, determine what criteria will:

(i) Constitute success, such that responsible parties are relieved of responsibility for further restoration actions; or

(ii) Necessitate corrective actions in order to comply with the terms of a restoration plan or settlement agreement.

(3) The monitoring component to the Draft Restoration Plan should address such factors as duration and frequency of monitoring needed to gauge progress and success, level of sampling needed to detect success or the need for corrective action, and whether monitoring of a reference

or control site is needed to determine progress and success. Reasonable monitoring and oversight costs cover those activities necessary to gauge

the progress, performance, and success of the restoration actions developed under the plan.

(c) Public review and comment. The nature of public review and comment on the Draft and Final Restoration Plans will depend on the nature of the incident and any applicable federal trustee NEPA requirements, as described in Secs. 990.14(d) and 990.23 of this part.

(d) Final Restoration Plan. Trustees must develop a Final Restoration Plan that includes the information specified in paragraph (a) of this section, responses to public comments, if applicable, and an

indication of any changes made to the Draft Restoration Plan.

Sec. 990.56 Restoration selection--use of a Regional Restoration Plan or existing restoration project.

(a) General. Trustees may consider using a Regional Restoration Plan

or existing restoration project where such a plan or project is determined to be the preferred alternative among a range of feasible restoration alternatives for an incident, as determined under Sec. 990.54 of this part. Such plans or projects must be capable of fulfilling OPA's intent for the trustees to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources and services and compensate for interim losses.

(b) Existing plans or projects--(1) Considerations. Trustees may select a component of a Regional Restoration Plan or an existing restoration project as the preferred alternative, provided that the plan

or project:

(i) Was developed with public review and comment or is subject to public review and comment under this part;

(ii) Will adequately compensate the environment and public for injuries resulting from the incident;

(iii) Addresses, and is currently relevant to, the same or comparable natural resources and services as those identified as having been injured; and

(iv) Allows for reasonable scaling relative to the incident.

(2) Demand. (i) If the conditions of paragraph (b) (1) of this section are met, the trustees must invite the responsible parties to implement that component of the Regional Restoration Plan or existing restoration project, or advance to the trustees the trustees' reasonable

estimate of the cost of implementing that component of the Regional Restoration Plan or existing restoration project.

(ii) If the conditions of paragraph (b) (1) of this section are met, but the trustees determine that the scale of the existing plan or project is greater than the scale of compensation required by the incident, trustees may only request funding from the responsible parties

equivalent to the scale of the restoration determined to be appropriate for the incident of concern. Trustees may pool such partial recoveries until adequate funding is available to successfully implement the existing plan or project.

(3) Notice of Intent To Use a Regional Restoration Plan or Existing Restoration Project. If trustees intend to use an appropriate component of a Regional Restoration Plan or existing restoration project, they must prepare a Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project. Trustees must make a copy of the notice publicly available. The notice must include, at a minimum:

[[Page 392]]

(i) A description of the nature, degree, and spatial and temporal extent of injuries; and

(ii) A description of the relevant component of the Regional Restoration Plan or existing restoration project; and

(iii) An explanation of how the conditions set forth in paragraph (b) (1) of this section are met.

Subpart F--Restoration Implementation Phase

Sec. 990.60 Purpose.

The purpose of this subpart is to provide a process for implementing restoration.

Sec. 990.61 Administrative record.

(a) Closing the administrative record for restoration planning. Within a reasonable time after the trustees have completed restoration planning, as provided in Secs. 990.55 and 990.56 of this part, they must

close the administrative record. Trustees may not add documents to the administrative record once it is closed, except where such documents: (1) Are offered by interested parties that did not receive actual constructive notice of the Draft Restoration Plan and the opportunity to comment on the plan;

(2) Do not duplicate information already contained in

the administrative record; and

(3) Raise significant issues regarding the Final Restoration Plan. (b) Opening an administrative record for restoration implementation.

Trustees may open an administrative record for implementation of restoration, as provided in Sec. 990.45 of this part. The costs associated with the administrative record are part of the costs of restoration. Ordinarily, the administrative record for implementation of

restoration should document, at a minimum, all Restoration Implementation Phase decisions, actions, and expenditures, including any

modifications made to the Final Restoration Plan.

Sec. 990.62 Presenting a demand.

(a) General. After closing the administrative record for restoration

planning, trustees must present a written demand to the responsible parties. Delivery of the demand should be made in a manner that establishes the date of receipt by the responsible parties.

(b) When a Final Restoration Plan has been developed. Except as provided in paragraph (c) of this section and in Sec. 990.14(c) of this part, the demand must invite the responsible parties to either:

(1) Implement the Final Restoration Plan subject to trustee oversight and reimburse the trustees for their assessment and oversight costs; or

(2) Advance to the trustees a specified sum representing all trustee direct and indirect costs of assessment and restoration, discounted as provided in Sec. 990.63(a) of this part.

(c) Regional Restoration Plan or existing restoration project. When the trustees use a Regional Restoration Plan or an existing restoration project under Sec. 990.56 of this part, the demand will invite the responsible parties to implement a component of a Regional Restoration Plan or existing restoration project, or advance the trustees' estimate of damages based on the scale of the restoration determined to be appropriate for the incident of concern, which may be the entire project

or a portion thereof.

(d) Response to demand. The responsible parties must respond within ninety (90) calendar days in writing by paying or providing binding assurance they will reimburse trustees' assessment costs and implement the plan or pay assessment costs and the trustees' estimate of the costs

of implementation.

(e) Additional contents of demand. The demand must also include:

(1) Identification of the incident from which the claim arises;

(2) Identification of the trustee(s) asserting the claim and a statement of the statutory basis for trusteeship;

(3) A brief description of the injuries for which the claim is being brought;

(4) An index to the administrative record;

(5) The Final Restoration Plan or Notice of Intent to Use a Regional

Restoration Plan or Existing Restoration Project; and

(6) A request for reimbursement of:

[[Page 393]]

(i) Reasonable assessment costs, as defined in Sec. 990.30 of this part and discounted as provided in Sec. 990.63(b) of this part;

(ii) The cost, if any, of conducting emergency restoration under Sec. 990.26 of this part, discounted as provided in Sec. 990.63(b) of this part; and

(iii) Interest on the amounts recoverable, as provided in section 1005 of OPA (33 U.S.C. 2705), which allows for prejudgment and post-judgment interest to be paid at a commercial paper rate, starting from thirty (30) calendar days from the date a demand is presented until the date the claim is paid.

(f) Cost accounting procedures. Trustees must use methods consistent

with generally accepted accounting principles and the requirements of Sec. 990.27 of this part in determining past assessment and restoration costs incurred by trustees. When cost accounting for these costs, trustees must compound these costs using the guidance in Sec. 990.63(b) of this part.

(g) Cost estimating procedures. Trustees must use methods consistent

with generally accepted cost estimating principles and meet the standards of Sec. 990.27 of this part in estimating future costs that will be incurred to implement a restoration plan. Trustees also must apply discounting methodologies in estimating costs using the guidance in Sec. 990.63(a) of this part.

[61 FR 500, Jan. 5, 1996, as amended at 67 FR 61493, Oct. 1, 2002]

Sec. 990.63 Discounting and compounding.

(a) Estimated future restoration costs. When determining estimated future costs of implementing a Final Restoration Plan, trustees must discount such future costs back to the date the demand is presented. Trustees may use a discount rate that represents the yield on recoveries

available to trustees. The price indices used to project future inflation should reflect the major components of the restoration costs.

(b) Past assessment and emergency restoration costs. When calculating the present value of assessment and emergency restoration costs already incurred, trustees must compound the costs forward to the date the demand is presented. To perform the compounding, trustees may use the actual U.S. Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis. For costs incurred by state or tribal trustees, trustees may compound using parallel state or tribal borrowing rates.

(c) Trustees are referred to Appendices B and C of OMB Circular A-94

for information about U.S. Treasury rates of various maturities and guidance in calculation procedures. Copies of Appendix C, which is regularly updated, and of the Circular are available from the OMB

Publications Office (202-395-7332).

Sec. 990.64 Unsatisfied demands.

(a) If the responsible parties do not agree to the demand within ninety (90) calendar days after trustees present the demand, the trustees may either file a judicial action for damages or present the uncompensated claim for damages to the **Oil** Spill Liability Trust Fund, as provided in section 1012 (a) (4) of OPA (33 U.S.C. 2712(a) (4)) or seek an appropriation from the **Oil** Spill Liability Trust Fund as provided in section 1012 (a) (2) of OPA (33 U.S.C. 2712 (a) (2)).

(b) Judicial actions and claims must be filed within three (3) years after the Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project is made publicly available, in accordance with 33 U.S.C. 2717(f) (1) (B) and 2712(h) (2).

[61 FR 500, Jan. 5, 1996, as amended at 67 FR 61493, Oct. 1, 2002]

Sec. 990.65 Opening an account for recovered damages.

(a) General. Sums recovered by trustees in satisfaction of a natural resource damage claim must be placed in a revolving trust account. Sums recovered for past assessment costs and emergency restoration costs may be used to reimburse the trustees. All other sums must be used to implement the Final Restoration Plan or all or an appropriate component of a Regional Restoration Plan or an existing restoration project.

(b) Joint trustee recoveries. (1) General. Trustees may establish a joint account for damages recovered pursuant to

[[Page 394]]

joint assessment activities, such as an account under the registry of the applicable federal court.

(2) Management. Trustees may develop enforceable agreements to govern management of joint accounts, including agreed-upon criteria and procedures, and personnel for authorizing expenditures out of such joint accounts.

(c) Interest-bearing accounts. Trustees may place recoveries in interest-bearing revolving trust accounts, as provided by section 1006(f) of OPA (33 U.S.C. 2706(f)). Interest earned on such accounts may

only be used for restoration.

(d) Escrow accounts. Trustees may establish escrow accounts or other investment accounts.

(e) Records. Trustees must maintain appropriate accounting and reporting procedures to document expenditures from accounts established under this section.

(f) **Oil** Spill Liability Trust Fund. Any sums remaining in an account

established under this section that are not used either to reimburse trustees for past assessment and emergency restoration costs or to implement restoration must be deposited in the **Oil** Spill Liability Trust

Fund, as provided by section 1006(f) of OPA (33 U.S.C. 2706(f)).

Sec. 990.66 Additional considerations.

(a) Upon settlement of a claim, trustees should consider the following actions to facilitate implementation of restoration:

(1) Establish a trustee committee and/or memorandum of understanding or other agreement to coordinate among affected trustees, as provided in

Sec. 990.14(a) (3) of this part;

(2) Develop more detailed workplans to implement restoration;

(3) Monitor and oversee restoration; and

(4) Evaluate restoration success and the need for corrective action.

(b) The reasonable costs of such actions are included as restoration costs.

[[Page 395]]

APPENDIX A

CORAL REEF CONSERVATION ACT OF 2000 **[P.L. 106-562; 16 U.S.C. 6401 et seq; December 23, 2000]**

TITLE II- -CORAL REEF CONSERVATION

SEC. 201. SHORT TITLE.

This title may be cited as the `Coral Reef Conservation Act of 2000'.

SEC. 202. PURPOSES.

The purposes of this title are- -

- (1) to preserve, sustain, and restore the condition of coral reef ecosystems;
- (2) to promote the wise management and sustainable use of coral reef ecosystems to benefit local communities and the Nation;
- (3) to develop sound scientific information on the condition of coral reef ecosystems and the threats to such ecosystems;
- (4) to assist in the preservation of coral reefs by supporting conservation programs, including projects that involve affected local communities and nongovernmental organizations;
- (5) to provide financial resources for those programs and projects; and
- (6) to establish a formal mechanism for collecting and allocating monetary donations from the private sector to be used for coral reef conservation projects.

SEC. 203. NATIONAL CORAL REEF ACTION STRATEGY.

(a) IN GENERAL- Not later than 180 days after the date of the enactment of this Act, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Resources of the House of Representatives and publish in the Federal Register a national coral reef action strategy, consistent with the purposes of this title. The Administrator shall periodically review and revise the strategy as necessary. In

developing this national strategy, the Secretary may consult with the Coral Reef Task Force established under Executive Order 13089 (June 11, 1998).

(b) GOALS AND OBJECTIVES - The action strategy shall include a statement of goals and objectives as well as an implementation plan, including a description of the funds obligated each fiscal year to advance coral reef conservation. The action strategy and implementation plan shall include discussion of--

- (1) coastal uses and management;
- (2) water and air quality;
- (3) mapping and information management;
- (4) research, monitoring, and assessment;
- (5) international and regional issues;
- (6) outreach and education;
- (7) local strategies developed by the States or Federal agencies, including regional fishery management councils; and
- (8) conservation, including how the use of marine protected areas to serve as replenishment zones will be developed consistent with local practices and traditions.

SEC. 204. CORAL REEF CONSERVATION PROGRAM.

(a) GRANTS- The Secretary, through the Administrator and subject to the availability of funds, shall provide grants of financial assistance for projects for the conservation of coral reefs (hereafter in this title referred to as `coral conservation projects'), for proposals approved by the Administrator in accordance with this section.

(b) MATCHING REQUIREMENTS-

- (1) Fifty percent- Except as provided in paragraph (2), Federal funds for any coral conservation project under this section may not exceed 50 percent of the total cost of such project. For purposes of this paragraph, the non-Federal share of project costs may be provided by in-kind contributions and other noncash support.
- (2) WAIVER- The Administrator may waive all or part of the matching requirement under paragraph (1) if the Administrator determines that no reasonable means are available through which applicants can meet the matching requirement and the probable benefit of such project outweighs the public interest in such matching requirement.

(c) **ELIGIBILITY**- Any natural resource management authority of a State or other government authority with jurisdiction over coral reefs or whose activities directly or indirectly affect coral reefs, or coral reef ecosystems, or educational or nongovernmental institutions with demonstrated expertise in the conservation of coral reefs, may submit to the Administrator a coral conservation proposal under subsection (e).

(d) **GEOGRAPHIC AND BIOLOGICAL DIVERSITY**- The Administrator shall ensure that funding for grants awarded under subsection (b) during a fiscal year are distributed in the following manner:

(1) No less than 40 percent of funds available shall be awarded for coral conservation projects in the Pacific Ocean within the maritime areas and zones subject to the jurisdiction or control of the U.S..

(2) No less than 40 percent of the funds available shall be awarded for coral conservation projects in the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea within the maritime areas and zones subject to the jurisdiction or control of the U.S..

(3) Remaining funds shall be awarded for projects that address emerging priorities or threats, including international priorities or threats, identified by the Administrator. When identifying emerging threats or priorities, the Administrator may consult with the Coral Reef Task Force.

(e) **PROJECT PROPOSALS**- Each proposal for a grant under this section shall include the following:

(1) The name of the individual or entity responsible for conducting the project.

(2) A description of the qualifications of the individuals who will conduct the project.

(3) A succinct statement of the purposes of the project.

(4) An estimate of the funds and time required to complete the project.

(5) Evidence of support for the project by appropriate representatives of States or other government jurisdictions in which the project will be conducted.

(6) Information regarding the source and amount of matching funding available to the applicant.

(7) A description of how the project meets one or more of the criteria in subsection (g).

(8) Any other information the Administrator considers to be necessary for evaluating the eligibility of the project for funding under this title.

(f) **PROJECT REVIEW AND APPROVAL**-

(1) IN GENERAL- The Administrator shall review each coral conservation project proposal to determine if it meets the criteria set forth in subsection (g).

(2) REVIEW; APPROVAL OR DISAPPROVAL- Not later than 6 months after receiving a project proposal under this section, the Administrator shall- -

(A) request and consider written comments on the proposal from each Federal agency, State government, or other government jurisdiction, including the relevant regional fishery management councils established under the Magnuson- Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), or any National Marine Sanctuary, with jurisdiction or management authority over coral reef ecosystems in the area where the project is to be conducted, including the extent to which the project is consistent with locally-established priorities;

(B) provide for the merit-based peer review of the proposal and require standardized documentation of that peer review;

(C) after considering any written comments and recommendations based on the reviews under subparagraphs (A) and (B), approve or disapprove the proposal; and

(D) provide written notification of that approval or disapproval to the person who submitted the proposal, and each of those States and other government jurisdictions that provided comments under subparagraph (A).

(g) CRITERIA FOR APPROVAL- The Administrator may not approve a project proposal under this section unless the project is consistent with the coral reef action strategy under section 203 and will enhance the conservation of coral reefs by- -

(1) implementing coral conservation programs which promote sustainable development and ensure effective, long-term conservation of coral reefs;

(2) addressing the conflicts arising from the use of environments near coral reefs or from the use of corals, species associated with coral reefs, and coral products;

(3) enhancing compliance with laws that prohibit or regulate the taking of coral products or species associated with coral reefs or regulate the use and management of coral reef ecosystems;

(4) developing sound scientific information on the condition of coral reef ecosystems or the threats to such ecosystems, including factors that cause coral disease;

(5) promoting and assisting to implement cooperative coral reef conservation projects that involve affected local communities, nongovernmental organizations, or others in the private sector;

- (6) increasing public knowledge and awareness of coral reef ecosystems and issues regarding their long term conservation;
- (7) mapping the location and distribution of coral reefs;
- (8) developing and implementing techniques to monitor and assess the status and condition of coral reefs;
- (9) developing and implementing cost-effective methods to restore degraded coral reef ecosystems; or
- (10) promoting ecologically sound navigation and anchorages near coral reefs.

(h) **PROJECT REPORTING**- Each grantee under this section shall provide periodic reports as required by the Administrator. Each report shall include all information required by the Administrator for evaluating the progress and success of the project.

(i) **CORAL REEF TASK FORCE**- The Administrator may consult with the Coral Reef Task Force to obtain guidance in establishing coral conservation project priorities under this section.

(j) **IMPLEMENTATION GUIDELINES** - Within 180 days after the date of the enactment of this Act, the Administrator shall promulgate necessary guidelines for implementing this section. In developing those guidelines, the Administrator shall consult with State, regional, and local entities involved in setting priorities for conservation of coral reefs and provide for appropriate public notice and opportunity for comment.

SEC. 205. CORAL REEF CONSERVATION FUND.

(a) **FUND**- The Administrator may enter into an agreement with a nonprofit organization that promotes coral reef conservation authorizing such organization to receive, hold, and administer funds received pursuant to this section. The organization shall invest, reinvest, and otherwise administer the funds and maintain such funds and any interest or revenues earned in a separate interest bearing account, hereafter referred to as the Fund, established by such organization solely to support partnerships between the public and private sectors that further the purposes of this Act and are consistent with the national coral reef action strategy under section 203.

(b) **AUTHORIZATION TO SOLICIT DONATIONS**- Pursuant to an agreement entered into under subsection (a) of this section, an organization may accept, receive, solicit, hold, administer, and use any gift to further the purposes of this title. Any moneys received as a gift shall be deposited and maintained in the Fund established by the organization under subsection (a).

(c) **REVIEW OF PERFORMANCE**- The Administrator shall conduct a continuing review of the grant program administered by an organization under this section. Each review shall

include a written assessment concerning the extent to which that organization has implemented the goals and requirements of this section and the national coral reef action strategy under section 203.

(d) ADMINISTRATION- Under an agreement entered into pursuant to subsection (a), the Administrator may transfer funds appropriated to carry out this title to an organization. Amounts received by an organization under this subsection may be used for matching, in whole or in part, contributions (whether in money, services, or property) made to the organization by private persons and State and local government agencies.

SEC. 206. EMERGENCY ASSISTANCE.

The Administrator may make grants to any State, local, or territorial government agency with jurisdiction over coral reefs for emergencies to address unforeseen or disaster-related circumstance pertaining to coral reefs or coral reef ecosystems.

SEC. 207. NATIONAL PROGRAM.

(a) IN GENERAL- Subject to the availability of appropriations, the Secretary may conduct activities to conserve coral reefs and coral reef ecosystems, that are consistent with this title, the National Marine Sanctuaries Act, the Coastal Zone Management Act of 1972, the Magnuson- Stevens Fishery Conservation and Management Act, the Endangered Species Act of 1973, and the Marine Mammal Protection Act of 1972.

(b) AUTHORIZED ACTIVITIES- Activities authorized under subsection (a) include--

- (1) mapping, monitoring, assessment, restoration, and scientific research that benefit the understanding, sustainable use, and long-term conservation of coral reefs and coral reef ecosystems;
- (2) enhancing public awareness, education, understanding, and appreciation of coral reefs and coral reef ecosystems;
- (3) providing assistance to States in removing abandoned fishing gear, marine debris, and abandoned vessels from coral reefs to conserve living marine resources; and
- (4) cooperative conservation and management of coral reefs and coral reef ecosystems with local, regional, or international programs and partners.

SEC. 208. EFFECTIVENESS REPORTS.

(a) GRANT PROGRAM- Not later than 3 years after the date of the enactment of this Act, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report that documents the effectiveness of the grant program under section 204 in meeting the purposes of this title. The report shall include a State-by-State summary of Federal and non-Federal

contributions toward the costs of each project.

(b) NATIONAL PROGRAM- Not later than 2 years after the date on which the Administrator publishes the national coral reef strategy under section 203 and every 2 years thereafter, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing all activities undertaken to implement that strategy, under section 203, including a description of the funds obligated each fiscal year to advance coral reef conservation.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL- There are authorized to be appropriated to the Secretary to carry out this title \$16,000,000 for each of fiscal years 2001, 2002, 2003, and 2004, which may remain available until expended.

(b) ADMINISTRATION- Of the amounts appropriated under subsection (a), not more than the lesser of \$1,000,000 or 10 percent of the amounts appropriated, may be used for program administration or for overhead costs incurred by the National Oceanic and Atmospheric Administration or the Department of Commerce and assessed as an administrative charge.

(c) CORAL REEF CONSERVATION PROGRAM- From the amounts appropriated under subsection (a), there shall be made available to the Secretary \$8,000,000 for each of fiscal years 2001, 2002, 2003, and 2004 for coral reef conservation activities under section 204.

(d) NATIONAL CORAL REEF ACTIVITIES- From the amounts appropriated under subsection (a), there shall be made available to the Secretary \$8,000,000 for each of fiscal years 2001, 2002, 2003, and 2004 for activities under section 207.

SEC. 210. DEFINITIONS.

In this title:

(1) ADMINISTRATOR- The term `Administrator' means the Administrator of the National Oceanic and Atmospheric Administration.

(2) CONSERVATION- The term `conservation' means the use of methods and procedures necessary to preserve or sustain corals and associated species as diverse, viable, and self-perpetuating coral reef ecosystems, including all activities associated with resource management, such as assessment, conservation, protection, restoration, sustainable use, and management of habitat; mapping; habitat monitoring; assistance in the development of management strategies for marine protected areas and marine resources consistent with the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); law enforcement; conflict resolution initiatives; community outreach and education; and that promote safe and ecologically sound navigation.

- (3) CORAL- The term `coral' means species of the phylum Cnidaria, including--
- (A) all species of the orders Antipatharia (black corals), Scleractinia (stony corals), Gorgonacea (horny corals), Stolonifera (organpipe corals and others), Alcyonacea (soft corals), and Coenothecalia (blue coral), of the class Anthozoa; and
 - (B) all species of the order Hydrocorallina (fire corals and hydrocorals) of the class Hydrozoa.
- (4) CORAL REEF- The term `coral reef' means any reefs or shoals composed primarily of corals.
- (5) CORAL REEF ECOSYSTEM- The term `coral reef ecosystem' means coral and other species of reef organisms (including reef plants) associated with coral reefs, and the nonliving environmental factors that directly affect coral reefs, that together function as an ecological unit in nature.
- (6) CORAL PRODUCTS- The term `coral products' means any living or dead specimens, parts, or derivatives, or any product containing specimens, parts, or derivatives, of any species referred to in paragraph (3).
- (7) SECRETARY- The term `Secretary' means the Secretary of Commerce.
- (8) STATE- The term `State' means any State of the U.S. that contains a coral reef ecosystem within its seaward boundaries, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands, and any other territory or possession of the U.S., or separate sovereign in free association with the U.S., that contains a coral reef ecosystem within its seaward boundaries.

Attachment F: Federal Register Notification

before the end of the fishing year, NMFS may reapportion whiting to the other sectors to ensure full utilization of the resource. Therefore, it is necessary to collect information, via telephone and/or email, from the groundfish industry to determine the level of interest in harvesting the unused portion of the Pacific whiting resource and to project the number of participants. This survey continues to be valuable and important in groundfish management.

II. Method of Collection

Telephone and email.

III. Data

OMB Number: 0648-0243.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit organizations (owners or operators of vessels that catch or process fish in ocean waters 0-200 nautical miles offshore Washington, Oregon, and California).

Estimated Number of Respondents: 40.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 3.33 hours.

Estimated Total Annual Cost to Public: \$0 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05-846 Filed 1-13-05; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011105G]

Proposed Information Collection; Comment Request; Coral Reefs Economic Valuation Study

AGENCY: National Oceanic and Atmospheric Administration (NOAA).
ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 15, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Vernon R. Leeworthy, NOS/Special Projects, 1305 East-West Highway, SSMC 4, 9th Floor, Silver Spring, Maryland 20910; or via e-mail at Bob.Leeworthy@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this data collection is to provide information on the value of Hawaii's coral reef habitats to specific segments of the U.S. population. The study will measure total economic values for Hawaii's coral reefs. This effort is designed to provide defensible information for both resource managers and damage assessments on the value of coral reef habitats and alternative management actions. The project is designed as a phased three-year effort to ensure effective use of all the available information. It will involve the development of extensive knowledge about how reef habitats are perceived, implication of alternative management actions, designing original survey instruments, interviewing of a large number of respondents via an electronically downloadable and submittable pretest (200) and survey

(2000), conducting formal statistical analysis of the data, and developing a decision support system for resource managers to use. For total economic value, a nationally oriented survey will be conducted using stated preferences methods.

II. Method of Collection

Data collection will be done in two phases. First, a large-scale pretest of the full survey instrument will be tested for a response of up to 200 usable observations. The pretest data will then be analyzed and the questionnaire revised, as needed. In the second phase, the final survey instrument will be administered to a sample of up to 2000 people. Both the pretest and final surveys are planned as taking an average of 30 minutes per completed interview.

III. Data

OMB Number: None. *Form Number:* None.

Type of Review: Regular submission.
Affected Public: Individuals or households.

Estimated Number of Respondents: 2,200.

Estimated Time Per Response: 30 minutes for a pretest, and 30 minutes for a final survey.

Estimated Total Annual Burden Hours: 1,100.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 7, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

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