

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 03/25/2009

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Suzanne Hilding
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 03/13/2009

ACTION REQUESTED: New collection (Request for a new OMB Control Number)
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200903-0648-007
AGENCY ICR TRACKING NUMBER:
TITLE: Coral Reef Valuation Study
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved with change
OMB CONTROL NUMBER: 0648-0585

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 03/31/2012

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	2,973	1,519	0
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	2,973	1,519	0
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE: This ICR is approved. Upon completing the focus groups and pretests, NOAA must submit the final survey instrument, including the final bid amounts, to OMB through 83C.

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Cognitive interviews	NA	Coral Reef Valuation Instrument	
Pretest	NA	Coral Reef Valuation Instrument	
Full survey	NA	Coral Reef Valuation Instrument	

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 Valuation Study

OMB CONTROL No. 0648-xxxx

**U.S. Department of Commerce
National Ocean and Atmospheric Administration
National Ocean Service
Office of National Marine Sanctuaries and Office of Response and Restoration
1305 East West Highway, SSMC4, 9th floor
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March 10, 2009**

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A. JUSTIFICATION

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

Background

The National Oceanic and Atmospheric Administration (NOAA) is a member of the United States (U.S.) Coral Reef Task Force (CRTF), which was established in June 1998 through Executive Order (EO) 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 research studies to better understand the nation's coral reef resources (see Attachment 6 for a full list of authorities).

NOAA currently manages three National Marine Sanctuaries (NMS) with coral reef resources under the National Marine Sanctuaries Act (NMSA, 16 U.S.C. 1431, et seq.): the Florida Keys National Marine Sanctuary (FKNMS), the Flower Gardens Bank National Marine Sanctuary, and the Hawaiian Islands Humpback Whale National Marine Sanctuary. NOAA also has the authority to conduct research to understand the use of MPAs under EO 13158. In order to more efficiently conduct surveys about public preferences for attributes of marine environmental resources, including coral reef ecosystems, located in the U.S.A, NOAA needs to conduct research on the validity and reliability of using Internet-based panels of respondents recruited using alternative recruitment methods and which result in varying, underlying response rates.

Request

This information collection request is for conducting up to 32 cognitive one-on-one interviews to test changes made since the first pretest, conducting a second pretest using Knowledge Networks's (KN's) established Internet Panel, and implementing the main survey concurrently using the June 2009 wave of the American National Election Study (ANES) Internet Panel recruited by KN and Stanford's Major Research Instrumentation (MRI) Internet Panel recruited by Abt SRBI, a subsidiary of Abt Associates. There is limited opportunity to have outside research projects use these panels. Because of the ANES and MRI Panel schedules, the only opportunity for administration of the coral reef survey is the June 2009 wave. **We request the Office of Management and Budget (OMB) approval to administer the survey on the June 2009 wave.**

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 for up to 32 cognitive one-on-one interviews, a second pretest, and the full-scale implementation of an Internet-based survey instrument designed to estimate individuals' preferences and economic values of the Hawaiian coral reef ecosystem. Four members of the project team will conduct up to 16 cognitive one-on-one interviews on 2 consecutive nights in

Denver, Colorado the week of March 30, 2009 and another 16 interviews in Washington D.C. the week of April 6, 2009. These members will include staff from NOAA and from Stratus Consulting. We will randomly select established KN Panel members (those that are separate from the ANES Panel, which is developed by KN) to participate in the one-on-one interviews. Participants will take the survey using a computer with Internet connection, a set-up similar to conditions for the main survey. The purpose of these interviews is to test participants' understanding of the material presented to them and to evaluate certain sections of the survey or wording issues. Information gathered from these interviews is not intended to be used to make major changes to the survey instrument.

The next activity for which we are seeking approval once the cognitive interviews are completed is conducting a second pretest. Based on review by OMB and others, we have made changes to the survey instrument (see the next section called "The main survey instrument") since the first pretest, including changes to the experimental design. We plan to test these changes using a randomly selected sample of 385 established KN Panel members (of this sample, we expect to get 250 completed interviews). The purpose of this pretest is to test the programmed survey instrument. We need to make sure that there are no issues with the programming of the survey and that the experimental design (as described below) is appropriate for the full administration of the main survey. This pretest will not involve any participants from the ANES or MRI Panels. Once KN sends us the pretest data, we will analyze it using simple summary statistics, develop a presentation on the results, and make any changes, if necessary, to the programming and/or experimental design before implementing the main Internet survey using the ANES and MRI Panels in June 2009. The pretest is currently scheduled to begin the week of April 20, 2009 and is expected to be in the field for three weeks.

The main survey will be administered to two independent Internet Panels: the ANES Internet Panel and the MRI Internet Panel. KN will develop the ANES Panel and Abt SRBI will develop the MRI Panel. For the ANES Panel, KN has recruited a sample of 2,000 panel members using Random Digit Dialing (RDD). Abt SRBI has recruited a sample of 990 panel members from the U.S. Postal Service (USPS) mailing address lists for the MRI Panel.

Most Internet-based surveys currently depend on RDD recruiting to build their panels. This type of recruiting involves several steps, including initial and follow-up telephone calls, administration of a screener, and recruitment of the panel. At each step, potential panelists are lost, which results in potentially low overall survey response rates of 20%. The representativeness of telephone-recruited panels is then subject to question, but it has been difficult to evaluate the actual extent of nonresponse biases if any.

KN and Abt SRBI are developing the two Internet Panels *independent of this specific data collection effort* under a grant from the National Science Foundation (NSF). The panels are being recruited to administer a series of surveys over multiple months (waves). These panels are part of a research project (designed by KN and Abt SRBI in cooperation with Professor Jon Krosnick of Stanford University and others) to evaluate the representativeness of RDD-recruited Internet Panels. Abt SRBI will recruit the MRI Panel by contacting households face-to-face, which is

expected to generate an overall response rate of approximately 63%.¹ Results from the surveys performed by the MRI Panel can then be used to evaluate the representativeness of the ANES Panel survey results. More details on procedure are provided below.

We propose using the June 2009 survey wave to collect information for our Coral Reef Economic Valuation Study survey. In this way, our survey can depend heavily on KN's ANES Panel for cost-effective survey implementation. At the same time, we can use responses from surveying the MRI Panel to evaluate any nonresponse biases in the RDD results.

We plan to test estimates of total value obtained from the two panels that use different recruiting methods and which result in different underlying response rates. The survey focuses on overfishing and ship groundings, which are among the most widespread threats to the reef ecosystems. Two 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 MPAs known as marine reserves or no-take areas; and (2) restoration of coral habitats after vessel groundings. The survey uses a stated choice conjoint framework to evaluate the willingness of study subjects to trade off these actions against each other at a cost and against taking no action. The survey has gone through extensive design, development, qualitative research, and pretesting. After we complete the one-on-one interviews and second pretest, the main survey will be ready to be fully implemented using the ANES and MRI Panels.

The study effort involves three main phases. Phase 1, which has been completed, involved the development of the initial survey instrument, qualitative research through focus groups and cognitive one-on-one interviews to test out and improve the instrument, and implementation of a small-scale pretest of the survey instrument, which OMB has previously approved (OMB NO. 0648-0531, expired 8/31/2006). Results of the pretest are provided in Attachment 2. In Phase 2, the current phase of this project, we will complete the three tasks described above that require OMB approval. Phase 3 of the effort will involve analysis of the survey data and development of a final study report. Details relating primarily to Phase 2 are presented in this supporting statement, because this application is to conduct cognitive one-on-one interviews, a second pretest, and the main survey.

The main survey instrument

This instrument has been revised in light of peer review, the first pretest results, and initial comments from OMB. The version included in this package differs from the executable version in format only. An online address to review the Web Interface version will be provided to OMB as soon as all the screens have been programmed correctly. We designed the survey to provide respondents with adequate levels of information about the MHI coral reef ecosystems, the problems facing such ecosystems, and potential management actions that might be undertaken to help protect and restore them. To ensure that the information is accurate, numerous coral reef researchers reviewed the survey instrument.

1. This value comes from an NSF-sponsored demonstration project on face-to-face recruitment of an internet survey panel.

Throughout the development and presentation of materials in the survey, we have strived to present information in a balanced, neutral manner. Discussions of details of this balance are provided in the individual sections below.

As the information is presented, it is divided into sections by questions designed to encourage review and consideration of survey information and to provide us with feedback on respondents' preferences based on the information they have seen up to that point.

For purposes of review and comment, the survey instrument included in this submission has labels for Screens, where the information and/or questions will appear in the online executable version. The question numbers will not appear in the executable version; they are used only to track comments and suggestions in the review process.

Summaries of the major sections of the main survey follow.

General instructions to KN and Abt SRBI operations

The first page will not appear in the application. This is a tracking sheet for internal operations at KN and Abt SRBI. The general instructions to the KN and Abt SRBI operations begin on the second page. These instructions lay out several features and capabilities that the researchers and funding agencies want KN and Abt SRBI to implement in the online executable version of the questionnaire.

Instructions/warm-up: (Screens 1 through Screens 2C)

Screen 1 begins the survey. The survey is presented with and without audio (some panel members may not have audio capability). Screen 1 and Screen 2A test whether the panel member has audio capability to determine which version of the survey they will receive. Question S2A asks if the panel member heard the music for testing the audio capability. If the respondent answers "yes" they will see Screen 2B, which informs them that some instructions are given by audio and that they should turn up their audio. Respondents are also reminded to read the screen carefully, even if audio is provided.

Screen 2C presents respondents with a question (Q2D1 or Q2D2) from the General Social Survey (GSS), which is placed at the beginning of the survey to serve both as a warm-up and to provide information to help evaluate potential attitudinal differences between the respondents to our survey and respondents to the GSS. Half the sample will randomly receive Question Q2D1 and half the sample will randomly receive Question Q2D2.

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

Part 1 introduces the topic of the survey: management options for coral reefs in Hawaii. It gives the initial explanation of the purpose of the survey and explains why respondents' 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, panel members (respondents) are informed that their participation is voluntary and are provided an opportunity to obtain more information. Respondents wanting more information

are sent to Screen 3B, where information is provided about the policies regarding survey participation and efforts to protect their privacy (see Attachment 3 for KN's Panel Member Bill of Rights). Respondents are also provided an 800-telephone number if they have any questions.

Screen 3C informs respondents that this survey will present information about coral reefs, including pictures and maps. Respondents also learn 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 any information.

Part 2: Introduction (Screens 4A through 12B; Questions Q1 through Q5)

The introduction presents information about coral reefs and coral reef ecosystems using text and an illustration (Screen 4A). The text 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 how often a respondent has read or heard about coral reefs (on Screen 4), how many times he/she has been to a coral reef in the U.S. or elsewhere (on Screen 5), and, if a respondent has been to a reef before, where this visit occurred (on Screen 6). The responses to Question Q3 can be used to differentiate survey respondents' level of previous familiarity with coral reefs.

On Screen 7, respondents learn that 10% of coral reefs are found around the Hawaiian Islands; most other coral reefs are found around Florida. A map is used to show respondents the location of the MHI (on Screen 8). The text below the map communicates how extensive the MHI are and how people use them. Screen 9 then shows another map of the Hawaiian Islands that highlights the NWHI. The text below the map describes more about the NWHI. The introductory section ends with Questions Q4, Q4A, and Q5, which ask whether respondents have either lived in or visited Hawaii in the past and how likely they are to visit Hawaii in the next 10 years (on Screens 10A, 10B, and 11). These questions will be used to segment those whose values might include direct economic use value versus those whose values would hold pure nonuse/passive economic use values.

On Screen 12A, respondents see four pictures of reefs and reef fish and other sea life found on Hawaii's coral reefs. These pictures provide a transition between answering questions and providing the next bit of information. The final screen in Part 2 (Screen 12B) highlights two reasons why coral reef ecosystems around Hawaii are unique: (1) 25% to 50% of the species found around the Hawaiian Islands do not occur anywhere else in the world, and (2) the NWHI reefs are in a remote location and still in a relatively unaltered natural state (i.e., mostly untouched by humans).

Part 3: Overfishing (Screens 13A through 16D; Questions Q6 through Q7)

This section introduces overfishing as the first of two main threats to coral reef health in the MHI. The section first describes what is meant by "overfishing" and the ways that it can affect reef health.

Illustrations are used to show respondents current conditions at the MHI and how the MHI looked before overfishing occurred. By seeing the two illustrations side by side, respondents can see that under conditions before overfishing occurred, there are more reef fish and healthier coral ecosystems than under current conditions.

A solution to the overfishing problem — implementation of no-fishing zones — is then described. Respondents learn that this management tool has been effective in other locations 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 text also highlights some undesirable consequences associated with developing no-fishing zones, including additional government spending, potential loss of commercial fishing jobs, and displacement of recreational fishing. Presenting this information demonstrates to respondents that protection comes at a cost.

Following the discussion of no-fishing zones, Question Q6 asks respondents whether they agree with statements about three issues: commercial fishing jobs, sport fishing opportunities, and federal government involvement. This question serves two purposes. First, it breaks up the presentation of important information and second, it provides additional information to assess respondents' preferences for protecting coral reefs.

Next, respondents learn about a proposal to increase no-fishing zones from the current 1% to a new level of 25% of the coral reef ecosystems in the MHI. We present some reasons for and against enlarging no-fishing zones to ensure that a balanced and neutral presentation on these issues is given to respondents.

Screen 16A through 16C address the proposal in detail. Illustrations are used to compare conditions in 10 years (1) if no-fishing areas continue to protect only 1% of coral reefs, and (2) if no-fishing areas are expanded to protect 25% of coral reefs. Finally, Question Q7 asks respondents if they have any comments about the information provided so far.

Part 4: Ship accidents (Screens 17A through 19B; Questions Q8 through Q9)

Part 4 introduces the second of the two main threats to coral reef health in the MHI: ship accidents. Ship accidents occur about 10 times a year in the MHI, and these can significantly impact a localized area of the reef. This section describes the effects of ship groundings in the MHI and highlights the fact that natural recovery of the reefs from these groundings typically takes about 50 years. During this time, a reef's health, and many of the coral reef-associated activities such as snorkeling and diving, may be affected. The ship grounding scenario provides a description of localized impacts on ecosystem health, contrasting with the broader effects associated with overfishing. It 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 MHI.

Illustrations are used to compare current conditions of coral reefs in the MHI and conditions immediately following a ship accident (e.g., a damaged reef).

On the next screen, Question Q8 asks respondents whether they ever heard about, read about, or seen where ship accidents have injured coral reefs in Hawaii or elsewhere.

Next, respondents learn that management actions, such as planting living coral from coral farms into injured areas and restoring injured coral that is still alive, could help the reef recover faster after ship accidents (10 years rather than 50 years). This section explains that these actions have been effective in other locations, such as Florida, in restoring the reefs in a much shorter period compared to natural recovery.

The next screen tells respondents that the federal government, with the State of Hawaii, is considering a new program to repair ship injuries to coral reefs that would repair about 10 sites (about 5 acres) each year. Again, as with the overfishing solution, the respondents are given the pros and cons of this management action.

Respondents are told it is not possible to make boat and ship owners pay for repairs because it is often difficult to track which ship caused the injury. This information helps avoid protest amongst respondents who think it was not fair for them to pay for the injuries because the boat and ship owners are responsible.

Finally, Question Q9 asks respondents if they have any comments about the information provided so far.

Part 5: Choice questions/follow-up evaluation (Screens 20A through 41; Questions Q10 through Q29, A1 through A2a, and D1 through D2)

In Part 5, respondents are asked to identify which combination, if any, of the management actions they prefer. The two management actions (no-fishing zones, and restoration of ship accident damages) are summarized, and a series of stated-choice questions is asked. To clarify this task for respondents, a warm-up question is presented on Screen 20C. On this screen, respondents will see the Current Program (the status quo) and either the No-Fishing Zone Program or the Reef Repair Program. The question on the screen asks respondents to pick their most preferred alternative out of the two choices.

Starting with Screen 20D, each stated choice question asks respondents to choose between the presented programs, with each program described in terms of management actions and cost to the respondent's household in the form of increased federal income taxes. The Current Program is always the status quo: no new no-fishing zones in the MHI, no additional efforts to restore vessel grounding damages, and no additional taxes. The Full Program includes a combination of new no-fishing zones in the MHI and additional efforts to restore vessel grounding damages, which results in the greatest increase in new taxes. The No-Fishing Zones and Reef Repair Programs include one management action beyond the status quo (based on their respective titles) and some increase in taxes.

Respondents are asked in Question Q10 to specify which of the four programs is their most preferred. Respondents are reminded to consider the effectiveness of each management option and their budget constraints, and then asks respondents to specify their most preferred program in Q10. Question Q11 then asks respondents to provide a brief comment explaining why they chose the program they did. In particular, this information can 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. This question also provides a space for respondents to comment on their answers to Question Q10. This can provide insights into the individual's thought process, and subsequently help identify valid and invalid responses. Second, it provides the opportunity for individuals to express how they feel about being asked this type of question. This is especially important for those respondents that clearly dislike some element of the question. This comment question is not repeated for other choice questions because experience indicates little additional information is gained from repeating the question.

Next, respondents are presented with the remaining three programs and asked to check which of these is their most preferred. The screen is then replaced once more with the two remaining programs and respondents are asked to choose their most preferred. Each respondent is asked three stated choice questions to limit potential respondent fatigue. As has become standard practice in stated preference studies, we introduce a "certainty question" after each choice question.

Asking respondents to identify their most preferred, next most-preferred, and then their most preferred from the remaining two programs, provides a complete ranking of all the programs in each choice set. Complete rankings provide potent information on preferences that will be very useful in data analysis and value estimation.

Next, Screen 22 tells respondents they will answer some questions about what they were thinking when choosing the programs they prefer. Question Q17 asks respondents whether or not they believe overfishing has caused the changes in coral reefs they were told about earlier. Questions Q18 and Q19 then ask how serious the effects of overfishing would be without additional no-fishing zones and how effective no-fishing zones would be if adopted.

In respect to ship accidents, Question Q20 asks the respondents to evaluate how serious the effects of ship accidents are on the MHI coral reef ecosystem. Questions Q21 and Q22 ask respondents how effective they thought the Reef Repair Program would be in speeding up recovery and if they thought recovery would take more than, less than, or about 10 years under the Reef Repair Program.

Questions Q23-Q28 are used to evaluate the validity of the survey instrument. These questions elicit respondent attitudes about the proposed programs in the instrument, various groups and institutions in the United States, and their environmental attitudes.

Question Q29 asks if anyone in the household paid any federal income taxes in 2008. This will be used to assess the use of federal income taxes as a payment vehicle.

Respondents who had audio were asked in Questions A1-A2a if they thought the audio presentation was helpful and whether they thought additional audio instructions would have been helpful. 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.

Finally, the last screen reminds respondents that the survey is eliciting information useful to NOAA and other agencies to estimate the value of coral reef ecosystems; it does not necessarily represent actual government policy. These statements were developed in consultation with the State of Hawaii and NOAA's National Marine Sanctuary Program (NMSP). Peer reviewers were adamant that these statements not be presented until respondents had completed and submitted their survey responses.

Our plan is to administer the main survey using the ANES and MRI Internet Panels. When these panels are recruited, a portion of each recruitment interview, independent of this specific Coral Reef Valuation survey, will measure socio-demographics and other generic measures, including contact information and questions to gauge Internet access.² We will be able to utilize this socioeconomic data for our analysis. Additionally, it will have the interviewers conduct a brief, , face-to-face interview; invite the respondents to accept a free computer and other incentives; and join the panel. The ANES and MRI Panel members will agree to complete one questionnaire every month via the Internet.

Use of illustrations

The survey is designed to solicit preferences from the ANES and MRI Panels on three coral reef conservation programs: (1) increasing the no-fishing zones around the MHI from 1% to 25% of coral reef ecosystems, (2) annually repairing coral injuries caused by ship groundings, and (3) increasing the no-fishing zones *and* repairing coral injuries around the MHI. Obtaining reliable expressions of individuals' 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 respondents have never visited a coral reef ecosystem and, thus, are likely to be unfamiliar with this habitat type, beyond what has been learned from television, movies, books, and magazines. Second, given the complexity of the ecosystem, it is unlikely that the respondents could develop a relatively complete mental image of the habitat by solely relying on the textual information contained in the instrument. Third, 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 many respondents. Forth, the instrument contains significant technical detail on the potential habitat changes that would result with and without the three alternative programs. If the respondents are 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 four challenges, the instrument includes a series of six professionally developed, color illustrations (see Attachment 5). Appearing as pairs , these illustrations depict how a typical reef location may appear with and without each management option. Including illustrations in the instrument provides several benefits. First, for those respondents unfamiliar

2. Recruitment information for the ANES and MRI panels are being collected independently of this request and are not part of the Coral Reef Valuation Study request to OMB.

with coral reefs, the illustrations provide a visual complement to the textual information. This visual component will most likely strengthen respondents' understanding of the habitat of interest. Second, the graphics interspersed among the mostly text-based instrument are likely to help respondents maintain interest and to focus on completing the questionnaire. This 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 allow the researchers to accurately display the potential different states of the environment with and without the programs in a manner that can be comprehended by nearly all respondents.

The first pair of illustrations presents the current conditions at the MHI and conditions before overfishing occurred there. The illustration on the left shows a representation of current conditions at the MHI. The one on the right shows what the MHI looked like before overfishing occurred. As compared with the status quo image (the image on the left), the illustration on the right 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 is designed to show the potential effects of increasing no-fishing zones around the MHI from 1% to 25% of coral reef ecosystems in about 10 years. The first illustration within this pair 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 third pair of illustrations shows the potential effects of ship groundings on coral reef ecosystems in the MHI. The illustration on the left depicts current conditions of the MHI coral reefs. The illustration on the right shows how the current MHI scene would change immediately following a ship grounding. 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.

Experimental design

This section describes the experimental design for the Coral Reef Valuation Study survey. The developed design will be pretested using a subset of the overall design. Adjustments to the final design for the main survey will be based upon the results of the pretest. The remainder of this section describes the method and layout of the experimental design that will be used for the main survey. We expect the attribute levels presented here to be final. If necessary, we will modify the final cost estimates based on the results of the pretest.

There are three programs in the revised Coral Reef Valuation Study survey: (1) increasing the no-fishing zones from 1% to 25% around the MHI (protecting reefs), (2) repairing reefs from ship injuries so that injuries last 10 years rather than 50 years (repairing reefs), and (3) implementing no-fishing zones *and* repairing reefs from ship injuries (both). Thus, there are two

attributes for the Coral survey: the percentage of Main Hawaiian Island reefs protected and the years for reefs to be repaired from ship injuries. The individual programs, protecting reefs and repairing reefs, have two levels apiece: the status quo or some positive action. As summarized in Table A.1, the alternative levels for protecting and repairing reefs are 25% of reefs protected versus 1% under the status quo, and injuries being repaired in 10 years rather than 50 years under the status quo, respectively.

There are four possible combinations of attribute levels (referred to as alternatives) representing the combinations of programs: the status quo, protecting reefs only, repairing reefs only, and both protecting and repairing reefs. Because there are only four possible combinations, it is possible to obtain a full ranking of a respondent's preferences using only one choice set (with four alternatives).

We have assigned each attribute a vector of bid amounts to represent the cost of implementing the program to produce the desired attribute levels (Table A.1). The bid amounts were selected as follows. We used the results from the Phase I pretest to create a distribution of willingness to pay (WTP) estimates for the no-fishing zones and reef repair programs. We then simulated probabilities of a respondent selecting each alternative using the parameter estimates from the pretest and randomized error terms. We experimented with the bids to rebalance the probabilities and to capture the overall range of WTP values.

Table A.1. Program attributes and associated levels.

Attribute	Status quo level	Alternate level	Cost (\$)
% reefs protected	1%	25%	30, 60, 80, 110
Years for reefs to be repaired from ship injuries	50	10	20, 40, 60, 85

The bid amounts represent the cost of implementing the individual programs. For the program that involves both protecting and repairing, the bid amount is equal to the total cost of the program (i.e., the sum of the individual project costs) plus a bundling adjustment. The bundling adjustment is included to test if respondents are willing to pay a different amount for the combination of programs (both protecting and repairing reefs) than for the individual programs separately. This allows us to estimate an interaction term and to test whether this interaction term is positive or negative. We have included two positive and one negative bundling adjustment to account for respondents who are willing to pay less or more to have both programs implemented. The bundling adjustment also accounts for the fact that the two programs could have economies or diseconomies of scale. The bundling adjustments in this design are (-5), 0, 10, and 15.

The design and bid amounts will be pretested to reinforce our understanding of how people are trading off the individual programs. We will use the results of the pretest to re-estimate the parameters and repeat the above process to refine the distribution of WTP estimates that reflect these trade-offs.

There are 16 possible choice sets for the main survey that contain all the different combinations of individual program costs. In each choice set, the cost of the combined program is the sum of the individual program costs plus a bundling adjustment. Each individual program cost level appears four times in the design matrix, and each time it appears it is paired with a different bundling adjustment. Table A.2 presents the current experimental design matrix. As stated above, the methodology, layout, and attribute levels for the main survey will match this design, but the cost estimates may be revised based on the results of the pretest.

Table A.2. Experimental design matrix.

Alternative	Protecting reefs: % protected	Repairing reefs: Years to recovery	Cost (\$)
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$30
Repairing reefs only	1%	10	Cost repairing = \$20
Both	25%	10	\$30 + \$20 - (-5)
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$30
Repairing reefs only	1%	10	Cost repairing = \$40
Both	25%	10	\$30 + \$40 - 0
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$30
Repairing reefs only	1%	10	Cost repairing = \$60
Both	25%	10	\$30 + \$60 - 10
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$30
Repairing reefs only	1%	10	Cost repairing = \$85
Both	25%	10	\$30 + \$85 - 15
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$60
Repairing reefs only	1%	10	Cost repairing = \$20
Both	25%	10	\$60 + \$20 - 0
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$60
Repairing reefs only	1%	10	Cost repairing = \$40
Both	25%	10	\$60 + \$40 - (-5)

Table A.2. Experimental design matrix (cont.).

Alternative	Protecting reefs: % protected	Repairing reefs: Years to recovery	Cost (\$)
Status quo	1%	50	\$0

Protecting reefs only	25%	50	Cost protecting = \$60
Repairing reefs only	1%	10	Cost repairing = \$60
Both	25%	10	$\$60 + \$60 - 15$
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$60
Repairing reefs only	1%	10	Cost repairing = \$85
Both	25%	10	$\$60 + \$85 - 10$
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$80
Repairing reefs only	1%	10	Cost repairing = \$20
Both	25%	10	$\$80 + \$20 - 10$
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$80
Repairing reefs only	1%	10	Cost repairing = \$40
Both	25%	10	$\$80 + \$40 - 15$
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$80
Repairing reefs only	1%	10	Cost repairing = \$60
Both	25%	10	$\$80 + \$60 - (-5)$
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$80
Repairing reefs only	1%	10	Cost repairing = \$85
Both	25%	10	$\$80 + \$85 - 0$
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$110
Repairing reefs only	1%	10	Cost repairing = \$20
Both	25%	10	$\$110 + \$20 - 15$
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$110
Repairing reefs only	1%	10	Cost repairing = \$40
Both	25%	10	$\$110 + \$40 - 10$

Table A.2. Experimental design matrix (cont.).

Alternative	Protecting reefs: % protected	Repairing reefs: Years to recovery	Cost (\$)
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$110
Repairing reefs only	1%	10	Cost repairing = \$60
Both	25%	10	\$110 + \$60 - 0
Status quo	1%	50	\$0
Protecting reefs only	25%	50	Cost protecting = \$110
Repairing reefs only	1%	10	Cost repairing = \$85
Both	25%	10	\$110 + \$85 - (-5)

The experimental design will be tested using a pretest. The experimental design used in the pretest will be a subset of the matrix presented in Table A.2. It will consist of eight choice sets formed by dropping the (-5) and 15 bundling adjustments. We will use the results from the pretest to modify the cost options to accurately depict respondents' preferences for the main survey.

Use of stated choice questions

Stated choice methods have been identified as a useful tool to better understand individuals' 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 there has a large public good component. No markets are available to study the value 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 (Kanninen, 2007). This approach evolved from conjoint analysis, a method used extensively in marketing and transportation research (Louviere et al., 2000).³ 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 are 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

3. 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.

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. (1998a) 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 levels that currently do not exist. This feature is particularly useful in marketing studies whose purpose is to estimate preferences for proposed goods, where various characteristics can be manipulated in arriving at final product designs.⁴ 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., an MPA 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, 1998b, 2004), Breffle et al. (2005), 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. (1998a) 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 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 to 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. (1998b) provide an overview of choice and ranking experiments applied to environmental valuation, and

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

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.⁵

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. (1998b) 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 Phase I 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 use them directly, they could understand both how the reefs were useful to others and their ecological functions. 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 (the least preferred option was used in the first pretest; the proposed pretest and main study would use four alternatives and would not use the least preferred option). 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.

Survey mode

Pretest survey

For the pretest survey, we plan to use KN's established Web-enabled panel. See the discussion below in "Main survey" for justification of using a Web-enabled survey instead of a telephone or telephone mail survey.

Main survey

We propose to concurrently use two Web-enabled panels for the main survey. Independent of this data collection effort, KN and Abt SRBI (with support and oversight from Stanford

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

University) are developing both panels. The first is the ANES Panel, built and administered by KN.⁶ Recruitment to this panel will be based on a list-assisted, RDD sample drawn from all 10-digit telephone numbers. The second is Stanford's MRI Panel, built and administered by Abt SRBI. The MRI Panel members will be selected based on a multistage probability sample of residential mailing addresses. Abt SRBI will roster the household and then randomly select one of the eligible members. The sample will be limited to households; group quarters (e.g., college dormitories and nursing homes) will be excluded from the eligible target population.

We will use this standing panel, Web-based approach to overcome a set of potential problems inherent in the research. As revealed in the focus groups and cognitive interviews conducted during phase I, most people 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 people are interested in and are 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 lead to a low response rate. There is not any way to separate those nonrespondents 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 an RDD and in-person Web-enabled survey will be superior to a telephone or telephone mail survey for the following reasons:

- ▶ We can get higher response rates using the ANES and MRI Web-enabled panels that we could with a telephone or telephone mail survey due to the low saliency of the topic to people.
- ▶ We can use pictures, graphical materials, voice-over, and other tools to communicate information more effectively to respondents, ease the respondents' 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 used to address this problem in mail surveys, and they often cause difficulties as subjects get lost and skip questions or try to answer questions that do not apply to them. Web-enabled surveys are programmed so that skip patterns are automatic.
- ▶ 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 in earlier ones. This is not possible in mail surveys.
- ▶ We can avoid potential problems that can arise when respondents do not read the material in a mail instrument at all or read it in a different order than the survey designers intended. For example, one danger in this type of survey is that subjects in a mail survey may try to complete stated choice questions before digesting the information needed to answer them.

6. The ANES Web Panel is separate from KNs existing Web-enabled panel.

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- ▶ Experimental treatments can be easily and independently randomized among respondents.
 - ▶ We can track all stages of the recruitment process to provide a solid basis for evaluating the representativeness of each of the samples 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.

Frequency of the information collection

The cognitive one-on-one interviews, the second pretest, and the main survey study are a one-time application.

How collection complies with NOAA information quality guidelines

Utility

The overall study goals were refined in Phase I of the project through interviews with key stakeholder groups, including federal and state resource managers and members of the U.S. CRTF. These initial interviews allowed us to identify key information needs. At critical points throughout the study, we updated 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 first pretest has allowed NOAA to further refine the survey instrument as to information presentation, reliability, internal consistency, response variability, and other properties of a newly developed survey. It has ensured that the information obtained from the survey is of the highest quality. Due to recent changes in the survey instrument, we are proposing to implement another pretest (following some cognitive one-on-one interviews) to test these changes and to ensure proper programming of the instrument.

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, question wording, the balance of information provided (acquiesce bias or leading people to adopt a certain position), and nonmarket economic valuation methods have been conducted while designing the current survey instrument. Internal and external peer reviews will be conducted on all project products (e.g., survey instruments, sample designs, analyses, and reports). Peer review will ensure that the information collected is accurate, reliable, and unbiased; and that 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

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 will be protected and any material identifying you will not be provided to anyone.

KN will provide the ANES Panel members with its Panel Member Bill of Rights, included in this submission (see Attachment 3). For a full discussion of KN and Abt SRBI's procedures for protection of information, see Question 10 of this supporting statement.

It is anticipated that the information collected will be disseminated to the public. As explained in the preceding paragraphs, the information has utility. NOAA's NOS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards of protection of information. 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 (see Attachment 4 for KN and Abt SRBI's Quality Assurance Procedures) and a predissemination 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 will participate in the survey using either a home-based personal computer connected to the Internet, a personal laptop computer with Internet service, or a Web-capable appliance such as the MSN TV 2 with Internet service. Because we are one part of a larger scientific study, it will be possible to give a Web-capable appliance and/or Internet access to panelists who do not already have them. Non-Internet households participating in the ANES Panel will receive MSN TV 2 Internet and Media Player and Internet Service at no expense. For the MRI Panel, non-Internet houses will receive laptops with broad band Internet access at no expense.

All Web-enabled panel surveys are self-administered, which allows respondents to complete the surveys at their convenience and own pace, in the comfort and privacy of their homes. 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 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. It uses advanced scripting techniques for customization of individual questions to meet the needs of researchers proposing innovative designs. The data

capture platform supports the complexity and type of questions proposed in our study including multimedia graphics, voice-over presentation.

The system also supports the importation of auxiliary data, such as demographic information collected as part of the screening. These data can be used 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.

4. Describe efforts to identify duplication.

There are no published studies in the survey research literature that compare the results of asking respondents questions about preservation and repair of nonmarket environmental goods, such as coral reef ecosystems and comparing the responses to two, independently-recruited Internet panels (e.g., the ANES and MRI Panels) with widely different response rates.

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 lack the tools it will need in the future to conduct surveys for determining public preferences for protection and repair of marine environmental resources. This is a one-time collection for the cognitive one-on-one interviews, the second pretest, and the main survey.

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

Data collected from the ANES Panel is expected to achieve net survey response rates of 20%. This is based on an expected 31% panel recruitment response rate [American Association for Public Opinion Research (AAPOR) Rate No. 3], 75% connection rate (agree to join the panel and completed the first online demographic survey), and 85% survey participation rate. The ANES Web Panel is created and the first three waves (i.e., the first three months) of data collection are completed.⁷ The first wave of online data collection experienced a survey participation rate in excess of 90%. The low overall response rate is due to the multistage construction of the KN Panel.

7. The panels are being recruited to administer a series of surveys over multiple months (waves).

For the recruited MRI Panel, we anticipate an overall response rate of about 63%. This is based on a 90% participation rate for each monthly wave.⁸

These estimates are based on the recruitment rates reported on other KN RDD and Abt SRBI in-person surveys and from participation rates reported in the industry and the effort designed into the ANES/SRBI study to ensure high completion rates.

See the answer to Question 9 of this Supporting Statement on the use of incentives as a way of increasing response rates and Part B, Question 2, which addresses the representativeness of the Internet RDD and in-person panels.

8. Provide information on 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, published on September 12, 2006 (71 FR 53667), solicited public comment (see Attachment 7).

One set of comments was received from the Western Pacific Fishery Management Council (WPFMC); however, these comments were based on a version of the survey instrument that is different from the one included in this package; they were included in the original supporting statement, but we prefer not to include them here again to avoid confusion. We also consulted with the State of Hawaii on the policy/management options we evaluated in the survey.

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

Cognitive one-on-one interviews

For the cognitive one-on-one interviews, we plan to give participants \$50 to compensate and thank them for giving up 1 and ½ hours to participate in our interview.

Pretest survey

Pretest respondents will receive a \$5 check for their participation. See the section below called “Main survey” for more specific information on why we typically give incentives to respondents.

8. This is based on the participation rate for the ANES Panel, though we expect the participation rate for the MRI Panel to be similar.

Main survey

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

Survey-specific incentives

KN and Abt SRBI will provide survey-specific incentives 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 main 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.

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 ($p < 0.01$) 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.

ANES panel members who participate in the survey will be sent a check for \$10 by U.S. mail for their participation.

These measures are expected to contribute significantly to a survey completion rate of 90% for both the ANES and MRI Panels.

Nonsurvey-specific incentives

Nonsurvey-specific incentives are used to maintain a high degree of panel loyalty and to prevent attrition from the panel. Both the KN and Abt SRBI will provide panel members with Internet connection and laptops or Web-capable devices if they do not already have them. For the households provided with Internet appliances and an Internet connection, their incentive is the hardware and Internet service. ANES Panel members will receive an MSN TV 2 Internet and Media Player and Internet service. All MRI Panel members will be offered a laptop computer and broadband Internet access.

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

KN will conduct the survey for NOAA under subcontract to Stratus Consulting. They will administer the survey to the ANES and the MRI panels even though they will be recruited independently. Neither Stratus Consulting nor NOAA or anyone else will receive name, address, telephone number, or email address that can be used to identify a survey participant. Stratus Consulting and NOAA will also not release survey data that might be used to identify an individual who participated in the survey using the “rule of 10”⁹ applied by the U.S. Census Bureau. KN and Abt SRBI procedures to protect information follow.

Survey responses are protected, with identifying information never revealed without respondent approval. When surveys are assigned to panel members, they receive notice in their password-protected email account that the survey is available for completion. Surveys are self-administered and accessible any time of day for a designated period.

KN procedures

All ANES Panelists, when joining the panels, are given a copy of the Privacy and Term of Use Policy. In the privacy terms, a section called the “Panel Member Bill of Rights” summarizes the information 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.

Below is a summary of the measures that will be taken to meet the needs for privacy and confidentiality from the point of data access and information technology (IT).

First, all employees of KN are required to sign an agreement requiring them to protect all personally identifiable information regarding panel members. KN warrants that all employees are bound to protect all personal information provided by respondents, and very few employees actually have access to any personal data. The only employees who have access to this information 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 maintaining the computers systems at KN.
- ▶ 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.

9. As developed by the United States Census Disclosure Review Board, in some circumstances, presentation of tabulation data on some population households must be rounded to 10s. The exact rounding scheme for rounding to 10s is: 0 remains 0; 1-4 rounds to 0; 5-14 rounds to 10; 15-24 rounds to 20, and so on.

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- ▶ Staff members of the Statistics department have access to personally identifying information to draw samples for the various surveys conducted at KN.

All personally identifying records are kept secured in a separate office in the IT section of the main offices in Menlo Park, California, and all data transfers from MSN TV 2 and WebTV units and personal computers (both used for survey administration) to the main servers pass through a firewall. KN 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 KN 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 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 a survey conducted in support of Food and Drug Administration (FDA) applications, KN 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.

KN 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 data for all the projects conducted on the ANES Web Panel are also stored in a data vault maintained by Stanford University. The only person with access to these data at Stanford University is the Director of Operations of the ANES.

A 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 protected and any material identifying you will not be provided to anyone outside of Knowledge Networks. Also see the Knowledge Networks Bill of Rights.

Abt SRBI procedures

For this study, Abt SRBI will recruit the MRI panel and KN will administer the survey. As a member of CASRO (Council of American Survey Research Organization), Abt SRBI fully abides by CASRO's regulations in preserving respondent information, and will have the following measures in place to do so.

Abt SRBI follows these routine practices:

- ▶ Educating the research staff to the importance of confidentiality
- ▶ Substituting codes for personal identifiers
- ▶ Removing personal identifiers from data files
- ▶ Limiting access to identifiable data
- ▶ Storing identifiable data under security conditions
- ▶ Maintaining personal identifying information only as long as required and only under conditions specified in the study protocol
- ▶ Properly disposing of records with identifying information as specified in the study protocol.

Below is a summary of the measures that will be taken to meet the needs for information protection from the point of data access and IT.

The AT&T NOC in which Abt SRBI co-locates their servers is a hardened facility with many levels of security for protection of hardware and data. The facility is monitored 24 hours, 7 days a week, by on-site professional security guards and monitored over continuous closed circuit video surveillance from a command center via both stationary and 360° cameras located both outside and inside the facility.

Access is controlled by electronic key cards and "Man Trap" with biometric palm scanners with Individual PIN numbers. The cages of server racks and cabinets are also locked to prohibit unauthorized access. Security breach alarms exist at each security point to prohibit bypassing the access controls. Visitors must be pre-authorized individually before they are allowed to enter the building.

Abt SRBI further controls access to their equipment through strong password requirements and locking the desktop of each server automatically when idle or when a system administrator logs in remotely. Their servers are protected on the network by Sonic Wall Pro 3060 firewalls, which block access from the Internet except to pre-authorized Internet Protocol addresses and log all access and intrusion attempts. The site is also secured from disaster by redundant bandwidth, power, fire and heat detection, fire suppression, and ventilation systems.

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.

No questions of a sensitive nature are asked in this survey.

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

Estimated number of respondents:

- A. Number of respondents for the cognitive one-on-one interviews: 32
- B. Number of respondents for the pretest: 250
- C. Number of respondents for the main study: 2,691
- D. Total number of respondents: 2,973

Estimated time per response:

- A. Cognitive one-on-one interviews: 90 minutes
- B. Pretest survey: 30 minutes
- C. Main survey: 30 minutes

Estimated total annual burden hours:

- A. Cognitive one-on-one interview burden hours: 48
- B. Pretest burden hours: 125
- C. Main survey burden hours: 1,345.5
- D. Total burden hours: 1,518.5

Estimated total annual cost to the public for the pretest and main survey: 1,518.5 hours (only one-time application, no additional costs expected per respondent for this particular study).

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.

Table A.3 shows the annualized cost to the federal government during each phase of the project.

Table A.3. Annualized cost to the federal government

Project phase	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08	FY 09	Total
1. Questionnaire and sample design								
a. Stratus Consulting contract	\$80k	\$80k	\$30k	\$20k	\$20k			\$230k
b. Steve Thur contract	\$5k	\$5k	\$5					\$15k
c. NOAA personnel travel	\$5k	\$5k	\$5k	\$5k				\$20k
d. Peer review	\$5k	\$5k	\$5k	\$5k				\$20k
2. Main survey implementation								
a. Stratus Consulting contract						\$270k		\$270k
b. Peer review						\$5k		\$5k
3. Analysis and reporting								
a. Stratus Consulting contract							\$250k	\$250k
b. Peer review							\$5k	\$5k
Total project	\$95k	\$95k	\$45k	\$30k	\$20k	\$275k	\$255k	\$815k

The entire project is spread over seven fiscal years. The contract with Stratus Consulting Inc. includes all subcontracts to support questionnaire and sample design, main survey implementation, analysis and reporting, and some peer review. NOAA is independently paying for other peer review. Steven Thur was a contract employee until June 2005, when he became a full-time NOAA employee. As a contract employee, a portion of his time was allocated to the project. Dollars are reported in thousands of dollars (\$80k means \$80,000). Dollars are recorded for the Stratus Consulting contract in the year of paid invoices not the date and amount of signed contract.

The \$530k cost of the final survey implementation and analysis and reporting will be incurred in FY2008 and FY2009.

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

This is a new survey.

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

The results of the main survey will be tabulated using simple summary statistical analyses of the data (means, medians, standard deviations, maximums, and minimums). The main survey report will include details on the methods of analysis, plans for tabulation, and publication of project results. All project reports (pretest and main survey) will be posted online on the NOAA Website (<http://sanctuaries.noaa.gov/Socioeconomics>) in PDF. All data files will be documented and distributed via CD-ROM and/or online on the NOAA Website.

The results of the pretest have not yet been made public, except for inclusion in the supplemental statement for this OMB approval of the main survey implementation. Pre-test results documenting how estimates of the total economic value were derived are included in this submission.

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.

NA.

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

NA.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

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 cognitive one-on-one interviews, a second pretest, and the main survey only.

Cognitive one-on-one interviews

For the cognitive one-on-one interviews, we will recruit up to 32 panelists in Washington, D.C. and Denver, CO from KN's established Web-panel.¹⁰ These recruits will be invited to a facility to take the questionnaire online and to participate in a discussion with one of the Stratus Consulting or NOAA researchers. The purpose of the discussion is to help the researchers test how well respondents understood the information presented to them and to debrief on any other issues the respondents had (e.g., wording issues).

Pretest survey implementation

For the pretest survey, we will interview a random sample of 385 panelists from KN's established Web-panel. Due to the nature of the ANES and SRBI panels, we cannot conduct the pretest on these panels. The first pretest we conducted in 2006 resulted in a 65% completion rate, which is higher than what KN typically gets. KN typically expects a 65% completion rate, and we expect a similar completion rate for the second pretest. Based on this assumption, we expect that we will have to send out 385 surveys in order to get 250 completed interviews ($385 \times 0.65 = 250$). This sample size is feasible within the project's budget, given the selected implementation mode, and will provide enough observations for conducting simple summary statistical analyses of the data (means, medians, standard deviations, maximums, and minimums) and for evaluating the effectiveness and appropriateness of the experimental design for the main study.

Main survey implementation

The KN and Abt SRBI Panel samples will include the civilian, non-institutionalized population age 18 or over, as defined by the universe of U.S. households that can be contacted by telephone (106 million households in 2000).

The main survey will be administered to a sample that will be sufficient to produce completed surveys from approximately 2,691 respondents. The main study will be administered to the 2,000 ANES Panel members and 990 MRI Panel members. Due to expected panel response rates, the

10. We believe that 32 cognitive one-on-one interviews will be enough to help us understand and resolve any wording issues and to test respondents' understanding of the material.

expected number of completes is 2,691 ($2,000 \times 0.90$ plus 990×0.90). 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) and the more sophisticated econometric analyses need to arrive at total value estimates.

We anticipate an overall response rate of about 20% for the ANES Panel. This is based on an expected 31% panel recruitment response rate (AAPOR Rate No. 3), 75% connection rate (agree to join the panel and completed the first online demographic survey), and 85% survey participation rate. The low overall response rate is due to the multistage construction of the KN Panel.

For the in-person recruited MRI Panel, we anticipate an overall response rate of about 63%. This is based on a 90% participation rate.

These estimates are based on the recruitment rates reported on other KN RDD and Abt SRBI in-person surveys and from participation rates reported in the industry (see the answer to Question 2 of this Supporting Statement).

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.

Following are descriptions of the sample frame, the sample selection process, and the process for selecting the sample size that will be followed in the pretest and the main survey implementation.

Sample frame and sample selection

Pretest survey

The KN's established Web panel sample is selected using directory-listed, RDD 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.

Main survey

The main survey sample frame is the U.S. civilian noninstitutionalized population age 18 or over, as defined by the universe of U.S. households that can be contacted by telephone (106 million households in 2000).

KN will select the ANES Panel sample using RDD telephone methodology, providing a probability-based sample of U.S. telephone households (96% of population). Abt SRBI will select the MRI Panel sample by using in-person recruiting methods, providing a multistage probability sample of residential mailing addresses, described in detail later in this question. The

KN and Abt SRBI Web-enabled panels comprise both Internet and non-Internet households. For non-Internet households, KN will install MSN TV 2 devices using professional installers; Abt SRBI will provide these households with a laptop and broadband Internet access.

Data will be collected from the Abt SRBI and KN Panels. In both samples, each household will have an equal probability of entering the sample (except for households without working telephones, which will have a zero probability of entering the telephone sample).

KN Panel sampling design for the main survey

The sample universe of the ANES Panel is the U.S. citizen population 18 and over as of November 4, 2008. Teenagers who turned 18 prior to or on November 4, 2008 will be included in the sample. KN will utilize list-assisted RDD sampling techniques on the sample frame consisting of the entire U.S. residential telephone population. Only those banks of telephone numbers (consisting of 100 telephone numbers) that have zero directory-listed phone numbers will be excluded. The ANES Panel sample will be a stratified RDD sample of all residential phone numbers in the U.S. where only two strata are necessary. The strata will be defined by whether or not KN can find an address for the telephone number using a service that provides the highest match rate available. Telephone numbers for which KN is able to recover a valid postal address is about 70%. KN will select the sample of phone numbers with equal probability within the two pre-identified strata. Stratum 1 includes all phone numbers that can be matched with postal addresses. Stratum 2 are the remaining phone numbers that cannot be matched beforehand to postal addresses. All numbers drawn from Strata 1 will be kept in the sample. One half of the numbers, randomly selected from Stratum 2, will be kept in the sample.

Approximately 10 days prior to calling sampled phone numbers, the address-matched telephone numbers are sent an advance mailing informing them that they have been selected to participate in the Monthly Special Topics Study. The Stanford University Principal Investigator will sign the advance letters. The respondents are told that the study is being created on behalf of Stanford University, with collaboration from the University of Michigan and funding from the NSF. The advance mailing will include a \$2 cash incentive. The advance mailing will describe that their participation in the study, will explain that there are a wide range of studies about which they will have an opportunity to represent many people like themselves, and will cite their burden as one survey per month. The advance letter describes that study participation is voluntary and includes answers to frequently asked questions that respondents might have.

KN expects about 40% of the sampled phone numbers will be ineligible (not a household, non-working phone number, non-residential phone number, non-English speaking, non-Citizen, etc.), and that some households will initially refuse. Extra follow-up will be done with the initial-refusal households, including use of a special refusal conversion package. The refusal package will contain a refusal letter tailored to the reason for refusal. A monetary incentive of \$5 will be enclosed. However, we anticipate some final refusals even with conversion efforts and have provided for framed 8"x10" framed Certificates of Appreciation to be sent to the respondents selected for the study. A special 1-800 number specific to the study will also be available for the households to call that have questions and for households who wish to authenticate the legitimacy of the study.

A short interview (10 minutes) will be conducted with eligible, cooperating households. The interview will include selected questions from national surveys to measure the attitudes of study respondents and will include identifying and contact information needed by KN, such as survey questions that collect information on all adults in the household. The interview will be conducted with a randomly selected person age 18 as of November 4, 2008. If the selected study member is a minor, then parental consent to interview the minor is obtained on the phone from a parent or legal guardian. The telephone interviewer administering the recruitment survey instrument will document the consent.

ANES Web Panel recruitment response rate statistics

Recruitment interviews were completed at 2,371 of the 12,809 sampled telephone numbers. Completion of a recruitment interview is the operational definition of joining the panel. All sample cases fall into one of four categories: complete interviews (2,371), eligible nonresponse (808), unknown eligibility (5,601), and not eligible (4,029). Completed interviews are broken down into three categories: those completed through the standard telephone interview (2,222), those who initially refused but were converted to a completed interview (85), and those who completed the interview through the internet (64).

- ▶ Response rate (AAPOR RR3): 31%
- ▶ Refusal rate (estimated): 38%
- ▶ Cooperation rate (estimated): 34%
- ▶ Contact rate (estimated): 92%

Table B.1 summarizes the disposition of the ANES Panel recruitment sample.

Table B.1. Final case-level disposition of ANES Panel Study recruitment sample

Disposition	Number
Total sampled telephone numbers	12,809
Complete interviews	2,371
Standard telephone interview	2,222
Refusal conversion interview	85
Internet-only recruitment interview	64
Eligible non response	808
Eligible non-contacts	0
Eligible contacts not complete	808
Refusals, post-selection	558
Language barrier, post-selection	16
Physical or mental impairment, post-selection	25
MSN TV setup not possible, post-selection	19
Respondent never available, post-selection	190

Table B.1. Final case-level disposition of ANES Panel Study recruitment sample (cont.)

Disposition	Number
Unknown eligibility	5,601
Contacts	4,063
Refusals, pre-selection	2,376
Informant pre-selection contact, but never available	1,288
Language barrier, pre-selection	291
Physical or mental impairment, pre-selection	93
MSN TV setup not possible, pre-selection	15
Non-contacts	1,538
Computer/fax tone (on all attempts)	241
No answer (on all attempts)	198
Information never available, non-contact, pre-selection	1,099
Not eligible	4,029
Disconnected phone	3,457
Non-residential/business/government	518
Number changed	11
No age-eligible U.S. citizen in household	43

Source: ANES staff analysis is of the 2008-09 ANES Panel Study sample file.

Abt SRBI Panel sampling design for the main survey

Abt SRBI will draw a multistage probability sample of residential mailing addresses. A sampling frame based on USPS mailing addresses will allow for the selection and enrollment of a sample of eligible households in the panel. This address frame will be referred to as the Delivery Sequence File (DSF). The target population will cover the 48 contiguous states and Washington, DC.

Research on the use of the DSF as an address-sampling frame for area probability samples has focused on the relative merits of using U.S. Census Bureau Census administrative units (blocks, block groups, tracts, counties) or USPS units (ZIP codes, carrier routes). For example, at the 2007 Joint Statistical Meetings, papers on the use of the DSF focused on geo-coding errors associated with assigning DSF addresses to Census Bureau geographic units such as Block Groups. The use of USPS Zip Code carrier routes does not suffer from this problem, but it is more difficult to apply the half-open interval in the field to add missed housing units to the sample.

The basic design involves self-weighting, stratification, probability proportional to size sampling, and multiple stages. Abt SRBI will use four stages of sampling. In the first stage, they will elect 60 3-digit ZIP Code areas from a sampling frame of all 3-digit ZIP Code areas in the

48 continuous states and DC. Principal sampling units (PSUs) will be sorted by geography (nine Census Divisions), metropolitan status, and total number of residential addresses. A systematic sampling scheme will be applied to sorted file with probabilities of selection being proportional to the total number of residential addresses in the 3-digit ZIP Code area. Some 3-digit ZIP Code areas may be sufficiently large to have more than one selection.

In the second stage, they will sample two 5-digit ZIP Codes per 3-digit ZIP Code area for 120 in total. Abt SRBI will do this by preparing a complete list of 5-digit ZIP Codes in each PSU, sorting them in numerical sequence (which reflects geography), and selecting two ZIP Codes systematically using probabilities proportional to the total number of residential addresses in each ZIP Code.

In Stage 3, Abt SRBI will sample two carrier routes per ZIP Code for a total of 240. They will prepare a complete list of carrier routes in each ZIP Code, sorting them in numerical sequence to reflect geography. Select two carrier routes systematically using probabilities proportional to the total number of residential addresses in each carrier route.

In Stage 4, the final stage, Abt SRBI will obtain a complete list of all residential addresses in each of the 240 carrier routes. A systematic sample of addresses will be drawn from each carrier route. The target number of completed household interviews, the expected response rate, and the expected vacancy rate have determined the sample size of addresses per carrier route. The initial sample size of residential addresses is likely to be in the range of 1,300 to 1,400 housing units.

The target sample size for the study is approximately 990 completed household interviews. The sample will be limited to households, with group quarters being excluded from the eligible target population.

Sample size

Cognitive interviews

We intend to interview up to 32 KN Panel members in Washington, D.C. and Denver, Colorado. This number is sufficient in order to test wording issues and respondents' understanding of the survey material.

Pretest survey

The expected number of completed surveys for the pretest survey will be approximately 250. This number is sufficient in order to refine, if necessary, the experimental design.

Main survey

The intended number of completed surveys for the main survey will be approximately 2,691 (1,800 for the KN Panel and 891 for the Abt SRBI Panel). This sample size 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 the 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 (Orme, 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.¹¹

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 (W. Adamowicz, University of Alberta, personal communication, 12/30/2004). 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 Orme (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. Orme (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 (e.g., 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 (i.e., there are different kinds of people who care differently about characteristics), a larger sample size will be needed because more sets of preference parameters must be estimated (Orme, 1998; Louviere et al., 2000).

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:

$$(n \times t \times a)/c \geq 500.$$

Where:

- n = minimum number of respondents
- t = number of tasks or "replications"

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

-
- a = 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 (Orme, 1998).

For the main survey, this calculation would be:

$$(2,691 \times 3 \times 2)/4 = 4,036$$

which is more than eight times the target level of 500, indicating that we have sufficient sample size for a study of our design.

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.

Numerous steps have been and will be taken to maximize response rates and deal with nonresponse behavior for the main survey. Descriptions of these efforts follow.

Maximizing response rates

The first step in achieving a high response rate is to develop an appealing questionnaire that is easy for respondents to complete. We spent significant effort on developing an effective survey instrument during Phase I. We hired experts on economic survey design and stated preference techniques to assist in the design and testing of this survey. The survey instrument developed in Phase I benefited from input on earlier versions from several focus groups and cognitive interviews, and from peer review by experts in survey design and nonmarket valuation and scientists who study coral reefs. In the Phase I focus groups and cognitive interviews, the information presented was tested to ensure key concepts and terms were understood, figures and graphics were tested for proper comprehension and appearance, and key economic and design issues were evaluated. After testing the instrument with focus groups and cognitive interviews, the survey was pretested using the KN’s Web-based Panel.¹² The result is a professional, high-quality survey instrument. Since Phase I, we have made additional changes to the survey instrument that will also be tested using cognitive one-on-one interviews and a second pretest before implementing the main survey.

For both of the Web-based panels, KN and Abt SRBI will employ the practices for the Coral Reef Valuation Study main survey that have been employed successfully on other projects that have required OMB approval:

12. KN’s Web Panel is different from the ANES Panel that KN created to conduct the main survey from Phase II.

-
- ▶ Field period of one month for the main survey
 - ▶ Use of the federal agency name in the email invitation
 - ▶ Email reminders¹³
 - ▶ Telephone reminder calls to nonrespondents.¹⁴
 - ▶ Both survey-specific and nonsurvey-specific incentives (as described in response to Part A, Question 9) will be used to improve response rates.

These measures will provide a survey completion rate of 90% for the KN and Abt SRBI Panels. Overall response rates are expected to be approximately 20% and 63% respectively.

Nonrespondents

Specific steps will be employed to assess the presence and extent of nonresponse bias. The purpose of this exercise is not to adjust the estimates of economic value based on nonresponse bias, but rather to test for differences between the two Web-based panels and for differences between the U.S. Census and the two panels. Some of the steps involved to test for nonresponse bias include the following:

- ▶ Data from the screening interview for the ANES and MRI Panels will be compared to each other and to Census figures to identify any systematic differences. The characteristics of people who completed the interview and agreed to participate on panels can also be compared with those who completed the interview but refused to participate on panels.
- ▶ A parallel type of comparison will be made with respect to answers to the attitudinal questions asked of respondents and non-respondents during the initial panel recruitment surveys. The distribution of responses to this question by respondents and nonrespondents will be evaluated for the two groups (respondents and nonrespondents) and compared with the GSS survey results. The demographic and attitudinal question comparisons will enable us to assess how similar respondents and nonrespondents are to each other and to the general population (except for the non-GSS attitudinal questions).
- ▶ Another step that will be taken to evaluate the potential for nonresponse bias will be the analysis of estimated values from the preference function as a function of time/sample size. This approach essentially seeks to assess whether the estimated economic values stabilize as additional sample is added over time.

13. For the ANES Panel, members will receive a pre-announcement email, an invitation email, and as many reminder emails as is necessary. MRI Panel members will receive one prenotification email, one announcement email, and then 4 email reminders.

14. For telephone reminder calls, Abt SRBI will call up to 15 times over the course of two weeks for any particular wave. If they have a home and cell phone number listed, they will try both in any one call attempt.

After taking these steps, we will evaluate the potential magnitude of nonresponse bias on the valuation results.

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.

The methodological advance developed in this application is the direct comparison of the sample representativeness, and potential difference in nonmarket valuation estimates, developed from an RDD-recruited (ANES) and an in-person recruited (SRBI) sample concurrently administered using an Internet mode. This study design has held the majority of survey design and administration variables constant across the two sample recruitment methods. Results of this comparisons will add to the currently available information on the effectiveness of using data collected from an RDD-recruited Internet mode 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. Mr. David Chapman of Stratus Consulting serves as the Project Manager, and Dr. Robert Rowe of Stratus Consulting serves as Project Technical Advisor. Both Dr. Rowe and Mr. Chapman have extensive experience in applied environmental and natural resource economics involving the use of statistical methods. Contact information follows:

Mr. David Chapman: 303-381-8289

Dr. Robert Rowe: 303-381-8000

Stratus Consulting hired Professor Emeritus Richard Bishop of the University of Wisconsin, Department of Agricultural and Applied Economics, to serve as Principal Investigator. Professor Bishop is a well-known environmental and natural resource economist and has conducted many applied projects involving the use of statistical methods. Contact information follows:

Professor Richard Bishop: 608-238-7473

Stratus Consulting 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. Contact information follows:

Dr. Roger Tourangeau: 301-314-7984

Stratus Consulting hired Dr. Barbara Kanninen, to advise on experimental design issues. Contact information follows:

Dr. Barbara Kanninen: 703-536-6949

The rest of the research team includes Norman Meade, Vernon (Bob) Leeworthy, Tony Penn, and Steve Thur from NOAA.

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 to 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

Stratus Consulting has already entered a contract with KN to recruit for the cognitive one-on-one interviews and to conduct the pretest and the main survey.

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ATTACHMENT 1: CORAL REEF SURVEY INSTRUMENT

[Coral Reef Protection Study]
February 25, 2009

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 Approved	Completed (Y/N)

[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. (Question about whether we need/want to keep audio?)

[SCREEN 1A] [radio] [embed = "test.mp3, autostart = true]

Please listen to the entire music file before pressing the "Next" button to continue your survey.

[SCREEN 2A]

S2A. Did you hear the music file?

Select one answer only.

- Yes**.....1 [If yes, show Screen 2b]
- No**.....0 [If no, skip to Screen 2c]
- Not sure**2 [If don't know, skip to Screen 2c]

[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 2C grid, random half sample for Q2D1 and Q2D2]

Q2D1. 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.

Check one box for each row in the grid.

	We are spending:		
	Too little	About the right amount	Too much
	▼	▼	▼
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"/>

Q2D2. 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.

Check one box for each row in the grid.

	We are spending:		
	Too little	About the right amount	Too much
	▼	▼	▼
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 addiction	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?

Sometimes the Government considers starting a new program. The Government does not want to start a new program unless people are willing to pay for it. One way for the Government to find out about this is to give people like you information about a program in a survey like this, so you can make up your own mind about it.

Some people think the program they are asked about is not needed; others think it is. We want to get the opinions of all kinds of people.

The particular program addressed in this survey involves coral reefs in Hawaii. 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 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.

OMB NO.: XXXXXXXXX Coral Reef Economic Valuation Final Survey Approval
Expiration XX/XX/XXXX

[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 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 Privacy and Term of Use Policy that you received with your internet access equipment are in effect. If you have questions about this survey, you may contact Panel Relations at (800) 782-6899.

[SCREEN 3C]

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

If you want to review information that you saw earlier, you can go back by clicking the “Information” button available in the lower left corner of the screen. When you are done reviewing the information, you can return to where you were in the survey.

PART 2: INTRODUCTION

[SCREEN 4A, display]

Below is a picture of a coral reef ecosystem from Hawaii, including various types of coral and fish.



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

- ▶ **Coral reefs are made of 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 nearby.**
- ▶ **Coral reef ecosystems provide a place to live for many ocean species including fish, sea turtles, seals, dolphins, shrimp, octopuses, sea snails, sea plants, and sea birds. These animals live near the coral because it provides food.**
- ▶ **Most coral reef ecosystems are in water less than 60 feet deep.**

[SCREEN 4B, radio buttons]

Q1. How often have you read or heard about coral reefs, either in U.S. waters or elsewhere?

Select one answer only

- Not often at all1
- Slightly often.....2
- Moderately often.....3
- Very Often4
- Extremely often.....5

[SCREEN 5, radio]

Q2. About how many times have you been to a coral reef in the U.S. or elsewhere to fish, snorkel, scuba dive, view marine life, or for some other reason?

_____ times (TYPE A NUMBER)

[SCREEN 6, check box] [if q2>1]

Q3. Where have you visited a coral reef?

Select all answers that apply

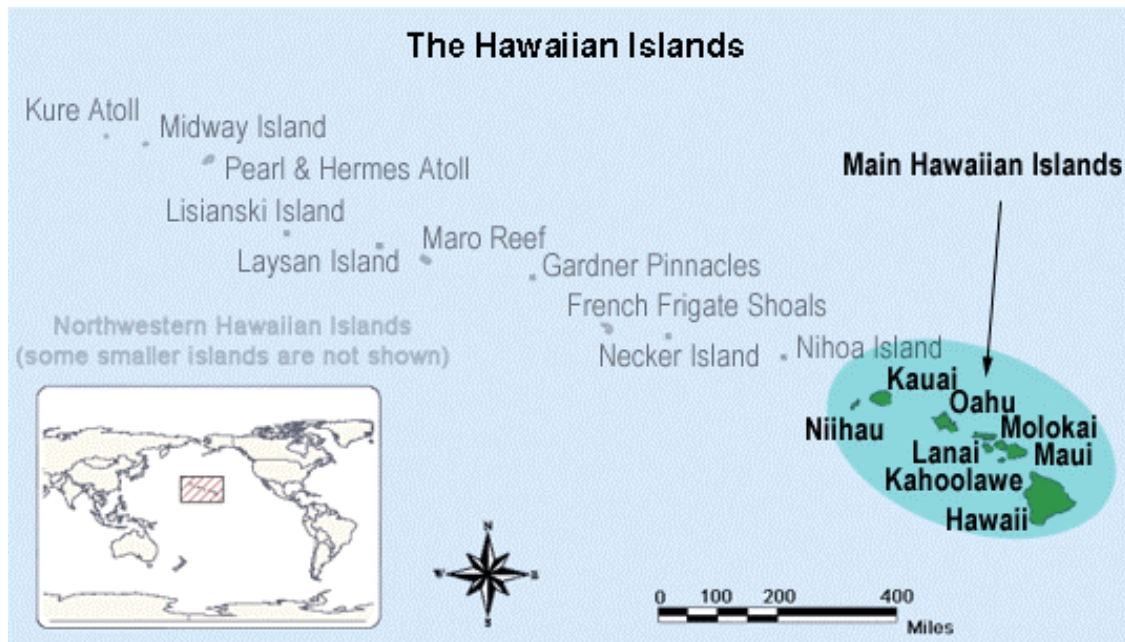
- Florida1
- Puerto Rico or the U.S. Virgin Islands2
- Other Caribbean, Gulf of Mexico, or Atlantic Ocean locations3
- Hawaii4
- Pacific Ocean locations other than Hawaii.....5
- Other (specify: _____).....6

[SCREEN 7, display]

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

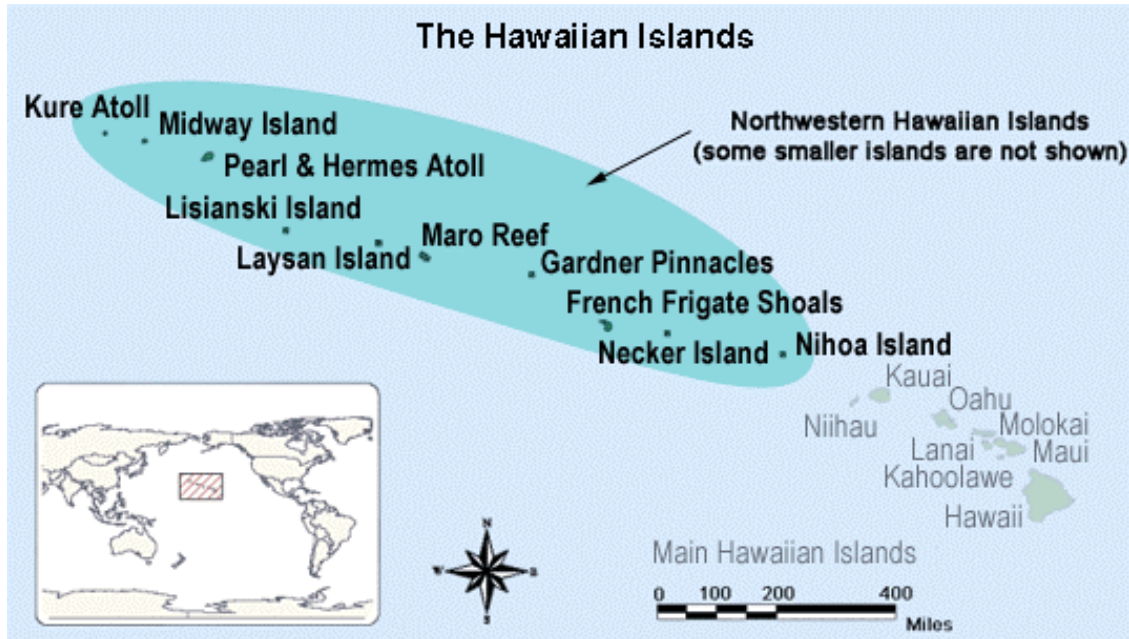


The Main Hawaiian Islands are eight larger islands, where nearly all of Hawaii's people live.

These islands are surrounded by about 300,000 acres of coral reef ecosystem.

- ▶ These coral reefs are heavily used for recreation (fishing, boating, diving, and snorkeling), for 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 coral reef ecosystem.
- ▶ This area was named a National Monument in 2006.

[SCREEN 10A, radio]

Q4. Have you ever lived in Hawaii, or have you never lived in Hawaii?

Select one answer only

- Yes, I have lived in Hawaii1
- No, I have never lived in Hawaii.....0

[SCREEN 10B, radio] [if q5 = 2 or -1]

Q4a. Have you ever visited Hawaii, or have you never visited Hawaii?

Select one answer only

- Yes, I have visited Hawaii.....1
- No, I have never visited Hawaii0

[SCREEN 11, radio]

Q5. In the next 10 years, how likely is it that you will go to Hawaii?

Select one answer only

- I definitely will not go to Hawaii.....1
- I probably will not go to Hawaii.....2
- I may or may not go to Hawaii.....3
- I probably will go to Hawaii.....4
- I definitely will go to Hawaii.....5

[SCREEN 12A, 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 12B]

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 replace.

Around the Main Hawaiian Islands:

- ▶ **After decades of overfishing, 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.**
- ▶ **This coral reef ecosystem is 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 been greatly reduced around the Main Hawaiian Islands.**
- ▶ **As a National Monument administered by the federal government and the State of Hawaii, the Northwestern Hawaiian Islands are permanently protected from overfishing.**

[SCREEN 13C, display]

The following drawings represent current conditions in the Main Hawaiian Islands and how they would have looked before overfishing:

Current conditions of coral reefs around the Main Hawaiian Islands



Conditions of coral reefs around the Main Hawaiian Islands before overfishing



[SCREEN 14A,]

**A SOLUTION TO OVERFISHING IN
THE MAIN HAWAIIAN ISLANDS: NO-FISHING ZONES**

No-fishing zones can be used to prevent or limit overfishing in the Main Hawaiian Islands. No-fishing zones are areas of the ocean where fishing is not permitted.

- ▶ Where overfishing has occurred, no-fishing zones will allow the number, size, and variety of fish to increase inside the zones. More fish means that there will also be more seals, sea birds, and other marine life.
- ▶ When nearby areas remain open to fishing, fish from within no-fishing zones migrate and increase the number, average size, and varieties of fish in areas outside the no-fishing zones.
- ▶ No-fishing zones have been effective in rebuilding coral reef ecosystems in other places such as Florida.
- ▶ Snorkeling, diving, and similar activities are allowed in no-fishing zones.

[SCREEN 14B]

However, no-fishing zones can have undesirable effects:

- ▶ **Commercial fishing jobs may be lost.**
- ▶ **Recreational fishing has to be relocated away from the no-fishing zones.**
- ▶ **Federal government spending on enforcement will be required because many of the reefs are managed by the federal government. The State of Hawaii will pay its fair share of enforcement costs for reefs in state waters.**

[SCREEN 14C, grid]

Q6. Below are a list of statements. Please indicate whether you strongly disagree, somewhat disagree, neither agree nor disagree, somewhat agree or strongly agree with each of the following statements.

Check one box for each row in the grid

	Strongly disagree	Somewhat disagree	Neither agree nor disagree	Somewhat agree	Strongly agree
	▼	▼	▼	▼	▼
Protecting jobs of commercial fishermen is more important than protecting Hawaiian 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 Hawaiian coral reefs.	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
The federal government should take an active role 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]

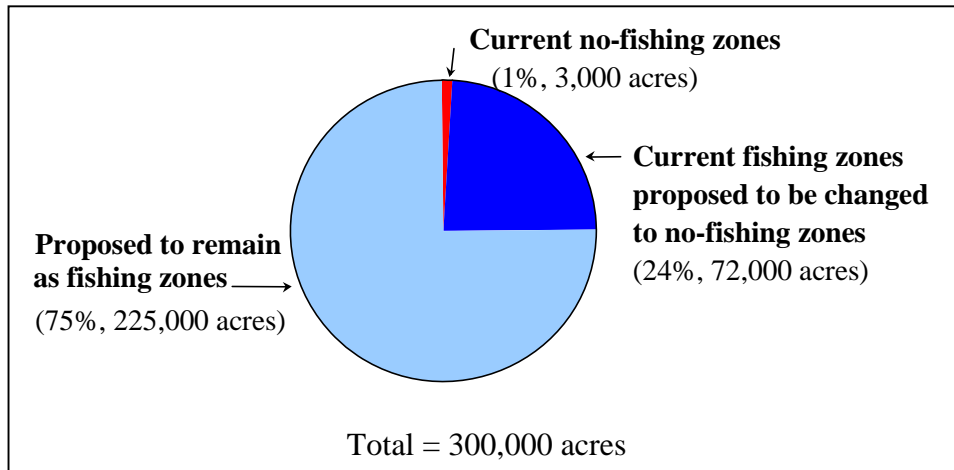
OPTIONS TO INCREASE NO-FISHING ZONES AROUND THE MAIN HAWAIIAN ISLANDS

There are many possible options for increasing no-fishing zones around the Main Hawaiian Islands. Currently, about 1% of coral reefs around the Main Hawaiian Islands are included in no-fishing zones. One option being discussed would increase the no-fishing zones around the Main Hawaiian Islands to 25% of coral reefs.

More details about this option are shown on the next screen.

[SCREEN 16A, display]

Main Hawaiian Islands Option: Increase no-fishing zones from current 1% up to 25% of coral reefs.



[SCREEN 16B]

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

- ▶ **Inside the no-fishing zones, fish and other marine life would begin to increase during the first three years.**
- ▶ **Beginning in three to five years after no-fishing zones are established, scientists expect that the amount of fish caught outside the no-fishing zones would begin to increase.**
- ▶ **In about 10 years, the total amount of reef fish caught each year in the Main Hawaiian Islands would increase by about 50%, coming close to levels of 25 years ago.**
- ▶ **The entire Main Hawaiian Island 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 reasons against increasing no-fishing zones around the Main Hawaiian Islands:

- ▶ **Enforcement costs may be high. Part of the costs would be paid for by all U.S. taxpayers through increased taxes. The rest of the costs would be paid for by the State of Hawaii.**
- ▶ **Recreational and commercial fishing will not be allowed within the no-fishing zone.**
- ▶ **The coral reef ecosystem around the Northwestern Hawaiian Islands is already protected from overfishing.**

[SCREEN 16C, display]

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

Conditions in about 10 years
if 1% of the coral reefs remain protected by
no-fishing zones



Conditions in about 10 years
if no-fishing zones are increased to protect
25% of the coral reefs



[SCREEN 16D, text box]

Q7. Do you have any comments about the information provided so far?

Type in your comments.

PART 4: SHIP ACCIDENTS

[SCREEN 17A]

SHIP ACCIDENTS

Ship accidents are another cause of injuries to coral reefs around the Main Hawaiian Islands.

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.

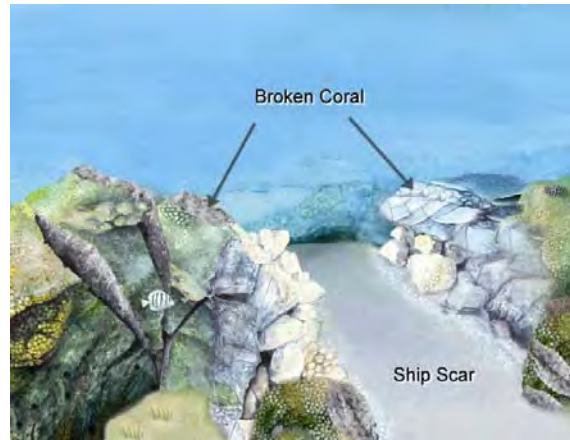
- ▶ **These accidents usually occur around the Main Hawaiian Islands, where most ship traffic occurs.**
- ▶ **Severe injuries to the coral reefs usually range from a few square feet to an acre (an acre is about the size of a football field).**
- ▶ **In an average year, a total of about 5 acres of coral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

[SCREEN 17B, display]

Main Hawaiian Island coral reefs where no ship accident has occurred.



Area of coral reef where a ship accident has occurred.



[SCREEN 17C, radio]

Q8. Have you ever heard about, read about, or seen where ship accidents have injured coral reefs in Hawaii or elsewhere?

Select one answer only.

- Yes1
- No0

[SCREEN 18]

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 about 50 years with natural recovery.**
- ▶ **These types of repairs have been successful around Florida and elsewhere.**

[SCREEN 19A]

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

As part of the proposed program, boat and ship owners will be required to pay for such repairs. However, it is often not possible to find those who caused the injuries or to collect payment from the persons responsible.

Some reasons for a coral reef repair program:

- ▶ These sites would recover in about 10 years, rather than in about 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 reasons 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 very small percentage.
- ▶ A program like this would require additional costs beyond what can be collected from the ship owners that caused the damage.
- ▶ Part of the costs that are not paid by ship owners would be paid by all U.S. taxpayers through increased taxes. The rest of the costs would be paid by the State of Hawaii.

[SCREEN 19B, text box]

Q9. Do you have any comments about the information presented so far?

Type in your comments.

PART 5: CHOICE QUESTIONS

[SCREEN 20A] [Text in italics = text for those with no audio. For those with audio – text is spoken and not repeated on the screen.]

Which Program 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 choose among alternative programs that have different combinations of actions to protect and restore coral reefs ecosystem around the Main Hawaiian Islands, at different costs to you.

[SCREEN 20B] [show text in italics if SA ~ = 1]

In each question, the Current Program describes the reef management actions that are currently in place and the expected results if these are continued.

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 reefs will continue to decline. (short pause)

In Row 2: Ship injuries to coral reefs around the Main Hawaiian Islands are not repaired. Currently, ship accidents injure about 5 acres each year. It takes about 50 years for these reefs to recovery naturally. (short pause)

The last row shows the additional cost paid by your household each year: With the current program, there will be no additional actions, and therefore no added federal taxes paid by your household to protect and restore coral reef ecosystem around the Main Hawaiian Islands. (short pause)

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

	<u>Current Program</u>
<u>Main Islands no-fishing zones:</u> % of reef protected.	1% protected Declining marine life
<u>Ship injuries to coral reefs:</u> About 5 acres/year total.	No repairs Injuries last about 50 years
<u>Added taxes paid by your household each year.</u>	\$0

[SCREEN 20C, warm-up question]

Now consider an example with two alternative programs: The Current Program and a program that expands no-fishing zones around the Main Hawaiian Islands from 1% to 25% of the coral reefs. In this alternative, there is no program to repair ship damage to coral reefs.

If the Current Program is continued, there are no additional annual costs to your household. If the No-Fishing Zone Program is implemented, it would cost your household \$35 per year in additional taxes.

Once you are done reviewing these alternative programs, please check the box for the program you most prefer.

	<u>Current Program</u>	<u>No-Fishing Zones Program</u>
<u>Main Islands no-fishing zones:</u> % of reef protected.	<ul style="list-style-type: none"> ▶ 1% protected ▶ Declining marine life 	<ul style="list-style-type: none"> ▶ 25% Protected ▶ 50% more fish ▶ Better reef health
<u>Ship injuries to coral reefs:</u> About 5 acres/year total.	<ul style="list-style-type: none"> ▶ No repairs ▶ Injuries last about 50 years 	<ul style="list-style-type: none"> ▶ No repairs ▶ Injuries last about 50 years
Added taxes paid by your household <u>each year</u>	\$0	\$35
Which program is your <u>most preferred</u> ?	<input type="checkbox"/>	<input type="checkbox"/>

[SCREEN 20D, show text in italics if SA ~ = 1; Alt C varies by VERSION]

This table includes the Current Program and three other programs that do more and cost more than the Current Program. After you carefully review the four programs, and the costs to your household under each alternative program, please check which of the four alternatives you most prefer.

Remember, if you spend money for one of the programs that does more, that money won't be available to buy other goods and services. If you do not want to do more and spend more to protect coral reefs in the Main Hawaiian Islands, you should check the Current Program as your most preferred choice.

Q10. Please choose your most preferred program from the options below.

	Column 1	Column 2	Column 3	Column 4
	<u>Current Program</u>	<u>Full Program</u>	<u>No-Fishing Zones Program</u>	<u>Reef Repair Program</u>
<u>Main Islands no-fishing zones:</u> % of reef protected.	▶ 1% protected ▶ Declining marine life	▶ 25% protected ▶ 50% more fish caught outside zone ▶ Healthier reefs	▶ 25% protected ▶ 50% more fish caught outside zone ▶ Healthier reefs	▶ 1% protected ▶ Declining marine life
<u>Ship injuries to coral reefs:</u> About 5 acres/year total.	▶ No repairs ▶ Injuries last about 50 years	▶ Repair injuries ▶ Injuries last about 10 years	▶ No repairs ▶ Injuries last about 50 years	▶ Repair injuries ▶ Injuries last about 10 years
Added taxes paid by your household each year	\$0	\$100	\$35	\$85
Which alternative is your <u>most preferred</u> ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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

[SCREEN 21A, text box]

Q11. Please provide a brief comment that helps us understand why you chose the [Answer to Q10] as your most preferred.

Type in the answer

Q12. How sure are you the [Answer to Q10] is your most preferred program?

- Not sure at all1
- Slightly sure.....2
- Moderately sure.....3
- Very sure4
- Extremely sure.....5

[SCREEN 21B, Alt C varies by version] [Programming note: Once they have answered Q10, remove the selected most preferred options from the choice table and re-present the three remaining options.]

Q13. Now that you have told us which program you most prefer, consider the remaining three programs. Of the remaining three, which program do you prefer?

[SCREEN 21C, Alt C varies by version]

Q14. How sure are you the [Answer to Q13] is your most preferred program of these three programs?

- Not sure at all1
- Slightly sure..... 2
- Moderately sure.....3
- Very sure4
- Extremely sure.....5

[SCREEN 21D, Alt B, Alt C vary by version] [Programming note: Once they have answered Q14, remove the selected most preferred options from the choice table and re-present the two remaining options.]

Q15. Of the remaining two programs, please check which one you prefer?

[SCREEN 21E, Alt C varies by version]

Q16. How sure are you the [Answer to Q15] is your most preferred program of these two programs?

- Not sure at all1
- Slightly sure.....2
- Moderately sure.....3
- Very sure4
- Extremely sure.....5

[SCREEN 22]

Following are some questions about what you were thinking when you chose your preferred alternatives.

[SCREEN 23]

Q17. When you chose your most preferred alternatives, did you think that overfishing caused the changes in Hawaii’s coral reef ecosystems we told you about or did you think they did not cause those changes?

- Overfishing had caused the changes.....1
- Overfishing had not caused the changes.....0

[SCREEN 24]

Q18. If no-fishing zones are NOT put in place, how serious did you think the effects of overfishing would be on the coral reef ecosystem around the Main Hawaiian Islands?

- Not serious at all..... 1
- Slightly serious2
- Moderately serious3
- Very serious.....4
- Extremely serious5

[SCREEN 25]

Q19. When you chose your preferred alternatives, how effective did you think that no-fishing zones would be in restoring fish and other marine life in coral reef ecosystems?

- Not effective at all 1
- Slightly effective2
- Moderately effective.....3
- Very effective4
- Extremely effective5

[SCREEN 26]

Q20. When you chose your preferred alternatives, how serious did you think the effects of ship accidents are on the coral reef ecosystem around the Main Hawaiian Island?

- Not serious at all..... 1
- Slightly serious2
- Moderately serious3
- Very serious.....4
- Extremely serious5

[SCREEN 27]

Q21. When you chose your preferred alternatives, how effective did you think that repairing injuries from ship accidents would be in speeding up recovery of coral reef ecosystems?

- Not effective at all 1
- Slightly effective2
- Moderately effective.....3
- Very effective4
- Extremely effective5

[SCREEN 28]

Q22. When you chose your most preferred alternatives, did you think that repairs of injuries to coral reefs after ship accidents would take about 10 years, more than 10 years, or less than 10 years?

- About 10 years.....1
- More than 10 years2
- Less than 10 years0

[SCREEN 29]

Q23. When you chose your most preferred alternatives, did you think that your household would pay the higher tax amount stated, or did you think you would pay more than that amount, or less than that amount?

- The amount stated 1
- More than the amount2
- Less than the amount.....0

[SCREEN 30]

Q24. Please tell us how much confidence you have in the following groups and institutions in this country. In general, would you say you have no confidence at all, a little confidence, a moderate amount of confidence, a lot of confidence or a great deal of confidence in:

	No confidence at all ▼	A little confidence ▼	A moderate amount of confidence ▼	A lot of confidence ▼	A great deal of confidence ▼
The people who run the U.S. Government	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
University scientists	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Large corporations	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>
Newspapers	1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>	5 <input type="checkbox"/>

[SCREEN 31]

Q25. How do you feel about increasing federal taxes to protect coral reefs around the Main Hawaiian Islands?

- Strongly oppose..... 1
- Somewhat oppose..... 2
- Neither oppose nor favor..... 3
- Somewhat favor..... 4
- Strongly favor..... 5

[SCREEN 32]

Q26. There are different ways for people to pay for new programs to protect the environment. One way is for the government to pay the cost. This will raise everyone's taxes. The other way is for businesses to pay the cost. This will make prices go up for everyone.

If you had to choose, would you prefer to pay for new environmental programs through higher income taxes or through higher prices?

- Through higher income taxes 1
- Through higher prices 2
- No preference 3

[SCREEN 33]

Q27. Would you say you think of yourself as a very strong environmentalist, a strong environmentalist, a moderate environmentalist, slightly an environmentalist, or not an environmentalist at all?

- Not an environmentalist at all1
- Slightly an environmentalist2
- A moderate environmentalist3
- A strong environmentalist4
- A very strong environmentalist5

[SCREEN 34]

Q28. 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. Please indicate whether you agree not at all, a little, a moderate amount, a lot, or a great deal with the following statements?

Check one box for each row in the grid.

	Not at all ▼	A little ▼	A moderate amount ▼	A lot ▼	A great deal ▼
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 which programs I preferred.	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"/>

[SCREEN 35]

Q29. Did anyone in your household pay any federal income taxes last year, 2008?

Select one answer

- Yes.....1
- No.....0
- Not Sure.....2

[SCREEN 36]

We would like to get some additional information from you about this survey.

[SCREEN 37]

[For those respondents that had audio]

Please think about the audio information provided.

A1. Did you find the audio presentation useful, or would you rather have read the same information? (radio button)

- I found the audio useful.....1
- I would have preferred to read the material rather than listen to it0

A2. Do you think that additional audio instructions or descriptions would be helpful?

- Yes1
- No0 (skip to D1)

A2a. Where do you think additional audio instruction would be helpful? (text box)

[SCREEN 38, text box, just have this text box without screen 31]

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 39, radio] [if xpanel = 1]

[Prompt if skip]

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

WebTV1

PC0

[SCREEN 40 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 modem1

ISDN line.....2

Cable modem.....3

Digital Subscriber Line (DSL)4

Wireless5

Satellite dish6

T1 / T3 line7

[SCREEN 41, to be viewed after survey responses are submitted]

[Disable back button]

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. The management options discussed in the survey were presented to elicit information useful for estimating the value of coral reef ecosystems and do not necessarily represent actual government policy.

ATTACHMENT 2: WRITE-UP OF PRETEST RESULTS

Purpose

The Coral Reef Valuation Study measures the public's preferences and valuation for protecting and restoring Hawaii's coral reef ecosystem. The results of the study will provide important information to the National Oceanic and Atmospheric Administration's Office of Response and Restoration, the State of Hawaii's resource managers, and other federal agencies that are actively managing the coral reef resources of Hawaii. 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 of the overall study 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 focuses on two of the most widespread threats to the reef ecosystems: overfishing and ship groundings. The survey presents three methods of protection: (1) restoration of the coral reef ecosystems of the MHI through establishing a special category of Marine Protected Areas (MPAs) known as Marine Reserves or no-fishing areas; (2) prevention of the future decline in the overall health of coral ecosystems from overfishing in the NWHI¹ (again through designation of no-fishing areas); and (3) restoration of coral habitats after vessel groundings. The survey uses a stated choice framework to evaluate respondents' willingness to trade off these actions against each other at different costs and against each other by taking no action.

As part of this study, we conducted a pretest of the survey instrument using the Knowledge Network's (KN's) Internet Panel. The pretest provided an opportunity to evaluate the survey instrument and obtain some simple results to help refine the main survey. This attachment presents the results of the pretest.

Response rate

We calculated response rates using the panel recruitment response rate, the household profile rate, and the survey completion rate in order to provide the final response rate. The panel recruitment response rate reported by KN was 28.2%. The household profile rate — the percentage of households recruited where an adult completed the demographic profile survey — reported by KN was 57.1%. The survey completion rate, or the percentage of sampled cases that completed the web survey, reported by KN was 69.2% (216 completed surveys out of the 312 surveys sent out). To calculate the overall response rate, we multiplied the panel recruitment response rate by the household profile rate and the survey completion rate, to yield a response rate of 11.1%.

1. This includes incorporating areas within the boundaries of the Northwestern Hawaiian Island Ecosystem Reserve established by President Clinton in Executive Order 13178 and as modified in Executive Order 13196.

Methods

The pretest consisted of a small-scale survey, designed for implementation in the Internet mode, with a sample of U.S. households (216 responses). KN administered the pretest survey to a random sample of its Internet Panel. We designed the pretest to provide information on two key issues: how well the survey would work under full field conditions and whether the preliminary range of dollar values used in the pretest would be suitable for the final survey. As is standard in survey development, the pretest results, along with the results from focus groups and cognitive interviewers and the research team's previous experience with nonmarket valuation of public goods, will inform the dollar values to be used in the final survey.

KN administered the pretest survey in two phases. In phase 1, KN verified that all survey programming, skip patterns, and other survey design features worked properly. Upon completion of the first 50 surveys, we analyzed the responses to ensure compliance with established quality assurance control measures. Upon successful completion of phase 1 of the pretest, KN administered phase 2 to the remaining sample to garner 156 additional responses. Given the selected implementation mode and budget constraint, this sample size was feasible and provided sufficiently large numbers of observations to support a simple summary statistical analyses of the data (e.g., means, medians, standard deviations, maximums, and minimums).

Given the pretest sample size, the pretest was 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 had medium and high costs² to balance the design across the dollar range of interest.

Results

General Social Survey comparison

The instrument began with questions from the General Social Survey (GSS). The GSS is comprised of standard demographic and attitudinal questions, as well as questions about special interest topics. The GSS is conducted periodically and is considered authoritative when it comes to trends in demographic characteristics and attitudes of U.S. residents. The latest data currently available are from the 2006 GSS survey, however, we used results from the 2004 GSS survey since the coral reef survey was conducted in 2004. We drew on the GSS for questions about attitudes toward government spending on a number of social issues, including environmental issues. The GSS has several versions of this question. We used two of the versions — one short and one long — to compare our respondents to those who completed the GSS in 2004. We placed these questions at the beginning of the pretest instrument, before coral reefs had even been mentioned, both to serve as a warm-up to the survey and to provide information to evaluate potential differences between the respondents and the general public. Table 2.1 summarizes how the coral reef pretest respondents answered these questions compared to the GSS respondents in 2004 for the short version.

2. Based on preliminary interviews and a range of \$0 (status quo) to \$101 to be tested in the pretest.

Table 2.1. Comparison of the coral reef survey results to the 2004 GSS results for the short version

Category	Survey	Are we spending too much, about the right amount, or too little on these categories?		
		Too much	About the right amount	Too little
Space exploration	Coral Reef Pretest	47%	39%	14%
	GSS	40%	42%	13%
The environment	Coral Reef Pretest	4%	32%	64%
	GSS	7%	27%	63%
Health	Coral Reef Pretest	7%	17%	76%
	GSS	7%	14%	77%
Assistance to big cities	Coral Reef Pretest	38%	41%	21%
	GSS	28%	41%	17%
Law enforcement	Coral Reef Pretest	7%	48%	45%
	GSS	9%	36%	52%
Drug rehabilitation	Coral Reef Pretest	14%	48%	38%
	GSS	11%	34%	49%
Education	Coral Reef Pretest	5%	16%	78%
	GSS	5%	17%	77%

Table 2.2 summarizes how the coral reef pretest respondents answered these questions compared to the GSS respondents in 2004 for the long version.

Few differences exist between how our respondents answered these questions compared to the 2004 GSS participants. Tests for statistical significance do not show any significant differences for the long version. For the short version, however, there are significant differences between the GSS and coral respondents for drug rehabilitation and assistance to big cities categories. For example, in the short version, more of our respondents feel that the government spends too much on drug rehabilitation and on assistance to big cities. Our proposed design includes GSS questions so that we can continue to compare our respondents to the population as a whole.

Part I: Set-up

The full survey is presented and its features are discussed in detail elsewhere in this document. As a brief summary, once the GSS questions were administered, respondents were presented with some background information on the purpose of the survey and the sponsors of the survey. Other issues such as whether the respondent had audio capabilities on the computer system were included for optional voice instructions during later parts of the survey. No survey questions were asked in this section.

Table 2.2. Comparison of the coral reef survey results to the 2004 GSS results for the long version

Category	Survey	Are we spending too much, about the right amount, or too little on these categories?		
		Too much	About the right amount	Too little
The space exploration program	Coral Reef Pretest	37%	50%	14%
	GSS	39%	43%	13%
Improving and protecting the environment	Coral Reef Pretest	9%	30%	61%
	GSS	7%	29%	62%
Improving and protecting the nation's health	Coral Reef Pretest	5%	23%	72%
	GSS	4%	17%	77%
Solving the problems of big cities	Coral Reef Pretest	16%	45%	40%
	GSS	12%	37%	40%
Halting the rising crime rate	Coral Reef Pretest	3%	35%	62%
	GSS	5%	35%	57%
Dealing with drug addiction	Coral Reef Pretest	11%	31%	58%
	GSS	9%	33%	54%
Improving the nation's education system	Coral Reef Pretest	5%	23%	72%
	GSS	5%	22%	71%

Part II: Introduction

After being provided with some basic coral reef facts, respondents were prompted to answer several questions on coral reefs. Table 2.3 summarizes how often respondents have read about or seen TV programs about coral reefs.

Table 2.3. How often respondents have read about or seen TV programs about coral reefs, either in U.S. waters or elsewhere

Response	Percent respondents
Never	24.7%
Sometimes, but not often	65.6%
Often	7.4%
Very often	2.3%

Respondents were then asked how many times they have ever been to a coral reef in the United States or elsewhere. Table 2.4 summarizes these responses.

For the respondents who had visited a coral reef, the locations of visits are summarized in Table 2.5.

Table 2.4. The number of times respondents have been to a coral reef in the United States or elsewhere (for example, to fish, snorkel, scuba dive, or view marine life)

Response	Percent respondents
Never	63.3%
Once	12.6%
A few times (2-4 times)	16.7%
Several times (5-10)	4.2%
Many times (more than 10 times)	3.3%

Table 2.5. Summary of locations where respondents have visited a coral reef

Response	Percent of respondents who have visited a coral reef
Florida	36.7%
Puerto Rico or the U.S. Virgin Islands	12.7%
Other Caribbean, Gulf of Mexico, or Atlantic locations	45.6%
Hawaii	41.8%
Pacific Ocean locations other than Hawaii	24.1%
Other location	8.9%

About 3% of the respondents have lived in Hawaii. Of the respondents who have never lived in Hawaii, 27% have visited Hawaii. Table 2.6 summarizes how likely it will be that respondents will travel to Hawaii in the next 10 years.

Table 2.6. Summary of how likely is it that respondent will go to Hawaii

Response	Percent respondents
Not at all likely	35.0%
Somewhat likely	37.9%
Very likely	16.4%
Don't know	10.7%

Part III: Overfishing

After receiving a brief overview of overfishing in the MHI and NWHI and potential solutions to overfishing, respondents were prompted to answer several questions about fishing practices in Hawaii. Table 2.7 summarizes whether respondents feel that protecting jobs of commercial fishermen and protecting recreational fishing are more important than protecting Hawaiian coral reefs, as well as whether it is important for the federal government to take an active role in trying to protect the reefs.

Table 2.7. Summary of how respondents feel about these statements

Response	Protecting jobs of commercial fishermen is more important than protecting Hawaiian coral reefs	Protecting recreational fishing is more important than protecting Hawaiian coral reefs	It is important for the federal government to take an active role in trying to protect Hawaiian coral reefs
Strongly agree	2.8%	2.3%	46.5%
Somewhat agree	7.9%	4.2%	31.2%
Neither agree nor disagree	20.5%	14.9%	13.0%
Somewhat disagree	36.3%	20.5%	4.7%
Strongly disagree	32.6%	58.1%	4.7%

Table 2.8 summarizes the degree to which respondents oppose or support increasing federal taxes to expand no-fishing zones in the MHI versus the NWHI. Just less than half of the respondents at least somewhat to strongly support the idea of increasing federal taxes to expand no-fishing zones around the NWHI. Nearly 25% of the respondents at least somewhat to strongly oppose increasing taxes for that purpose. Tests for significance show that there is no significant difference in the overall pattern between how respondents feel about increasing taxes to expand no-fishing zones around the MHI and the NWHI. In general, respondents support increasing federal taxes to expand no-fishing zones slightly more for around the MHI than for the NWHI.

Table 2.8. Summary of how respondents feel about increasing federal taxes to expand no-fishing zones around the Main/Northwestern Hawaiian Islands

Response	Percent respondents	
	Main Hawaiian Islands	Northwestern Hawaiian Islands
Strongly oppose	10.7%	11.7%
Somewhat oppose	7.9%	13.1%
Neither oppose nor support	27.6%	25.4%
Somewhat support	34.1%	31.5%
Strongly support	19.6%	18.3%

Part IV: Ship accidents

Part IV of the survey begins with an introduction to ship accidents, which are one cause of physical injury to coral reefs. Table 2.9 summarizes whether respondents have heard about, read about, or seen where ship accidents have injured coral reefs. Tests for significance show that there is a significant difference in respondents' WTP increased taxes for increasing no-fishing zones around the MHI when compared to WTP to protect against ship accidents.

Respondents were then asked how they feel about increasing federal taxes to restore coral reefs injured by ships around the MHI. Table 2.10 summarizes their responses to this question.

Table 2.9. Summary of whether respondents have heard about, read about, or seen where ship accidents have injured coral reefs in Hawaii or elsewhere

Response	Percent respondents
Yes	22.3%
No	64.7%
Don't know	13.0%

Table 2.10. How respondents feel about increasing federal taxes to restore coral reefs injured by ships around the Main Hawaiian Islands

Response	Percent respondents
Strongly oppose	14.9%
Somewhat oppose	18.1%
Neither oppose nor support	27.0%
Somewhat support	31.2%
Strongly support	8.8%

Part V: Choice questions

The final section of the survey included a series of choice questions asking respondents to rank alternatives. In the jargon, each alternative is defined by a “bundles of attributes.” We used four attributes: the percentage of coral reef ecosystems in the MHI protected as no-fishing zones, the percentage of coral reef ecosystems in the NWHI protected as no-fishing zones, whether ship injuries to coral reefs are repaired, and the cost in higher taxes. Each attribute, in turn, could take on two levels: the status quo (i.e., 1% of coral reef ecosystems protected for the MHI, 5% of coral reef ecosystems protected for the NWHI, no new program to repair ship injuries, and zero cost) and changes from the status quo (i.e., 25% of coral reef ecosystems protected for the MHI, 100% protected for the NWHI, a new program to repair ship injuries, and a positive dollar amount). Each alternative consisted of some specified combination of these attributes. For example, an alternative might consist of 1% protection for the MHI (the status quo), 100% protection for the NWHI (a change from the status quo), no repair of coral reefs injured by ships (the status quo), and an annual cost of \$40.

Each choice question involved three alternatives. Alternative A was always the status quo for all attributes: no new no-fishing zones in the MHI or the NWHI, no additional efforts to restore damages from vessel groundings, and no additional taxes. Alternatives B and C posed some combination of management actions beyond the status quo and some increase in taxes. For each choice question, respondents were asked to identify their most preferred and their least preferred alternative. In this way, a complete ranking of alternatives for each of the choice questions could be identified. Six versions of the survey were developed, each with a different combination of choices in each of the three choice set questions. Table 2.11 illustrates how this worked by summarizing the first choice question in each of the six versions and the frequency with which alternatives were chosen as most and least preferred. In each of the six versions, later choice questions varied the attributes in each alternative and the cost. Each version was designed to

Table 2.11. Selection of alternative protection programs, by version, for Choice Set 1

	Main Hawaiian Islands: % reef protected	Northwest Hawaiian Islands: % reef protected	Reefs repaired from ship injuries	Added taxes to your household each year	Percent preferring this alternative the most	Percent preferring this alternative the least
<i>Version 1</i>						
Alternative A	1%	5%	No	\$0	18%	53%
Alternative B	25%	100%	Yes	\$80	61%	29%
Alternative C	25%	5%	No	\$30	21%	18%
<i>Version 2</i>						
Alternative A	1%	5%	No	\$0	12%	72%
Alternative B	25%	100%	Yes	\$40	62%	19%
Alternative C	1%	100%	No	\$15	26%	9%
<i>Version 3</i>						
Alternative A	1%	5%	No	\$0	28%	72%
Alternative B	25%	100%	Yes	\$101	56%	22%
Alternative C	25%	100%	No	\$100	17%	6%
<i>Version 4</i>						
Alternative A	1%	5%	No	\$0	30%	54%
Alternative B	25%	100%	Yes	\$40	51%	43%
Alternative C	1%	100%	Yes	\$20	19%	3%
<i>Version 5</i>						
Alternative A	1%	5%	No	\$0	16%	78%
Alternative B	25%	100%	Yes	\$60	63%	19%
Alternative C	1%	100%	No	\$20	21%	3%
<i>Version 6</i>						
Alternative A	1%	5%	No	\$0	27%	63%
Alternative B	25%	100%	Yes	\$70	36%	34%
Alternative C	25%	5%	Yes	\$40	36%	3%

avoid inconsistencies across the choice question. For example, within each version, alternatives that would do less always had a lower cost. The setup and responses to the second and third choice questions are reported below.

With the exception of respondents who received version 6 of choice set 1, a majority of respondents chose Alternative B as their most preferred alternative. In all versions, a majority of respondents chose Alternative A, the status quo, as their least preferred alternative. This points towards the conclusion that the dollar values for Alternatives B and C used in the pretest were likely too low, a conclusion that received further support in responses to the other choice sets across the various survey versions.

The survey includes an open-ended question following the first choice question to further probe why respondents chose a particular level of protection for Hawaiian reefs as their most preferred.³

To analyze the open-ended responses, we developed descriptive categories to group each of the open-ended responses. Categories were developed by first looking at the full set of open-ended responses, and then by categorizing them. Responses could fall into multiple categories. Table 2.12 shows the final categories and provides a rationale for selecting each category.

Table 2.12. Description of open-ended response categories for the choice question

Category	Rationale for choosing the category
1. It's the right thing to do/We have an obligation to do something.	Respondent's comments fell into this category if they specifically discussed the need to protect coral reefs as a responsibility for each citizen of the U.S., OR if they discussed the importance of protecting reefs because it is the right thing to do.
2. We need to protect reefs for future generations.	Respondents felt that we NEED to protect coral reefs for future generations to enjoy and use.
3. There is a trade-off between long-term and short-term costs for protection.	Respondents wrote about the need to pay for protection now in order to avoid further damage in the future. They also commented on the difference in price for protecting reefs now and in the future.
4. Does not want more taxes/Thinks we should consider other alternatives first/The cost is too high/Money should be spent on other things.	Respondents simply did not want to pay more taxes. Some felt that the tax was too high and that we should consider other alternatives first. Others felt that money would be better spent elsewhere.
5. Something needs to be done, but not too much.	This category of responses came from individuals who agreed that something needed to be done to help protect the reefs. They felt that doing something was preferred to doing nothing.
6. Find a compromise between cost and protection.	These individuals rationalized their responses by weighing the cost of protection against the benefits of protection.

3. The follow up to the choice question read, "Please provide a brief comment that helps us understand why you chose the alternative as most preferred and as least preferred in the previous question."

Table 2.12. Description of open-ended response categories for the choice question

Category	Rationale for choosing the category
7. We need to choose the alternative with the best benefit for the reef ecosystem and the individuals that depend on them.	Respondents felt that the reef ecosystem is important enough for citizens to pay more in taxes to protect them.
8. Protest/Does not believe the program could work.	These respondents were not convinced that any of the alternatives solve the reef problem or thought that protection should not cost as much.
9. Other	Responses that could not be combined into a specific category.

Across all six versions, the first choice question had full implementation of all the management actions (i.e., 25% protection for the MHI, 100% protection for the NWHI, implementation of a program to repair injuries from ship accidents). Alternative C returned at least one of these attributes to the status quo and had a low dollar price, which made it easy to match respondents' most preferred choice with their responses to the open-ended question about why they made that choice.

About 75% of respondents chose both a most and least preferred alternative in answering the first choice question. Most of these respondents chose B as their most preferred option and A, status quo, as their least preferred option (56.4%). Table 2.13 reports the frequency of responses by category and choice pattern.

Table 2.13. Frequency of responses for respondents' most preferred and least preferred alternatives, by category

Category	A most preferred, B least preferred	A most preferred, C least preferred	B most preferred, A least preferred	B most preferred, C least preferred	C most preferred, A least preferred	C most preferred, B least preferred
1. It's the right thing to do/We have an obligation to do something.	0	0	30	1	0	1
2. We need to protect reefs for future generations.	0	0	12	0	0	0
3. There is a trade-off between long-term and short-term costs for protection.	0	0	9	0	1	0
4. Does not want more taxes/Thinks we should consider other alternatives first/The cost is too high/Money should be spent on other things.	22	1	0	0	1	3
5. Something needs to be done, but not too much.	0	0	0	0	13	2
6. Find a compromise between cost and protection.	0	0	9	0	5	7
7. The best benefit for the reef ecosystem and the individuals that depend on them.	0	0	23	3	0	0

Table 2.13. Frequency of responses for respondents' most preferred and least preferred alternatives, by category

Category	A most preferred, B least preferred	A most preferred, C least preferred	B most preferred, A least preferred	B most preferred, C least preferred	C most preferred, A least preferred	C most preferred, B least preferred
8. Protest/Do not believe the program could work.	2	1	0	1	0	1
9. Other.	3	2	10	0	0	2
Total	27	4	93	5	20	16

Below we discuss the verbatim responses according to respondents' most preferred and least preferred management option:

Alternative A most preferred/Alternative B least preferred: These respondents tended to fall into Category 4. That is, they tended to object to taxes or feel that costs were excessive, or other such lines of reasoning. Of all the responses falling into Category 4, 81.5% chose A as most preferred and B as least preferred.

Alternative A most preferred/Alternative C least preferred: Only four respondents fell into this group.

Alternative B most preferred/Alternative A least preferred: Ninety-four respondents chose Alternative B as their most preferred option and Alternative A as their least preferred option. They represent 93.8% of responses in Category 1 (30 out of 32), 100% of responses in Category 2 (12 out of 12), 90% of responses in Category 3 (9 out of 10), 43% of Category 6 responses (9 out of 21), 88% of responses in Category 7 (23 out of 26), and 59% of responses in Category 9 (10 out of 17).

Alternative B most preferred/Alternative C least preferred: Only 3% (n = 5) fell into this group. Answers to the open ended responses tended to focus on justifying B as most preferred and do not provide insights on why doing nothing was preferred to alternatives that did not do as much as Alternative B.

Alternative C most preferred/Alternative A least preferred: A total of 19 respondents (12.1%) fell into this group. In their open ended responses, respondents in this group tended to fall into Categories 5 and 6.

Alternative C most preferred/Alternative B least preferred: A total of 16 respondents (9.7%) fell into this group. Their open ended responses were spread out among the categories, with some tendency to fall into Categories 6 and 8.

Tables 2.14 and 2.15 summarize respondents' rankings to the alternatives made in response to the second and third choice set questions, respectively.

Table 2.14. Selection of alternative protection programs, by version, for Choice Set 2

	Main Hawaiian Islands: % reef protected	Northwest Hawaiian Islands: % reef protected	Reefs repaired from ship injuries	Added taxes to your household each year	Percent preferring this alternative the most	Percent preferring this alternative the least
<i>Version 1</i>						
Alternative A	1%	5%	No	\$0	21%	67%
Alternative B	1%	100%	Yes	\$50	62%	24%
Alternative C	1%	100%	No	\$40	18%	9%
<i>Version 2</i>						
Alternative A	1%	5%	No	\$0	9%	79%
Alternative B	1%	5%	Yes	\$5	32%	9%
Alternative C	1%	100%	No	\$15	59%	12%
<i>Version 3</i>						
Alternative A	1%	5%	No	\$0	16%	69%
Alternative B	1%	5%	Yes	\$1	24%	3%
Alternative C	25%	5%	No	\$50	59%	28%
<i>Version 4</i>						
Alternative A	1%	5%	No	\$0	30%	62%
Alternative B	1%	5%	Yes	\$5	11%	11%
Alternative C	25%	100%	No	\$30	59%	27%
<i>Version 5</i>						
Alternative A	1%	5%	No	\$0	14%	79%
Alternative B	1%	5%	Yes	\$10	22%	5%
Alternative C	1%	100%	No	\$20	65%	16%
<i>Version 6</i>						
Alternative A	1%	5%	No	\$0	21%	67%
Alternative B	1%	100%	Yes	\$30	55%	3%
Alternative C	25%	5%	Yes	\$60	24%	30%

Table 2.15. Selection of alternative protection programs, by version, for Choice Set 3

	Main Hawaiian Islands: % reef protected	Northwest Hawaiian Islands: % reef protected	Reefs repaired from ship injuries	Added taxes to your household each year	Percent preferring this alternative the most	Percent preferring this alternative the least
<i>Version 1</i>						
Alternative A	1%	5%	No	\$0	26%	63%
Alternative B	25%	100%	No	\$70	59%	28%
Alternative C	1%	100%	No	\$40	15%	9%
<i>Version 2</i>						
Alternative A	1%	5%	No	\$0	15%	68%
Alternative B	25%	100%	No	\$35	56%	24%
Alternative C	25%	5%	Yes	\$25	29%	9%
<i>Version 3</i>						
Alternative A	1%	5%	No	\$0	22%	73%
Alternative B	25%	5%	No	\$50	5%	14%
Alternative C	1%	100%	Yes	\$51	73%	14%
<i>Version 4</i>						
Alternative A	1%	5%	No	\$0	31%	51%
Alternative B	25%	5%	No	\$15	36%	8%
Alternative C	25%	100%	Yes	\$85	33%	41%
<i>Version 5</i>						
Alternative A	1%	5%	No	\$0	18%	76%
Alternative B	25%	5%	No	\$30	34%	5%
Alternative C	1%	100%	No	\$80	47%	18%
<i>Version 6</i>						
Alternative A	1%	5%	No	\$0	24%	64%
Alternative B	25%	100%	No	\$50	39%	33%
Alternative C	25%	5%	Yes	\$40	36%	3%

Econometric modeling of responses to the choice questions

Using the data from the pretest, we estimated a rank order logit model, regressing the probability of selecting a specific alternative on the levels of protection from overfishing around the MHI and NWHI, whether ship injuries would be repaired, and the bid amount. Table 2.16 summarizes these results.⁴ All coefficients have the expected sign and are highly significant. A strong preference for addressing problems of overfishing in the MHI is apparent from the results. Support is lowest for repairing ship injuries, with no-fishing areas for the NWHI receiving somewhat more support.

Table 2.16. Rank order logit model results

	Parameter estimate	Standard Error	Standard Deviation	Z	P> z
Main Islands	0.0975	0.0040	0.1780	24.15	< 0.001
Northwest Islands	0.0191	0.0014	0.0598	14.09	< 0.001
Ship Injuries	0.0148	0.0017	0.0745	8.73	< 0.001
Household Cost	-0.0314	0.0030	0.1333	-10.39	< 0.001

Despite these encouraging results, any attempt to use them to estimate dollar values could be quite misleading. The problem is that large numbers of respondents chose alternatives with dollar costs toward the high end. This indicates that the distributions of probabilities coming out of the model are likely to suffer from “fat tails” on the right side that are not supported by data. Some higher dollar costs will be used in the final study to remedy this problem.

Attitudes about choice questions

We asked respondents six follow-up questions regarding their attitudes about the choice questions. Table 2.17 summarizes responses to these attitudinal questions.

Table 2.18 summarizes significant correlations between responses to these attitudinal questions and answers to other questions in the survey. All relationships reported here are significantly correlated, at a 10% level or better. The correlations reveal consistent attitudes across questions; for example, those who believed that cost should not be a factor when protecting the environment supported paying higher taxes to restore reefs elsewhere in the survey.

4. In this model, no-fishing zones are entered in continuous terms expressed as the percentage of total coral reefs protected. As a check on results, we also ran an effects coded model, rather than a continuous model, and the results were the same. The effects coded model coefficients are the marginal values of moving from one level to the next — which are the same as the coefficient reported above multiplied by the unit changes.

Table 2.17. Summary statistics for responses to the six attitudinal follow-up questions

Attitudinal statement	NOBS	Mean	Median	StdDev	Scale
Costs should not be a factor when protecting the environment	213	2.77	3	0.08	
I found it difficult to select my most preferred alternative	214	3	3	0.09	
There was not enough information for me to make informed decisions about doing more to protect coral reefs in Hawaii	213	3.56	3	0.07	1 = strongly agree 2 = somewhat agree 3 = indifferent
I am concerned that the federal government cannot effectively manage coral reefs	213	2.58	3	0.07	4 = somewhat disagree 5 = strongly disagree
I should not have to pay more federal taxes to protect coral reefs around Hawaii	214	2.94	3	0.09	
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	210	1.97	2	0.08	

Those who agreed with the statement “Costs should not be a factor when protecting the environment” also tended to support increasing federal taxes to expand no-fishing zones around the MHI and NWHI and restore coral reefs injured by ships around the MHI. They tended to disagree with the statement that they should not have to pay more federal taxes to protect coral reefs and to agree that the views of the public as expressed in the survey should be important in making decisions about Hawaii’s reefs.

Those who found it difficult to select their most preferred alternative tended to oppose increasing taxes to restore coral reefs around the MHI. They also believed that there was insufficient information to make informed decisions and did not want to pay more taxes to protect reefs.

If respondents did not believe there was sufficient information to make informed decisions, they tended to be less likely to expect to visit Hawaii in the next 10 years and opposed using federal taxes to restore reefs injured by ships. They also tended to agree that the federal government cannot effectively manage reefs and that they should not have to pay more federal taxes to protect the reefs.

Respondents who were concerned that the federal government cannot effectively manage coral reefs had a higher tendency to have visited coral reefs in the United States.

Table 2.18. Summary of significant correlations between attitudinal and other variables

Attitudinal statement	Questions with significant correlations	Respondents who agreed with this statement also tended to:
Q19a. Costs should not be a factor when protecting the environment	Q10a (-) ^a Q11a (-) Q14a (-) Q19e (-) Q19f (+)	<ul style="list-style-type: none"> ▶ Support higher taxes to expand no-fishing zones and restore reefs from ship strikes ▶ Disagree with NOT paying more to protect coral reefs around Hawaii ▶ Agree the public's opinions should be considered in management decisions
Q19b. I found it difficult to select my most preferred alternative	Q14a (+) Q19c (+) Q19e (+)	<ul style="list-style-type: none"> ▶ Oppose increasing taxes to restore reefs after ship injuries ▶ Believe there was not enough information for informed decisions ▶ Not want to pay higher taxes to protect coral reefs around Hawaii
Q19c. There was not enough information for me to make informed decisions about doing more to protect coral reefs in Hawaii	Q6 (+) Q14a (+) Q19_4 (+) Q19_5 (+)	<ul style="list-style-type: none"> ▶ Less likely to visit Hawaii in the next 10 years ▶ Oppose increasing taxes to restore reefs after ship injuries ▶ Concerned about the government's ability to effectively manage reefs ▶ Not want to pay higher taxes to protect coral reefs in Hawaii
Q19d. I was concerned that the federal government cannot effectively manage coral reefs	Q2 (-)	<ul style="list-style-type: none"> ▶ Never have visited a coral reef in the US
Q19e. I should not have to pay more federal taxes to protect coral reefs around Hawaii	Q2 (+) Q6 (+) Q10a (+) Q11a (+) Q14a (+)	<ul style="list-style-type: none"> ▶ Never have visited a coral reef in the US ▶ Not expect to visit Hawaii in the next 10 years ▶ Oppose paying higher federal taxes to increase no-fishing zones and restore reefs
Q19f. 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	Q6 (-)	<ul style="list-style-type: none"> ▶ Not expect to visit Hawaii in the next 10 years

The scales for Q10a, Q11a, and Q14a ran from 1 for "strongly disagree" to 5 for "strongly agree." The scales in Q19 ran in the opposite direction. Hence, the expected signs or the correlation are negative.

Respondents who agreed that they should not have to pay more federal taxes to protect coral reefs around Hawaii were less likely to have visited a reef in the U.S., less likely to expect to visit Hawaii in the next 10 years, opposed to raising federal taxes to expand no-fishing zones around the MHI and NWHI, and opposed to raising federal taxes to restore reefs injured by ships around the MHI.

Finally, respondents who agreed that the public's views should be considered by the government when managing coral reefs were more likely to expect to visit Hawaii in the next 10 years.

Influence of news media

As the study was nearing the pretest stage, President Bush announced that a large area in the NWHI would become a national monument. This meant that no commercial fishing would be allowed, a fact that conflicted with what we told respondents about the possible need for further protection from overfishing in the NWHI. This had the potential of undermining the credibility of the choice questions in the eyes of respondents and we asked the following question to evaluate this risk: Have you heard or read anything about the Northwestern Hawaiian Islands in the past year?

Only nine respondents (4.2%) answered this question. Four of the nine participants who answered were aware that the NWHI had some type of protection (e.g., a sanctuary, monument, or national park).

Examples of their responses include the following.⁵

“That the government created a large no fishing sanctary North of Hawaii.”

“Just that a national park was being created there.”

“Pres. Bush signed an evironmental bill that would protect the islands.”

Only one of these participants knew that the U.S. President designated the NWHI as a national monument. The other five responses varied. Some participants learned about the islands from watching television shows like PBS. The remaining responses represent how participants feel about the threat to the islands – the MHI and NWHI – as well as general knowledge about the number of islands in Hawaii.

“Now is the time to protect the Northwestern Hawaiian Islands, not wait until they are compromisd.”

“Just that they are not in near as much danger as the main islands.”

“I very recently learned that there were 122 islands in Hawaii, and I did not know there were so many. These must mostly be in the Northwestern Islands.”

Hence, we concluded that the national monument announcement would not do much to undermine the validity of our study as it was designed.

5. All responses are presented verbatim as we received them. The respondents entered this information themselves.

Closing comments from respondents

At the end of the survey, we asked respondents if they had any additional comments to help us understand their views about coral reefs in Hawaii and their responses to the survey. A question like this at the end of a survey allows respondents to have one final opportunity to tell us any idea or concerns that might otherwise have been unstated, or to restate a previous opinion. This question also may provide clues about whether participants' responses to the choice questions are consistent with their views about coral reefs in Hawaii.

To analyze the open-ended responses, we developed descriptive categories to group them. We developed categories by first looking at the full set of open-ended responses, and then developed potential categories. Table 2.19 shows the final categories and provides a description of the category meaning.

Table 2.19. Description of response categories for additional comments

Category	Rationale for choosing the category
1. Needs more information/never thought about coral reefs in Hawaii before.	Respondents did not feel that they could make an informed decision without more information, or respondents had never thought about the coral reefs in Hawaii before taking the survey.
2. Distrust of the federal government.	Respondents did not trust the federal government to put the money to good use (i.e., protecting the reefs).
3. Feel that we need to maintain a balance in nature.	These respondents feel like we need to make greater efforts to balance the effects of consumption of natural resources by taking measures to protect the reef ecosystem.
4. Feel that we have an obligation to protect reefs/we should protect reefs just like any other national resource.	Respondents feel that we need to protect coral reefs, regardless of the cost we incur.
5. Does not believe the program could work/does not care/protest.	Respondents do not feel that the program will have its desired effects on the reef ecosystem, or they do not care about reefs.
6. Other people have a responsibility to pay/cannot afford more taxes.	Respondents in this category feel that we need to consider the source of the problem (e.g., over-fishing, ship strikes) and tax the people causing the problem rather than creating a federal tax, or that the people visiting Hawaii should pay for the problem, or that they could not pay more in taxes.
7. Other	Responses that we could not combine into a specific category.

Only 23% (50 of 216) of the respondents provided comments for this question. Table 2.20 presents the frequency of responses for each category.

Table 2.20. Any closing comments respondents had about the survey

Category	Number of responses	Frequency of responses
1. Needs more information/never thought about coral reefs in Hawaii before.	5	10%
2. Distrust of the federal government.	5	10%
3. Feel that we need to maintain a balance in nature.	6	12%
4. Feel that we have an obligation to protect reefs/we should protect reefs just like any other national resource.	13	26%
5. Does not believe the program could work/does not care/protest.	3	6%
6. Other people have a responsibility to pay/cannot afford more taxes.	7	14%
7. Other.	11	22%

Conclusions

Overall, the pretest supported the soundness of the survey instrument and supported the use of internet mode administration. Comparisons with the GSS national survey showed that respondents to the Coral Reef survey were for the most part very similar to the national GSS respondents in terms of attitudes toward social policy issues. Answers to the choice questions were sufficiently coherent to support simple econometric models with significant coefficients of the expected signs on the various attributes despite the relatively small sample size. Comparing verbatim responses to the open-ended questions with responses to the first choice question showed a few anomalies, but not many. Our conclusion is that the instrument is ready to be finalized and that finalizing it should be straightforward.

The most surprising result was the lack of correspondence between attitudes toward government spending of our respondents and those of the national sample from the GSS, but this does not appear to have any implications for the soundness of our instrument.

ATTACHMENT 3: KN'S 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.

ATTACHMENT 4: QUALITY ASSURANCE PROCEDURES

Knowledge Networks

The steps in the Quality Control (QC) process are: survey scripting and QC process, Word document review, test cases and pre-tests, online PI reviews, and final revisions and edits. The stages that the QC manager supervise includes the following:

- ▶ Review questionnaire Word document
- ▶ Review logic flow
- ▶ Review behavior of sample variables (used in skip logic)
- ▶ Estimate number of test cases to be performed
- ▶ Complete QC checklist/perform test cases on computer
- ▶ Perform data verification
- ▶ Re-test for corrections
- ▶ Configure sample variables
- ▶ Assign survey to WebTV accounts
- ▶ Test on WebTV
- ▶ Assign survey panel members for one or more pretests
- ▶ Assess pretest results
- ▶ Make any corrections as needed
- ▶ Assign survey to main survey sample according to the sample plan.

Abt SRBI

To ensure that production goals are met, field representatives will transmit screening data and case status information to Abt SRBI daily. This data will allow Field Managers to measure field progress and implement strategies to meet the production goals. Field Managers will conduct telephone verification on the first two completed households per interviewer. Thereafter we will randomly select 10% of the sample for telephone validation

Close attention will be paid to the monitoring of panel attrition and ensuring that it is kept at a minimum. The number of active respondents participating in each survey will be monitored on a daily basis and proactive intervention will be implemented in consultation with the Stanford investigators should the attrition rate increase beyond a set acceptable threshold.

ATTACHMENT 5: ILLUSTRATIONS

Current conditions of coral reefs around the Main Hawaiian Islands



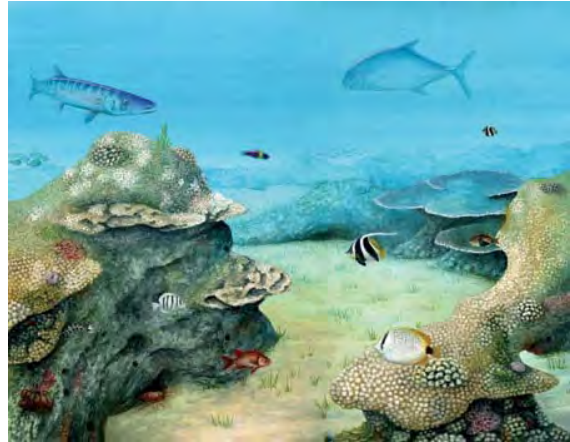
Conditions of coral reefs around the Main Hawaiian Islands before overfishing



Conditions in about 10 years if 1% of the coral reefs remain protected by no-fishing zones



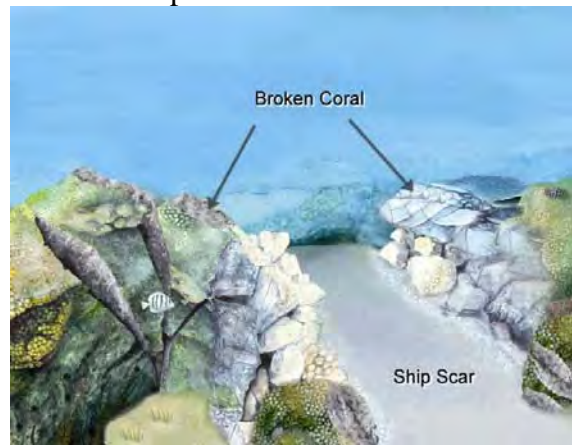
Conditions in about 10 years if no-fishing areas are increased to protect 25% of the coral reefs



Main Hawaiian Island coral reefs where
no ship accident has occurred



Area of coral reef where
a ship accident has occurred



ATTACHMENT 6: 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.

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.

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.

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. 102-587 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.

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 Reserve

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Marine mammal science.

(B) Coral reef ecology.

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

(D) Oceanography.

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

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

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

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

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

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

(8) One citizen-at-large representative.

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

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

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

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

(a) The seaward boundary of the Reserve is 50nm from the approximate center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Island. Where the areas are not contiguous, parallel lines drawn tangent to and connecting those 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 13178)--

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.

S6.1.4.1 Vehicles manufactured on or after September 1, 1998 and before September 1, 2007 are not required to comply with the requirements specified in S7.

S6.1.4.2 Vehicles manufactured on or after September 1, 2007 shall comply with the requirements specified in S7.

* * * * *

Issued on: August 22, 2006.

Nicole R. Nason,

Administrator.

[FR Doc. E6-14259 Filed 8-28-06; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 404

[Docket No. 060824225-6225-01]

RIN 0648-AU82

Northwestern Hawaiian Islands Marine National Monument

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC); United States Fish and Wildlife Service (USFWS), Department of the Interior (DOI).

ACTION: Final rule.

SUMMARY: NOAA and the USFWS are issuing final regulations for the Northwestern Hawaiian Islands Marine National Monument. This action codifies the prohibitions and management measures set forth in Presidential Proclamation 8031 establishing the Monument. The rule is effective immediately.

DATES: *Effective date:* These regulations are effective August 25, 2006. Written comments on the information collection requirement must be received by October 30, 2006.

ADDRESSES: Submit written comments regarding the burden-hour estimates or other aspects of the information collection requirements contained in this proposed rule by e-mail to Diana Hynek at dHynek@noaa.gov.

Coordinates for the outer boundary of the Monument, the Special Preservation Areas, the Ecological Reserves, and the Midway Atoll Special Management Area can be found at: <http://hawaiireef.noaa.gov/management/>.

FOR FURTHER INFORMATION CONTACT:

NOAA contact: T. Aulani Wilhelm, Monument Superintendent (NOAA); 6600 Kalaniana'ole Highway, #300, Honolulu, HI 96825; (808) 397-2657.

FWS contact: Barry Stieglitz, Monument Project Leader (USFWS); Hawaiian and Pacific Islands NWR Complex, 300 Ala Moana Boulevard, Box 50167, Honolulu, HI 96850-5000; 808-792-9540.

State of Hawaii contact: Athline Clark, Special Projects Manager, Department of Land and Natural Resources, Division of Aquatic Resources; 1151 Punchbowl Street, Room 330, Honolulu, HI 96813; (808) 587-0099.

SUPPLEMENTARY INFORMATION: On June 15, 2006, President Bush established the Northwestern Hawaiian Islands Marine National Monument by issuing Presidential Proclamation 8031 (71 FR 36443, June 26, 2006) under the authority of the Antiquities Act (Act) (16 U.S.C. 431). The Proclamation reserves all lands and interests in lands owned or controlled by the Government of the United States in the Northwestern Hawaiian Islands (NWHI), including emergent and submerged lands and waters, out to a distance of approximately 50 nautical miles (nmi) from the islands. The outer boundary of the Monument is approximately 100 nmi wide and extends approximately 1200 nmi around coral islands, seamounts, banks, and shoals. The area includes the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge.

The Proclamation appropriated and withdrew the area from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including, but not limited to, withdrawal from location, entry, and patent under mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The Proclamation provides that the Secretary of Commerce, through NOAA, has primary responsibility regarding the management of the marine areas of the Monument, in consultation with the Secretary of the Interior. The Secretary of the Interior, through the USFWS, has sole responsibility for management of the areas of the Monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce. Further, the Proclamation

provides that nothing in the Proclamation diminishes or enlarges the jurisdiction of the State of Hawaii. The Monument includes state waters, including the Northwestern Hawaiian Islands State Marine Refuge and Kure Atoll Wildlife Sanctuary. The State currently holds the submerged and ceded lands of the NWHI in trust. This public trust is overseen by the Office of Hawaiian Affairs through an amendment to the Constitution of the State of Hawaii. The State of Hawaii has primary responsibility for managing the State waters of the Monument.

The three principal entities with responsibility for managing lands and waters of the Monument—NOAA, USFWS, and the State of Hawaii (collectively, the Co-Trustees)—are working cooperatively and will consult to administer the Monument. The Co-Trustees have established a goal to provide unified management in the spirit of cooperative conservation. This relationship will be further described in a Memorandum of Agreement among the Co-Trustees.

The Proclamation requires restrictions and prohibitions regarding activities in the Monument consistent with the authority provided by the Act. The Proclamation shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law. NOAA and USFWS are promulgating as final regulations the management measures and prohibitions set forth in the Proclamation to codify them in the Code of Federal Regulations. This action will provide additional notice to the public and other interested parties of the terms of the Proclamation and activities that are prohibited or regulated and thereby facilitate improved compliance. Interested parties may view Hawaii Administrative Rules also applicable within the Monument at http://www.hawaii.gov/dlnr/dar/fish_regs/nwhi.htm.

These regulations address the requirement in the Proclamation that the Secretaries shall ensure, in addition to other things, that commercial fishing for bottomfish and other associated pelagic species may continue in the Monument for no more than 5 years. Section 404.10 sets out the conditions under which such fishing may continue to be conducted. However, commercial fishing remains prohibited in areas of the Monument not open to such fishing prior to issuance of the Proclamation.

Classification

Administrative Procedure Act

The Secretaries find good cause to waive notice and comment on these regulations, pursuant to 5 U.S.C. 533(b)(B), and the 30-day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary and contrary to the public interest because these regulations do not expand on the action already taken by the President in the Proclamation. The Proclamation became effective upon issuance on June 15, 2006. These regulations codify the prohibitions and management measures set forth in the Proclamation. Therefore, these regulations are being published as final

regulations and are effective August 25, 2006.

E.O. 12866

This rule has been determined to be significant for purposes of E.O. 12866.

Paperwork Reduction Act

This rule contains a collection-of-information requirement that was submitted to OMB for emergency approval under the Paperwork Reduction Act (PRA). The collection-of-information requirement was approved by OMB and granted OMB control number 0648-0548 which expires on February 28, 2007. We are now requesting comment on this information collection requirement for OMB's

subsequent review and approval on a non-emergency basis.

The public reporting burden for this information collection is described in the table below. The public reporting burden for permit applications and associated reporting requirements is estimated to average 1 hour per response. The public reporting burden for entry and exit notification is expected to average 15 minutes per response. The public reporting burden for VMS checklist certification is estimated to average 5 minutes per response. Each of these public reporting burdens includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

APPLICANT BURDEN

Permit type	Permits and other reporting per year	Responses per requirement	Total responses	Hours/response	Total hours	Annual record-keeping/reporting cost per response (dollar)	Total annual cost (dollar)
(a) General	33	3	99	1	99	1.00	99.00
(b) Special Ocean Use	5	3	15	24	360	1.00	15.00
(c) Native Hawaiian Practices.	2	2	4	4	16	1.00	4.00
(d) Recreation	2	3	6	1	6	1.00	6.00
(e) Entry & Exit Notice	174	2	348	5 minutes	29	0.00	0.00
(f) Purchase and installation of VMS.	50	NA	NA	4 hours	50	899 (initial cost: \$3595).	44,950.00
(g) VMS maintenance	50	NA	NA	4 hours	200	0	0
(h) VMS Certification	50	0.25	12.5	5 minutes	4	0.25	13.00
(i) Hourly VMS reports	50	3805	190,224	5 seconds	264	1.28/day	10,145.00
Total	124	190,709	1028	55,232.00

Note: VMS installation and activation hours and purchase costs are annualized by dividing by 4 years, the expected service life.

Public comment is sought regarding: whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230, or via e-mail at dHynek@noaa.gov.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject

to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 404

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Dated: August 24, 2006.

Conrad C. Lautenbacher Jr.,
Vice Admiral, U.S. Navy (Ret.),
Undersecretary of Commerce for Oceans and Atmosphere.

Dated: August 24, 2006.

David M. Verhey,
Acting Assistant Secretary for Fish and Wildlife and Parks.

■ Accordingly, NOAA and USFWS add part 404, title 50 of the Code of Federal Regulations as follows:

PART 404—NORTHWESTERN HAWAIIAN ISLANDS MARINE NATIONAL MONUMENT

- Sec.
- 404.1 Scope and purpose.
- 404.2 Boundary.
- 404.3 Definitions.
- 404.4 Access to the Monument.
- 404.5 Requirements for a vessel monitoring system.
- 404.6 Prohibited activities.
- 404.7 Regulated activities.
- 404.8 Emergencies and law enforcement activities.
- 404.9 Armed Forces actions.
- 404.10 Commercial fishing.
- 404.11 Permitting procedures and criteria.
- 404.12 International law.
- Appendix A to Part 404—Map of the Monument Outer Boundary and Ecological Reserves, Special Preservation Areas, and Midway Atoll Special Management Area
- Appendix B to Part 404—Approved Vessel Monitoring Systems

Authority: 16 U.S.C. 431 *et seq.*; 16 U.S.C. 460k-3; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 742f, 16 U.S.C. 742l, and 16 U.S.C. 668dd-

ee; 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 1531 *et seq.*, Pub. L. No. 106–513, § 6(g) (2000).

§ 404.1 Scope and purpose.

The regulations in this part codify the provisions of Presidential Proclamation 8031, and govern the administration of the Northwestern Hawaiian Islands Marine National Monument. These regulations are jointly implemented by the Secretaries of the Interior, through the U.S. Fish and Wildlife Service (USFWS), and Commerce, through the National Oceanic and Atmospheric Administration (NOAA). Nothing in these regulations shall be deemed to diminish or enlarge the jurisdiction of the State of Hawaii.

§ 404.2 Boundary.

The Northwestern Hawaiian Islands Marine National Monument consists of all lands and interest in lands owned or controlled by the Government of the United States within the boundaries of the Monument, including emergent and submerged lands and waters of the Northwestern Hawaiian Islands. The map in Appendix A to this part 404 depicts the outer boundary of the Monument, which consists of the geodetic lines connecting the coordinates specified in the Proclamation.

§ 404.3 Definitions.

The following definitions are applicable only to this Part.

Attract or Attracting means luring or attempting to lure a living resource by any means, except the mere presence of human beings (e.g., swimmers, divers, boaters).

Bottomfish Species means Bottomfish management unit species as defined at 50 CFR 665.12.

Commercial Bottomfishing means commercial fishing for bottomfish species.

Commercial passenger vessel means a vessel that carries individuals who have paid for such carriage.

Commercial pelagic trolling means commercial fishing for pelagic species.

Deserting a vessel means:

(1) Leaving a vessel aground or adrift:

(i) Without notifying the Secretaries of the vessel going aground or adrift within 12 hours of its discovery and developing and presenting to the Secretaries a preliminary salvage plan within 24 hours of such notification;

(ii) After expressing or manifesting intention to not undertake or to cease salvage efforts; or

(iii) When the Secretaries are unable, after reasonable efforts, to reach the owner/operator within 12 hours of the vessel's condition being reported to authorities.

(2) Leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Ecological Reserve means the areas of the Monument, identified in the Proclamation, consisting of contiguous, diverse habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Monument. Specific coordinates for Ecological Reserves within the Monument are found in the Proclamation, and the Ecological Reserves consist of the areas within the geodetic lines connecting these coordinates. The Ecological Reserves are depicted on the map in Appendix A to part 404.

Ecological integrity means a condition determined to be characteristic of an ecosystem that has the ability to maintain the function, structure, and abundance of natural biological communities, including rates of change in response to natural environmental variation.

Fishing year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

Introduced Species means:

(1) A species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystem(s) protected by the Monument; or

(2) Any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Landing means offloading fish from a fishing vessel or causing fish to be offloaded from a fishing vessel.

Midway Atoll Special Management Area means the area of the Monument surrounding Midway Atoll out to a distance of 12 nautical miles, established for the enhanced management, protection, and preservation of Monument wildlife and historical resources. The geographic coordinates of this area, which consists of the area within the geodetic lines connecting these coordinates, are found in the Proclamation. The Midway Atoll Special Management Area is depicted on the map in Appendix A to part 404.

Mobile transceiver unit means a vessel monitoring system or VMS device, as described in Appendix E to this Part, installed on board a vessel that is used

for vessel monitoring and transmitting the vessel's position as required by this Part.

Monument means the Northwestern Hawaiian Islands Marine National Monument.

Native Hawaiian Practices means cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of Monument resources for direct personal consumption while in the Monument.

Ocean-based ecotourism means a class of fee-for-service activities that involves visiting the Monument for study, enjoyment, or volunteer assistance for purposes of conservation and management.

Office for Law Enforcement (OLE) refers to NOAA, National Marine Fisheries Service, Office for Law Enforcement.

Pelagic Species means Pacific Pelagic Management Unit Species as defined at 50 CFR 665.12.

Pono means appropriate, correct, and deemed necessary by traditional standards in the Hawaiian culture.

Proclamation means Presidential Proclamation 8031, dated June 15, 2006 (71 FR 36443).

Recreational activity means an activity conducted for personal enjoyment that does not result in the extraction of Monument resources and that does not involve a fee-for-service transaction. This includes, but is not limited to, wildlife viewing, SCUBA diving, snorkeling, and boating.

Secretaries means the Secretary of Commerce and the Secretary of the Interior or their designees.

Special Preservation Area (SPA) means discrete, biologically important areas of the Monument, identified in the Proclamation, within which uses are subject to conditions, restrictions, and prohibitions, including but not limited to access restrictions. SPAs are used to avoid concentrations of uses that could result in declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Specific coordinates for Special Preservation Areas within the Monument are found in the Proclamation, and the Special Preservation Areas consist of the areas within the geodetic lines connecting these coordinates. The Special

Preservation Areas are depicted on the map in Appendix A to part 404.

Special ocean use means an activity or use of the Monument that is engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and does not destroy, cause the loss of, or injure Monument resources. This includes ocean-based ecotourism and other activities such as educational and research activities that are engaged in to generate revenue, but does not include commercial fishing for bottomfish or pelagic species conducted pursuant to a valid permit issued by NOAA.

Stowed and not available for immediate use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

Sustenance fishing means fishing for bottomfish or pelagic species in which all catch is consumed within the Monument, and that is incidental to an activity permitted under this part.

Vessel monitoring system or VMS means a vessel monitoring system or mobile transceiver unit as described in § 404.5 and approved by Office for Law Enforcement for use on vessels permitted to access the Monument, as required by this Part.

§ 404.4 Access to the Monument.

(a) Entering the Monument is prohibited and thus unlawful except:

- (1) As provided in §§ 404.8 and 404.9;
- (2) Pursuant to a permit issued under §§ 404.10 or 404.11; or

(3) When conducting passage without interruption in accordance with paragraph (b) of this section.

(b) Any person passing through the Monument without interruption is subject to the prohibitions in §§ 404.5, 404.6, and 404.7 and must provide notification prior to entering and after leaving the Monument. Notification of entry must be provided at least 72 hours, but no longer than 1 month, prior to the entry date. Notification of departure from the Monument must be provided within 12 hours of leaving. Notification under this paragraph may be made via e-mail, telephone or fax by contacting:

(1) E-mail: nwhi.notifications@commat.noaa.gov;
or

(2) Telephone: 1-866-478-NWHI (6944); or (808) 395-NWHI (6944).

(c) A person providing notice under this paragraph must provide the following information, as applicable:

(1) Position when making report.

(2) Vessel name and International Maritime Organization identification number.

(3) Name, address, and telephone number of owner and operator.

(4) USCG documentation, state license, or registration number.

(5) Home port.

(6) Intended and actual route through the Monument.

(7) General categories of any hazardous cargo on board.

(8) Length of vessel and propulsion type (e.g., motor or sail).

§ 404.5 Requirements for a vessel monitoring system.

(a) *Requirement for use.* Effective August 28, 2006, an owner or operator of a vessel that has been issued a permit for accessing the Monument must ensure that such vessel has an OLE-approved, operating VMS on board when voyaging within the Monument. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and OLE as provided by an OLE-approved communication service provider. Appendix B to this part 404 provides information regarding OLE-approved transmitting units.

(b) *Installing and activating the VMS.* Only a VMS that has been approved by OLE may be used. When installing and activating the OLE-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must:

(1) Follow procedures indicated on an installation and activation checklist, which is available from OLE; and

(2) Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.

(c) *Interference with the VMS.* No person may interfere with, tamper with, alter, damage, disable, or impede the operation of the VMS, or attempt any of the same.

(d) *Interruption of operation of the VMS.* When a vessel's VMS is not operating properly, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by OLE that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by OLE the vessel's positions or returning to port until the VMS is operable.

(e) *Access to position data.* As a condition of authorized access to the Monument, a vessel owner or operator subject to the requirements for a VMS in this section must allow OLE, the USCG,

and their authorized officers and designees access to the vessel's position data obtained from the VMS. Consistent with other applicable laws, including the limitations on access to, and use of, VMS data collected under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretaries may have access to, and use of, collected data for scientific, statistical, and management purposes.

(f) *Authority for installation and operation.* OLE has authority over the installation and operation of the VMS unit. OLE may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by OLE.

(g) *Activities Regarding Vessel Monitoring Systems.* Effective August 28, 2006, the following activities regarding vessel monitoring systems are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(1) Operating any vessel within the Monument without an OLE type-approved mobile transceiver unit described in this section;

(2) Failing to install, activate, repair, or replace a mobile transceiver unit prior to leaving port;

(3) Failing to operate and maintain a mobile transceiver unit on board the vessel at all times as specified in this section;

(4) Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel as specified in this section;

(5) Failing to contact OLE or follow OLE instructions when automatic position reporting has been interrupted as specified in this section;

(6) Registering a VMS or mobile transceiver unit to more than one vessel at the same time;

(7) Connecting or leaving connected additional equipment to a VMS unit or mobile transceiver unit without the prior approval of OLE; and

(8) Making a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or mobile transceiver unit or communication service provider.

§ 404.6 Prohibited activities.

The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted:

(a) Exploring for, developing, or producing oil, gas, or minerals within the Monument;

(b) Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a Monument resource;

(c) Introducing or otherwise releasing an introduced species from within or into the Monument; and

(d) Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope.

§ 404.7 Regulated activities.

Except as provided in §§ 404.8, 404.9 and 404.10, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the Monument without a valid permit as provided for in § 404.11:

(a) Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving Monument resource;

(b) Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;

(c) Anchoring a vessel;

(d) Deserting a vessel aground, at anchor, or adrift;

(e) Discharging or depositing any material or other matter into Special Preservation Areas or the Midway Atoll Special Management Area except vessel engine cooling water, weather deck runoff, and vessel engine exhaust;

(f) Discharging or depositing any material or other matter into the Monument, or discharging or depositing any material or other matter outside the Monument that subsequently enters the Monument and injures any resources of the Monument, 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;

(g) Touching coral, living or dead;

(h) Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument;

(i) Swimming, snorkeling, or closed or open circuit SCUBA diving within any Special Preservation Area or the Midway Atoll Special Management Area; and

(j) Attracting any living Monument resource.

§ 404.8 Emergencies and law enforcement activities.

The prohibitions in this part do not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

§ 404.9 Armed Forces actions.

(a) The prohibitions in this part do not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard) that are consistent with applicable laws.

(b) These regulations shall not 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.

(c) All activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on Monument resources and qualities.

(d) In the event of threatened or actual destruction of, loss of, or injury to a Monument resource or quality resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the United States Coast Guard, the cognizant component shall promptly coordinate with the Secretaries for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Monument resource or quality.

§ 404.10 Commercial fishing.

(a) *Lobster fishing.* Any commercial lobster fishing permit is subject to a zero annual harvest limit condition.

(b) *Fishing and bottomfish and pelagic species.* (1) Notwithstanding the prohibitions in § 404.7(a) and (h), commercial fishing for bottomfish and associated pelagic species may continue within the Monument subject to paragraph (c) of this section, until June 15, 2011, provided that:

(i) The fishing is conducted in accordance with a valid commercial bottomfish permit issued by NOAA; and

(ii) Such permit was in effect on June 15, 2006, and is subsequently renewed pursuant to NOAA regulations at 50 CFR part 665, subpart E as necessary.

(2) Total landings for each fishing year from fishing allowed under paragraph (b)(1) of this section may not exceed the following amounts:

(i) 350,000 pounds for bottomfish species; and

(ii) 180,000 pounds for pelagic species.

(3) Commercial fishing for bottomfish and associated pelagic species is prohibited in the Monument after June 15, 2011.

(c) *General requirements.* Any commercial fishing within the Monument shall be conducted in accordance with the following restrictions and conditions:

(1) A valid permit or facsimile of a valid permit shall be on board the fishing vessel and available for inspection by an authorized officer;

(2) No attempt is made to falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other required record or report.

(3) Only gear specifically authorized by the relevant permit issued under the Magnuson-Stevens Fishery Conservation and Management Act is allowed to be in the possession of a person conducting commercial fishing under this section;

(4) Any person conducting commercial fishing notifies the Secretaries by telephone, facsimile, or electronic mail at least 72 hours before entering the Monument and within 12 hours after leaving the Monument in accordance with § 404.4(b) and (c);

(5) All fishing vessels must carry an activated and functioning VMS unit on board at all times whenever the vessel is in the Monument;

(6) All fishing vessels must carry an observer when requested to do so by the Secretaries;

(7) The activity does not take place within any Ecological Reserve, any Special Preservation Area, or the Midway Atoll Special Management Area.

§ 404.11 Permitting procedures and criteria.

(a) *Issuance.* Subject to such terms and conditions as the Secretaries deem appropriate, a person may conduct an activity prohibited by § 404.7 if such activity is specifically authorized by a permit issued under this section.

(b) *Application requirements.* Applicants for permits under this section shall submit applications to: Northwestern Hawaiian Islands Marine National Monument, 6600 Kalanianaʻole Highway, Suite 300, Honolulu, HI 96825.

(c) *Permit Types.* A permit under this subpart may be issued if the Secretaries find that the activity:

(1) Is research designed to further understanding of Monument resources and qualities;

(2) Will further the educational value of the Monument;

(3) Will assist in the conservation and management of the Monument;

(4) Will allow Native Hawaiian practices subject to paragraph (e) of this section;

(5) Will allow a special ocean use subject to paragraph (f) of this section; or

(6) Will allow recreational activities subject to paragraph (g) of this section.

(d) *Findings.* A permit may not be issued under this section unless the Secretaries find:

(1) The activity can be conducted with adequate safeguards for the resources and ecological integrity of the Monument;

(2) The activity will be conducted in a manner compatible with the purposes of the Proclamation, considering the extent to which the conduct of the activity may diminish or enhance Monument resources, qualities, and ecological integrity, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(3) There is no practicable alternative to conducting the activity within the Monument;

(4) The end value of the activity outweighs its adverse impacts on Monument resources, qualities, and ecological integrity;

(5) The duration of the activity is no longer than necessary to achieve its stated purpose;

(6) The applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;

(7) The applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;

(8) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to Monument resources, qualities, and ecological integrity;

(9) The applicant's vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of § 404.5; and

(10) There are no other factors that would make the issuance of a permit for the activity inappropriate.

(e) *Additional findings for Native Hawaiian practice permits.* In addition to the findings listed in paragraph (d) of this section, a permit to allow Native Hawaiian practices under paragraph (c)(4) of this section, may not be issued unless:

(1) The activity is non-commercial and will not involve the sale of any organism or material collected;

(2) The purpose and intent of the activity are appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (*pono*), and demonstrate an understanding of, and background in, the traditional practice, and its associated values and protocols;

(3) The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community;

(4) The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and

(5) Any Monument resource harvested from the Monument will be consumed in the Monument.

(f) *Additional findings, criteria, and requirements for special ocean use permits.* (1) In addition to the findings listed in paragraph (d) of this section, the following requirements apply to the issuance of a permit for a special ocean use under paragraph (c)(5) of this section:

(i) Any permit for a special ocean use issued under this section:

(ii) Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the Monument is designated and with protection of Monument resources;

(A) Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed;

(B) Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure Monument resources; and

(iii) 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;

(iv) Each person issued a permit for a special ocean use under this section shall submit an annual report to the Secretaries not later than December 31 of each year which describes activities conducted under that permit and revenues derived from such activities during the year.

(2) In addition to the findings listed in paragraph (d) of this section, a permit may not be issued for a special ocean use unless the activity has been determined to be consistent with the findings made pursuant to paragraph (f) of this section.

(3) Categories of special ocean use being permitted for the first time under this section will be restricted in duration and permitted as a special ocean use pilot project. Subsequent permits for any category of special

ocean use may only be issued if a special ocean use pilot project for that category meets the requirements of this section, and any terms and conditions placed on the permit for the pilot project.

(4) Public notice shall be provided prior to requiring a special ocean use permit for any category of activity not previously identified as a special ocean use.

(5) The following requirements apply to permits for a special ocean use for an activity within the Midway Atoll Special Management Area.

(i) A permit for a special ocean use for activities within the Midway Atoll Special Management Area may be issued provided:

(A) The activity furthers the conservation and management of the Monument; and

(B) The Director of the United States Fish and Wildlife Service or his or her designee has determined that the activity is compatible with the purposes for which the Midway Atoll National Wildlife Refuge was designated.

(ii) As part of a permit issued pursuant to this paragraph (f)(5), vessels may be allowed to transit the Monument as necessary to enter the Midway Atoll Special Management Area.

(6) A permit for a special ocean use for activities outside the Midway Atoll Special Management Area may be issued provided:

(i) The activity will directly benefit the conservation and management of the Monument;

(ii) The purpose of the activity is for research or education related to the resources or qualities of the Monument;

(iii) Public notice of the application and an opportunity to provide comments is given at least 30 days prior to issuing the permit; and

(iv) The activity does not involve the use of a commercial passenger vessel.

(g) *Additional findings for recreation permits.* A permit for recreational activities under paragraph (c)(6) of this section may be issued for activities to be conducted within the Midway Atoll Special Management area if, in addition to the findings listed in paragraph (d) of this section:

(1) The activity is for the purpose of recreation as defined in section 404.3;

(2) The activity is not associated with any for-hire operation; and

(3) The activity does not involve any extractive use.

(h) *Sustenance fishing.* Sustenance fishing, as defined in 404.3, may be allowed outside of any Special Preservation Area as a term or condition of any permit issued under this part. Sustenance fishing in the Midway Atoll

Special Management Area shall not be allowed unless the activity has been determined by the Director of the U.S. Fish and Wildlife Service or his or her designee to be compatible with the purposes for which the Midway Atoll National Wildlife Refuge was established. Sustenance fishing must be conducted in a manner compatible with the Proclamation and this part, including considering the extent to which the conduct of the activity may

diminish Monument resources, qualities, and ecological integrity, as well as any indirect, secondary, or cumulative effects of the activity and the duration of such effects. Sustenance fishing is subject to systematic reporting requirements when developed by the Secretaries.

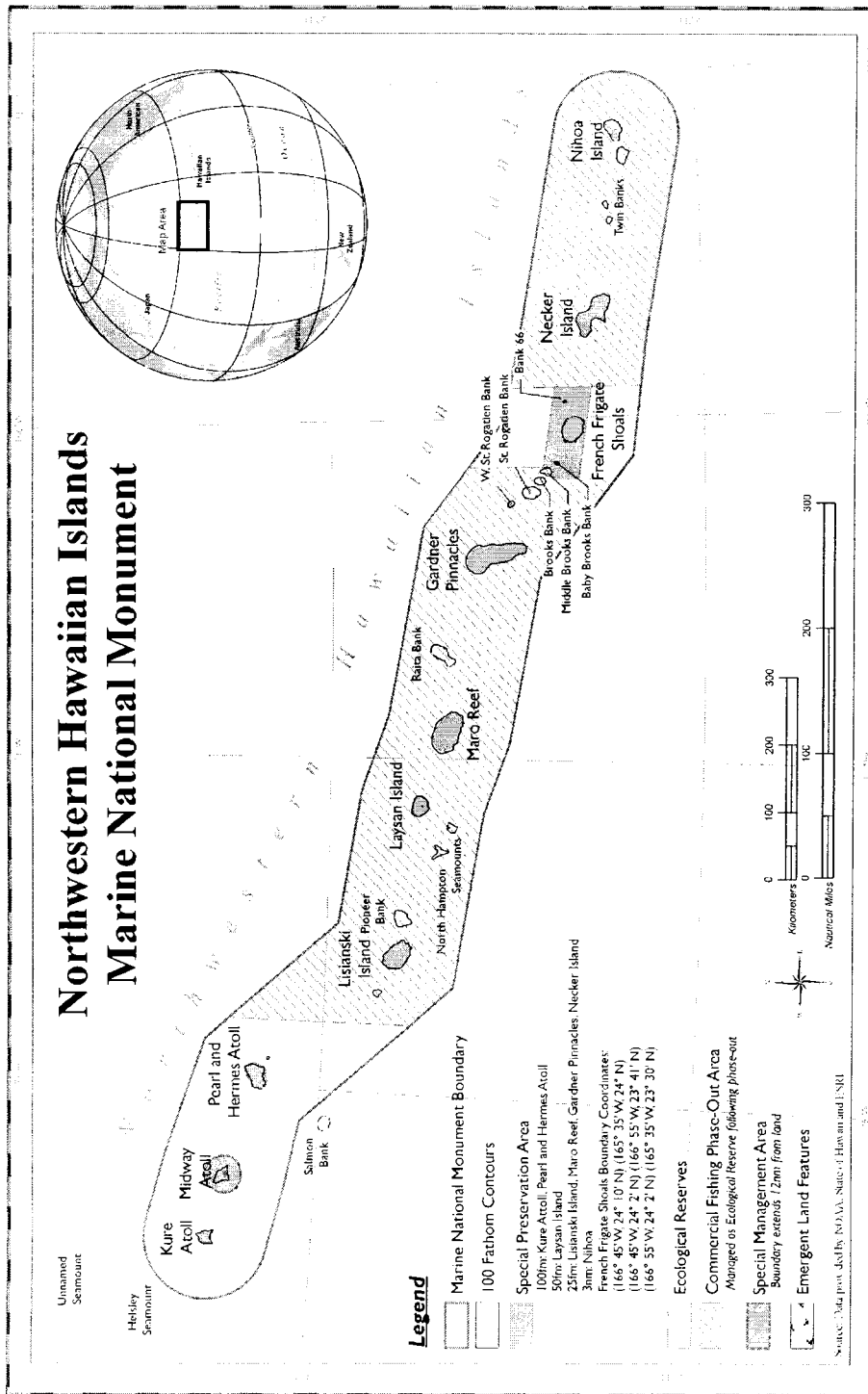
§ 404.12 International law.

These regulations shall be applied in accordance with international law. No restrictions shall apply to or be enforced

against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Appendix A to Part 404—Map of the Monument Outer Boundary and Ecological Reserves, Special Preservation Areas, and Midway Atoll Special Management Area

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Appendix B to Part 404—Approved VMS

I. VMS Mobile Transceiver Unit

Thrane & Thrane Sailor 3026D Gold VMS

The Thrane & Thrane Sailor 3026D Gold VMS (TT-3026D) has been found to meet the minimum technical requirements for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument. The address for the Thrane & Thrane distributor contact is provided in this notice under the heading VMS Provider Address.

The TT-3026D Gold VMS features an integrated GPS/Inmarsat-C unit and a marine grade monitor with keyboard and integrated mouse. The unit is factory pre-configured for NMFS VMS operations (non-Global Maritime Distress & Safety System (non-GMDSS)). Satellite commissioning services are provided by Thrane & Thrane personnel.

Automatic GPS position reporting starts after transceiver installation and power activation onboard the vessel. The unit is an integrated transceiver/antenna/GPS design using a floating 10 to 32 VDC power supply. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). It allows for port stays without power drain or power shut down. The unit restarts normal position transmission automatically when the vessel goes to sea.

The TT-3026D provides operation down to +/- 15 degree angles. The unit has the capability of two-way communications to send formatted forms and to receive e-mail and other messages. A configuration option is available to automatically send position reports to a private address, such as a fleet management company.

A vessel owner may purchase this system by contacting the entity identified in this notice under the heading "VMS Provider Address". The owner should identify himself or herself as a vessel owner issued a permit to operate in the Northwestern Hawaiian Islands Marine National Monument, so the transceiver set can be properly configured. To use the TT-3026D the vessel owner will need to establish an Inmarsat-C system use contract with an approved Inmarsat-C communications service provider. The owner will be required to complete the Inmarsat-C "Registration for Service Activation for Maritime Mobile Earth Station." The owner should consult with Thrane & Thrane when completing this form.

Thrane & Thrane personnel will perform the following services before shipment: (1) Configure the transceiver according to OLE specifications for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument; (2) download the predetermined NMFS position

reporting and broadcast command identification numbers into the unit; (3) test the unit to ensure operation when installation has been completed on the vessel; and (4) forward the Inmarsat service provider and the transceiver identifying information to OLE.

II. Inmarsat-C Communications Providers

It is recommended, for vendor warranty and customer service purposes, that the vessel owner keep for his or her records and that Telenor and Xantic have on record the following identifying information: (1) Signed and dated receipts and contracts; (2) transceiver serial number; (3) Telenor or Xantic customer number, user name and password; (4) e-mail address of transceiver; (5) Inmarsat identification number; (6) owner name; (7) vessel name; (8) vessel documentation or registration number; and (9) mobile earth station license (FCC license).

The OLE will provide an installation and activation checklist that the vessel owner must follow. The vessel owner must sign a statement on the checklist certifying compliance with the installation procedures and return the checklist to OLE. Installation can be performed by an experienced crew or by an electronics specialist, and the installation cost is paid by the owner.

The owner may confirm the TT-3026D operation and communications service to ensure that position reports are automatically sent to and received by OLE before leaving on a trip under VMS. The OLE does not regard the vessel as meeting requirements until position reports are automatically received. For confirmation purposes, contact the NOAA Fisheries Office for Law Enforcement, 8484 Georgia Ave., Suite 415, Silver Spring, MD 20910, phone 888-219-9228, fax 301-427-0049.

Telenor Satellite Services

Inmarsat-C is a store-and-forward data messaging service. Inmarsat-C allows users to send and receive information virtually anywhere in the world, on land, at sea, and in the air. Inmarsat-C supports a wide variety of applications including Internet, e-mail, position and weather reporting, a free daily news service, and remote equipment monitoring and control. Mariners can use Inmarsat-C free of charge to send critical safety at sea messages as part of the U.S. Coast Guard's Automated Mutual-Assistance Vessel Rescue system and of the NOAA Shipboard Environmental Acquisition System programs. Telenor Vessel Monitoring System Services is being sold through Thrane & Thrane, Inc. For the Thrane & Thrane and Telenor addresses, look inside this notice under the heading "VMS Provider Address".

Xantic

Xantic is a provider of Vessel Monitoring Services to the maritime industry. By

installing an approved OLE Inmarsat-C transceiver on the vessel, vessels can send and receive e-mail, to and from land, while the transceiver automatically sends vessel position reports to OLE, and is fully compliant with the International Coast Guard Search and Rescue Centers. Xantic Vessel Monitoring System Services are being sold through Thrane & Thrane, Inc. For the Thrane & Thrane and Xantic addresses, look in this notice under the heading "VMS Provider Address".

For Telenor and Xantic, Thrane & Thrane customer service supports the security and privacy of vessel accounts and messages with the following: (a) Password authentication for vessel owners or agents and for OLE to prevent unauthorized changes or inquiries; and (b) separation of private messages from OLE messages. (OLE requires VMS-related position reports, only.)

Billing is separated between accounts for the vessel owner and the OLE. VMS position reports and vessel-initiated messaging are paid for by the vessel owner. Messaging initiated from OLE operations center is paid for by NOAA.

Thrane & Thrane provides customer service for Telenor and Xantic users to support and establish two-way transmission of transceiver unit configuration commands between the transceiver and land-based control centers. This supports OLE's message needs and, optionally, the crew's private message needs.

The vessel owner can configure automatic position reports to be sent to a private address, such as to a fleet management company.

Vessel owners wishing to use Telenor or Xantic services will need to purchase an Inmarsat-C transceiver approved for vessels issued permits to operate in the Northwestern Hawaiian Islands Marine National Monument. The owner will need to complete an Inmarsat-C system use contract with Telenor or Xantic, including a mobile earth station license (FCC requirement). The transceiver will need to be commissioned with Inmarsat according to Telenor or Xantic's instructions. The owner should refer to and follow the configuration, installation, and service activation procedures for the specific transceiver purchased.

III. VMS Provider Address

For TT-3026D, Telenor, or Xantic information, contact Ronald Lockerby, Marine Products, Thrane & Thrane, Inc., 509 Viking Drive, Suite K, L & M, Virginia Beach, VA 23452; voice: 757-463-9557; fax: 757-463-9581, e-mail: rdl@tt.dk.com; Web site: <http://www.landseasystems.com>.

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Establishment of the Northwestern Hawaiian Islands Marine National Monument

For Immediate Release

Office of the Press Secretary

June 15, 2006

Establishment of the Northwestern Hawaiian Islands Marine National Monument

A Proclamation by the President of the United States of America

President Bush Establishes Northwestern Hawaiian Islands National Monument

In Focus: Environment

In the Pacific Ocean northwest of the principal islands of Hawaii lies an approximately 1,200 nautical mile stretch of coral islands, seamounts, banks, and shoals. The area, including the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway National Wildlife Refuge, the Hawaiian Islands National Wildlife Refuge, and the Battle of Midway National Memorial, supports a dynamic reef ecosystem with more than 7,000 marine species, of which approximately half are unique to the Hawaiian Island chain. This 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 and a connection to early Polynesian culture worthy of protection and understanding.

WHEREAS Executive Order 13089 of June 11, 1998, Executive Order 13178 of December 4, 2000, and Executive Order 13196 of January 18, 2001, as well as the process for designation of a National Marine Sanctuary undertaken by the Secretary of Commerce, have identified objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States in the area of the Northwestern Hawaiian Islands;

WHEREAS section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the "Antiquities Act") authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS it would be in the public interest to preserve the marine area of the Northwestern Hawaiian Islands and certain lands as necessary for the care and management of the historic and scientific objects therein,

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by

the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Northwestern Hawaiian Islands Marine National Monument (the "monument" or "national monument") for the purpose of protecting the objects described above, all lands and interests in lands owned or controlled by the Government of the United States within the boundaries described on the accompanying map entitled "Northwestern Hawaiian Islands Marine National Monument" attached to and forming a part of this proclamation. The Federal land and interests in land reserved includes approximately 139,793 square miles of emergent and submerged lands and waters of the Northwestern Hawaiian Islands, which is the smallest area compatible with the proper care and management of the objects to be protected. All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including, but not limited to, withdrawal from location, entry, and patent under mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), will have primary responsibility regarding management of the marine areas, in consultation with the Secretary of the Interior. The Secretary of the Interior, through the Fish and Wildlife Service (FWS), will have sole responsibility for management of the areas of the monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce.

The Secretary of Commerce and the Secretary of the Interior (collectively, the "Secretaries") shall review and, as appropriate, modify the interagency agreement developed for coordinated management of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, signed on May 19, 2006. To manage the monument, the Secretary of Commerce, in consultation with the Secretary of the Interior and the State of Hawaii, shall modify, as appropriate, the plan developed by NOAA's National Marine Sanctuary Program through the public sanctuary designation process, and will provide for public review of that plan. To the extent authorized by law, the Secretaries, acting through the FWS and NOAA, shall promulgate any additional regulations needed for the proper care and management of the objects identified above.

The Secretary of State, in consultation with the Secretaries, shall take appropriate action to enter into negotiations with other governments to make necessary arrangements for the protection of the monument and to promote the purposes for which the monument is established. The Secretary of State, in consultation with the Secretaries, shall seek the cooperation of other governments and international organizations in furtherance of the purposes of this proclamation and consistent with applicable regional and multilateral

arrangements for the protection and management of special marine areas. Furthermore, this proclamation shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Nothing in this proclamation shall be deemed to diminish or enlarge the jurisdiction of the State of Hawaii.

The establishment of this monument is subject to valid existing rights and use of the monument shall be administered as follows:

Access to the Monument

The Secretaries shall prohibit entering the monument except pursuant to permission granted by the Secretaries or their designees. Any person passing through the monument without interruption must notify an official designated by the Secretaries at least 72 hours, but no longer than 1 month, prior to the entry date. Notification of departure from the monument must be provided within 12 hours of leaving. A person providing notice must provide the following information, as applicable: (i) position when making report; (ii) vessel name and International Maritime Organization identification number; (iii) name, address, and telephone number of owner and operator; (iv) United States Coast Guard (USCG) documentation, State license, or registration number; (v) home port; (vi) intended and actual route through the monument; (vii) general categories of any hazardous cargo on board; and (viii) length of vessel and propulsion type (e.g., motor or sail).

Vessel Monitoring Systems

1. As soon as possible but not later than 30 days following the issuance of this proclamation, NOAA shall publish in the Federal Register a list of approved transmitting units and associated communications service providers for purposes of this proclamation. An owner or operator of a vessel that has been issued a permit for accessing the monument must ensure that such a vessel has an operating vessel monitoring system (VMS) on board, approved by the Office of Legal Enforcement in the National Oceanic and Atmospheric Administration in the Department of Commerce (OLE) when voyaging within the monument. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and OLE as provided by an OLE-approved communication service provider.

2. Only a VMS that has been approved by OLE may be used. When installing and activating the OLE-approved VMS, or when reinstalling and reactivating such VMS, the vessel owner or operator must:

- a. Follow procedures indicated on an installation and activation checklist, which is available from OLE; and
- b. Submit to OLE a statement certifying compliance with the checklist, as prescribed on the checklist.

3. No person may interfere with, tamper with, alter, damage, disable, or impede

the operation of the VMS, or attempt any of the same.

4. When a vessel's VMS is not operating properly, the owner or operator must immediately contact OLE, and follow instructions from that office. If notified by OLE that a vessel's VMS is not operating properly, the owner and operator must follow instructions from that office. In either event, such instructions may include, but are not limited to, manually communicating to a location designated by OLE the vessel's positions or returning to port until the VMS is operable.

5. As a condition of authorized access to the monument, a vessel owner or operator subject to the requirements for a VMS in this section must allow OLE, the USCG, and their authorized officers and designees access to the vessels position data obtained from the VMS. Consistent with applicable law, including the limitations on access to, and use, of VMS data collected under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the Secretaries may have access to, and use of, collected data for scientific, statistical, and management purposes.

6. OLE has authority over the installation and operation of the VMS unit. OLE may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit, when deemed appropriate by OLE.

7. The Secretaries shall prohibit any person from conducting or causing to be conducted:

- a. Operating any vessel without an approved transmitting device within the monument area 45 days after the publication of the list of approved transmitting devices described in paragraph (1) above;
- b. Failing to install, activate, repair, or replace a mobile transceiver unit prior to leaving port;
- c. Failing to operate and maintain a mobile transceiver unit on board the vessel at all times;
- d. Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS, mobile transceiver unit, or VMS signal required to be installed on or transmitted by a vessel;
- e. Failing to contact OLE or follow OLE instructions when automatic position reporting has been interrupted;
- f. Registering a VMS or mobile transceiver unit registered to more than one vessel at the same time;
- g. Connecting or leaving connected additional equipment to a VMS unit or mobile transceiver unit without the prior approval of OLE;
- h. Making a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or mobile transceiver unit or communication service provider.

Restrictions

Prohibited Activities

The Secretaries shall prohibit persons from conducting or causing to be conducted the following activities:

1. Exploring for, developing, or producing oil, gas, or minerals within the monument;
2. Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a monument resource;
3. Introducing or otherwise releasing an introduced species from within or into the monument; and
4. Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope.

Regulated Activities

Except as otherwise provided in this proclamation, the Secretaries shall prohibit any person from conducting or causing to be conducted within the monument the following activities:

1. Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving monument resource;
2. Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;
3. Anchoring a vessel;
4. Deserting a vessel aground, at anchor, or adrift;
5. Discharging or depositing any material or other matter into Special Preservation Areas or the Midway Atoll Special Management Area except vessel engine cooling water, weather deck runoff, and vessel engine exhaust;
6. Discharging or depositing any material or other matter into the monument, or discharging or depositing any material or other matter outside of the monument that subsequently enters the monument and injures any resources of the monument, 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;
7. Touching coral, living or dead;
8. Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the monument;
9. Swimming, snorkeling, or closed or open circuit SCUBA diving within any Special Preservation Area or the Midway Atoll Special Management Area; and
10. Attracting any living monument resources.

Emergencies and Law Enforcement Activities

The prohibitions required by this proclamation shall not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

Armed Forces Actions

1. The prohibitions required by this proclamation shall not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard) that are consistent with applicable laws.
2. Nothing in this proclamation 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.
3. All activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on monument resources and qualities.
4. In the event of threatened or actual destruction of, loss of, or injury to a monument resource or quality resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the USCG, the cognizant component shall promptly coordinate with the Secretaries for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the monument resource or quality.

Commercial Fishing

1. The Secretaries shall ensure that any commercial lobster fishing permit shall be subject to a zero annual harvest limit.
2. Fishing for bottomfish and pelagic species. The Secretaries shall ensure that:
 - a. Commercial fishing for bottomfish and associated pelagic species may continue within the monument for not longer than 5 years from the date of this proclamation provided that:
 - (i) The fishing is conducted in accordance with a valid commercial bottomfish permit issued by NOAA; and
 - (ii) Such permit is in effect on the date of this proclamation and is subsequently renewed pursuant to NOAA regulations at 50 CFR part 660 subpart E as necessary.
 - b. Total landings for each fishing year may not exceed the following amounts:
 - (i) 350,000 pounds for bottomfish species; and
 - (ii) 180,000 pounds for pelagic species.
 - c. Commercial fishing for bottomfish and associated pelagic species is prohibited in the monument after 5 years from the date of this proclamation.

General Requirements

The Secretaries shall ensure that any commercial fishing within the monument is conducted in accordance with the following restrictions and conditions:

1. A valid permit or facsimile of a valid permit is on board the fishing vessel and is available for inspection by an authorized officer;
2. No attempt is made to falsify or fail to make, keep, maintain, or submit any logbook or logbook form or other required record or report;
3. Only gear specifically authorized by the relevant permit issued under the Magnuson-Stevens Fishery Conservation and Management Act is allowed to be in the

- possession of a person conducting commercial fishing under this section;
4. Any person conducting commercial fishing notifies the Secretaries by telephone, facsimile, or electronic mail at least 72 hours before entering the monument and within 12 hours after leaving the monument;
 5. All fishing vessels must carry an activated and functioning VMS unit on board at all times whenever the vessel is in the monument;
 6. All fishing vessels must carry an observer when requested to do so by the Secretaries; and
 7. The activity does not take place within any Ecological Reserve, any Special Preservation Area, or the Midway Atoll Special Management Area.

Permitting Procedures and Criteria

Subject to such terms and conditions as the Secretaries deem appropriate, a person may conduct an activity regulated by this proclamation if such activity is specifically authorized by a permit. The Secretaries, in their discretion, may issue a permit under this proclamation if the Secretaries find that the activity: (i) is research designed to further understanding of monument resources and qualities; (ii) will further the educational value of the monument; (iii) will assist in the conservation and management of the monument; (iv) will allow Native Hawaiian practices; (v) will allow a special ocean use; or (vi) will allow recreational activities.

Findings

1. The Secretaries may not issue any permit unless the Secretaries find:
 - a. The activity can be conducted with adequate safeguards for the resources and ecological integrity of the monument;
 - b. The activity will be conducted in a manner compatible with the management direction of this proclamation, considering the extent to which the conduct of the activity may diminish or enhance monument resources, qualities, and ecological integrity, any indirect, secondary, or cumulative effects of the activity, and the duration of such effects;
 - c. There is no practicable alternative to conducting the activity within the monument;
 - d. The end value of the activity outweighs its adverse impacts on monument resources, qualities, and ecological integrity;
 - e. The duration of the activity is no longer than necessary to achieve its stated purpose;
 - f. The applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;
 - g. The applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;
 - h. The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to monument resources, qualities, and ecological integrity;

- i. The applicant's vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of this proclamation; and
- j. There are no other factors that would make the issuance of a permit for the activity inappropriate.

2. Additional Findings for Native Hawaiian Practice Permits. In addition to the findings listed above, the Secretaries shall not issue a permit to allow Native Hawaiian practices unless the Secretaries find:

- a. The activity is non-commercial and will not involve the sale of any organism or material collected;
- b. The purpose and intent of the activity are appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (pono), and demonstrate an understanding of, and background in, the traditional practice, and its associated values and protocols;
- c. The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community;
- d. The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and
- e. Any monument resource harvested from the monument will be consumed in the monument.

3. Additional Findings, Criteria, and Requirements for Special Ocean Use Permits

a. In addition to the findings listed above, the following requirements apply to the issuance of a permit for a special ocean use:

- (i) Any permit for a special ocean use issued under this section:
 - (A) Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the monument is designated and with protection of monument resources;
 - (B) Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretaries;
 - (C) Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure monument resources; and
 - (D) Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims; and
- (ii) Each person issued a permit for a special ocean use under this section shall submit an annual report to the Secretaries not later than December 31 of each year that describes activities conducted under that permit and revenues derived from such activities during the year.

b. The Secretaries may not issue a permit for a special ocean use unless they determine that the proposed activity will be consistent with the findings listed

above for the issuance of any permit.

c. Categories of special ocean use being permitted for the first time under this section will be restricted in duration and permitted as a special ocean use pilot project. Subsequent permits for any category of special ocean use may be issued only if a special ocean use pilot project for that category has been determined by the Secretaries to meet the criteria in this proclamation and any terms and conditions placed on the permit for the pilot project.

d. The Secretaries shall provide public notice prior to requiring a special ocean use permit for any category of activity not previously identified as a special ocean use.

e. The following requirements apply to permits for a special ocean use for an activity within the Midway Atoll Special Management Area.

(i) The Secretaries may issue a permit for a special ocean use for activities within the Midway Atoll Special Management Area provided:

(A) The Secretaries find the activity furthers the conservation and management of the monument; and

(B) The Director of the United States Fish and Wildlife Service or his or her designee has determined that the activity is compatible with the purposes for which the Midway Atoll National Wildlife Refuge was designated.

(ii) As part of a permit, the Secretaries may allow vessels to transit the monument as necessary to enter the Midway Atoll Special Management Area.

f. The Secretaries may issue a permit for a special ocean use for activities outside the Midway Atoll Special Management Area provided:

(i) The Secretaries find the activity will directly benefit the conservation and management of the monument;

(ii) The Secretaries determine the purpose of the activity is for research or education related to the resources or qualities of the monument;

(iii) The Secretaries provide public notice of the application and an opportunity to provide comments at least 30 days prior to issuing the permit; and

(iv) The activity does not involve the use of a commercial passenger vessel.

4. Additional Findings for Recreation Permits. The Secretaries may issue a permit only for recreational activities to be conducted within the Midway Atoll Special Management Area. In addition to the general findings listed above for any permit, the Secretaries may not issue such permit unless the Secretaries find:

a. The activity is for the purpose of recreation as defined in regulation;

b. The activity is not associated with any for-hire operation; and

c. The activity does not involve any extractive use.

Sustenance Fishing

Sustenance fishing means fishing for bottomfish or pelagic species that are consumed within the monument, and is incidental to an activity permitted under this proclamation. The Secretaries may permit sustenance fishing outside of any

Special Preservation Area as a term or condition of any permit issued under this proclamation. The Secretaries may not permit sustenance fishing in the Midway Atoll Special Management Area unless the activity has been determined by the Director of the United States Fish and Wildlife Service or his or her designee to be compatible with the purposes for which the Midway Atoll National Wildlife Refuge was established. Sustenance fishing must be conducted in a manner compatible with this proclamation, including considering the extent to which the conduct of the activity may diminish monument resources, qualities, and ecological integrity, as well as any indirect, secondary, or cumulative effects of the activity and the duration of such effects. The Secretaries will develop procedures for systematic reporting of sustenance fishing.

Definitions For purposes of this proclamation:

Attract or Attracting means luring or attempting to lure a living resource by any means, except the mere presence of human beings (e.g., swimmers, divers, boaters).

Bottomfish Species means bottomfish management unit species as defined at 50 CFR 660.12.

Commercial Bottomfishing means commercial fishing for bottomfish species.

Commercial Passenger Vessel means a vessel that carries individuals who have paid for such carriage.

Commercial Pelagic Trolling means commercial fishing for pelagic species.

Deserting a vessel means:

1. Leaving a vessel aground or adrift:

- (i) Without notifying the Secretaries of the vessel going aground or adrift within 12 hours of its discovery and developing and presenting to the Secretaries a preliminary salvage plan within 24 hours of such notification;
- (ii) After expressing or manifesting intention to not undertake or to cease salvage efforts; or
- (iii) When the Secretaries are unable, after reasonable efforts, to reach the owner/operator within 12 hours of the vessels condition being reported to authorities.

2. Leaving a vessel at anchor when its condition creates potential for a grounding, discharge, or deposit and the owner/operator fails to secure the vessel in a timely manner.

Ecological Reserve means an area of the monument consisting of contiguous, diverse habitats that provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the monument.

Ecological Integrity means a condition determined to be characteristic of an ecosystem that has the ability to maintain the function, structure, and abundance of natural biological communities, including rates of change in

response to natural environmental variation.

Fishing Year means the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31.

Introduced Species means:

1. A species (including, but not limited to, any of its biological matter capable of propagation) that is non native to the ecosystem(s) protected by the monument; or
2. Any organism into which genetic matter from another species has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

Landing means offloading fish from a fishing vessel or causing fish to be offloaded from a fishing vessel.

Midway Atoll Special Management Area means the area of the monument surrounding Midway Atoll out to a distance of 12 nautical miles, established for the enhanced management, protection, and preservation of monument wildlife and historical resources.

Mobile Transceiver Unit means a vessel monitoring system or VMS device installed on board a vessel that is used for vessel monitoring and transmitting the vessel's position as required by this proclamation.

Native Hawaiian Practices means cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment, and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of monument resources for direct personal consumption while in the monument.

Ocean-Based Ecotourism means a class of fee-for-service activities that involves visiting the monument for study, enjoyment, or volunteer assistance for purposes of conservation and management.

Pelagic Species means Pacific Pelagic Management Unit Species as defined at 50 CFR 660.12.

Pono means appropriate, correct, and deemed necessary by traditional standards in the Hawaiian culture.

Recreational Activity means an activity conducted for personal enjoyment that does not result in the extraction of monument resources and that does not involve a fee-for-service transaction. This includes, but is not limited to, wildlife viewing, SCUBA diving, snorkeling, and boating.

Special Preservation Area (SPA) means discrete, biologically important areas of the monument within which uses are subject to conditions, restrictions, and prohibitions, including but not limited to access restrictions. SPAs are used to avoid concentrations of uses that could result in declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide

opportunities for scientific research.

Special Ocean Use means an activity or use of the monument that is engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and does not destroy, cause the loss of, or injure monument resources. This includes ocean-based ecotourism and other activities such as educational and research activities that are engaged in to generate revenue, but does not include commercial fishing for bottomfish or pelagic species conducted pursuant to a valid permit issued by NOAA.

Stowed and Not Available for Immediate Use means not readily accessible for immediate use, e.g., by being securely covered and lashed to a deck or bulkhead, tied down, unbaited, unloaded, or partially disassembled (such as spear shafts being kept separate from spear guns).

Sustenance Fishing means fishing for bottomfish or pelagic species in which all catch is consumed within the monument, and that is incidental to an activity permitted under this proclamation.

Vessel Monitoring System or VMS means a vessel monitoring system or mobile transceiver unit approved by the Office for Law Enforcement for use on vessels permitted to access the monument, as required by this subpart.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of June, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.

GEORGE W. BUSH

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Return to this article at:

<http://www.whitehouse.gov/news/releases/2006/06/20060615-18.html>

[Code of Federal Regulations]
[Title 15, Volume 3]
[Revised as of January 1, 2003]
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TITLE 15--COMMERCE AND FOREIGN TRADE

CHAPTER IX--NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT
OF COMMERCE

PART 990--NATURAL RESOURCE DAMAGE ASSESSMENTS

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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

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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

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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

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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

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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

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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

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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

Sec. 990.30 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:

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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

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,

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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]

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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;

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(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**,

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trustees must establish whether natural resources were exposed, either

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

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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)

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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

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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:

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(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 or

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:

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(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

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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.

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**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.

(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.

(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

(a) General rule

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.

(2) Limitation

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.

§ 2716a. 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.

ATTACHMENT 7: FEDERAL REGISTER NOTIFICATION

Awards for members of the Senior Executive Service.

The Under Secretary for International Trade, Franklin L. Lavin, has named the following members of the International Trade Administration Performance Review Board:

1. Thomas A. McGinty, National Director (new).
2. Barbara E. Tillman, Senior Director (new).*
3. Seward L. Jones Jr., Director, Office of Multilateral Affairs (new).
4. Patricia A. Sefcik, Senior Director for Manufacturing (new).
5. Ronald A. Glaser, Human Resources Officer, Executive Secretary (new).
6. Sean M. Reilly, Chief of Staff, At-Large (new).
7. Matthew S. Borman, Deputy Assistant Secretary for Export Enforcement, Bureau of Industry and Security, Outside Reviewer (new).

Dated: September 8, 2006.

Deborah Martin,

Acting, Human Resources Officer.

[FR Doc. E6-15200 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-25-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Coral Reefs—Economic Valuation Study

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

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.

DATES: Written comments must be submitted on or before November 13, 2006.

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).

* Joseph A. Spetrini, Deputy Assistant Director for Anti-Dumping and Countervailing Duty Policy and Negotiations, Alternate (new).

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Vernon R. Leeworthy, NOS/Special Projects, 1305 East West Highway, SSMC 4, 9th Floor, Silver Spring, Maryland 20910 (or 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. This is a national survey using a panel based on a nationally representative, list-assisted, random digit-dial (RDD) sample drawn from all 10-digit telephone numbers in the U.S. The survey is designed to yield information that can be used to estimate non-use or passive economic use values for Hawaii's coral reef ecosystems. The survey addresses the public's preferences and economic values regarding the use of no-take areas as a management tool and their preferences regarding several alternative methods of restoring damaged coral reefs. A large scale pre-test of the survey has been conducted (200 survey responses) under OMB Approval Number 0648-0531, expiration date 8/31/2006.

II. Method of Collection

Members of the panel will complete the survey on-line using either WebTV technology supplied by Knowledge Networks, Inc. or their own Internet service.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,000.

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: September 5, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-15032 Filed 9-11-06; 8:45 am]

BILLING CODE 3510-NK-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Bottlenose Dolphin Conservation Outreach Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

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.

DATES: Written comments must be submitted on or before November 13, 2006.

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 Michelle McGregor, (301) 713-1406 ext. 169 or michelle.mcgregor@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The objective of this survey is to assess the level of awareness on issues related to regulations preventing feeding/harassment of wild bottlenose