



Prepared for:



# DRAFT Programmatic Environmental Impact Statement Appendices A-L

Hawaiian Monk Seal Recovery Actions

August 2011

*Appendix L  
Draft Section 106 Analysis of  
Programmatic Environmental  
Impact Statement for the  
Hawaiian Monk Seal Recovery  
Program (2011)*

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Section 106 Analysis of the Programmatic Environmental Impact Statement  
for the Hawaiian Monk Seal Recovery Program

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for the National Marine Fisheries Service  
Pacific Islands Regional Office

April 2011

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## Qualifications of Evaluator

36 CFR Part 61 defines the Secretary of Interior's Professional Qualification Standards for the minimum education and experience required to perform identification, evaluation, registration, and treatment activities in historic preservation. Dr. Trisha Kehaulani Watson (JD, PhD American Studies) meets the History (Historic Preservation) Professional Qualification Standards.

### I. Background

The U.S. Department of Commerce, National Oceanic and Atmosphere Administration, National Marine Fisheries Service (NMFS), Pacific Islands Regional Office is preparing a Programmatic Environmental Impact Statement (PEIS) to assess the potential impacts of implementing specific management actions and administering a research and enhancement program to improve survival of Hawaiian monk seals (*Monachus schauinslandi*) in the Northwestern and Main Hawaiian Islands.

The purpose of this proposed action is to ensure the long-term viability of the Hawaiian monk seals in the wild, with the eventual goal of achieving reclassification to threatened status and, ultimately, removal from the List of Endangered and Threatened Wildlife under the Endangered Species Act (ESA). Alternatives considered in the PEIS would generally include the provision of limited on-site medical treatment to monk seals and temporarily translocating seals from areas of low juvenile survival to areas of high juvenile survival.

### II. Coordination with the National Environmental Policy Act

36 CFR Section 800.8 of the NHPA regulations encourages Federal Agencies "to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA)."

#### A. Notice Requirements

Under §800.8(c), in order to use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§ 800.3 through 800.6," the agency official must notify both the State Historic Preservation Office and the Advisory Council on Historic Preservation of its decision.

Points of contact are as follows:

State Historic Preservation Officer (Hawai`i):  
Bill Ailā, Chairman  
Department of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl St.  
Honolulu, HI 96813

State Historic Preservation Division Administrator (Hawai`i):  
Pua Aiu, PhD, Administrator  
State Historic Preservation Division

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Department of Land and Natural Resources  
601 Kamokila Blvd., Suite 555  
Kapolei, HI 96707

Advisory Council on Historic Preservation  
Office of Federal Agency Programs  
Agency Staff Assignment  
National Ocean and Atmospheric Administration (NOAA)  
Tom McCullough  
[tmmcullough@achp.gov](mailto:tmmcullough@achp.gov)  
(202) 606-8554

(ACHP contact information obtained from  
[http://www.achp.gov/docs/OFAP\\_Agency\\_Org\\_Chart.pdf](http://www.achp.gov/docs/OFAP_Agency_Org_Chart.pdf), accessed May 20, 2011)

## B. NHPA Compliance

Use of the NEPA process for §106 purposes requires adherence of the following standards under NHPA regulations:

- (i) Identify consulting parties either pursuant to § 800.3(f) or through the NEPA scoping process with results consistent with § 800.3(f);
- (ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§ 800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;
- (iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;
- (iv) Involve the public in accordance with the agency's published NEPA procedures; and
- (v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

## III. Analysis

Section 106 of the National Historical Preservation Act addresses the need for federal agencies to take into account impacts, if any, undertakings have on historic properties. Protection of Historic Properties and Section 106 analysis are regulated under 36 CFR Part 800. This part provides guidelines as to conducting an analysis in assessing when and how to undergo Section 106 review.

## **A. Establishing Undertaking**

The first step in initiating the Section 106 process constitutes determining whether or not a proposed Federal action is an undertaking as defined in 36 CFR §800.16(y), which states: “*Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those required a Federal permit, license or approval.”

It has been determined that this proposed action is an undertaking as defined in §800.16(y).

## **B. Area of Potential Effect**

The Area of Potential Effect (APE) for this project encompasses the range where Hawaiian monk seals are found throughout the Hawaiian Archipelago and Johnston Atoll including the Northwestern Hawaiian Islands (NWHI) and Main Hawaiian Islands (MHI). More specifically, the APE includes portions of the open ocean and near shore environment where monk seals may be found as well as the shore zone of the islands, islets, and atolls that make up the Hawaiian Archipelago and Johnston Atoll. For the purposes of this project, the shore zone includes terrestrial habitat five (5) meters (m) inland from the upper reaches of the wash of the waves, at high edge of vegetation growth or the upper limit of debris. In addition, secondary use areas, such as research field camps in the Northwestern Hawaiian Islands, are also considered for inclusion in the APE. Known shipwrecks or navigational hazards within 300 meters from shore will be evaluated.

## **C. Determining Presence of Historic Properties**

NHPA Section 106 requires the agency to “take into account the effect of (an) undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register (of Historic Places.)” 16 U.S.C. § 470f. NHPA section 101(d)(6)(B) requires agency officials to consult with any Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking, regardless of the location of the property. 36 CFR §800.16 provides the following definition of a “historic property”:

(l)(1) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

There may be sites within the APE that would meet this definition of historic properties, including, but not limited to: shipwrecks, sites related to traditional Hawaiian navigation and other seafaring traditions, traditional Hawaiian fishponds, ko`a (traditional Hawaiian fishing shrines typically consisting of piles of coral or stone), Hawaiian heiau (religious structures), Native Hawaiian burial sites, leina (places from which spirits leapt into the spirit world), and other cultural heritage properties and burial sites. NHPA section 106 requires an agency to make a reasonable and good faith effort to identify historic properties, determine whether identified properties are eligible for listing on the National Register, assess the effects of the



undertaking on any eligible historic properties found, determine whether the effect will be adverse; and avoid or mitigate any adverse effects. To this end, NHPA regulations require an agency to provide Native Hawaiian organizations, as consulting parties, with “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.” 36 CFR § 800.2(c)(2)(ii)(A).

Therefore, for purposes of this analysis, it is assumed that historic properties are present within the APE.

#### **D. Determination of “No Effect”**

Upon determining there may be historic properties present, the analysis turns to whether the undertaking is a type of activity that does not have the potential to cause effects on historic properties. If it does not, then the agency official has no further obligations under NHPA section 106.

36 CFR §800.16(i) provides the following definition: “*Effect* means alternation to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.” NHPA regulations provide that an “adverse effect” occurs when an undertaking “may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.” 36 CFR § 800.5(a)(1). Adverse effects may include physical destruction of or damage to all or part of the property; alteration or removal of the property, change of the character of the property’s use or physical features; introduction of visual, atmospheric, or audible elements that diminish the integrity of the property’s historic features; and transfer, lease, or sale of the property.

As indicated above, the proposed federal program involves the provision of limited on-site medical treatment to monk seals and temporarily removing and translocating a small number of seals from areas of low juvenile survival to areas in the Northwestern Hawaiian Islands to areas of high juvenile survival in the Main Hawaiian Islands. Activities will be brief and conducted by a very small number of individuals. None of the alternatives under consideration in the program entail destruction, modification, or alteration of land, substrate, or habitat, or other properties. None of the proposed activities will introduce visual, atmospheric, or audible elements that effect the features of any historic property. Therefore, it is recommended that the agency official for the U.S. Department of Commerce, National Oceanic and Atmosphere Administration, National Marine Fisheries Service (NMFS), Pacific Islands Regional Office determine that this project has no potential to cause effects on historic properties. Accordingly, initiation of consultation is not required.

#### **E. Notice to State Historic Preservation Officer**

Upon determination by the agency official that this project has no potential to cause effects on historic properties, the agency should provide notice to the State Historic Preservation Officer (SHPO) and the State Historic Preservation Division Administrator of its determination. The agency official shall also notify all consulting parties and provide them with the documentation specified in 36 CFR 800.11(e).

Points of contact are as follows:

State Historic Preservation Officer (Hawai`i):  
Bill Ailā, Chairman  
Department of Land and Natural Resources  
Kalanimoku Building  
1151 Punchbowl St.  
Honolulu, HI 96813

State Historic Preservation Division Administrator (Hawai`i):  
Pua Aiu, PhD, Administrator  
State Historic Preservation Division  
Department of Land and Natural Resources  
601 Kamokila Blvd., Suite 555  
Kapolei, HI 96707

Under 36 CFR §800.3, once the agency official determines that the undertaking is not an activity that has the potential to cause effects on historic properties, the agency official has “no further obligations under section 106 or this part.”

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