

Prepared for:



DRAFT Programmatic Environmental Impact Statement

Hawaiian Monk Seal Recovery Actions

August 2011

1.0 *PURPOSE AND NEED*

1.1 *INTRODUCTION*

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Services (NMFS) is the Federal agency responsible for management of Hawaiian monk seals, under the Endangered Species Act (ESA) (16 United States Code [U.S.C.] 1531 *et seq.*) and the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*). NMFS funds, permits, and conducts research and enhancement activities on Hawaiian monk seals in the Northwestern Hawaiian Islands (NWHI) and Main Hawaiian Islands (MHI). The Hawaiian monk seal population has experienced a prolonged decline. In 1976, NMFS listed Hawaiian monk seals as “endangered” under the ESA (41 Federal Register [FR] 51611) and “depleted” under the MMPA. The most recent (2009) best estimate of total abundance is 1,125 seals (Carretta *et al.*, 2011 SAR draft). A detailed description of Hawaiian monk seals is included in Section 3.3.1.

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

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

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

1.2

PURPOSE AND NEED FOR ACTION

The purpose of implementing recovery activities (research and enhancement) for Hawaiian monk seals is to promote the recovery of the species population to levels at which ESA protection is no longer needed.

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

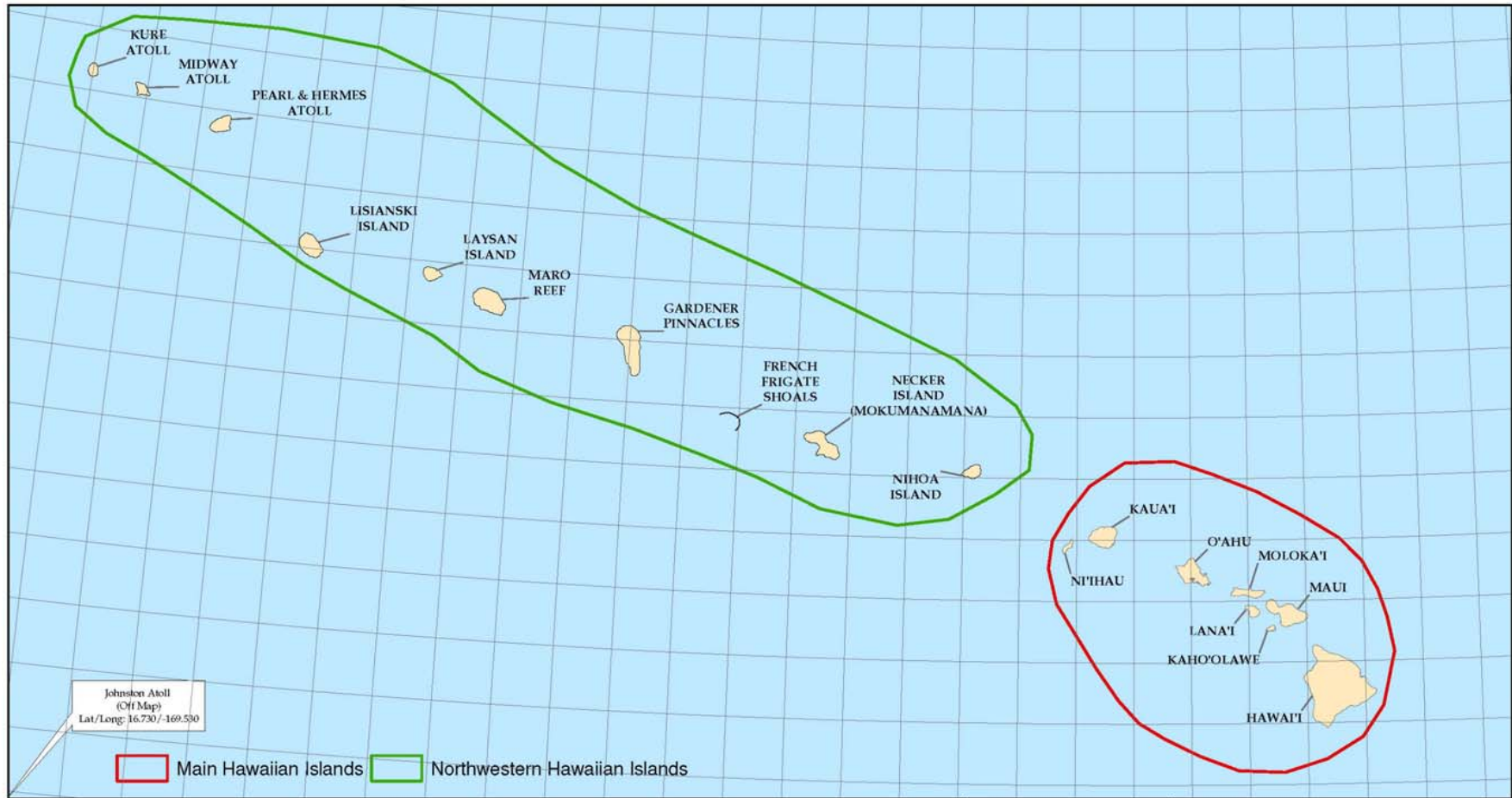
1.3

DESCRIPTION OF THE PROJECT AREA

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

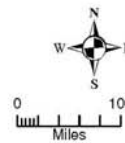
In the NWHI, monk seals have six main reproductive sites including Kure Atoll, Midway Atoll, Pearl and Hermes Reef, Lisianski Island, Laysan Island, and French Frigate Shoals. Necker and Nihoa Islands have smaller breeding sub-populations and monk seals have been observed at Gardner Pinnacles and Maro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


Figure 1.3-1 Project Area Map



Johnston Atoll
(Off Map)
Lat/Long: 16.730/-169.530

Main Hawaiian Islands
 Northwestern Hawaiian Islands



CLIENT: National Marine Fisheries Service		Figure 1.3-1 Main Hawaiian Islands and Northwestern Hawaiian Islands	
ERM West - Anchorage 341 West Tudor Road Suite # 206 Anchorage, AK 99503 Telephone: 907-770-1994			
DATE: 14/03/2011	CHECKED:	PROJECT: Monk Seal PEIS	
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CURRENT RESEARCH AND ENHANCEMENT AND ASSOCIATED PERMITS

MMPA-ESA Permit No. 10137-05 issued to the NMFS Pacific Islands Fisheries Science Center (PIFSC) authorizes research and enhancement activities on Hawaiian monk seals as summarized below.

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

- **Harassment** at any location in the Hawaiian Archipelago and Johnston Atoll for research and enhancement purposes:
 - **Monitoring:** 1,440 seals of any age/sex may be closely approached for monitoring activities via ground, aerial, and vessel (includes photo-ID);
 - **Incidental harassment:** 200 seals of any age/sex may be incidentally disturbed during all other research and enhancement activities; and
 - **Bleach marking:** 1,315 seals may be approached and bleach marked.
- **Capture takes**¹ at locations specified for each activity:
 - **Flipper tagging for population monitoring:** 556 seals of any size or sex except lactating females and nursing pups may be captured, restrained, flipper and Passive Integrated Transponder (PIT) tagged, measured, and flipper plugs sampled; this includes retagging; locations include Hawaiian Archipelago and Johnston Atoll.
 - **Sonic tags for monitoring shark predation:** up to 35 weaned pups at French Frigate Shoals may have sonic tags applied concurrent with and on a flipper tag annually for up to three years.
 - **Health screening and foraging instrumentation research:** 70 healthy seals and 30 unhealthy seals of any age/sex excluding lactating females with pups and nursing pups may be captured, restrained, sedated, sampled for health and disease screening (swabs, blood, blubber biopsies), measured, weighed, ultrasound measurements taken, and flipper tagged if necessary; of the

¹ Take as defined in the ESA means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to do any of those things.

healthy seals, 60 may also be instrumented with external tagging devices; location is the Hawaiian Archipelago.

- **Translocation for enhancement:** immature seals may be translocated as follows:
 - 20 nursing pups of either sex that are abandoned or have been switched between two lactating females may be captured, restrained by hand or net, and relocated to a prospective foster mother or their natural mother, respectively; multiple attempts may occur to successfully unite pups with appropriate mothers; locations include the Hawaiian Archipelago and Johnston Atoll.
 - 35 weaned pups of either sex may be captured, restrained by hand or net, sedated, sampled for health and disease screening, instrumented, and relocated via boat, vehicle, or aircraft from a high risk area (*e.g.*, known shark predation) to a low risk area within the same island or atoll in the NWHI or Johnston Atoll; translocations in the MHI may be to a different location on the same island or to a different island in the MHI; locations include the Hawaiian Archipelago and Johnston Atoll.
 - Weaned pups and juvenile seals in subpopulations where juvenile survival is low may be translocated to subpopulations with higher rates of juvenile survival; seals may only be translocated among subpopulations within the NWHI and this activity requires approval on a case-by-case basis.
- **De-worming research:** 200 seals of either sex, up to age 3 years, may be captured, weighed, treated for intestinal parasites, and have ultrasound measurements taken; treatment animals may include those captured for health assessments or foraging studies; location is the Hawaiian Archipelago, although the preponderance of activities occurs in the NWHI.
- **Disentanglement/de-hooking for enhancement:** as warranted, seals may be disentangled and de-hooked to prevent injury or death; location is the Hawaiian Archipelago and Johnston Atoll.
- **Specimen collection and import/export for research:** necropsies may be performed on all carcasses; samples (molt, scat, spew, urine, placentae) may be collected opportunistically from beaches; samples may be exported and re-imported for analysis (world-wide); location of necropsies and sample collection is the Hawaiian Archipelago and Johnston Atoll.

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

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

MMPA-ESA Permit No. 932-1905/MA-009526 issued to the NMFS Marine Mammal Health and Stranding Response Program (MMHSRP) authorizes enhancement activities on wild monk seals and research and enhancement activities on captive and rehabilitating monk seals through June 2014, when the permit will expire.

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

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

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

- Disentanglement/de-hooking;
- Euthanasia of moribund seals;
- Incidental harassment and incidental mortality; and
- Specimen collection (necropsies).

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

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

This section summarizes federal laws applicable to Hawaiian monk seals research and enhancement activities, and federal permits, licenses, approvals, and consultation requirements for implementing the preferred alternative.

1.5.1 ***National Environmental Policy Act***

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

NMFS has, through NAO 216-6, established agency procedures for complying with NEPA and the implementing regulations issued by the CEQ. NAO 216-6 specifies that issuance of scientific research permits under the MMPA and ESA is among a category of actions that are generally exempted (categorically excluded) from further environmental review, except under extraordinary circumstances. When a proposed action that would otherwise be categorically excluded is the subject of public controversy based on potential environmental consequences, has uncertain environmental impacts or unknown risks, establishes a precedent or decision in principle about future proposals, may result in cumulatively significant impacts, or may have an adverse effect upon endangered or threatened species or their habitats, preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required.

1.5.2 ***Endangered Species Act***

The ESA (16 U.S.C. 1531 *et seq.*) was established to conserve and protect threatened and endangered species. Section 9 of the ESA prohibits the take of endangered and threatened species unless a lawful exception is made, such as by issuance of a permit. Permits to take ESA-listed species for scientific purposes, or for the purpose of enhancing the survival of the species, may be granted under Section 10(a)(1)(A) of the ESA. NMFS’ regulations implementing the permit provisions of the ESA can be found at [50 CFR Part 222](#). Regulations specifying requirements for issuance of ESA scientific research and enhancement permits are found at [50 CFR 222.308](#). According to 50 CFR 222.308(b), permits for

endangered marine mammals must be issued according to MMPA regulations ([50 CFR Part 216](#)).

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

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

Section 2 of the ESA sets forth the purposes and policy of the Act. Purposes of the ESA include providing a means to conserve endangered and threatened species' ecosystems and providing programs for the conservation of such species. It is the policy of the ESA that all federal agencies must seek to conserve threatened and endangered species and use their authorities to further the purposes of the ESA. In consideration of the ESA's definition of conserve, which indicates an ultimate goal of bringing a species to the point where listing under the ESA is no longer necessary (for example, the species is recovered), permits issued pursuant to section 10 of the ESA must be for activities that are likely to further the conservation of the affected species.

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

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

The MMPA (16 U.S.C. 1361 *et seq.*) prohibits takes² of all marine mammals in the United States (U.S.) (including territorial seas) with few exceptions. Permits for *bona fide*³ scientific research on marine mammals and permits to enhance the survival or recovery of a species, issued under section 104 of the MMPA, are two such exceptions. NMFS' Office of Protected Resources (OPR) issues permits for research and enhancement of Hawaiian monk seals. These permits must specify:

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

Applications for MMPA permits must be reviewed by the Marine Mammal Commission (MMC). NMFS may issue a permit under section 104 of the MMPA if the activities are consistent with the purposes of the MMPA and applicable regulations at [50 CFR Part 216](#). NMFS must also find that the manner of taking is "humane"⁴ as defined in the MMPA. If lethal taking of a marine mammal is requested, the applicant must demonstrate that using a non-lethal method is not feasible. For depleted species such as Hawaiian monk seals, NMFS must also determine the lethal take will directly benefit the species or otherwise fulfill a critically important research need. Persons permitted to take marine mammals must submit reports on activities undertaken each year.

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

² "Take" under the MMPA means to harass, hunt, capture, or kill a marine mammal, or attempt to do any of those. "Harassment" means any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal (Level A); or has the potential to disturb a marine mammal by causing disruption of behavioral patterns such as migration, breathing, nursing, breeding, feeding, or sheltering (Level B).

³ The MMPA defines bona fide research as "scientific research on marine mammals, the results of which – (A) likely would be accepted for publication in a refereed scientific journal; (B) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or (C) are likely to identify, evaluate, or resolve conservation problems."

⁴ The MMPA defines humane in the context of the taking of a marine mammal, as "that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved."

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

Regulations specifying general issuance requirements for permits issued under Section 104 of the MMPA ([50 CFR 216.34](#)) and specific requirements for issuance of scientific research and enhancement permits ([50 CFR 216.41](#)) are summarized in Sections 1.8 and 2.6.

Section 109(h) of the MMPA authorizes Federal, State, and local government employees, or NMFS Stranding Agreement holders, to take a marine mammal in a humane manner (including euthanasia) if it is for the protection or welfare of the individual animal, the protection of public health and welfare, or the nonlethal removal of nuisance animals. NMFS regulations implementing MMPA section 109(h) are found at [50 CFR 216.22](#) and [50 CFR 216.27](#). For threatened and endangered marine mammals, an ESA section 10(a)(1)(A) enhancement permit is also required to undertake such activities. Therefore, such activities on ESA-listed species must be consistent with the ESA and carried out to enhance the survival of the species; nuisance animals may be taken if it is to enhance their survival (such as, if they may be harmed or killed by humans).

1.5.4 National Historic Preservation Act

The goal of the National Historic Preservation Act (NHPA; 16 U.S.C. 470 *et seq.*) is to have federal agencies act as responsible stewards of our nation's resources when their actions affect historic properties. The NHPA established the Advisory Council on Historic Preservation (ACHP), an independent federal agency that promotes the preservation, enhancement, and productive use of our nation's historic resources, and advises the President and Congress on national historic preservation policy. The ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into federal project requirements. Under Section 106 of the NHPA, a consultation is required to take into account the effect of federal activities on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. Section 106 also requires consultation with Indian tribes and Native Hawaiian organizations regarding properties of traditional religious and cultural importance that are listed in or eligible for the National Register.

Based on the analysis presented in this PEIS, NMFS has determined that the proposed action is a type of activity that does not have the potential to cause effects on historic or cultural properties, assuming such properties are present. Therefore, no further obligations are required under NHPA section 106. A letter documenting this determination will be sent to the Hawaii State Historic Preservation Division. In addition, a supplemental document has been prepared to satisfy the Section 106 Consultation required under this Act (see Appendix L,

1.5.5 *Magnuson-Stevens Fishery Conservation and Management Act*

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

1.5.6 *Coastal Zone Management Act*

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

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

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

Implementation of any of the alternatives would be conducted in a manner consistent with Hawaii’s Coastal Zone Management Program in accordance with Section 307(c)(1) of the CZMA. A letter to this effect will be sent to the State of Hawaii for comment.

1.5.7 *National Marine Sanctuaries Act*

The National Marine Sanctuaries Act (NMSA; 32 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce to designate and manage areas of the marine environment with special national significance. The National Marine Sanctuary Program, operating under the NMSA and administered by NOAA's National Ocean Service (NOS) has the authority to issue special use permits for research activities that would occur within a National Marine Sanctuary. Obtaining special use permits is the responsibility of individual researchers. However, as a courtesy, the NMFS OPR consults with NOS when proposed activities would occur in or near a National Marine Sanctuary.

1.5.8 *Migratory Bird Treaty Act*

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712) was enacted to ensure the protection of shared migratory bird resources. The MBTA prohibits the take, possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase or barter, of any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit. The responsibilities of Federal agencies to protect migratory birds are set forth in Executive Order 13186 (see below). USFWS is the lead agency for migratory birds. The USFWS issues permits for takes of migratory birds for activities such as scientific research, education, and depredation control, but does not issue permits for incidental take of migratory birds.

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

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

1.5.10 *Animal Welfare Act*

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

Animal and Plant Health Inspection Service. For federal research facilities, the head of the federal agency is responsible for ensuring compliance with the AWA requirements. It is the responsibility of researchers to seek and secure IACUC reviews and approvals for their research and adhering to other requirements of the AWA related to care and transport of marine mammals.

1.5.11 *Administrative Procedure Act*

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

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

1.5.12 *Executive Orders*

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

1.5.12.1 *Executive Order 12898 - Environmental Justice*

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

1.5.12.2 *Executive Order 13089 - Coral Reef Protection*

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

- a. Identify their actions that may affect U.S. coral reef ecosystems.
- b. Use their programs and authorities to protect and enhance the conditions of such ecosystems.

- 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.

1.5.12.3 *Executive Order 13112 - Invasive Species*

EO 13112 requires Federal agencies to use authorities to prevent introduction of invasive species, respond to and control invasions in a cost effective and environmentally sound manner, and to provide for restoration of native species and habitat conditions in ecosystems that have been invaded.

1.5.12.4 *Executive Order 13158 - Marine Protected Areas*

EO 13158 requires Federal agencies to identify actions that affect natural or cultural resources that are within a marine protected area (MPA). It further requires Federal agencies, in taking such actions, to avoid harm to the natural and cultural resources that are protected by an MPA.

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

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

1.6 ***WHY IS A PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT NEEDED***

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

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

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

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

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

Section 1508.25 of CEQ's guidance on NEPA states that the scope of an individual EIS may depend on its relationship to other EAs or EISs and the evaluations considered therein. There are five NEPA documents that have recently been published that influence the scope (in other words, issues considered) of this PEIS and are described briefly in Table 1.7-1. To streamline the NEPA process and avoid duplication, pertinent information presented in these previous evaluations has been incorporated by reference where appropriate in this PEIS as cited. In addition, the analysis of cumulative effects presented in Chapter 4 of this document includes the activities listed below.

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

Title	Year	Issues Evaluated	Associated Permit (if applicable)
EA on the Effects of NOAA Fisheries Permitted Scientific Research and Enhancement Activities on Endangered Hawaiian Monk Seals	2003	Issuance of Scientific Research and Enhancement Permit Under Section 104 of the MMPA and Section 10(a)(1)(A) of the ESA to the NOAA Fisheries Marine Mammal Research Program, PIFSC, Honolulu Laboratory. A Finding of No Significant Impact (FONSI) for research and enhancement activities was signed in 2003.	NMFS Permit 848-1695
EA on Issuance of a Permit for Field Research and Enhancement Activities on the Endangered	2009	Issuance of Permit No. 10137 to the NMFS Pacific Islands Fisheries Science Center Marine Mammal Research Program (MMRP) to conduct field research and enhancement activities on Hawaiian monk seals to support recovery efforts.	NMFS Permit 10137 and associated amendments 01 - 05 (Current Permit Active through 2014)

Title	Year	Issues Evaluated	Associated Permit (if applicable)
Hawaiian Monk Seal		A FONSI for research and enhancement activities was signed in 2009.	
MMHSRP PEIS	2009	<p>NMFS national oversight and collaboration of the MMHSRP including the following activities specific to Hawaiian monk seals:</p> <ul style="list-style-type: none"> • Response, rescue, rehabilitation, and release of stranded seals; • Health-related research on captive and rehabilitating seals (excluding vaccination research); and • Hazing or translocating seals away from imminently harmful situations; and • Translocation of MHI seals in imminent danger for their protection. <p>The Record of Decision for the MMHRP PEIS was signed in 2009. http://www.nmfs.noaa.gov/pr/health/eis.htm</p>	NMFS Permit 932-1905
Programmatic Environmental Assessment (PEA) of the Program for Decreasing or Eliminating Predation of Pre-weaned Hawaiian Monk Seal Pups by Galapagos Sharks in the NWHI	2009	<p>NMFS PIFSC research activities to reduce predation by Galapagos sharks on Hawaiian monk seal pre-weaned pups.</p> <p>A FONSI for research activities to reduce shark predation was signed in 2009. http://www.pifsc.noaa.gov/nepa/documents.php</p>	NMFS Permit PNMN-2009
Supplemental Environmental Assessment of the Program for Decreasing or Eliminating Predation of Pre-weaned Hawaiian Monk Seal Pups by Galapagos Sharks in the NWHI	2010	<p>Supplement to the 2009 PEA on predation by Galapagos sharks on Hawaiian monk seal pre-weaned pups. Analyzed using a vertical 'surprise net' as a fishing method to reduce predation by sharks.</p> <p>A FONSI for the Use of 'Surprise Net' Technology was signed in May 2010. http://www.pifsc.noaa.gov/nepa/documents.php</p>	NMFS Permit PNMN-2010-014

1.8 REQUIRED DECISIONS AND OTHER AGENCIES INVOLVED IN THIS ANALYSIS

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

Although NMFS has sole jurisdiction for issuance of research and enhancement permits for Hawaiian monk seals, NMFS consults with the MMC, NOAA's NOS,

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

1.8.1 *Cooperating Agencies*

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

On September 14, 2010, NMFS invited the USFWS and the Hawai'i Department of Land and Natural Resources (DLNR) to be cooperating agencies in the PEIS process. The DLNR declined the invitation to be a cooperating agency. The USFWS accepted the invitation to be a cooperating agency. USFWS is in the process of coordinating with NMFS PIRO to determine their level of involvement in the PEIS. Cooperating agency correspondence is included in Appendix A.

1.8.2 *Commenting Agencies*

An invitation to an Agency Scoping Meeting was provided to multiple federal, state, and local agencies that were considered to have interest in the proposed action (Table 1.8-1 Agency Scoping Meeting Invitation List). The Agency Scoping Meeting was held at the NMFS PIRO offices on October 20, 2010 and 14 agency representatives attended. Coordination with these agencies will continue throughout the PEIS process.

Other agencies, such as the United States Coast Guard (USCG) D14, USFWS, NOS including NOAA Sanctuaries, National Park Service (NPS), NOAA Sanctuaries, and others, dedicate resources each year to assisting NMFS in protecting Hawaiian monk seals including coordinating with the Marine Mammal Stranding Response Network working under the MMHSRP permit when monk seals become entangled or stranded.

Table 1.8-1 Agency Scoping Meeting Invitation List

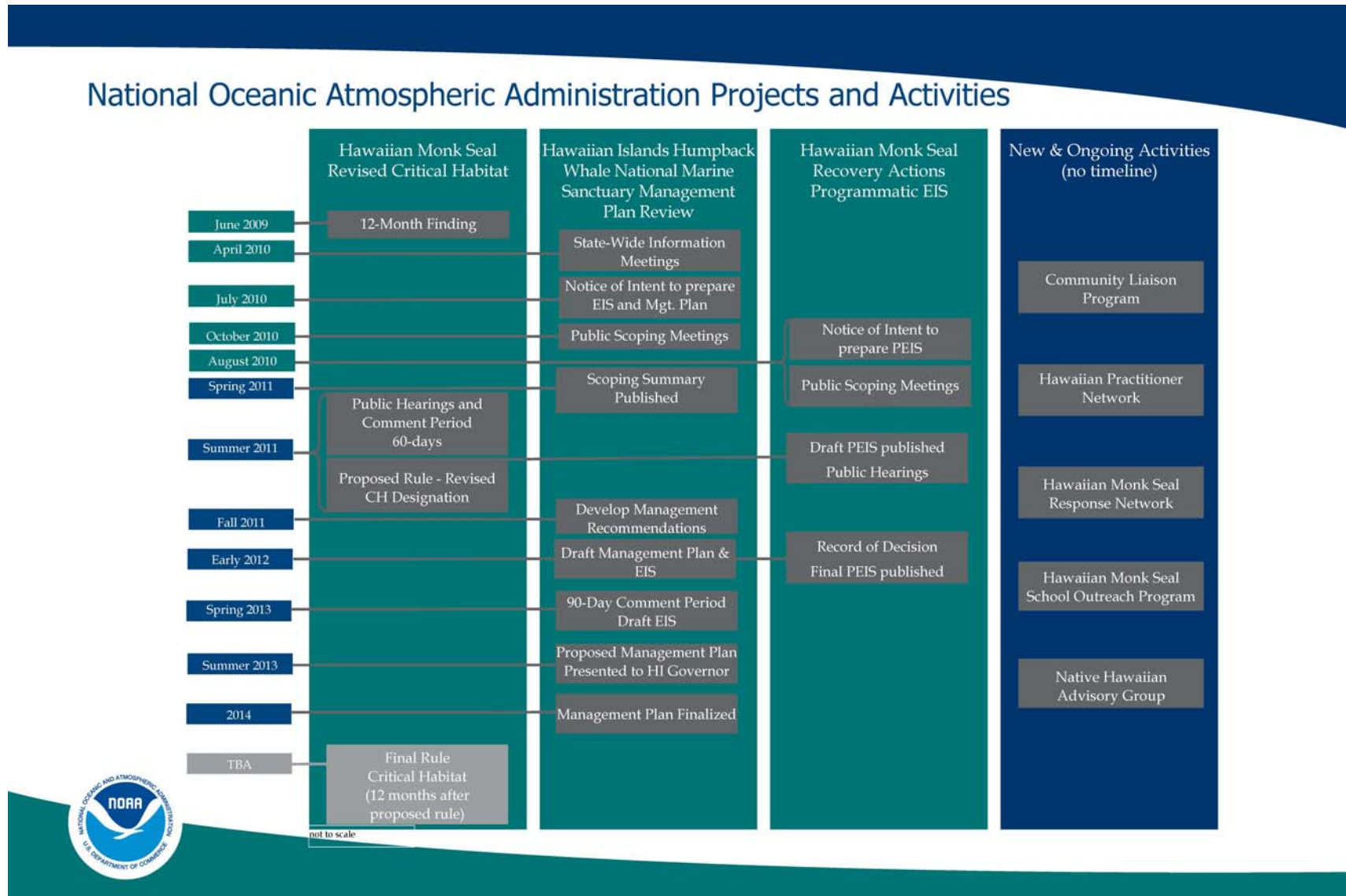
Agencies
Federal Agencies
USFWS Hawaiian & Pacific Islands National Wildlife Refuge Complex
USFWS Pacific Islands Ecological Field Services Office
Western Pacific Regional Fishery Management Council
USCG
U.S. Navy Region Hawai'i
U.S. Department of Defense
U.S. National Park Service Kalaupapa NHP
Environmental Review Office, U.S. EPA Region IX (CED-2)
U.S. Army Corps of Engineers
U.S. Environmental Protection Agency
State of Hawai'i Agencies
Department of Land and Natural Resources, Division of Aquatic Resources, ESA Section 6 Program
Department of Land and Natural Resources
Department of Health
Office of Environmental Quality Control
Department of Transportation
Office of Hawaiian Affairs
Department of Business, Economic Development, and Tourism, Office of Planning
County of Maui, Office of the Mayor
County of Kauai, Office of the Mayor
City and County of Honolulu, Office of the Mayor
County of Hawai'i, Office of the Mayor

1.9 NOAA ACTIONS NOT INCLUDED WITHIN THE SCOPE OF THIS PEIS

NOAA is currently undertaking other management actions within or near the Project Area that are not within the scope of this PEIS. These management actions and their general schedule are presented in Figure 1.9-1 and described in

more detail below. While these projects are considered separate federal actions, the PEIS project team is coordinating with managers responsible for these other projects. This coordination allows NMFS to share information about the PEIS that may be pertinent to other projects as well as gain an understanding of how other activities may influence the decision-making process for Hawaiian monk seal research and enhancement actions.

Figure 1.9-1 Estimated Timeline of Ongoing NOAA Actions



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1.9.1

National Marine Fisheries Service Hawaiian Monk Seal Critical Habitat Revision

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

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

This revision will update critical habitat originally designated in 1986 (51 FR 16047; April 30, 1986), as revised in 1988 (53 FR 18988; May 26, 1988). Since 1988, a significant amount of new information about monk seal habitat has become available, prompting the current revision.

While critical habitat is essential to the recovery of the species, evaluation and subsequent revisions to habitat areas is considered a federal action separate from research and enhancement activities covered in this PEIS. Existing monk seal critical habitat is described in more detail as part of the environmental baseline (Chapter 3) and will be evaluated as part of the cumulative effects assessment presented in Chapter 4. Additional information about the critical habitat revision process can be found at:

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

1.9.2

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

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

the State of Hawai'i DLNR. Additional information about the HIIHWNMS is provided in Section 3.4.11.

ONMS is required by law to periodically review sanctuary management plans to make certain sanctuary sites continue to conserve, protect and enhance nationally significant resources within their boundaries. Public information meetings on the management plan review began in April 2010 and will continue throughout the review process.

As part of the review process, HIIHWNMS is considering adding Hawaiian monk seals to the list of resources managed by the Sanctuary. NMFS and the Sanctuary would coordinate closely on any issues related to Hawaiian monk seals should this change occur. The PEIS is currently coordinating with the HIIHWNMS management review team to discuss details of the PEIS and Sanctuary Management Plan review in an effort to reduce potential confusion about project schedules, scope of actions covered and misconceptions about what these management actions mean in terms of resource use or protection.

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

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

As discussed in Section 1.7, the NMFS MMHSRP currently has a permit (MMPA-ESA Permit No. 932-1905/MA-009526) for activities specifically related to marine mammal (including Hawaiian monk seal) health and stranding response. The PIRO Stranding Coordinator, working under the MMHSRP permit coordinates closely with PIFSC on Hawaiian monk seal research and enhancement activities to ensure efforts undertaken to protect seals are not duplicative and are in the best interest of seals. While information from the MMHSRP PEIS has been incorporated by reference, the scope this PEIS does not include stranding and response activities. Captive care is currently covered under the MMHSRP PEIS (<http://www.nmfs.noaa.gov/pr/health/eis.htm>) as a tool for rehabilitating seals that need medical assistance due to entanglement or other injuries.

In general, all response activities in the MHI for seals in need of protection or medical attention are carried out under the MMHSRP permit in coordination with PIFSC. However, if PIFSC is conducting health assessment research in the MHI and discovers a captured seal needs to have a hook removed, this could all be done under the PIFSC permit to minimize the need for a second capture. PIRO

and PIFSC share resources (equipment and personnel) to accomplish rescues and conduct necropsies in the MHI under the MMHSRP permit. PIFSC conducts all disentanglements and necropsies in the NWHI under Permit No. 10137.

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

In addition to this PEIS, NMFS is undertaking several new or enhanced community-based activities supporting monk seal recovery. This includes a Native Hawaiian liaison. The objectives of the liaison project are to:

- Increase levels of support among Native Hawaiians for Hawaiian monk seal recovery and co-existence in the MHI;
- Increase levels of participation by Native Hawaiians in Hawaiian monk seal recovery and management activities;
- Enhance collaboration on Hawaiian monk seal recovery efforts between NMFS staff and partners, and Native Hawaiian practitioners and community leaders;
- Enhance consideration of Native Hawaiian concerns and enhanced incorporation of Native Hawaiian practices and protocols in the NMFS Hawaiian monk seal recovery program;
- Convene and manage a Native Hawaiian Advisory Group for monk seal recovery;
- Conduct meetings with Native Hawaiians, NMFS, partner agencies, NGO's, and volunteers on various islands in the MHI to identify and discuss monk seal recovery issues and opportunities;
- Prepare an annual report identifying and describing opportunities and constraints to achieving project objectives; and
- Work in collaboration with other NMFS contractors and grantees working on Hawaiian monk seal recovery and response.

In addition to the Native Hawaiian Outreach Program for monk seals, NMFS regularly conducts outreach and education programs on several other marine-related topics. These activities are likely to continue into the future, separate from the research and enhancement program.

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