

`Ilio`ulaokalani Coalition, Environmental Defense, KAHEA: The Environmental-Hawaiian Alliance, Sierra Club

NWHI *hui* COMMENTS ON DRAFT INTERIM VISITOR SERVICES PLAN FOR MIDWAY ATOLL

U.S. Fish and Wildlife Service
Pacific Islands Division of External Affairs and Visitor Services
February 6, 2007

Thank you for the opportunity to submit the attached public comments developed by `Ilio`ulaokalani Coalition, Environmental Defense, KAHEA: The Hawaiian Environmental Alliance and Sierra Club. These comments accompany and provide background information on the summary comments we are submitting under separate cover.

We appreciate the ample time provided for review and comments, and the wide circulation of the draft document to members of the public. The document is well-prepared and thorough in its discussion of issues. However, we do recommend that additional details be provided regarding proposed actions for addressing the issues identified. We underscore the crucial need to implement a restricted entry system via lottery and to ensure that Midway is, indeed, the only site for tourism and other such commercial operations in the NWHI. We are also deeply concerned about the budgetary shortfalls facing your agency and urge that no new visitor programs begin until and unless sufficient budgetary support for monitoring (including observers) and enforcement are available.

We would like to share our substantial concerns with the lack of public process pertaining to the development of the Monument management system. While the state has provided somewhat of a window into the permitting process for state waters, we are deeply alarmed at the lack of transparency regarding the Monument management process and Monument permitting system. We underscore the fact that the NWHI Reserve Advisory Council spent several years through an open and transparent process developing a Reserve Operations Plan for the NWHI and the plan recommended by the RAC provides a good starting point for discussion. We request that there be a full public overview and review of *each Monument Acton Plan as it is developed* as well as a full Environmental Impact Assessment (formally, an EIS) of the entire Monument Plan.

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1. GENERAL COMMENTS

We note that the draft Visitor Services Plan (VSP) is described by Midway Atoll National Wildlife Refuge Manager Barry Christenson as being “relatively short-term in duration”, and “likely be replaced by a more comprehensive monument management plan after about a year.” Our comments are offered within the broader context of the development of the management plan and related documents and agreements required to fully implement the Northwestern Hawaiian Islands Marine National Monument.

We note that the presentation of this draft stands in sharp contrast to the processes associated with the development of Monument “unified permit” criteria and conditions and the Monument management plan which have been undertaken, so far, in the absence of public input. Your draft makes it clear that the Monument permitting system will also be applied to Midway. As such we urge you to ensure an equally open period of public comment and input into the development of the unitary permitting process and guidelines, for the issuance of permits, and for the development of each Management Action Plan and the Monument Management plan to ensure that the highest levels of protection clearly prevail.

We recognize that Proclamation 8031 (the Proclamation), which established the Northwestern Hawaiian Islands Marine National Monument, also designated Midway Atoll as a Special Management Area, and the only area within the Monument where permits for recreational activities may be issued. Given the history of Midway Atoll, and its existing infrastructure, it is a logical location for visitor recreational activities of a scale and nature compatible with the purposes of the Midway Atoll National Wildlife Refuge, and the legal constraints imposed by the Proclamation and the other relevant laws mentioned in the VSP.

We note that the NWHI is a very unique area, now widely recognized as the world’s largest fully protected marine ecosystem. Our members have welcomed the protections afforded the NWHI by the Proclamation, the Executive Orders establishing the NWHI Coral Reef Ecosystem, and other protective actions dating as far back as President Roosevelt’s Executive Order in 1903. These also include the very stringent protections recently enacted by the State of Hawai‘i in its establishment of the NWHI Marine Refuge.

Our members have also engaged in a sustained effort over the past six years at both the state and federal levels, involving over 30 public hearings, 100 public meetings and the submission of over 116,000 public comments, to achieve a goal of establishing the NWHI as a true “Pu‘u Honua,” or place of refuge for the wildlife of the NWHI. Our definition of “refuge” means a place where the wildlife and their habitats are fully protected from human activities, and where the cultural and spiritual connections of the Native Hawaiian people with the NWHI are recognized and supported. We review the VSP with this concept of “refuge” in mind.

The VSP acknowledges that by law and by policy, any access to the Midway Atoll NWR, and any activities allowed within the NWR, must be determined to be compatible uses of the Refuge. The challenges for assuring that the VSP adequately protects the NWHI are in the interpretations as to what constitutes appropriate visitor activities and what scale of such activities is compatible; and in the monitoring and enforcement of permits, permit conditions, and rules and regulations under which activities are allowed. The VSP identifies numerous measures for controlling visitor activities and potential impacts, such as limitations on the numbers of visitors on island at any time, requirements for visitors to be accompanied on their tours, hiring of a Refuge Ranger, and others. For the VSP to achieve its stated purposes, of course, the measures it outlines must actually be implemented and enforced.

One of the best ways to assure that the protections identified in the VSP are actually implemented and enforced is through transparent processes accessible to public input and review. It is of the utmost importance that all necessary enforcement and monitoring positions be fully funded prior to the implementation of any new visitor plan. The remainder of our comments will focus on specific areas of concern within the VSP.

2. TOURISM THROUGHOUT THE NWHI? Midway Atoll NWR as a “window” to the Monument

The Midway Atoll NWR is described on page 5 of the VSP as offering “a window to the monument.” This phrase is open to interpretation, and we are concerned that what may be intended as a “window” not directly or indirectly develop into a door or a tunnel resulting in unintended harm to the natural resources of the Monument.

We are deeply concerned by the following statement in the Executive Summary (which is not found referenced elsewhere in the body of the text, and which is outside the scope of a management plan for Midway):

“We envision that future planning for a monument-wide visitor services program will be further developed to more fully realize the President’s vision to create a visitor window to the monument at Midway. In addition, future planning will explore opportunities for visitor use at Kure Atoll.”¹

We feel that it is a significant misinterpretation of the Monument Proclamation to claim that it represents a “vision” for developing a “monument-wide visitor services program.” The Proclamation clearly enumerates the ecological and cultural significance of the NWHI and declares that it is “in the public interest to preserve the marine area of the NWHI and certain lands as necessary for the care and management of the historic and scientific objects therein.”² The sole purpose enumerated in the Proclamation is “the purpose of protecting the objects described above, all lands or interests in lands owned or controlled by the Government of the United States.”³ We also note with concern that, in the past, the ecotourism concession operator at Midway attempted to exert considerable pressure on USFWS staff to allow expansion of operations to Kure and Pearl and Hermes. This expansion did not occur.

We note that the population of highly endangered Hawaiian monk seals at Kure is in a precarious position. The number of seals there “declined abruptly” in the late 1950’s and 1960s following the construction and occupation of a Coast Guard station. In 1960, the presence of a 20 person Coast Guard station resulted in “significant disturbance of the seal population.”⁴ Research found that the decline in population was attributed to “human disturbance, which caused adult females to abandon prime pupping habitat. Pup survival fell first, followed by a decline in recruitment of breeding females and the development of an age structure skewed toward older animals. The sex ratio of adults also became heavily biased towards males.”⁵ With the departure of the Coast Guard, since 1992, Kure has only been occupied during summer research camps. “Thereafter, the number of births has generally increased, with a high of 23 pups born in 1998. From 1983 – 2000, beach counts increased 5% per year but have declined since

¹ Midway Atoll National Wildlife Refuge Draft Interim Visitor Service Plan, Executive Summary, pg v

² Proclamation 8031, pg 1

³ Ibid, pg 1

⁴ Draft Hawaiian Monk Seal Recovery Plan, November 2006, pg 5

⁵ Kenyon, Wirtz, Johnson et al, Reddy and Griffith, cited in Draft Hawaiian Monk Seal Recovery Plan, November 2006, pg 5

2000.⁶ “However, to an even greater extent than at Midway, cohorts born at Kure from 2000 on have suffered from very high juvenile mortality. A total of 114 seals were identified at Kure in 2002.”⁷

The Pearl and Hermes seal population “declined by as much as 90% after the late 1950s”⁸ which may have been related to “human disturbances associated with military excursions from Midway in the 1950s and 1960s. Beach counts increased from the mid-1970s until 2000. By 2002, there were 228 seals identified at Pearl and Hermes.⁹ Unfortunately “there are indications that beach counts are leveling off and that juvenile survival is declining.”¹⁰

RECOMMENDATION

We urge that the above speculative sentences, proposing the expansion of tourism and visitor efforts beyond Midway into regions of extremely fragile monk seal populations, such as Kure, be deleted from the Midway Atoll Visitor Services Plan.

We do note, however, that it is important to draw attention within the VSP to the fact that there is significant potential for environmental harm as a result of activities outside of the purview of the VSP, but made possible by the logistical support offered by Midway Atoll, e.g. as a port of call by cruise ships or a “home base” for a diving or recreational boating operation. Introduction of invasive species is a key example of potential unintended harm, and human interactions with monk seals and green sea turtles are other examples. The category of “special ocean use” within the Monument is of deep concern given that it is ill-defined at present, and it is not clear what types of activities, and where, might be allowed under the Monument plan and regulations. It is important to have a clear set of requirements and a monitoring protocol to ensure that “off site” impacts – including pressure to expand activities to Kure or Pearl and Hermes -- do not result from Midway activities or infrastructure.

3. MONK SEALS and other endangered and threatened species

We urge you to include in the plan specific discussion of threats to endangered and threatened species from human disturbance, including historical information as information on specific monitoring measures (including observers) planned by your agencies for all activities. The following is an example of historical information and species-specific information appropriate for inclusion in the Plan:

Midway:

- At Midway, Kure, and Pearl and Hermes “the survival of juveniles is declining, thereby raising concerns that this pattern may become chronic.”¹¹
- The highest recorded seal counts at Midway occurred in 1957 – 58 but “within a decade, the seals had essentially disappeared”¹² The large post-WWII military contingent peaked at about 3,500 people, then was reduced from 1,600 to fewer than 250 in 1978. Through the 1980s seals were observed only occasionally and in small numbers; in the 1980’s FWS began to take an active role in wildlife management. In the early 1990’s seals began to appear in increasing numbers, mostly immigrants from Pearl and Hermes and Kure.¹³
- In 1996, the Navy transferred Midway to USFWS, and signed an agreement with USFWS which, unfortunately, released them from the financial responsibility of removing the lead-contaminated paint that covered the buildings and became a significant threat to bird populations.

⁶ Viet et al, cited in Draft Hawaiian Monk Seal Recovery Plan, November 2006, pg 6

⁷ Draft Hawaiian Monk Seal Recovery Plan, November 2006, pg 6

⁸ Ibid, pg 9

⁹ Ibid, pg 6

¹⁰ Ibid, pg

¹¹ Draft Hawaiian Monk Seal Recovery Plan, November 2006, pg 4

¹² Ibid, pg 7

¹³ Ibid, pg 7

- In 1996, USFWS immediately closed most of the atoll's beaches to human access. They entered into a contract with the Midway Phoenix corporation to maintain infrastructure, operate diving, fishing and ecotour concessions.¹⁴
- In 1995, mean beach counts of monk seals increased steadily. By 2002, 62 seals were estimated at Midway. Between 1997 and 2000, after Navy departure, prior to ecotourism and during the first two years of low level tour activities, a high rate of migrations between Midway and Kure and Pearl and Hermes were observed. Beach counts doubled and births increased. Immigrations to Midway and increased hauling on Sand Island were attributed to the reduction in human disturbance following the beach closures.¹⁵
- "Unfortunately, survival of the 2000 and subsequent cohorts has been low, which has raised concern about further recovery of this subpopulation."¹⁶

Monk seals:

- Given that monk seals spend nearly two-thirds of their time in the marine habitat, any marine-oriented visitor program could provide a threat to monk seal foraging behavior;
- "In general, monk seals in the NWHI avoid beaches for breeding where people have often disturbed them. A "critical intolerance of humans" is a characteristic of monk seals. The most significant documented consequence of disturbance is the decrease in population size and beach counts at human-disturbed sites during the later half of the 1900's. If sufficiently disturbed, monk seals have been observed to abandon haul-out sites, and females have abandoned preferred pupping habitat to move to suboptimal habitats."¹⁷
- "The effect of human disturbance on monk seals is often not immediately apparent. Human disturbance results in abandonment of preferred and protected pupping locations by seals and a subsequent decrease in pup survival. It may take several years before this decrease in pup survival manifests itself in an overall decrease in the seal population but the effect is enduring."¹⁸
- Female seals with pups are more likely to be disturbed by an approaching human than any other age or sex of seal. "Some individual seals that have been handled or harassed will show a heightened sensitivity on the beach to human presence. They will noticeably look around, scanning the beach much more than other seals, and are more likely to flee from human presence at a greater distance than other seals. This behavior can last for weeks, months, or even to the following year after the handling event. This possible effect of handling was not tested for in the study of Baker and Johanos."¹⁹

¹⁴ Ibid, pg 7

¹⁵ Gilmartin et al, "Managing human activity aids recovery of endangered Hawaiian monk seals at Midway Islands," Society for Marine Mammalogy, 1999, pg 67

¹⁶ Draft Hawaiian Monk Seal Recovery Plan, pg 7.

¹⁷ Draft Hawaiian Monk Seal Recovery Plan , pg 55

¹⁸ NMFS, PIFSC Marine Mammal Research Program, overview pg 2 We note that one study by Baker and Johanos has frequently been mischaracterized as "proof" that there is no impact of research/human disturbance on monk seal survival and behavior. However, the Baker study compared tagged and untagged seals with respect to survivorship at 1 year after tagging and changes in migration behavior to other atolls. Unfortunately, migration between atolls is not a proxy for behavioral changes which can directly affect seal mortality/morbidity, especially migration to less favorable pupping sites within a given atoll. For example, other researchers have found significant human impact on seal populations at Kure and Midway with significant pup mortality linked to migration of females to other, less protected, beaches on the same atoll, not inter-atoll migration. The Baker study did not examine the impact of human disturbance on migration within an atoll, thereby missing what could potentially be one of the more significant impacts of disturbance. In addition, it is our understanding such research has not been conducted on the impact of human disturbance and interaction in the marine environment of the monk seals' foraging range, which is where a significant amount of the newly proposed NWHI traffic will be concentrated. As noted earlier, monk seals spend the majority of their time in water.

¹⁹ Gilmartin, pg 6

- The draft Hawaiian Monk Seal Recovery Plan identifies “action taken to improve the survivorship of females” as of the highest importance.²⁰

4. GRANT ACCESS TO MIDWAY BY LOTTERY

Given the significant amount of publicity associated with the Monument Proclamation, the proposal by USFWS to engage in an active marketing campaign and the significant amount of publicity which is likely to occur if a World Heritage designation for the NWHI is pursued, having clear and unambiguous restrictions on access to the area *from the very beginning* is of the utmost importance.²¹ These restrictions should apply whether in this VSP or, later, under a larger Monument plan.

Experience shows us that Refuge managers and staff are likely to face significant pressure from commercial operators, tourists and potentially from other government agencies to “relax” rules pertaining to the allowable number of visitors. In order to help prevent such conflicts and pressures, we propose that it is of vital importance to ensure that – from the beginning of this new era of visitor services – a lottery system designed for a specific carrying capacity is utilized. Interviews with staff of various agencies with experience at Midway and Kure during the operation of the Midway Phoenix ecotourism concession underscored the following concerns:

- “There was tension from the very beginning of the concession operation” – i.e. between conservation goals and requirements and profit-making efforts; The concessionaire constantly pushed for an increase in the number of people, the amount of fishing beyond that considered compatible with the Refuge;
- “There was always tension regarding beach closures” as the concessionaire did not accept the premise that beaches – even those near human activity centers – must be closed if a monk seal hauled up on the beach.
- The concessionaire pushed for non-refuge related programs, including a military tracking facility or a fiber optic cable system; they were “always looking for another dollar.”
- The concessionaire introduced cruise ship traffic; The first tours were historically oriented. Not necessarily the case with later tours. “The cruise ships wanted to offload at the dock” despite substantial staff concerns; once, a cruise ship even offloaded in the lagoon.
- “Staff faced pressure every day.” “Every day it was in our faces.” “There was also pressure from above to ‘relax’ conservation rules.” “There was pressure to open areas for shore fishing.” “There was pressure to relax restrictions on ulua fishing and conflicting data was presented that kept that operation going, despite the fact that, as we discovered, there was a real impact on the ulua population.”

We are concerned by language regarding numbers of visitors which is phrased not as an absolute cap, but as an open-ended amount – for example, a goal of “at least 500 people in 2008 and beyond.” We urge that you provide an absolute cap on visitation, and not an open-ended goal which could result in potentially unlimited visits. .

A lottery system paired with an absolute cap would serve several purposes:

- 1) It would set up a healthy dynamic *from the beginning* wherein potential visitors understand that there is a strictly limited carrying capacity, that there is no guarantee of access, and that applicants have an equal chance for access via a lottery system;

²⁰ Draft Hawaiian Monk Seal Recovery Plan, November 2006, pg v

²¹ A World Heritage designation for the NWHI would contribute to an enormous amount of publicity, much of it aimed at generating tourism. See, for example, “The Curse of Approval: If UNESCO designates it, they will come. Does identifying world heritage sites do more harm than good?” Newsweek International - April 10-17, 2006 ;” The Flip side of World Heritage status,” The New York Times, 1/17/06: “Countries found out that while they didn't get money from Unesco, they did get recognition, and recognition results in tourism,” said Bonnie Burnham, the president of the New York-based World Monuments Fund, a nonprofit group that assists in preserving and protecting historic sites. “It's not a secret that this is one of the primary benefits of World Heritage listing. ‘The minute it goes on the list, it goes into Lonely Planet, Fodor's, Frommers,’ said Jeff Morgan, executive director of the Global Heritage Fund, a California-based group that maintains its own, smaller list, and runs preservation and restoration projects in developing countries. ‘The list means nothing in terms of protection.’”

- 2) Having a clearly defined and strictly limited carrying capacity stated in the plan (i.e. 30/day in the first year; 50/day thereafter²²) and linked to a lottery would make it more difficult for the sort of devastating continual upward revision of carrying capacity such as was experienced in the Galapagos to occur in the NWHI. In the Galapagos Islands, tourism increased – despite official “carrying capacity” limits which were routinely violated – from approximately 1,000 visitors per year to close to 100,000 visitors per year with the number of residents increasing by 300%. Significant environmental consequences included oil spills from tourism vessels, waste dumping from vessels, littering on land (consumption of plastic by sea turtles), and significant human disturbance impacts such as apparent increase in agitation and stress of sea lions, disturbance of bird colonies by tourists attempting to take photographs while on trails through bird nesting areas, etc.²³

We cannot overemphasize the importance of having clearly defined carrying capacity implemented via lottery (in this case, 30/day the first year and 50 in following years, as long as no negative impacts are observed on endangered and threatened species).

5. CONCERNS REGARDING ECONOMIC ASPECTS OF THE VISITOR SERVICES PROGRAM

Within the scope of the VSP, we note the inherent tension between protecting the natural resources of the Atoll by limiting the number of visitors, versus the requirement that the visitor services program be “financially self-sustaining.” While the VSP asserts in Appendix B-2 that “An economically sustainable visitor program is feasible for Midway,” there is scant mention in the VSP of the reasons for the collapse of the visitor program under the concession operated by Midway Phoenix Corporation.

Some reasons for the collapse of the visitor program under Midway Phoenix were suggested in an article in the Honolulu Star-Bulletin dated March 8, 2002 and titled “**Midway contractor officially pulls out -The Georgia company says it is losing money in the ecotour venture.**” Therein the Midway Phoenix Executive Vice President Bob Tracey was quoted as stating to the reporter that his company had lost at least \$15 million while operating Midway and that it cannot go on. Tracey was also quoted as saying that the Fish and Wildlife Service “managed at an extreme” -- citing the removal of non-native ironwood trees and the agency's refusal to allow moneymaking activities such as kayaking or surfing. We note with interest that the refuge manager at the time of Tracey’s complaints is no longer employed by the USFWS, and guided kayaking tours are now included among the suggested opportunities for wildlife observation and photography.

Concerns about the inherent tension between wildlife conservation at Midway and the need to protect the ecosystem have been echoed by those working at Midway and Kure over the years. See the “Lottery” section for information on the continual pressure to weaken conservation measures brought to bear on USFWS by the concessionaire and observed by staff, contractors and visitors, alike. In addition, see proposed plans in Appendix B-3 for a plan to import “a seaplane or World War II fighter plane and other historical pieces to Midway. Currently there are only the historical buildings, which have significant value but do not offer the experience that actual battle artifacts would.”

Given the past experience with Midway Phoenix Corporation (MCP) at Midway, the economic feasibility of the VSP requires close review. The feasibility study conducted by Pandion Systems, Inc. (The Study) is summarized in Appendix B. We have also reviewed portions of the full study published by Pandion Systems, Inc., which is accessible from the USFWS website.

²² We note with concern that the target of 50 people/day is only for the apparently brief period that “this visitor services plan is in effect.” Pg 24 DVSP; We urge you to make this limit a permanent one, as long as no negative impact on the environment or endangered species is observed. If negative impacts are observed, steps would be taken to lower the limit.

²³Galapagos Islands face a complex stream of threats, Knight Ridder Newspapers, Dec. 29, 2005

We have the following comments and questions regarding the marketing and feasibility study:

- 1) A major portion of the MPC visitor program was recreational sport fishing. Such activities are prohibited under the Proclamation, so one key assumption of the VSP is that the sport fishing market segment will have to be replaced by another significant type of activity.
- 2) There are some major differences between some of the assumptions of the Pandion study and the VSP. These differences, in general, suggest that more conservative revenue estimates for the VSP than are suggested in the study. The differences include the following:
 - a) The capacity used in the Study for determining Average Occupancy Rate of Lodging was based on 12 months of operation, with a maximum capacity of 72 visitors per day (36 rooms at double occupancy). Maximum occupancy under these assumptions would be 365 days x 72 = 26,280 Visitor days. Thus, a 10% occupancy rate would mean 2,628 visitor days, as shown in Table 4-5 of The Study. Under these assumptions, and related revenues and expenses, the breakeven point for the Visitor Program would be 11.6%.
 - b) The VSP, however, states that a maximum of 30 visitors per day would be allowed on island in 2007 and 50 visitors per day in 2008 and beyond for the duration of the VSP. Also, the Visitor Program would operate only during the months of November through July. Thus the maximum capacity in visitor days, assuming the higher level of 50 visitors per day, would be 273 (the total days November through July) x 50 = 13,650 Visitor days. Assuming that the same assumptions hold for the breakeven point of 11.6%, or 3,044 Visitor Days, then the VSP would require an average occupancy rate of 3,044/13,650, or 22%, roughly double that required under The Study. This still appears to be a low target requirement for breakeven, but it suggests that the upper range of revenue projections in The Study are overly optimistic given the constraints stated in the VSP.

We have substantial concerns regarding the requirement that the visitor program be entirely self-funding. If the self-funding requirement leads to the generation of similar pressures on staff to “relax” conservation rules, then this would not be a compatible use of refuge resources.

6. PERMITTING and Public Review

As the VSP recognizes, the Proclamation provides a regulatory framework which overlays the Midway Atoll NWR, and places additional conditions on the types of permits which can be issued, and creates a co-trustee relationship between the Secretaries of Commerce and the Interior, and the State of Hawai‘i. This co-trustee relationship and the comprehensive boundaries of the Monument afford a new opportunity for a coordinated and integrated approach for managing the NWHI as an ecosystem.

A coordinated permit system is necessary for this approach to succeed. A primary goal of the permit system should be protection of the NWHI from the cumulative impacts of the various activities which may be underway at any time and an open and public process regarding permitting activities. This requires consideration of the scheduling of the various categories of permitted activities so as to keep the numbers of persons visiting sensitive areas in the NWHI within limits acceptable for the protection of the threatened and endangered species and their habitats. In other words, the equivalent of a centralized reservation system with ongoing analyses of impacts on threatened and protected species is required.

Such a system appears necessary to have in place prior to the implementation of any new visitor plan to support the requirement in the Proclamation that before issuing any permit for an activity within the monument, the Secretaries must take into account “the extent to which the conduct of the activity may diminish or enhance monument resources, qualities, and ecological integrity, and indirect, secondary, or cumulative effects of the activity, and the duration of such effects.” This implies the need for an integrated system for tracking and reporting the nature, extent, location, and duration of the various activities permitted within the monument, the number of people on any given permit and their names (with signatures and dates indicating understanding and acceptance of permit conditions), the history of prior violations of any NWHI federal or state laws, rules, regulations or permit conditions and an assessment of the impacts of the activities, including on the behavior of endangered and

threatened species such as the monk seal. We recommend that, as per state NWHI rules that permit violators not be granted additional permits and that, in the case of a permit violation, a long term permit be revoked.

The VSP permitting elements should be designed to be compatible with the requirements of the Monument permit system, i.e. include a means for tracking and reporting the nature, extent, location, and duration of visitor activities for which permits were issued. In addition, it should provide a mechanism for public comment on permits, before they are issued. It is our understanding that Co-Trustees have been discussing a 90 day process, where permit applications are submitted at certain times of the year, staff and agency review occurs over a 45 day period, followed by 45 days for public comment. We urge you to support and engage in this type of public process. We note that the VSP mentions a permit tracking system, and the requirement that the Refuge manager produce an annual public use report, but we have not had the opportunity to evaluate the scope and depth of these information sources.

7. TRANSPARENCY AND ACCOUNTABILITY

The permit system established by the State of Hawai'i for its NWHI Marine Refuge is notable in the level of public visibility and participation it provides to the public. While implementation of the State system has not been without problems, it has furnished a wealth of information about the scope and nature of activities for which permits have been sought and has provided the opportunity for public comment to strengthen the permitting system. The federal agencies have thus far not offered the any degree of transparency and public participation in their permitting processes as we have seen with the State, and we encourage your agency to support the full transparency of the permitting process, including a 45 day public comment period on permits.

This VSP, including its appendices, identifies numerous possible adverse impacts from the proposed visitor program, while also enumerating the measures proposed to prevent or minimize such impacts. It is important that there be a system of accountability to assure that the preventive measures which are identified are actually implemented. This is especially important given the requirement that the visitor program be self-financing. One way to balance revenues and expenses would be to defer or eliminate expenses related to staffing associated with monitoring and enforcement activities, or to "relax" rules in the field, in which case the visitor program would be operating at greater risk to monument resources than is represented in the VSP.

The visitor impact monitoring activities described under Section 3.3 are other important tools for assessing the effectiveness of the protective measures proposed in the VSP. Such reports should be made public on regular basis.

We note that, despite having been deeply involved in NWHI protections for years and despite being present at many meetings with USFWS officials, we did not receive notice of the February 2006 comment period regarding the initiation of the new Midway visitor plan. We urge you to ensure that we are notified in a timely manner in the future by your agency of any opportunities for public comment. We note that throughout the process of over 30 public hearings and 100 public meetings on the NWHI, over 116,000 people have submitted comments on various aspects of the need to conserve the NWHI, including expressing concern regarding cruise ship traffic at Midway and the potential for significant expansion of tourism presence. The fact that your February 2006 "public comment period" only resulted in one individual expressing concerns regarding increased tourism indicates a real lack of public notification of opportunity to comment, one which the current VSP effort goes a long way to improve with its significant public comment period. We encourage you to apply such increased transparency to the permitting process, itself.

8. MONITORING VISITOR IMPACTS: A Public Process

The VSP acknowledges the requirement for monitoring the impacts of visitors and other users (e.g. researchers) on wildlife and historic resources to ensure continuing compatibility. **We request that the design, implementation, and publishing of results be an open process accessible to public review and input. We also request that, prior to the implementation of any Visitor Services Plan, a fully funded system for monitoring – with observers to note changes in the behavior and stress levels of endangered and threatened species – should be designed and implemented on a trial basis with existing Midway inhabitants.** The impact of human disturbance on Midway seal populations in the past and the apparent time lag between disturbance and potential juvenile

mortality means that an “early warning” monitoring system must be designed and implemented from the very beginning of this new phase of increasing human presence.

Past experience with the recreational fishing activities at Midway Atoll suggests that there were indeed adverse impacts on the ulua population there. This is acknowledged on page 35 of the VSP. We note that it was NOAA, not FWS that finally discussed the adverse impacts, so there is evidence that the FWS visitor impact monitoring efforts were not effective. Even in the face of declining ulua populations, the recreational fishing activities continued, ultimately including the practice of “chumming” for ulua near shore so as to allow visitors to hook ulua when they were not able to do so otherwise

The example of the former ulua catch and release fishery is instructive, as was the inability of staff, observers or visitors to ensure a proper review of compatibility of the fishery from within USFWS. In addition to impacting the ulua population, the operator apparently engaged in chumming for ulua in areas close to other groups engaged in swimming and snorkeling, leading to user conflicts.

The absence of any public process for monitoring and reporting on impacts proved problematic, given the experience of insufficient internal “reviews” of the impact of the ulua fishing and catch and release operation at Midway, and reports of pressure brought to bear on staff to keep the program operating despite the fact that it had an impact on ulua populations which should have made it an incompatible use. In hindsight, more than a few staff members and observers admit that the ulua operation should have been determined an incompatible use, yet the mechanism for doing so did not function properly. Since recreational fishing is banned throughout the Monument, the recreational fishing issue is now moot. The experience does, however, serve as a cautionary tale regarding pressures which can result from the pursuit of revenues from various concessions or tour package components.

We strongly urge that a precautionary approach be taken, since visitor impacts on species such as the monk seal may be hard to detect and to relate directly to visitor activities. It would be difficult, for example, to detect the impacts of kayaking activities on slumbering monk seals which may be observed from the kayaks. The cumulative impacts of kayaks or near shore boat traffic passing by may affect birth rates, for example, but that would be hard to determine. There may be behavioral cues that give a better indication of potential impacts, but such cues may be difficult to detect from a distance.

According to the VSP (Appendix f.1-4), “*Possible impacts from visitors involved in wildlife observation and/or photography include*

- (1) disturbance to nesting seabirds*
- (2) disturbance to Hawaiian monk seals and/or green sea turtles*
- (3) disturbance to spinner dolphins*
- (4) disturbance to fish and marine invertebrates*

... even with proper management and execution of a well run program, certain behavioral responses may occur that are not easily observable. Stress reactions (elevated heart rate, elevated levels of corticosterone, and behavioral responses) have been documented in several species of nesting seabirds at several ecotourism locations as a result of human activities in nesting colonies. Studies, however, have not been conducted to document long-term cumulative effects of human disturbance. Albatrosses in the developed part of Sand Island are clearly acclimated to the presence of people but may still have elevated stress hormone levels. When visitors are observing albatrosses, terns, boobies, Laysan ducks or other species in the less visited areas, they will have the potential of greatly elevating stress hormone levels if the duration of the disturbance is excessive.”

“Increased use of refuge waters also increases the potential for interaction/disturbance by boats, kayaks, or snorkelers/divers with monk seals, sea turtles, and spinner dolphins. Any action of pursuit or annoyance from boats potentially disturbs marine mammals in the wild by causing disruption of their behavioral patterns or displacement from essential habitat areas, especially if the dolphins or seals are in a rest phase.

Snorkel or dive operations also include the added risk of damage to living coral on the refuge. Improper boat operation or visitor behavior could result in localized impacts to the coral reef from repeated anchoring, touching, standing, or other avoidable physical disturbance to the coral.”

For this reason, it is imperative that a thorough monitoring process be developed to detect, for example, whether female seals are migrating to less favorable beaches after an increase in human presence in the water or whether marine activities linked to the VSP impact foraging behavior, duration, etc. It is also important to have trained observers (similar to the role of fishery observers) on board or accompanying tourism operations in the water as well as accompanying all individuals, including wildlife photographers.

The VSP mentions on Page 25 that a “refuge officer” will be added to the staff to enforce refuge and monument rules and regulations. We assume that this is the position described as a “refuge law enforcement officer” under section 2.2.1 of the proposed staffing plan on page 58. We welcome the addition of this position, and urge that budgeting for this position not be dependent upon visitor services revenues. Otherwise, this may be the first position to be cut in the face of revenue projections not meeting targets. There are enforcement issues involved with other users of the Monument besides visitors, and Midway is a strategic location for an enforcement officer. We are not convinced that one enforcement officer is sufficient and suggest that more funding be provided to enable the creation of at least two enforcement positions. No new visitor plan should be implemented in the absence of fully funded staff positions.

9. CRUISE SHIPS AND LIVE-ABOARDS

It is not clear to us that cruise ship operations at Midway Atoll are compatible with the purposes of the Monument. While we welcome a permanent cap of a maximum of three cruise ships per year visiting Midway, we are concerned that it is difficult to enforce regulations regarding discharges within Monument waters. We do not support Midway access by commercial “live-aboard” vessels.

The purposes of the cruise ship visits should be considered in granting access. We are aware, for example, of the interest in transporting Midway veterans and their friends and families to visit the Battle of Midway National Memorial. This would be an appropriate purpose for the use of a cruise ship within the Monument, assuming that all environmental protection measures are followed. It is not clear that other types of cruise ship access are appropriate. As the VSP stipulates, cruise ship visitors must be accompanied by guides to assure that they remain within walking tour boundaries.

We note with deep concern information provided in Appendix E regarding Cruise Ship Requirements. Although cruise ship visits appear to be highly restricted, they can result in "pulses" of up to 400 persons being on island at a time for "at least" 2 1/2 to 3 hours per group with a total of 1,500 passengers from any given vessel. The VSP indicates that a 650-passenger vessel would need to moor at Midway for a minimum of 8 hours. We are deeply concerned – given the documented impact of human disturbance on monk seal colonies at Midway, the initial recovery of the monk seal population after the sharp reduction of human presence, and the current dire survival rates of pups – that the USFWS would consider exceeding the daily limit by 1300% for a cruise ship vessel! It would seem that, in the case of a vessel with a 1,500-passenger capacity, the off-loading in one 12 hour day could involve 975 people or 1950% of the desired carrying capacity. This is a significant concern

Also, as stipulated in the VSP, there needs to be a designated anchoring/mooring site outside the reef. We are aware that during the operation of the Midway Phoenix concession, the operator apparently was quite insistent on being allowed to offload passengers at the dock. One cruise ship was even offloaded inside the lagoon. It will be extremely important, given the host of threats associated with cruise ships, including the transport of alien or invasive species, that docking only be allowed outside of the reef with offloading occurring only under conditions of appropriate safety. This would mean that in the case of inclement weather, the USFWS must freely – *without pressure from “above” or from any operator* – be allowed to make a judgment call regarding the safety or lack thereof of offloading at any given time. This may lead to a cancellation of offloading plans. Such possibilities must be explained to any cruise ship operators wishing to access Midway, including the fact that USFWS has the authority to refuse offloading privileges at any given time.

We must underscore the fact that cruise ships are a major concern due to the potential for introduced alien or invasive species via hull attachment, ballast water, dumping and large numbers of people. The anti-fouling paints utilized by cruise ships and other vessels are also a concern and some of them have already been banned in locations such as Bermuda due to impacts on corals. Vessels with harmful anti-fouling paints should not be allowed at Midway. There are significant concerns about the potential introduction of alien species including red ants, rats, and mice on land as well as marine algae, invertebrates and diseases.

We have additional concerns over the possible use of cruise ships, or other vessels, serving as a “mother ship” to allow recreational diving operations at other locations within the Monument, such as Kure Atoll or Pearl and Hermes reef. The VSP declares that such areas are off-limits, but item 9 of Appendix B makes the following recommendation: “It is recommended to explore the use of live-aboard diving options as well as an on-atoll dive center.” At issue, then is where such live-aboard dive operations would conduct their dives. We echo concerns regarding live-aboard dive vessels and recommend against their use in the NWHI.

Item 16 of the Cruise Ship Requirements listed in Appendix E calls for the cruise ships to provide staff to serve as on-island group escorts. Two guides are needed for each tour group, to escort visitors from one interpretive site to the next. It is not clear from the document whether there would be USFWS Staff with each of these groups, or whether the guides would be on their own, under the general supervision of the USFWS staff. Depending on cruise ship guides alone would not seem to adequately protect seals and turtles, given the large number of persons involved. In addition, Appendix F.2-6 states that “cruise ship visitors receive an orientation from a Service representative onboard ship or by handouts specific to their visit to Midway Atoll.” It would seem highly inappropriate to have the orientation of hundreds of visitors based on handouts alone. It is quite important that USFWS have sufficient staff presence to fully brief and accompany any such visitors, if they are indeed permitted.

The VSP directly addresses the feasibility of live-aboard dive cruises on page 37, and suggests that it “seems unlikely such a vessel could meet the environmental standards required of vessels within the monument.” We also note that the VSP would not allow snorkeling and diving activities for cruise ship passengers. We support those restrictions, and note that the scope of the VSP restrictions is limited to Midway Atoll. We recommend that live-aboard dive cruise vessels not be allowed in the waters off other islands and atolls throughout the NWHI.

10. “SELF-GUIDED TOURS” and Guided tours: Wildlife Observation and Photography

The reference to “self-guided” tours, page 36, of the trail adjacent to West Beach appears to be in contradiction to the general rule of having visitors accompanied by FWS staff or other authorized guides. Signage and briefings on rules and regulations may be necessary, but not sufficient, to assure visitor compliance. Interviews with individuals living and working at Midway and Kure during the Midway Phoenix era indicate significant concerns with “self-guided” tours – problems included unauthorized wildlife interactions/disturbances (including of monk seals) by “independent photographers,” independent foreign tourists claiming ignorance of rules, despite availability of language-appropriate materials, individuals frightening nesting birds, etc. We have strong reservations regarding self-guided tours and recommend that these not be allowed, at least initially. If the decision is made to allow such tours, we recommend that an observer is present and that monk seal and turtle areas be off limits.

The issue of delegation of supervision of activities occurs elsewhere in the Plan. For example, on Appendix F-16, the following statement is made: “Guided kayaking tours will be closely supervised by Service staff, Service-trained volunteers, or cooperators.” There is a world of difference between these three categories, especially between the Service staff and “cooperators.” Similar statements appear under descriptions of volunteer research and habitat restoration activities described in the Plan. The Plan overall leaves the impression that visitor activities other than a few opportunities for self-guided tours, will be under the direct supervision of Service staff accompanying visitors in small groups. That may not be the case, however, for activities where delegation is seen as an option. Any delegation of such direct supervision to volunteers or concession operators would be risky, and should only be undertaken with maximum safeguards – including independent observers -- to assure monitoring and enforcement of all rules and regulations, if allowed at all.

11. DIVING OPERATIONS

There is significant concern regarding the proposed implementation of a diving program. Any such program would require care that wetsuits and other equipment are not vectors for coral disease introduction. For example, if someone were diving in the Caribbean, had some pathogens absorbed into their wetsuit, then stored this prior to diving on Midway, the diseases could be spread. Would there be requirements for Midway-specific equipment and wetsuits?

In addition, we note that the VSP discusses the decline in the frequency occurrence of large jacks (ulua), likely “related to one or several ecotourism activities (recreational catch-and-release fishing, sport diving)” at Midway.²⁴

12. ENVIRONMENTAL EDUCATION PROGRAMS

The future of the NWHI lies in the hands of today’s young people, and environmental education programs leading to an awareness of the natural and cultural resources of this unique area are very important and worthwhile. As with other visitor activities, the environmental education component must be subject to the same constraints necessary to protect the wildlife and their habitat.

The NWHI have received much attention in recent years, and there is a great demand for opportunities to visit them in person. Recognizing that there will likely always be more people wanting to visit the NWHI than can be accommodated without risking harm to the natural resources there, the emphasis should be on bringing the place to the people, rather than bringing a lot of people to the place. Thus, the concept of distance learning as outlined in Objective 2.9 is an important alternative to be pursued, as is taking advantage of other off-site venues such as the Mokupapapa Discovery Center in Hilo. This would reflect the principle of the NWHI Reserve Advisory Council: “Bring the place to the people, not the people to the place.”

13. QUALITY INTERPRETATION OF KEY RESOURCES

Much of the recent efforts to address the serious marine debris problems at Midway and elsewhere in the NWHI has resulted from the educational efforts of refuge staff in directing the attention of visitors, including key decision makers and activists, to, among other things, the plight of seabirds ingesting plastic debris. The interpretive portion of the VSP is very important, and we are pleased to see this incorporated into most of the visitor activities envisioned in the VSP. We are concerned that the “self-discovery and exploration” mentioned on page 41 may, indeed not be possible without harming wildlife, and we recommend against the designation of areas open to unguided explorations.

14. BUILD VOLUNTEER PROGRAMS AND PARTNERSHIPS WITH MIDWAY ATOLL SUPPORT GROUPS

Visits to Midway are not available to all, so it is good that a service element is built into the VSP for visitors staying 3 days or longer. That would appear to be most of the visitors arriving by air, who are assumed to stay for one week.

15. REFUGE LAW ENFORCEMENT

The VSP states on page 50 that “As the visitor program grows, a law enforcement position will be added to the Midway staff. This position will also assist with law enforcement issues for the monument.” As we stated earlier, having a law enforcement presence at Midway would be very valuable, and should not be dependent on the level of revenues accruing from the visitor services program. Rather, this position -- or better yet, two positions -- should be incorporated into the management plan for the Monument and funded accordingly. The enforcement and monitoring funding must be in place, with officers hired prior to the implementation of visitor activities under the Plan. Also, we note (pg. 57) that while there are plans for a Refuge Ranger (for interpretation) to be hired immediately (2/07), the hiring of an enforcement officer is not scheduled to occur until a year later, after the June 2007 commemoration of the Battle of Midway (with a cruise ship visit), the October, 2007 hiring of a “Supervisory Outdoor Recreation Planner”, the evaluation (with NOAA) of the feasibility of a dive program and at the same time

²⁴ VSP, pg 35

as the hiring of a *second* Refuge Ranger (for interpretation). We urge you to begin with the hire of an enforcement officer, given the current plans for visitors and the presence of contractors and others at Midway who may not be well informed regarding rules and regulations. We also urge you to consider a minimum of two enforcement officers.

16. CONCESSION OPERATIONS

We note that the interim VSP does not envision operating with a concessionaire, with the possible exception of a snorkeling/SCUBA diving concession. That being the case, perhaps some of the past conflicts between the pursuit of revenues from the visitor program versus the need to place necessary restrictions on the nature and scope of revenue-generating visitor activities will be lessened or avoided. We also note, however, that through the Monument management plan now under development, the door is left open for operating the visitor program through a concession in the future.

17. TECHNICAL DETAIL

We note that with only three exceptions, the preparers of the VSP listed in Appendix I have listed their academic qualifications and years of experience. We request that all reviewers fill out this information.

18. FOCUS ON “VISITORS”

We note that, in addition to the individuals apparently targeted by this plan as “visitors”, there are significant additional populations at Midway to which this plan should apply, including contractors, maintenance people, agency representatives, short term operational personnel (including repair people who are flown to fix broken generators, etc.). These individuals are not necessarily coming to Midway for environmental or historical reasons and, after a day’s work, may seek engagement in a range of activities, some of which can be of significant detriment to the environment. It will be quite important to apply the VSP rules, restrictions, requirements, and enforcement/observer efforts equally to all at Midway. Given that everyone has an impact in the context of occupancy and carrying capacity, we urge the inclusion of a much broader definition of “Visitor” than currently exists in the draft Plan in order to apply the plan to all at Midway. We support the idea of separate seasons for contract maintenance work and more tourism-oriented visitor presence in order to limit the presence, at any given time, of the number of individuals at Midway.

19. “TRUST BUT VERIFY”

In summary, we recall Ronald Reagan’s dictum, “trust but verify.” The FWS staff at Midway NWR include individuals who have dedicated much of their professional lives to the protection of the birds, seals, turtles, and other species found at Midway and elsewhere within the Hawaiian Islands NWR. They deserve our continued support and gratitude, which must include support for their putting the welfare of the natural and cultural resources first, and subordinate to any visitor program revenue goals.

Thank you for the opportunity to present our comments on this draft plan.

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