MEMORANDUM OF AGREEMENT

AMONG THE

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES

AND THE

U.S. DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

AND THE

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

FOR

PROMOTING COORDINATED MANAGEMENT OF THE
NORTHWESTERN HAWAIIAN ISLANDS MARINE NATIONAL MONUMENT

I. BACKGROUND

A. The President established the Northwestern Hawaiian Islands Marine National Monument (Monument) on June 15, 2006, to protect the scientific and historic resources of the Northwestern Hawaiian Islands (NWHI). The purposes and management regime for the Monument, as well as restrictions and prohibitions regarding activities in the Monument, are set forth in Presidential Proclamation 8031 (71 FR 36443, June 26, 2006).

B. The Monument encompasses a vast and remote chain of islands that is a part of the Hawaiian Archipelago and provides habitat for numerous species found nowhere else on earth. These islands represent a nearly pristine ecosystem where habitats upon which marine species depend include both land and water. This area represents the majority of the coral reefs found within the United States' jurisdiction and supports more than 7,000 marine species, of which at least one quarter are unique to the Hawaiian Islands chain. This diverse ecosystem is home to many species of coral, fish, birds, marine mammals, and other flora and fauna, including the endangered Hawaiian monk seal, the threatened green sea turtle, and the endangered leatherback and hawksbill sea turtles. Like the coral reefs, the islets are home to many plant and animal species found nowhere else in the world, including four endangered land birds, an endangered seabird, and 12 endangered plants. In addition, millions of central Pacific seabirds congregate on these islands to breed. The area is rich in history and represents a place of great cultural significance to Native Hawaiians. It is an area that must be carefully managed to ensure that the resources are not diminished for future generations. The Hawaiian Islands are also the most remote archipelago in the world. This isolation has resulted in the opportunity and need for integrated resource management of this vast and exceptional environment.

C. The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), has primary responsibility regarding the management of the marine areas of the Monument, in consultation with the Secretary of the Interior. The Secretary of the Interior, through the United States Fish and Wildlife Service (USFWS), has sole responsibility for the areas of the Monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce. Nothing in the Proclamation diminishes or enlarges the jurisdiction of the State of Hawai`i. The State of Hawai`i has primary responsibility for managing the State waters of the Monument. The State of Hawai`i through the Department of Land and Natural Resources has primary responsibility for the Kure Atoll portion of the Hawai`i State Seabird Sanctuary. The State of Hawai`i holds the State submerged and ceded lands of the NWHI in trust. The Department of Land and Natural Resources (DLNR) will collaborate with the Office of Hawaiian Affairs (OHA) in the perpetuation of Hawaiian cultural resources in the Monument, including the customary and traditional rights and practices of Native Hawaiians exercised for subsistence, cultural, and religious purposes under the Constitution of the State of Hawai`i, Article XII, Section 7.

D. The areas subject to this Agreement are the lands and waters within the Monument. The Monument includes all lands and interest in lands owned or controlled by the Government of the United States in the NWHI, including emergent and submerged lands, and waters out to a distance of approximately 50 nautical miles from the islands. The Monument extends approximately 1200 nautical miles across coral islands, seamounts, banks, and shoals. The Monument includes a portion of State of Hawai`i waters, including the Northwestern Hawaiian Islands State Marine Refuge and the Kure Atoll portion of the Hawai`i State Seabird Sanctuary. The Monument also includes Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial, Hawaiian Islands National Wildlife Refuge, and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve.

E. The United States and the State of Hawai`i recognize the importance of the Monument's healthy coral reef, marine, and terrestrial ecosystems to the cultural, economic, and biological future of the State of Hawai`i and the Nation as a whole. Both recognize that a well managed terrestrial and marine environment in the NWHI is necessary to maintain the health and vigor of rare and protected species such as Hawaiian monk seals, sea turtles, seabirds, land birds, and plants, as well as to protect the other vital components of the ecosystem. The parties are collectively charged with protecting, conserving, and enhancing fish, plant, and wildlife habitats, including coral reefs and other marine and terrestrial resources in the NHWI. In order to protect the unique resources of these remote islands, the parties will manage the Monument in a manner that is free from exploitation and degradation due to human activities.

II. PARTIES, PURPOSE AND SCOPE

A. The Parties to this agreement are the State of Hawai`i, the U.S. Department of the Interior (DOI), and the U.S. Department of Commerce (DOC) (hereinafter collectively referred to as the Co-Trustees). This Memorandum of Agreement (Agreement) constitutes an agreement among the Co-Trustees to carry out coordinated resource management for the long-term comprehensive conservation and protection of the Monument.

B. This Agreement establishes functional relationships to effectively coordinate management actions in this area among the Co-Trustees. This Agreement also provides the general terms and conditions under which the Co-Trustees will cooperate and manage the resources of the Monument.

C. This Agreement also establishes objectives and responsibilities necessary for coordinated management activities in the Monument and is intended to provide the framework for long-term comprehensive protection of the Monument. The Co-Trustees will focus on coordinating planning efforts, management priorities, and field operations in the Monument.

D. The Co-Trustees will undertake coordinated, integrated management and protection that will result in comprehensive conservation of the ecosystems of the Monument in perpetuity. The Co-Trustees recognize that the Monument is also a place of special cultural significance for Native Hawaiians, which provides a unique opportunity to manage marine resources in a manner that honors the rich heritage of the Native Hawaiian culture. The Monument also is a place of more recent historical significance, including the Battle of Midway.

E. Monument Vision, Mission, and Guiding Principles:

1. The Monument vision is that the health, diversity, and resources of the vast NWHI ecosystems and the wildlife they support – unique in the world – be protected forever.

2. The Monument mission is to carry out seamless integrated management to achieve strong, long-term protection and perpetuation of NWHI ecosystems, Native Hawaiian traditional and customary cultural and religious practices, and heritage resources for current and future generations.

3. The Monument guiding principles are to manage the Monument in a manner that, consistent with applicable law:
   - is consistent with the vision and mission;
   - recognizes that the resources of the NWHI are administered by the Co-Trustees for the benefit of present and future generations;
   - affirms that the NWHI and its wildlife are important, unique, and irreplaceable;
   - honors the significance of the region for Native Hawaiians;
   - honors the historic importance of the region;
   - incorporates best practices, scientific principles, traditional knowledge, and an adaptive management approach;
   - errs on the side of resource protection when there is uncertainty regarding impacts of an activity;
   - enhances public appreciation of the unique character and environment of the NWHI;
   - authorizes only uses consistent with Presidential Proclamation 8031 and other applicable laws;
   - coordinates with federal, state, and local governments; Native Hawaiians; relevant organizations; and the public; and
   - carries out effective outreach, monitoring, and enforcement to promote compliance.

III. REFERENCES AND AUTHORITIES

The Co-Trustees are authorized to enter into this Agreement under various authorities most relevant to coordinated management, including:

A. Antiquities Act, 16 U.S.C. § 431, *et seq.*;

B. Proclamation 8031 of June 15, 2006, 71 FR 36443 (June 26, 2006);

C. Northwestern Hawaiian Islands Marine National Monument codifying regulations, 50 CFR Part 404 (2006);

D. State of Hawai`i Organic Act of April 30, 1900, c339, 31 Stat. 141 Section 2; and Hawai`i Admission Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4 Section 2;

E. Constitution of the State of Hawai`i, Article XI, Sections 1, 2, 6, and 9; and Article XII, Section 7;

F. Title 12, Chapter 171, Section 171-3, Chapter 183D, Section 183D-8, Chapter 187A, Section 187A-8, Chapter 188, Sections 188-37 and 188-53, Chapter 195D, Section 195D-5, and Chapter 199, Section 199-3, Hawai`i Revised Statutes; and Title 13, Chapter 60.5 and Chapter 125 Hawai`i Administrative Rules;

G. National Marine Sanctuaries Amendments Act of 2000, Pub. L. 106-513 §6(g) (2000);

H. Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531, *et seq.*;

I. Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361, *et seq.*;

J. Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801, *et seq.*;

K. National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. §§ 668dd-ee;

L. Refuge Recreation Act, 16 U.S.C. § 460k-3;

M. Fish and Wildlife Act of 1956, 16 U.S.C. § 742f;

N. Fish and Wildlife Improvement Act of 1978, 16 U.S.C. § 742l;

IV. MONUMENT MANAGEMENT OFFICIALS AND RESPONSIBILITIES

A. Senior Executive Board (SEB): The Co-Trustees hereby establish the SEB.

1. The SEB shall provide policy guidance to their respective agency staff assigned to carry-out Monument management activities.

2. Responsible Officials: SEB Membership will consist of an appropriate senior level designee from each of the following (Co-Trustees will notify each other of appointed designee and upon change of designee):
   a. State of Hawai`i Department of Land and Natural Resources
   b. U.S. Department of the Interior
   c. U.S. Department of Commerce

3. The SEB shall be responsible for the following activities through the Monument Management Board (MMB):

   a. Develop a management plan for ensuring the coordinated management of the coral reef ecosystems and related marine resources, terrestrial resources, and cultural and historic resources of the Monument, consistent with Proclamation 8031 and other applicable laws and regulations. To develop the management plan, the SEB shall modify, as appropriate, the plan developed by NOAA's National Marine Sanctuary Program through the public sanctuary designation process and provide for public review of that plan. The management plan should also maximize the efficient use of financial and human capital. Further, the SEB shall regularly review the implementation of the management plan and adjust the management framework as appropriate, consistent with applicable laws and policies.

   b. Provide access and support for enforcement purposes, share enforcement resources and data, as appropriate, and develop joint enforcement capabilities as needed to ensure compliance with applicable State and Federal laws. Enforcement support may involve assistance from additional agencies such as the U.S. Coast Guard.

   c. Coordinate research and monitoring efforts to better understand and address major threats to Monument resources. Initiate joint resource assessment, monitoring, and research activities including, but not limited to, population studies, species inventories and assessments, impacts from derelict fishing gear, and documentation of historic and cultural resources. Provide opportunities to participate in research activities initiated by each Co-Trustee, as appropriate. Coordinate research, including permits required for management activities that further the recovery of threatened or endangered species and protect and/or restore biodiversity within the Monument.

d. Develop a mechanism to access scientific and resource data, as needed, and, consistent with applicable law, a protocol to ensure the necessary confidentiality of certain information, such as fisheries data and the location of heritage resources.

e. Provide support to identify locations of cultural and religious significance and for noncommercial Native Hawaiian practices, which may benefit the resources of the Monument and the Native Hawaiian community. Develop a protocol to protect sensitive, culturally significant, and religious locations while allowing permitted access.

f. Manage recreational, educational, and commercial activities that may take place within the Monument consistent with Proclamation 8031.

g. Identify and facilitate, as appropriate, coordination, consultation, and partnership opportunities regarding Monument management activities among Federal, State, and local governments, Native Hawaiians, the private sector, foreign governments, international organizations, and any other public or private persons or entities.

h. Facilitate opportunities to participate in and collaborate on educational activities and projects between and among the Co-Trustees.

i. Develop interagency agreements, grants, memoranda of understanding, or other appropriate instruments that allow for ease in sharing resources, including funds as appropriate, and a sharing of in-kind assistance and support such as the sharing of vessel time, aircraft missions, or other logistical support as a means of facilitating cooperative project opportunities. These more detailed agreements on specific issues will be signed at an appropriate level.

j. Ensure appropriate monitoring of activities within the Monument. Develop a coordinated response program to assess and address human induced or natural threats to Monument resources.

k. Enhance coordination by jointly issuing permits required for activities allowed under Presidential Proclamation 8031.

B. Monument Management Board (MMB): The Co-Trustees hereby establish the MMB.

1. The MMB will promote coordinated management of the Monument at the field level.

2. Responsible Officials: MMB membership will consist of appropriate designees from the following entities (Co-Trustees will notify each other of appointed designee and upon change of designee):
   a. State of Hawai`i, Department of Land and Natural Resources, Division of Aquatic Resources, Honolulu, HI
   b. State of Hawai`i, Department of Land and Natural Resources, Division of Forestry and Wildlife, Honolulu, HI
   c. U.S. Fish and Wildlife Service, National Wildlife Refuge System, Honolulu, HI
   d. U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, Honolulu, HI
   e. National Oceanic and Atmospheric Administration, National Marine Sanctuary Program, Honolulu, HI
   f. National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Honolulu, HI
   g. State of Hawai`i, Office of Hawaiian Affairs, Honolulu, HI

3. The Monument Management Board shall implement the activities set forth in Section IV.A.3.

4. Whenever appropriate and practicable, the MMB will coordinate and consult with representatives of the U.S. Coast Guard, which provides enforcement support pertaining to laws and regulations regarding marine resources in the area.

C. Interagency Coordinating Committee (ICC): The Co-Trustees hereby authorize the MMB to establish an Interagency Coordinating Committee (ICC) to assist in the implementation of Monument management activities set forth in Section IV.A.3. The MMB will request the participation of other Federal and State agencies to establish the ICC as it determines to be appropriate and necessary to seek additional input, or as subject to needs that may arise.

V. PERIOD OF AGREEMENT, MODIFICATION, OR TERMINATION

A. This Agreement becomes effective when all Co-Trustees sign it. The Co-Trustees shall review this Agreement at least every year to determine whether it should be modified or terminated.

B. The Co-Trustees may modify this Agreement by written amendment only and with the concurrence of all Co-Trustees.

C. The Co-Trustees may terminate this Agreement by mutual written consent. Any Co-Trustee may terminate its participation in this Agreement by giving the other Co-Trustees six months advance written notice.

VI. DISPUTE RESOLUTION

If the members of the MMB disagree on an issue of Monument resource management, they shall present their differences to each other in writing, and they shall discuss them. The MMB should be the first body to attempt resolution of any disagreement. If the MMB fails to resolve their differences within 30 days after identification of the disagreement, or immediately upon determination that the MMB has reached an impasse, the matter shall be elevated to the SEB for resolution.

VII. OTHER PROVISIONS

A. Nothing in this Agreement shall be construed to conflict with applicable laws, or otherwise diminish authorities otherwise vested in the Secretaries of Commerce and Interior under federal law or the State of Hawai'i under state law. Any such conflicting term shall be invalid, but the remainder of the Agreement shall remain in effect. If a term is invalid, the Co-Trustees shall immediately review the Agreement to decide what should been done in light of the invalid term, e.g., amend or terminate the Agreement.

B. This Agreement serves as the foundation for the entering into other agreements among the Co-Trustees and with agencies and other entities, as appropriate, and at a level appropriate to such agreement. Such agreements may be for the purpose of, among other things, the pursuit of research or training, supplementation of enforcement support or enter into cooperative enforcement agreements, data sharing, or increasing management capacity in the Monument. All such agreements shall be coordinated with the other Co-Trustees and may become annexes to this Agreement.

C. The Co-Trustees intend to enter into an appropriate enforcement agreement to enhance enforcement of the Proclamation and implementing regulations. In the interim, pursuant to the authority of 16 U.S.C. 742*l* (b) and Title 12, Chapter 199, Section 199-3, Hawai`i Revised Statutes, NOAA and FWS and the State of Hawai`i each hereby authorize the other to use without reimbursement their respective personnel, services and facilities to enforce the provisions of all applicable Federal and State laws within the boundaries of the Monument.

D. This Agreement defines in general terms the basis on which the Co-Trustees will cooperate, and as such, does not constitute a financial obligation or an authorization for particular expenditures. Expenditures of funds, human resources, equipment, supplies, facilities, training, public information, and technical expertise are generally intended to be provided by each signatory Co-Trustee to the extent that their participation is required and resources are available.

E. Nothing in this agreement is intended to require the expenditure of funds in excess or advance of applicable appropriations. This Agreement is not a fiscal or funds obligation document. Any activities involving reimbursement or contribution of funds between Co-Trustees to this Agreement will be handled in accordance with

applicable laws, regulations, and procedures. Such activities will be documented in separate agreements, which will identify the specific projects between the Co-Trustees in appropriate detail. Such separate agreements should also reference this Agreement.

STATE OF HAWAI'I

Date: December 8, 2006

LINDA LINGLE
Governor
State of Hawaii

U.S. DEPARTMENT OF THE INTERIOR

Date: December 8, 2006

DIRK KEMPTHORNE
Secretary
United States Department of the Interior

U.S. DEPARTMENT OF COMMERCE

Date: December 8, 2006

CARLOS M. GUTIERREZ
Secretary of Commerce