HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.5

NORTHWESTERN HAWAIIAN ISLANDS MARINE REFUGE

§13-60.5-1 Intent and purpose
§13-60.5-2 Boundaries
§13-60.5-3 Definitions
§13-60.5-4 Prohibited activities
§13-60.5-5 Permits and permitted activities
§13-60.5-6 Applications and permit issues
§13-60.5-7 Penalties

§13-60.5-1 Intent and purpose. The department intends:

(1) To establish a marine refuge in the Northwestern Hawaiian Islands for the long-term conservation and protection of the unique coral reef ecosystems and the related marine resources and species, to ensure their sustainable use for present and future generations;

(2) To manage, preserve, protect, and conserve the unique resources in the marine refuge, using the best available science and a precautionary management approach to resource protection to minimize risks of possible adverse effects on the regional ecosystem or its indigenous wildlife in this area, especially where data is limited;

(3) To implement an entry permit program for the area that will cause no harm to the refuge resources and be consistent with the

management programs in the adjacent National Wildlife Refuge and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve for this area, that preserves the area by limiting entries and restricting access to specific areas;

(4) To support, promote, and coordinate appropriate scientific research and assessment, and long term monitoring of the refuge resources, and the impacts or threats thereto from human and other activities, to help better understand, protect, and conserve these resources for future generations, consistent with applicable law;

(5) To allow native Hawaiian cultural, subsistence, and religious practices, that are consistent with applicable law and the long-term conservation and protection of the resources of the marine refuge; and

(6) Consistent with the federal management in the area, to coordinate management among the department, U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the National Ocean Service, and other entities, as appropriate, to provide comprehensive conservation of the coral reef ecosystem and related marine resources and species throughout the area, consistent with applicable authorities and management principles, including cleanup and prevention of marine debris, restoration or remediation of degraded or injured resources, enforcement and surveillance, identification and coordination of native Hawaiian interests, identification of potential tourism, recreational, and commercial activities and actions needed to ensure they do not degrade the resources or diminish the natural character in the marine refuge.

[Eff] (Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§187A-8, 188-37, 188-53)

§13-60.5-2 Boundaries. The Northwestern Hawaiian Islands marine refuge area shall include, but is not limited to, the islands, reefs, and shoals, and theirappurtenant reefs and all state waters extending three miles seaward of any coastline beginning and including Nihoa Island and Kure Atoll, but excluding Midway Atoll, as shown as fisheries refuges on exhibit "A", map of Nihoa Island (date 8/10/02); exhibit "B", map of Necker Island (date 8/10/02); exhibit "C", map of French Frigate Shoals; exhibit "D"(date 8/10/02), map of Laysan Island fisheries refuge; exhibit "E"(date 8/10/02), map of Maro Reef fisheries refuge; exhibit "F" (date 8/10/02), map of Gardner Pinnacles; exhibit "G" (date 8/10/02), map of Lisianski Island; exhibit "H" (date 8/10/02), map of Pearl and Hermes Atoll(date 8/10/02); and exhibit "I" (8/10/02), a map of Kure Atoll, located at the end of this chapter, and made a part of this section. [Eff] (Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§188-37, 188-53)

§13-60.5-3 Definitions. As used in this chapter:

"Area" means the Northwestern Hawaiian Islands marine refuge.

"Board" means the board of the department of land and natural resources.

"Department" means the department of land and natural resources.

"Documentation" means documents or a number that verifies that the United States coast guard has recorded the vessel pursuant to 46 C.F.R. §46 and other applicable federal laws.

"Emergent land" means any land that is exposed or would be exposed above the surface of the water at the lowest tide.

"Hand-line fishing" means attempting to engage or engaging in the act of taking marine life while using the hands or mechanical device to set and to retrieve a length of flexible fishing line (the line), including associated hooks, leads, and swivels, that hang vertically under the boat.

"Marine life" means any type of species of

saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweeds or other marine plants, including any part, product, seed, or root thereof.

"Non-extractive" means those actions that do not involve the taking of marine life.

"Pole-and-line fishing" means attempting to engage or engaging in the act of taking marine life with the aid of a fishing gear consisting of a length of rigid, flexible, shaft (the pole) to which is attached a length of flexible fishing line (the line), including a reel to hold the line and other associated devices, such a hooks, leads, and swivels.

"Trolling" means attempting to engage or engaging in the act of pole-and-line fishing while in a moving boat, which results in the line dragging behind the boat.

"Scientific purposes" means observing, identifying, describing, investigating, and theoretically explaining natural phenomena, including the principles and processes necessary to form concepts, to conduct observations or experiments, and to validate hypotheses by observation or experiment.

"State marine waters" means the area extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary.

"Registration" means to assign a number to a vessel pursuant to chapter 13-241, Hawaii administrative rules. [Eff] (Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§187A-1.5,188-37, 188-53)

§13-60.5-4 <u>Prohibited activities.</u> Unless otherwise authorized by law, it is unlawful for any person:

(1) To enter the area without a permit under this chapter;

(2) To take marine life from the area, except as

allowed in section 13-60.5-5;

(3) To set foot on shore or on any emergent land or reef, except as authorized by law;

(4) To engage in any activity, including the anchoring of a vessel that can or does result in damaging or destroying coral beds; and

. (5) To discharge from a vessel as defined in federal and state law.

[Eff] (Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§188-23, 188-37, 188-53)

§13-60.5-5 Permitted activities. (a) A person shall obtain a permit from the department to enter the area, subject to the restrictions of section 13-60.5-5(c), and to take marine life using the following methods and gear while in the area:

(1) Trolling for pelagic species;

(2) Hand-line fishing;

(3) Pole-and-line fishing; and

(b) A person shall obtain a permit from the department to enter into the area and to engage in any activity that causes no harm to the coral reef ecosystem and related marine resources and species and further the intent and purpose of this chapter, as may be specifically authorized by law and is consistent with the existing law and authorized activities in the adjacent waters under federal jurisdiction, such as, but not limited to, those for the following purposes:

(1) Scientific, research, monitoring, educational, or management;

(2) Non-extractive; and

(3) Non-commercial subsistence, cultural, and religious use by native Hawaiians, in accordance with State law.

(c) No entry is allowed for extractive activities, except as may be permitted in section 13-60.5-5(b) and subject to all applicable laws, in the following areas:

(1) State marine waters surrounding French Frigate Shoals, Pearl and Hermes Atoll, and Kure Atoll as defined in section 13-60.5-2 and shown on exhibits “C”, “H”, and “I”,

respectively, located at the end of this chapter, and made a part of this section;

(2) State marine waters from 0 to 20 fathoms around Necker Island, Gardner Pinnacles, Maro Reef, Laysan Island, and Lisianski Island in the marine refuge as defined in section 13-60.5-2 and shown on exhibits "B","D","E","F",and "G", respectively, located at the end of this chapter, and made a part of this section; and

(3) State marine waters from 0 to 10 fathoms surrounding Nihoa Island, shown on exhibit "A", and located at the end of this chapter, and made a part of this section.

(d) Any federal law that is more restrictive than state law, including but not limited to, limited entries, restricted areas, and quotas, shall apply in the adjacent state area, except as otherwise provide by state law. [Eff] (Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§187A-6, 187A-8, 188-37, 188-53)

§13-60.5-6 Permits. (a) The board or its authorized representative may issue permits to enter the area, subject to the following conditions:

(1) Receipt of complete information the department may require on an application on the form provided by the department that lists the applicant's name, street and mailing addresses, number of persons entering with the applicant, vessel registration number or documentation number, name and length of the vessel, proposed dates of entry, purpose of entry, area of activities, and any other pertinent information;

(2) A public comment period of no less than thirty days after receipt of a complete application;

(3) Approval may be granted after an assessment of the appropriateness of the permit based on (i) factors that the department considers relevant to the intent of this chapter, and

(ii) all applicable state and federal laws, including compliance with the federal permit requirements governing commercial and recreational fishing in the adjacent waters. Submission of an application to the department or the receipt of public comments to the department on the application shall not obligate the department to issue a permit or constitute a right on the part of an applicant to receive a permit.

(4) When reviewing an application, the department shall consider whether the applicant has violated or not complied with any term or condition of previous permits issued by the department. The department may deny an application based on a past violation or non-compliance with any term or condition of a permit issued under this chapter.

(b) The department may issue a permit for a limited term, subject to this section, but the term shall not exceed one year from the date of issue. The issuance of a permit shall not constitute a vested right to receive additional or future permits.

(c) Permits are non-transferable.

(d) The permit holder shall submit monthly catch or access reports for the area to the department, with the information from any report or inspection remaining confidential as proprietary information.

(e) The department may impose such terms and additional conditions as it deems necessary to fulfill the intent and purpose of this chapter such as a vessel monitoring system as a future requirement, once the technology and capacity is sufficiently advanced.

(f) The department may determine that the protection and conservation of resources in all or a part of the area requires cessation of some or all of the activities allowed by permit. After notification by any reasonable means to a permit holder of such determination, the permit will automatically expire on the date provided in the notification.

(g) There is no right to a renewal or re-issuance of a permit.

(h) The board may revoke a permit for any

infraction of any term or condition of a permit.

(i) Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation. [Eff] (Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§187A-6, 188-37, 188-53)

§13-60.5-7 Penalties. Any person violating a provision of this chapter or the terms and conditions of any permit issued as provided by this chapter, excepting section 188-23, Hawaii Revised Statutes, or any rule adopted pursuant thereto, shall be guilty of a petty misdemeanor and upon conviction thereof, shall be punished as provided in sections 187A-13 and 188-70, Hawaii Revised Statutes, administrative penalties, and as may be otherwise provided by law." [Eff] (Auth: HRS §§187A-5, 187A-12.5, 188-37) (Imp: HRS §§187A-12.5, 187A-6 188-70)

2. The adoption of chapter 13-60.5, Hawaii Administrative Rules, shall take effect 10 days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

_____
GILBERT S. COLOMA-AGARAN
Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:

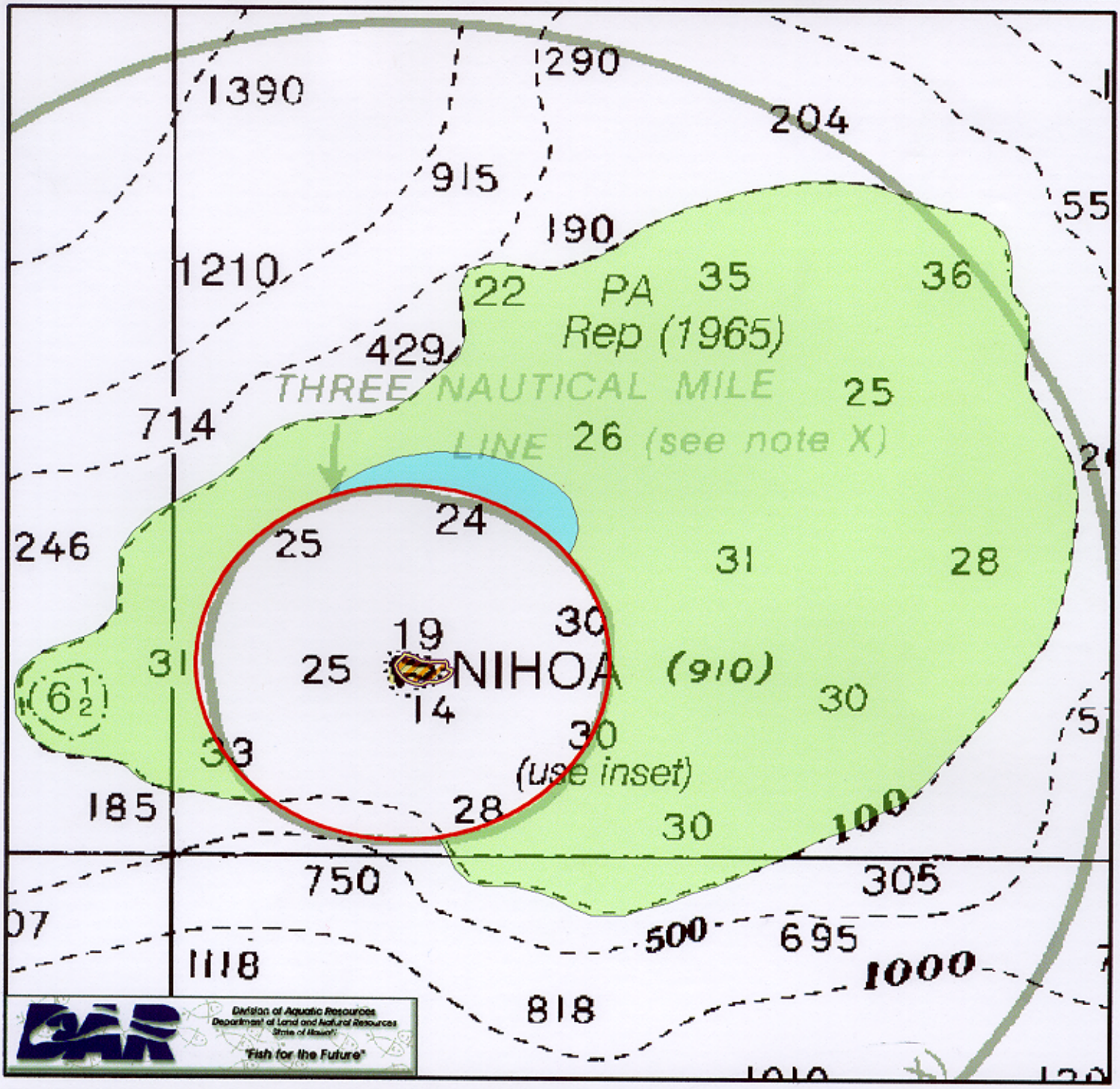
_____
Deputy Attorney General

Nihoa Island

Exhibit "A" 8/10/02 1:200,000

0 1.5 3 6 Kilometers

0 1.5 3 6 Nautical Miles



State Waters

- 3 nautical mile boundary
- Proposed closure to all extractive uses 10 fathoms and shallower

Hawaiian Islands National Wildlife Refuge

- Concurrent with State 10 fathoms and shallower

Reserve Preservation Areas

- Existing commercial bottom fishing and commercial and recreational pelagic trolling continues 25 - 100 fathoms
- Closed to all extractive uses 25 fathoms and shallower

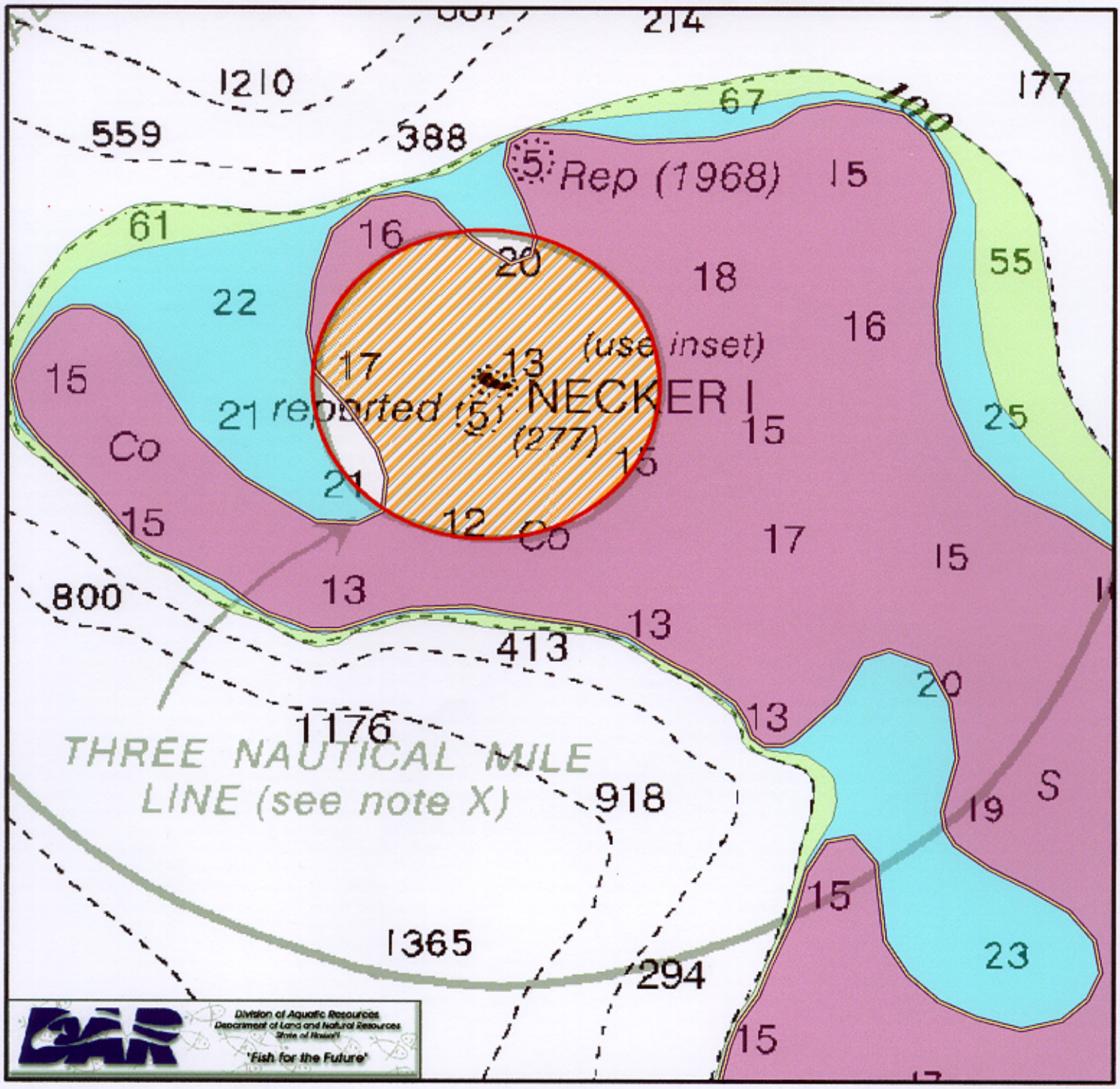
Overview Map of the Northwestern Hawaiian Islands

Necker Island

Exhibit "B" 8/10/02 1:220,000

0 1.5 3 6 Kilometers

0 1.5 3 6 Nautical Miles



State Waters

3 mile boundary

Proposed closure to all extractive uses
20 fathoms and shallower

Hawaiian Islands National Wildlife Refuge

Some areas concurrent with Reserve and others concurrent with State
20 fathoms and shallower

Reserve Preservation Areas

Existing commercial bottom fishing and commercial and recreational pelagic trolling continues
25 - 100 fathoms

Closed to all extractive uses
25 fathoms and shallower

Closed to all extractive uses
Concurrent with Hawaiian Islands National Wildlife Refuge
20 fathoms and shallower

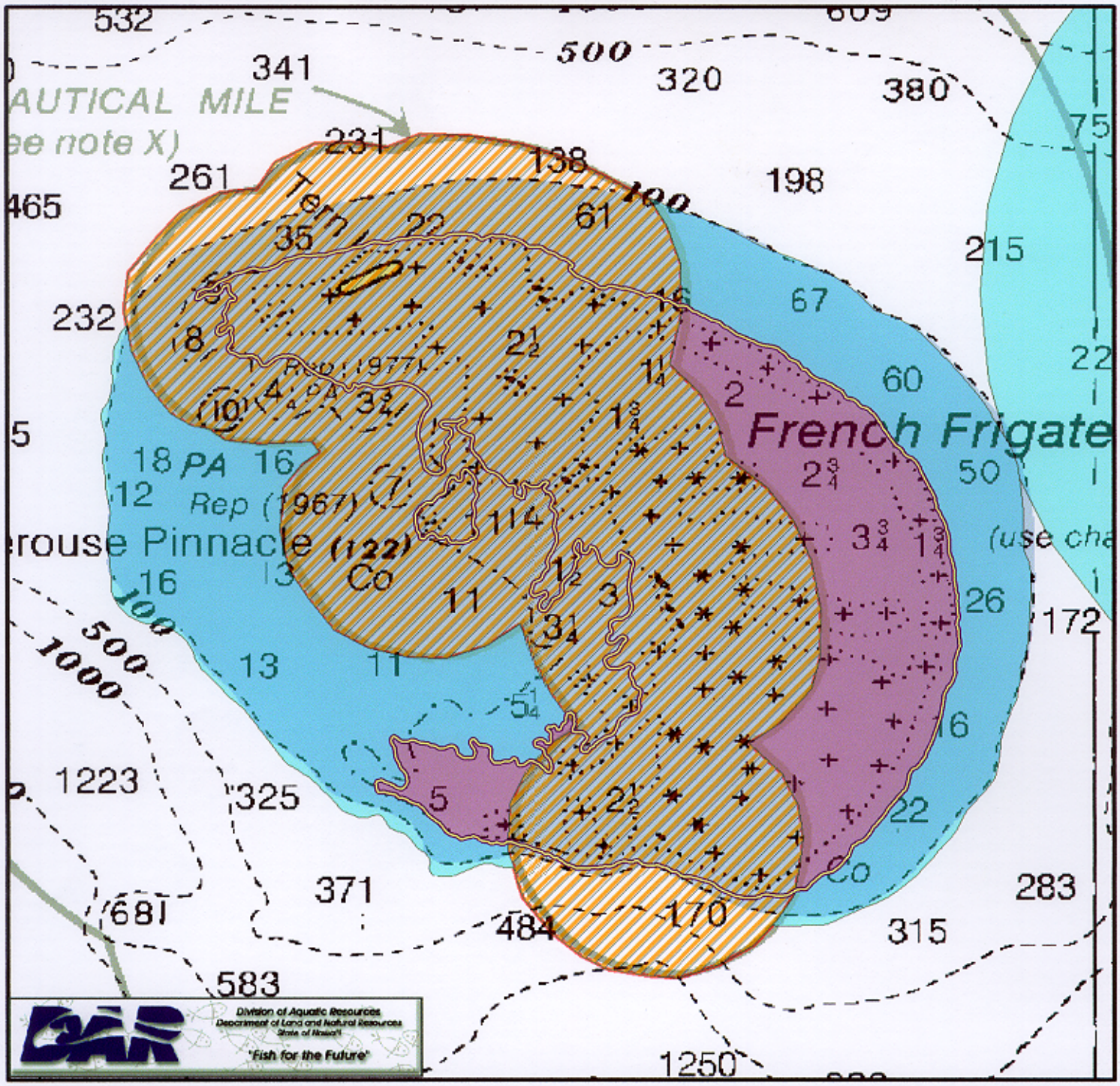
Overview Map of the Northwestern Hawaiian Islands

French Frigate Shoals

Exhibit "C" 8/10/02 1:250,000

0 1.5 3 6 Kilometers

0 1.5 3 6 Nautical Miles



State Waters

- 3 mile boundary
- Proposed closure to all extractive uses All State Waters

Hawaiian Islands National Wildlife Refuge

- Some areas concurrent with Reserve and others concurrent with State 20 fathoms and shallower

Reserve Preservation Areas

- Closed to all extractive uses 25 fathoms and shallower
- Closed to all extractive uses Concurrent with Hawaiian Islands National Wildlife Refuge 20 fathoms and shallower

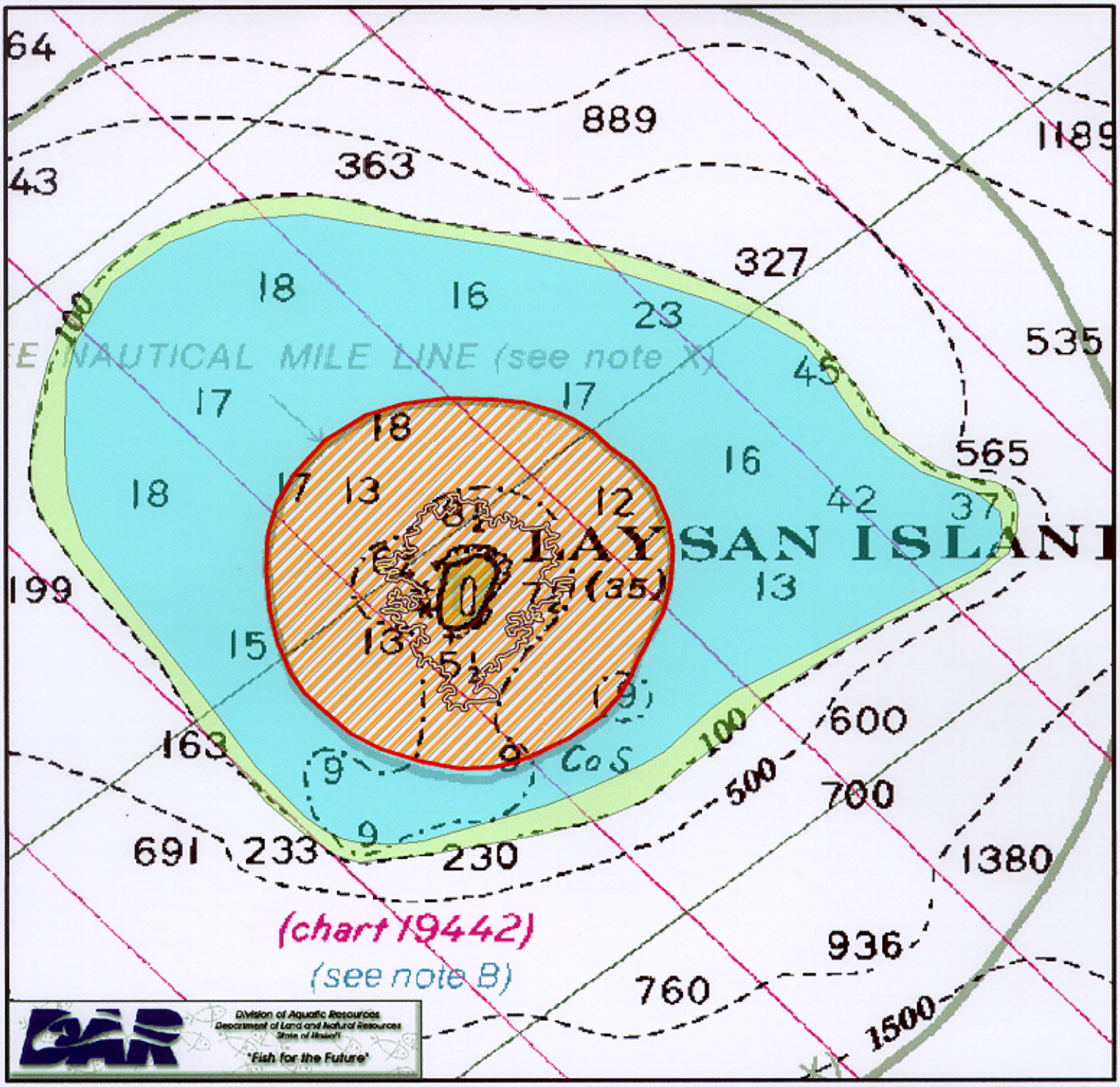
Overview Map of the Northwestern Hawaiian Islands

Laysan Island

Exhibit "D" 8/10/02 1:220,000

0 1.5 3 6 Kilometers

0 1.5 3 6 Nautical Miles



DAR Division of Aquatic Resources Department of Land and Natural Resources State of Hawai'i "Fish for the Future"

State Waters

3 mile boundary

Proposed closure to all extractive uses 20 fathoms and shallower

Hawaiian Islands National Wildlife Refuge

Concurrent with State 10 fathoms and shallower

Reserve Preservation Areas

Existing commercial bottom fishing and commercial and recreational pelagic trolling continues 25 - 100 fathoms

Closed to all extractive uses 25 fathoms and shallower

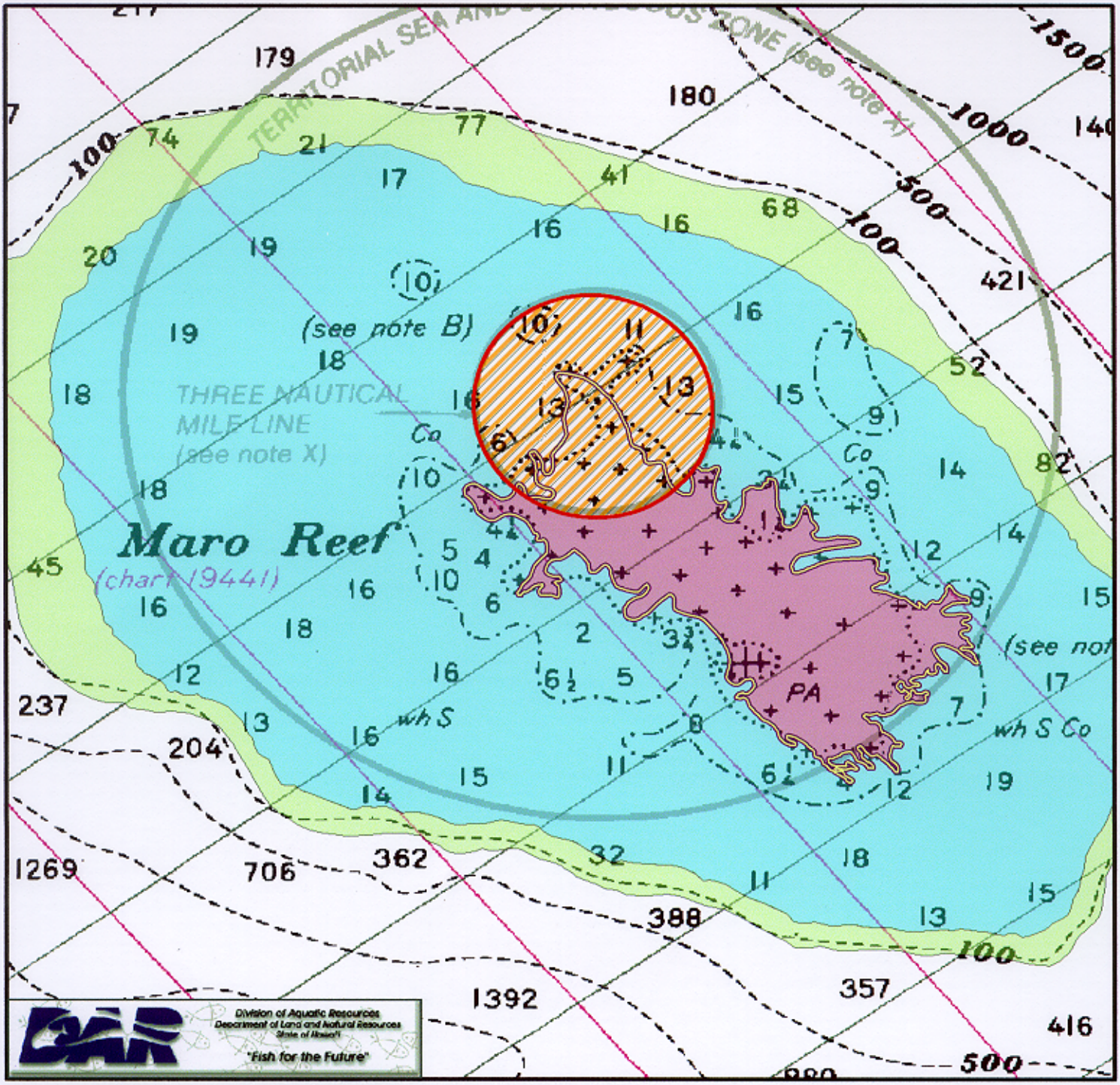
Overview Map of the Northwestern Hawaiian Islands

Maro Reef

Exhibit "E" 8/10/02 1:300,000

0 1.5 3 6 Kilometers

0 1.5 3 6 Nautical Miles



DAR Division of Aquatic Resources Department of Land and Natural Resources State of Hawai'i "Fish for the Future"

State Waters

3 mile boundary

Proposed closure to all extractive uses
20 fathoms and shallower

Hawaiian Islands National Wildlife Refuge

Some areas concurrent with Reserve and others concurrent with State
10 fathoms and shallower

Reserve Preservation Areas

Existing commercial bottom fishing and commercial and recreational pelagic trolling continues
25 - 100 fathoms

Closed to all extractive uses
25 fathoms and shallower

Closed to all extractive uses
Concurrent with Hawaiian Islands National Wildlife Refuge
10 fathoms and shallower

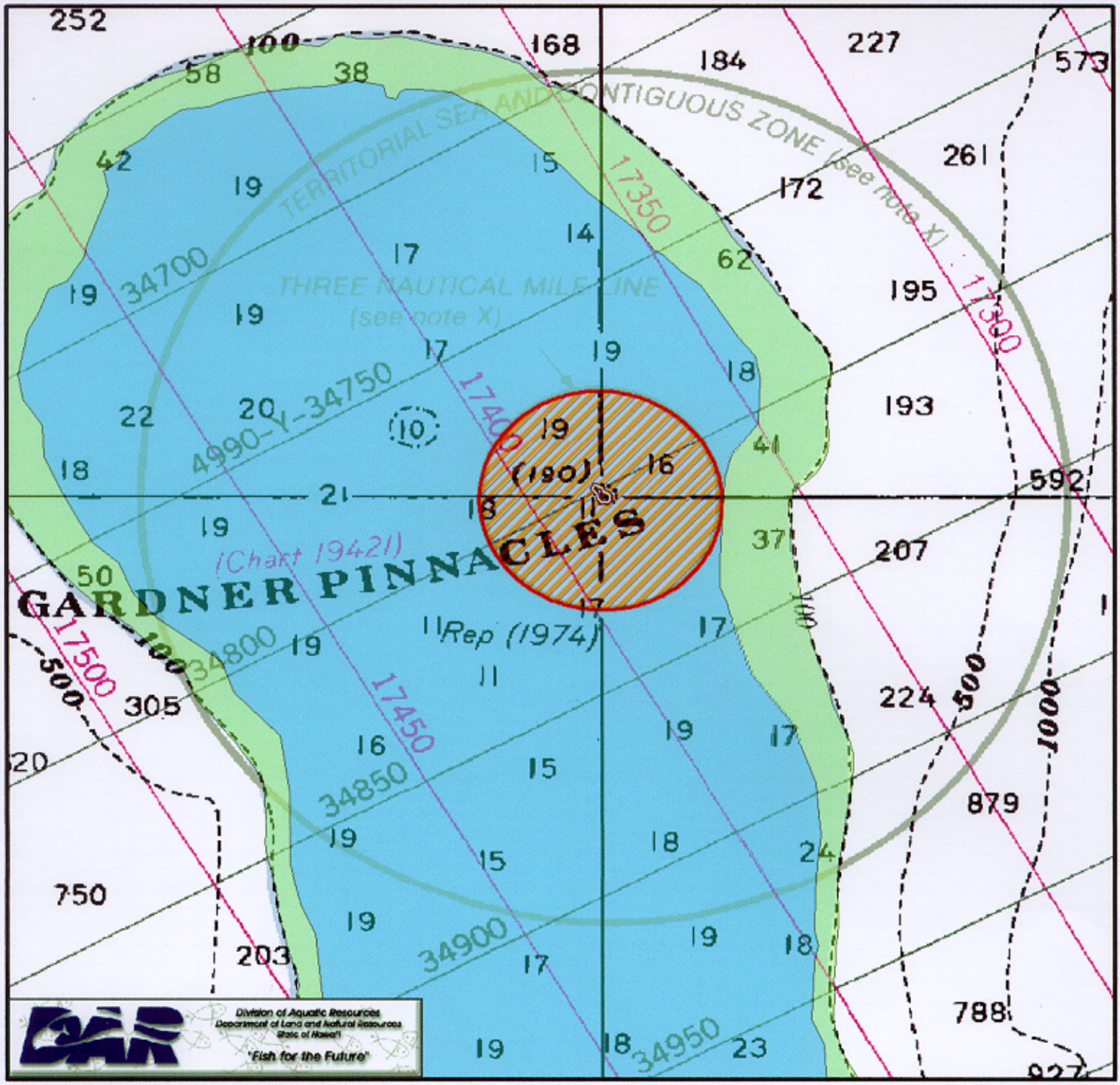
Overview Map of the Northwestern Hawaiian Islands

Gardner Pinnacles

Exhibit "F" 8/10/02 1:300,000

0 1.5 3 6 Kilometers

0 1.5 3 6 Nautical Miles



State Waters

- 3 mile boundary
- Proposed closure to all extractive uses 20 fathoms and shallower

Hawaiian Islands National Wildlife Refuge

- Concurrent with State 10 fathoms and shallower

Reserve Preservation Areas

- Existing commercial bottom fishing and commercial and recreational pelagic trolling continues 25 - 100 fathoms
- Closed to all extractive uses 25 fathoms and shallower

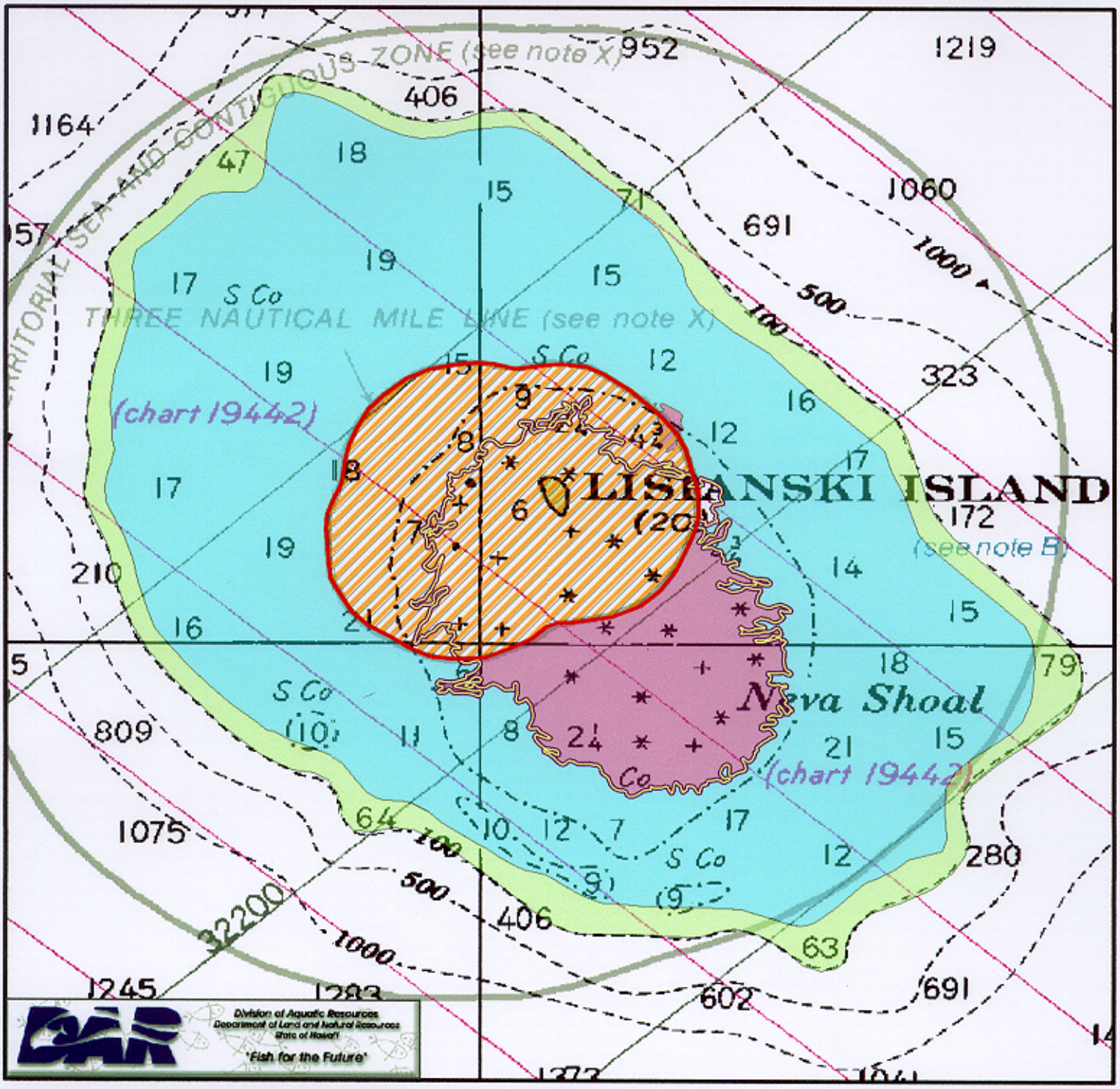
Overview Map of the Northwestern Hawaiian Islands

Lisianski Island

Exhibit "G" 8/10/02 1:280,000

0 1.5 3 6 Kilometers

0 1.5 3 6 Nautical Miles



State Waters

3 mile boundary

Proposed closure to all extractive uses
20 fathoms and shallower

Hawaiian Islands National Wildlife Refuge

Some areas concurrent with Reserve and others concurrent with State
10 fathoms and shallower

Reserve Preservation Areas

Existing commercial bottom fishing and commercial and recreational pelagic trolling continues
25 - 100 fathoms

Closed to all extractive uses
25 fathoms and shallower

Closed to all extractive uses
Concurrent with Hawaiian Islands National Wildlife Refuge
10 fathoms and shallower

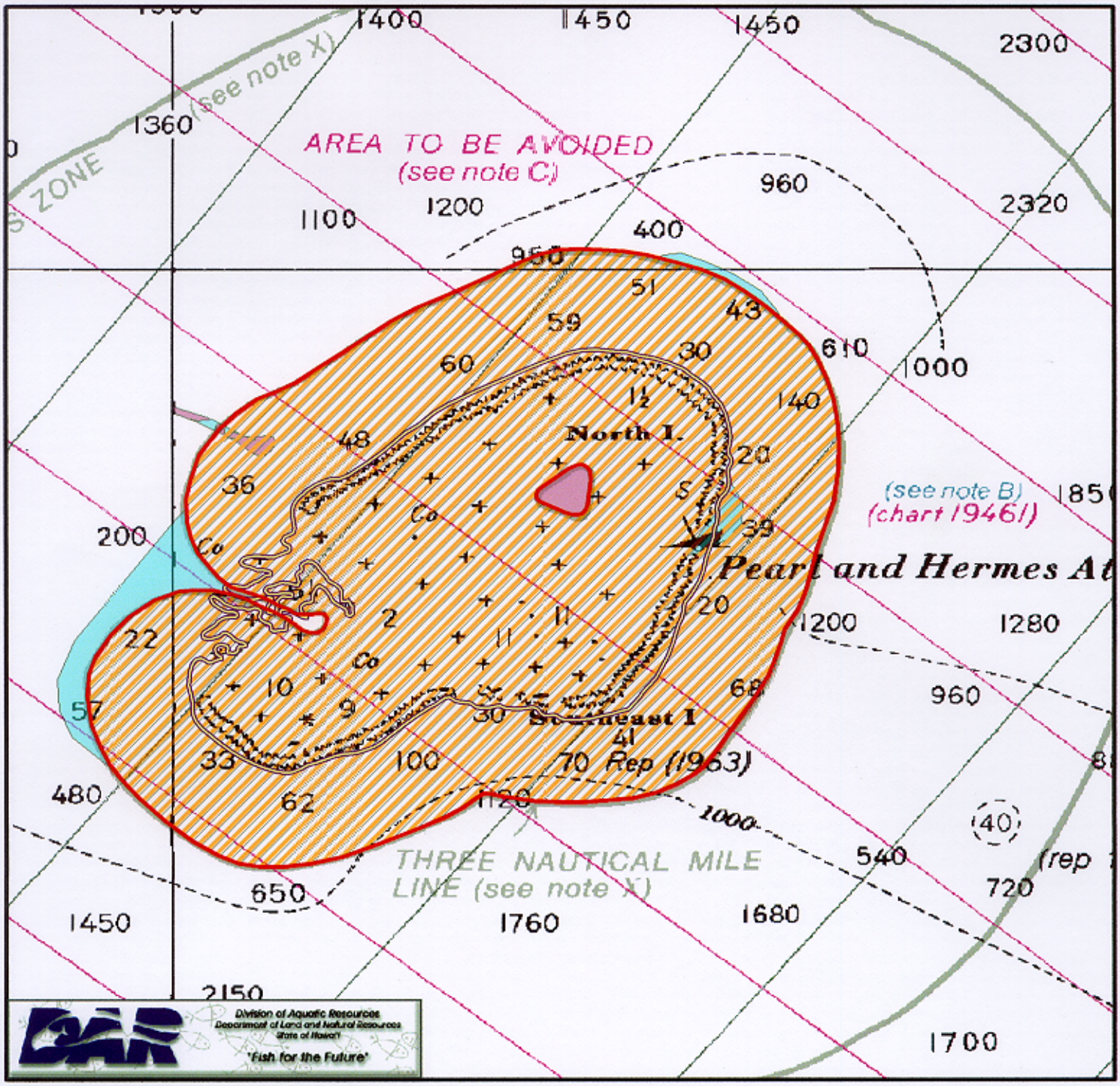
Overview Map of the Northwestern Hawaiian Islands

Pearl and Hermes Atoll

Exhibit "H" 8/10/02 1:320,000

0 1.5 3 6 Kilometers

0 1.5 3 6 Nautical Miles



State Waters

- 3 mile boundary
- Proposed closure to all extractive uses All State Waters

Hawaiian Islands National Wildlife Refuge

- Some areas concurrent with Reserve and others concurrent with State 10 fathoms and shallower

Reserve Preservation Areas

- Closed to all extractive uses 100 fathoms and shallower
- Closed to all extractive uses Concurrent with Hawaiian Islands National Wildlife Refuge 10 fathoms and shallower

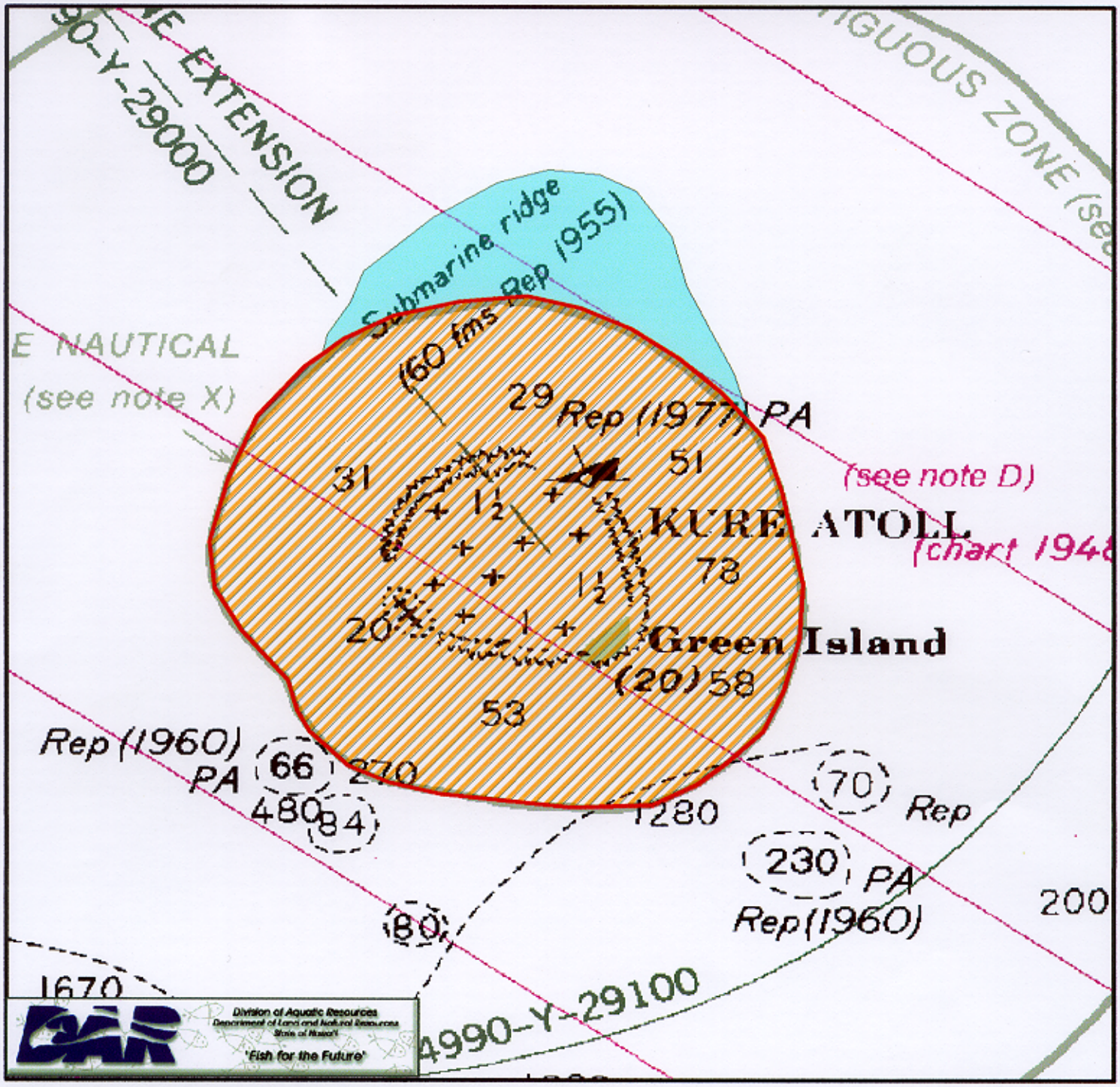
Overview Map of the Northwestern Hawaiian Islands

Kure Atoll

Exhibit "I" 8/10/02 1:230,000

0 1.5 3 6 Kilometers

0 1.5 3 6 Nautical Miles



State Waters

3 mile boundary

Proposed closure to all extractive uses
All State Waters

Reserve Preservation Areas

Closed to all extractive uses
100 fathoms and shallower

Overview Map of the Northwestern Hawaiian Islands