

**MARINE MAMMAL COMMISSION**  
4340 EAST-WEST HIGHWAY, ROOM 905  
BETHESDA, MD 20814

6 February 2007

Ms. Barbara Maxfield, Chief  
Pacific Islands Division of External Affairs and  
Visitor Services  
U.S. Fish and Wildlife Service  
300 Ala Moana Boulevard, Room 5-231  
Honolulu, HI 96850

Dear Ms. Maxfield:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Draft Interim Visitor Services Plan for the Midway Atoll National Wildlife Refuge to assess its possible impact on Hawaiian monk seals and spinner dolphins. The plan provides a number of protective measures for Hawaiian monk seals although some of these measures require clarification. Some additional measures also are needed. The plan should provide protective measures for spinner dolphins as well as provisions to monitor and assess potential effects of visitor activities on marine mammals. As discussed in greater detail in the attached comments, the Marine Mammal Commission recommends that the Fish and Wildlife Service—

- adopt measures identified in the draft plan to prevent visitor impacts on Hawaiian monk seals;
- clarify that those measures include a 500-foot approach limit around monk seal mother/pup pairs;
- apply the 500-foot shoreline approach limit proposed for powerboats to independent kayakers and limit closer approaches by kayaks to small groups led by an FWS employee or FWS-approved guide;
- consult with the National Marine Fisheries Service to identify areas of the fringing reef that should be protected to avoid disturbance of monk seals;
- consult with the National Marine Fisheries Service to identify appropriate approach distances or other measures necessary to prevent divers or watercraft from disturbing spinner dolphins using the atoll lagoon as a resting area and include those measures in the interim plan;
- require that visitors arriving in the evening or at night receive orientation early the next morning and that all other visitors receive orientation within a few hours (e.g., two or three hours) of their arrival;
- limit all activities with the potential to disturb Hawaiian monk seals or spinner dolphins (e.g., snorkeling or diving on lagoon reefs and kayaking) and all access to areas where such disturbance may occur (e.g., lagoon reefs and perhaps certain trails behind West Beach on Sand Island) to tours accompanied by an FWS employee or FWS-approved guide until planned sign posting is completed and an enforcement officer is present at the atoll; and

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- consult with the National Marine Fisheries Service on steps to monitor compliance with protective measures and to assess potential visitor impacts on Hawaiian monk seals before approving the interim plan.

Thank you for the opportunity to review the draft plan. I hope these comments are helpful. If you have questions, please call.

Sincerely,

A handwritten signature in black ink that reads "Timothy J. Ragen". The signature is written in a cursive, flowing style.

Timothy J. Ragen, Ph.D.  
Executive Director

Attachment

**Marine Mammal Commission Comments and Recommendations  
on the Draft Interim Visitor Services Plan for the Midway Atoll National Wildlife Refuge,  
the Battle of Midway National Memorial,  
and the Northwestern Hawaiian Islands Marine National Monument's Midway Atoll  
Special Management Area**

**Introduction and Background**

This section provides a good, concise overview of the purpose, goals, and objectives of the interim visitor services plan and the legal and institutional framework within which it would be implemented. It notes that a visitor program at Midway Atoll would provide a rare window of opportunity for the public to experience and enjoy the Northwestern Hawaiian Islands' (NWHI) unique and bountiful natural and historic resources. The Commission supports this objective and believes that a well-managed visitor program can be compatible with wildlife protection needs at Midway Atoll.

This section also notes that this plan would provide interim guidance pending the development of a management plan for the new NWHI Marine National Monument designated by President Bush on 15 June 2006. The monument management plan will be developed under the direction of designated co-trustees for the monument (representatives of the Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and the State of Hawaii). It would be helpful to expand discussion of the NWHI Marine National Monument (section 1.5.1) to clarify the role of the co-trustees in the review, approval, and possible oversight of the interim plan.

**Hawaiian Monk Seal Protective Measures**

Pages 21-25 discuss limitations on visitors intended, in part, to protect Hawaiian monk seals. Those limitations are incomplete and contain inconsistencies between different parts of the plan. For example, the draft plan states that powerboats would be prohibited from approaching closer than 500 feet from Sand, Spit, and Eastern Islands (except for access points at Sand Island), but the maps in this section indicate that "boats are not permitted within 500 feet of shore," which presumably includes kayaks. Page 37 of the document indicates that kayaks would be prohibited from approaching closer than 500 feet of Spit and Eastern Islands and 150 feet of Sand Island. Monk seals and sea turtles often swim along the beaches of all the islands (including Sand Island) and kayakers unfamiliar with those animals could inadvertently disturb them either when they are swimming just offshore or hauled out and resting. To avoid such disturbance, the Marine Mammal Commission recommends that the 500-foot shoreline approach limit applicable to powerboats also be applied to independent kayakers and that a 150-foot offshore limit be used only for small, guided kayak tours (i.e., perhaps 3 to 5 kayaks) led by an FWS employee or an FWS-approved guide. Also, recognizing that visitors may be unable to judge distances accurately, we suggest that a series of buoys be placed at appropriate locations 500 feet from shore to help ensure that boaters (including kayakers) comply with this restriction.

Also, this section notes that visitors would be required to remain at least 150 feet from monk seals on open beaches on Sand Island (i.e., North Beach), whereas the Endangered Species Act biological opinion in Appendix H (page H-8) states that visitors and kayaks will be prohibited from approaching closer than 150 meters (492 feet) of any mother/pup pair for the entire time they are

on the beach. The Marine Mammal Commission recommends that a 500-foot restriction be incorporated into the plan.

Although not discussed in the draft plan, monk seals commonly haul out on some emergent reefs fringing Midway Atoll. The approach restrictions applicable to Sand, Spit, and Eastern Islands also should be used to prevent seals from being disturbed when they are on the fringing reef. The Marine Mammal Commission therefore recommends that the Fish and Wildlife Service establish the same vessel approach limits around fringing reefs that are used as haul-out sites by monk seals and that it consult with the National Marine Fisheries Service to determine what portions of the atoll's fringing reefs are so used.

### **Spinner Dolphins**

The draft plan notes that 200 to 300 spinner dolphins habitually rest within Midway's lagoon. Such shallow areas are essential resting habitat for this species. In the main Hawaiian Islands, recreational divers, boaters, kayakers, and dolphin tours have disturbed spinner dolphins using coastal resting areas and may have caused the dolphins to abandon traditional resting areas. The draft plan does not include any measures to address disturbance of spinner dolphins by snorkelers, kayakers, or boaters at Midway, but such measures should be included in the plan. The Marine Mammal Commission therefore recommends that the Fish and Wildlife Service consult with the National Marine Fisheries Service to identify appropriate approach limits or other measures to prevent divers or watercraft operators from disturbing spinner dolphins in the Midway Atoll lagoon and that those measures be identified in this section of the interim plan.

### **Visitor Orientation**

The draft plan states that visitors would be required to undergo orientation within 24 hours of their arrival. In contrast, the visitor compatibility determinations in Appendix F (page F.1-5) state that visitors would be required to undergo orientation immediately upon arrival or early the next day in case of arrivals late in the day or at night. We do not believe that any visitors should be allowed to move about the island until they are fully advised of restrictions. The Marine Mammal Commission therefore recommends that timing for orientation programs adhere to the description in Appendix F. Recognizing that air flights may be scheduled for nighttime arrivals to avoid colliding with birds and that all scheduled visitor activities will take place during daylight hours, it would seem sensible to require visitor orientation the morning after any nighttime flight arrivals and within a few hours (e.g., two or three hours) of the arrival of anyone arriving before sunset, whether by aircraft or by boat.

### **Scheduling and Supervision**

The draft plan indicates that the visitor program will operate only during the months of November through July and that most visitors would arrive as part of scheduled tours whose activities would be largely under the supervision of an FWS employee or FWS-approved guide. On page 30, however,

the plan states that the FWS "...will offer at least two 1-week periods when individuals may come to Midway to enjoy the atoll's historic and wildlife resources in a less structured manner." When such weeks would occur is not clear. Nor is it clear what level of supervision will be required under normal circumstances and during these less structured weeks. The plan also does not discuss how the Service will manage visitors not on structured tours. The section of the plan on visitor scheduling and capacity should be expanded to address those points. Visitors accompanied by guides will be less likely to have an adverse impact on wildlife. For example, if a large number of people come ashore when cruise ships arrive, they should be restricted to guided or supervised tours except when in certain areas. With regard to independent visitors, we are concerned that certain important steps have not yet been taken to ensure that their activities will not impact wildlife. For example, we note that much apparently remains to be done to complete the posting of wildlife-related signs, and that plans for stationing an on-site enforcement officer have not yet been confirmed. Given these concerns, the Marine Mammal Commission recommends that, pending completion of planned sign posting and the presence of an enforcement officer, the Service limit certain activities (e.g., snorkeling or diving on lagoon reefs and kayaking) and access to certain areas (e.g., lagoon reefs and perhaps certain trails behind West Beach on Sand Island) to guided tours only.

### **Monitoring Visitor Impacts**

On page 25 the draft plan states that the monument staff would monitor for visitor impacts, and that methods for assessing impacts on Hawaiian monk seals would be developed by the refuge biologist based on past protocols developed in partnership with the National Oceanic and Atmospheric Administration. The draft plan also notes that monitoring methods would be developed in consultation with the co-trustees. Based on experience between 1996 and 2000 when up to 100 overnight visitors were present at a time, the plan states that few impacts are anticipated. The draft plan does not provide details of past monitoring efforts or the results of those efforts, nor does it address whether past provisions need to be modified. However, this information should be made available to provide a basis for judging the adequacy of monitoring efforts.

Although protective measures identified in the draft interim plan provide some level of reassurance that monk seals will not be disturbed by atoll visitors, we understand that there were at least some violations of similar measures during the previous visitor program for the Midway Atoll National Wildlife Refuge. Therefore, it seems likely that future violations of the plan's provisions will occur and that a reliable monitoring strategy to detect violations and assess possible impacts on Hawaiian monk seals (as well as other species) is an appropriate and necessary part of this plan. To ensure that adequate monitoring measures are in place before resuming a visitor program, the Marine Mammal Commission recommends that the Fish and Wildlife Service (1) complete consultations with the National Marine Fisheries Service on provisions to monitor compliance with protection measures for Hawaiian monk seals and to evaluate potential visitor impacts on the seals before approving the interim visitor plan, and (2) that this section of the interim plan be expanded to identify the results of those consultations and the monitoring measures that will be followed to detect and evaluate possible visitor impacts on monk seals and other wildlife.