MARINE MAMMAL COMMISSION
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14 May 2004

Mr. Robert P. Smith
Reserve Coordinator
Northwestern Hawaiian Islands
Coral Reef Ecosystem Reserve
6700 Kalaniana'ole Highway, Room 215
Honolulu, HI 96825

Dear Mr. Smith:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors, has reviewed the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Draft Final Reserve Operations Plan March 2004 prepared by the National Ocean Service and offers the following comments and recommendations. As you know, the Commission has a non-voting seat on the Coral Reef Ecosystem Reserve's Advisory Council, and its representative has participated in the Council's work to draft and review the Reserve Operations Plan. In that regard, the Marine Mammal Commission endorses all of the recommendations made on the draft plan by the Advisory Council at its 29 April 2004 meeting and recommends that the Service adopt all the recommended changes as it prepares the final plan.

The Commission appreciates the work that the Advisory Council, the Reserve staff, and others in the National Ocean Service have put into developing a plan to guide management of the Reserve over at least the next five years. The draft plan released for public review is a great improvement over earlier versions. However, although the draft plan identifies many important steps necessary to implement the Executive Orders establishing the Reserve, the Marine Mammal Commission believes the draft plan as currently written is inadequate. The purpose of the plan is to establish management measures necessary to protect marine resources in the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve pursuant to provisions of Executive Orders 13178 and 13196 establishing the Reserve. The final plan will remain in effect to guide operations of the Reserve pending a possible decision to designate the area as a national marine sanctuary. If a sanctuary is created, it will have a management plan that, in accordance with the Executive Orders, must "supplement and complement" the Executive Order provisions. Thus, the Reserve Operations Plan should constitute the "No Action" alternative for possible sanctuary designation. It is not known whether or when the Reserve might be designated as a national marine sanctuary. In our view, the National Ocean Service's first priority should be to establish an effective management program to protect the Reserve's resources consistent with the Executive Orders. We therefore recommend that, before finalizing the Reserve Operation Plan, the Service act on the major recommendations identified below. Specific comments on details of the plan are attached to this letter.

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Based on our review of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Draft Final Reserve Operations Plan March 2004, the Marine Mammal Commission recommends that the Service:

- revise the draft Reserve Operations Plan to identify as high-priority tasks all the steps necessary to implement fully the explicit restrictions on fisheries and other activities addressed in the Executive Orders by promulgating enforceable regulations or otherwise specifying activities that are prohibited and the penalties or sanctions that can be assessed for violations;
- modify the draft plan such that the words "permitting guidelines" in Strategy EN-3 and all other relevant parts of the draft plan are changed to read "permitting requirements";
- revise the plan to include a new action plan on "Fisheries" that provides a complete description of recent and proposed Northwestern Hawaiian Islands fisheries and related fishery management plans and a discussion of how those fisheries will be managed within the context of the Executive Orders establishing the Reserve;
- expand the section of the plan on "Importance to Marine Mammals" to clearly identify and address major management issues confronting Hawaiian monk seal recovery; and
- review the cost tables included in the draft plan to ensure that they are accurate and to provide clarification of cost issues described below.

Prompt Publication of Implementing Measures

Although both the Commission and the Reserve Advisory Council recommended that an earlier draft of the Reserve Operations Plan be revised to place a high priority on the development of regulations to implement Executive Order provisions, the Service has apparently dismissed this suggestion because it believes the Executive Orders provisions to be "self-executing" (i.e., "carrying the force of law without requiring regulations to enforce"). The basis for this conclusion needs to be explained in greater detail. We understand that some provisions of the Executive Orders may be straightforward and clear, and we agree with the Service that these would be self-executing. Other provisions, however, may not be as clear and should be addressed through regulations that specify what is and is not allowed and that set forth the potential penalties for violations.

Inasmuch as the Executive Orders do not specify any penalties or sanctions for violations of their provisions, the Service needs to address explicitly how violations will be prevented or prosecuted. In this regard, we understand that the Coast Guard, upon which Reserve managers intend to rely for enforcement, has advised the Service that, until Executive Order provisions are converted into conforming regulations with associated penalties, it is not prepared to enforce them. It therefore appears that, unless the situation is clarified, enforcement of fisheries violations would rely on existing regulations under fishery management plans that neither mirror those in the Executive Orders nor cover all potential resources that the Reserve was established to protect. The brief reference on page 129 of the draft plan to an agreement with the Coast Guard on enforcement does not clarify whether the latter has agreed to immediately begin enforcing all Executive Order provisions pertaining to the Reserve without further steps.

Whether through the publication of regulations or policy statements, amendments to the National Oceanic and Atmospheric Administration's penalty schedule, or some other mechanism,

the Commission believes it is essential for the Service to clearly describe and provide public notice of all prohibitions applicable to the Reserve and its resources, identify the basis upon which they will be enforced (i.e., will enforcement be based directly on violations of the Executive Orders or on some other provision of law?), and provide notice of available penalties. That is, the Service should develop a framework for enforcing provisions of the Executive Orders at the outset, rather than waiting for possible violations to occur and responding to them on an *ad hoc* basis. In our view, the absence of information on how Executive Order provisions will be enforced represents a fundamental deficiency rendering the plan as now written inadequate for managing the Reserve.

The National Ocean Service's overarching obligation is to protect Reserve resources consistent with the explicit provisions of the Executive Orders. In our view, the development of regulations and associated enforcement measures would be the most straightforward way to implement fishing and other restrictions mandated by the Executive Orders. Such protection should be provided as quickly, comprehensively, and as clearly as possible. A decision to defer the adoption of regulations or other measures necessary to implement the Executive Orders until sanctuary designation (for which a proposal has yet to be developed and may not ultimately be adopted) is inconsistent with Service obligations to manage and protecting the Reserve.

Permitting Requirements

A critical part of regulating activities within the Reserve is the development of an adequate and reliable permitting system. Both the Marine Mammal Commission and the Reserve Advisory Council have previously recommended that the Service move expeditiously to develop such a system to control and monitor human activities. However, strategy EN-3 of the draft plan (i.e., "Publish Notice in Federal Register defining permitting guidelines") calls for developing "definitions and guidelines for permits" rather than permit-related regulations. It is unclear what the nature of the guidelines would be or whether reliance on guidelines alone, without a specific requirement that a permit or other authorization be obtained for certain activities, would be adequate to protect Reserve resources and to monitor activities within the Reserve. The draft plan should, therefore, be revised to incorporate a mechanism for requiring permits or other authorizations in certain instances. Any permits for activities that the Service may issue that would potentially affect monk seals would have to comply with the consultation and permitting requirements of the Endangered Species Act and the Marine Mammal Protection Act as well.

Better Description of Fishery Issues

A substantial portion of the Executive Orders is devoted to detailing special management measures for fishing operations. The draft plan, however, does not include a section on either fisheries or fishery management. Moreover, those parts of the plan that do touch on fishing do not provide adequate descriptions of relevant fishery management plans, the benchmark levels of fishing effort that under the Executive Order will be used to cap fishing effort within the Reserve, or a strategy for enforcing fishery-related provisions of the Executive Orders. We recommend that the operations plan be expanded to include a section on fisheries that provides a complete description of recent and proposed Northwestern Hawaiian Islands fisheries and related fishery management plans. For each fishery, the plan should summarize information on past trends in fishing effort and catch levels in the Northwestern Hawaiian Islands, the status of target fishery stocks, the status of

fishery management plans and key management measures pertaining to the Northwestern Hawaiian Islands, and the relationship of those plans to provisions of the Executive Orders.

Identify Actions Needed to Recover Monk Seals

The section on "Importance to Marine Mammals" provides some information on the status of Hawaiian monk seals. However, it does not address the Commission's recommendation on the earlier draft plan that information be provided on current management issues pertaining to the recovery of the species, including interactions with commercial fisheries, entanglement in marine debris, shark predation, and human disturbance. Recognition of these management issues should be a significant concern to Reserve managers, and actions designed to reduce the impacts of those factors should be a key element of a Reserve Operations Plan.

In particular, we are concerned about the absence of information pertaining to the depletion of monk seal prey by the Northwestern Hawaiian Islands lobster fishery. Between 1990 and the time the Reserve was designated, the Commission wrote more than a dozen letters to the National Marine Fisheries Service and the Western Pacific Regional Fishery Management Council about the potential effect of the lobster fishery on monk seal prey availability and the need to take precautionary management measures. Failure to implement management measures to address this issue would run counter to the precautionary management approach embodied in the Executive Orders designating the Reserve.

Therefore, the draft plan should be expanded to identify major management issues confronting monk seal recovery. With regard to commercial fishing operations, the section should note that (1) monk seals are known to eat lobsters and other species taken in the Northwestern Hawaiian Islands lobster fishery; (2) neither the extent to which monk seals eat lobsters nor the effect of lobster fishing on other components of monk seal diets (e.g., species taken as bycatch) have been adequately assessed; (3) limited prey availability is believed to have been the most likely cause of the sharp decline in monk seal numbers that began in the late 1980s at what was then the species' largest breeding colony (i.e., French Frigate Shoals); and (4) gathering information to assess relationships between lobster fishing and the decline of monk seals has been one of the most important parts of the Hawaiian monk seal recovery program.

Revise and Clarify Cost Tables

The tables showing the estimated costs for each of the various action plans constitute an important part of the draft plan. They are important not only for purposes of budgeting within the Service, but also so that others can appreciate the amount of funding required to operate the Reserve and how those funds are likely to be directed. Although the Commission is not in a position to review the full details of the cost estimates for Reserve operations, we note the following three general issues that merit attention as the plan is finalized. Additional details are described in the attached specific comments.

First, although many of the described activities should be completed in the first or second year of operations, the tables project identical costs for each of the five years. This may simply be a mistake, but, if not, the description of the activities should be modified to make it clear that they are

expected to continue throughout the five-year period of the plan. Second, for some strategies, the text indicates that costs will consist mostly of in-house staff time, which presumably means that funding requirements are mostly subsumed in the cost projections for Strategy OP-1 of the Operations Action Plan. In some cases, however, tables in other action plans show substantial costs. For example, strategy DES-3 in the Sanctuary Designation Action Plan states that "costs associated with this Strategy consist mainly of in-house staff time," but the table shows costs of $360K in year 1 and $150K in year 2. Apparently, some revisions are needed in either the text or the tables. Third, in the Marine Debris Action Plan (strategy MD-1) and in the Enforcement Action Plan (strategy EN-4), it appears that cost estimates for Reserve operations include substantial amounts of funding that will not be expended directly by the Reserve. From what is presented in the plan, it appears that most of these funds would actually be spent by agencies such as the National Marine Fisheries Service through its Coral Reef Ecosystem Investigation, the National Oceanic and Atmospheric Administration's Enforcement Program, or the U.S. Coast Guard. Much of this work is likely to be done regardless of the Reserve status. Although both debris removal and enforcement are high-priority issues for Reserve operations, clearly some of the obligation for conservation and management of this region belongs to other parts of NOAA or other federal agencies. Including all such costs in the draft operations plan tables greatly inflates the estimate of total funding required for maintaining and operating the Reserve and makes the overall costs figures shown in Table 2 misleading (e.g., marine debris is shown as taking up 40 percent of Reserve operating costs over the next five years). It would seem more appropriate for such costs to be included within the budgets of the agencies that will actually be expending funds to the extent that is feasible. If that is not done, an explanation should be provided in the plan as to why these funds are being included within the Reserve's budget estimates.

I look forward to receiving your responses to these recommendations within the time frame set forth in section 202(d) of the Marine Mammal Protection Act. If you or your staff have any questions, please call.

Sincerely,

David Cottingham
Executive Director

Attachment

cc with attachment: Ms. Laurie K. Allen
Mr. Daniel J. Basta
Ms. Stephanie Balenson
Mr. Jerry F. Leinicke
Mr. Samuel Pooley
Mr. William Robinson
Mr. Peter T. Young
Members and alternates of the Coral Reef Ecosystem Reserve Advisory Council

Attachment

Specific Comments by the Marine Mammal Commission on the
Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve
Draft Final Reserve Operations Plan March 2004
prepared by the National Ocean Service

Page vii, Executive Summary: The Executive Summary does not but should identify the purpose of this plan, which is to guide reserve management actions pending a decision on whether to designate the area as a national marine sanctuary. In the event the area is not designated, this plan would remain in effect as the primary guidance document for Reserve management. As such, this plan should constitute the "No Action" alternative for any sanctuary designation proposal. The Executive Summary should be expanded to note that this document establishes a Reserve management framework that will remain in place until modified or replaced by a management program that incorporates provisions of the Executive Orders in an approved sanctuary designation decision.

Page viii, Executive Summary, Table 1: For reasons discussed in the cover letter, a new action plan for "Fisheries" should be added to address the development of regulations and other research and management actions necessary to give effect to the many explicit management provisions set forth in the Executive Orders establishing the Reserve.

Page iv, Executive Summary, Table 2: As discussed in the cover letter, including a substantial amount of funding that will be passed through to other agencies distorts the apparent amounts and distribution of funds needed to operate the Reserve. The cost estimates should be revised to reflect the actual amounts that will be expended by the Reserve itself to accomplish the identified actions.

Pages 1-10, Introduction: This section provides a thorough discussion of the Executive Orders and provisions establishing the Reserve. It responds to the Commission's recommendations on the earlier draft plan that fundamental management provisions, particularly the principle of exercising a precautionary management approach, be explicitly set forth in the plan.

Page 19, A Unique Coral Ecosystem: It appears that a new subsection starts after Table 3, and that "A Unique Coral Ecosystem" should be in bold type.

Page 21, paragraph 1: The parenthetical portion of the third sentence in this paragraph should read "(monk seals, cetaceans, reef and bottomfish, turtles, birds, sharks)."

Page 22, Table 6: The correct Latin name for killer whale should be spelled "*Orcinus orca.*"

Page 22, Importance to Marine Mammals: This section provides some information on the status of Hawaiian monk seals. However, as discussed in the cover letter, it does not address the Commission's recommendation on the previous draft plan that information be provided on current management issues pertaining to the recovery of the species. This section should be expanded to identify major management issues confronting monk seal recovery.

Also in this section, beach counts of monk seals in the Northwestern Hawaiian Islands include both subadult and adult seals, and therefore the third-to-the-last sentence of paragraph 1 should be changed to read: "The mean number of seals older than pups observed…".

Paragraph 2 of this section states that the diversity of prey items in monk seal diets indicates that monk seals are highly opportunistic feeders. "Opportunistic" in this context may be taken to mean that animals feed on anything they happen to encounter, which could lead to the conclusion that it is not important if a prey species is depleted because the animals will simply eat something else. In fact, there is no evidence that monk seals are opportunistic feeders, and recently collected information indicates that individual seals are very specialized in where and how they feed. For example, crittercams show seals swimming past potential prey and potential feeding areas to get to specific areas or habitats where they then start to search for and catch prey. These facts do not contradict the finding that, as a population, a large number of different species are eaten because different individuals or groups of seals have learned to feed in different communities, such as shallow reefs, talus slopes, deep coral beds, etc. Given the Reserve's focus on protecting ecosystem relationships, it would be appropriate and helpful for the plan to recognize and identify the potential sensitivities inherent in the small isolated ecosystems that make up this Reserve, of which monk seal feeding is one example. This section should be reworded by deleting the phrase "indicating that they are highly opportunistic feeders," and inserting a sentence in its place that says "Although a number of different species may be eaten, recent research has shown that individual seals are specialized in the habitats where they feed and the methods they use to locate and catch prey."

Page 25, Table 8: The caption for this table should say "Breeding birds in the…"

Page 32, Current Human Activities and Other Activities: The four short paragraphs in these sections provide almost the only information in the draft plan on the four fisheries (lobster, pelagic species, bottomfish, and precious coral) undertaken or proposed in recent years in the Northwestern Hawaiian Islands. The paucity of information on the level of fishing effort, the status of fishery stocks, allowable fishing levels, and efforts to manage these fisheries stands in sharp contrast to the more detailed discussions of other resources such as cultural and historic resources. Its brevity is inappropriate given the major focus on fishery management needs and measures in the Executive Orders. The discussion should be expanded and included in a separate action plan on fisheries, as recommended in the cover letter.

Page 32, Current Activities: The next-to-the-last sentence of the first paragraph in this section states that a limited ecotourism program opened at Midway Atoll National Wildlife Refuge in 1996. The paragraph should be expanded to note that this program was suspended in 2001, and it is currently unclear whether or when a new program might resume.

The first sentence in the fourth paragraph of this section states that "[t]he major commercial crustacean (lobster) fishery in the NWHI was closed by NOAA Fisheries in 2000, primarily as a 'precautionary measure' (see glossary) to prevent the potential of the fishery overfishing the spiny and slipper lobster resources in the NWHI." Calling the closure of this fishery a "precautionary measure" is not consistent with either the underlying management philosophy or the definition of the term in the draft plan's glossary (i.e., "management actions with resource protection favored when there is a lack of information regarding any activity..."). As noted elsewhere in the draft plan, excessive fishing likely led to the depletion of many local populations of spiny lobsters in the NWHI, and a replacement of spiny lobsters with slipper lobsters in much of the spiny lobsters'

preferred habitat. This closure occurred only after a lawsuit had resulted in an imminent court-ordered injunction to close the fishery and after available data clearly showed that targeted spiny lobster stocks had declined to levels near or below the definition of "overfishing." Rather than being "precautionary management," this action was a stopgap response to research and catch data clearly demonstrating that the management program was inadequate. The Commission is greatly concerned about the continued decoupling of management actions for the lobster fishery from the need for precautionary management to prevent potential effects on monk seal prey availability. This sentence should be revised to read something like the following:

> "The major commercial crustacean (lobster) fishery in the NWHI was closed by NOAA Fisheries in 2000 because stocks of spiny lobster had declined to levels below that defined as being "overfished" and because management measures were insufficient to assure lobster stocks would be maintained at required levels. Pending better information on the importance of lobsters in the diet of Hawaiian monk seals and the effect of the fishery on monk seal prey availability, this closure is consistent with precautionary management needs for protecting potentially important monk seal prey species taken in this fishery (i.e., lobsters and other species taken as bycatch)."

Pages 33-35, Introduction to Action Plans: Per comments discussed in the cover letter, Table 10 and the subsequent sections describing "action plans" for various reserve resources and management activities should be expanded to include a specific action plan on fisheries.

Page 38, Action Plan: Operations: The list of "performance measures" on this page should be expanded to include one corresponding to operational strategy OP-4, stating something like: "Documentation and tracking of all activities occurring within the Reserve." The addition also should be included in Table 10.

Page 46, Action Plan: Operations: Activities 2 and 3 under Strategy OP-4 appear to be nearly the same and could well be combined. The third bullet under Activity 4 should say "…treat vessels and equipment to prevent…" Also, from what is indicated by the title of Activity 6 regarding insurance against vessel grounding, it would seem this activity would be better placed under the Response, Damage Assessment, and Restoration Action Plan.

Pages 50-52, Table 11: The title descriptions of a number of activities listed on Table 11 suggest that work would be completed within one or two years, yet costs are shown for all five years. The activity titles should be written such that they clearly correspond with the number of years for which funding is required. Activities to check in this regard include Strategy OP-1, activity 3 (note that this is the activity to procure equipment etc. and is incorrectly numbered as "2", and that the following activity should be numbered as 4); Strategy OP-2, activities 2 and 3; Strategy OP-3, activities 7 and 8; and Strategy OP-4, activities 1, 2, 3, and 4.

Pages 79-80, Table 13: The title descriptions for a number of activities in Table 13 suggest that work should be completed within one or two years, yet costs are shown for all five years. These should be corrected or the activity title should be revised to make it clear that the action will be ongoing

throughout all five years. Some of those items include Strategy NH-1, activity 1; Strategy NH-2, activity 3; and Strategy NH-3, activity 1.

Page 92, Table 14: The title descriptions for a number of activities in Table 14 suggest that work should be completed within one or two years, yet costs are shown for all five years. These cost projections should be corrected or the activity descriptions revised to make it clear that the action will be ongoing throughout all five years. Some of those items include Strategy MH-1, activity 1; and Strategy MH-3, activities 2 and 4. Also, it is not clear why in Strategy MH-3 there is $10K shown for activity 3 (implement finalized management plan) in year 1 when it appears from activity 1 that the plan will not be completed until at least year 2.

Page 96, Action Plan: Research and Monitoring: A performance measure should be added to correspond with Strategy RM-2 stating something like: "Best management practices for research and monitoring activities incorporated into the Reserve's permitting system." This also should be added to Table 10.

Page 98-99, Research and Monitoring Strategy 1: Activity 4 listed under Strategy RM-1 (to "identify and review all past and present research and monitoring activities conducted in the NWHI") calls for participation in collaborative workshops, conferences, etc. To facilitate the sharing of research results and the development of cooperative, interdisciplinary research projects, it would be appropriate and helpful for Reserve managers to support informal periodic (e.g., annual or biannual) research meetings with constituents, including scientists and resource managers working in the Northwestern Hawaiian Islands, to share information on study results, activities, and future plans. Such meetings have proven to be a cost-effective way of updating researchers and managers on ongoing work and plans related to North Atlantic right whale research and have helped facilitate joint and cooperative research efforts. The list of activities in this strategy, or the list of activities under RM-4 (i.e., assess and monitor the integrity and function of NWHI ecosystems), should be expanded to include plans for convening periodic informal meetings to review ongoing and planned research pertaining to marine resources in Northwestern Hawaiian Islands.

Also, because marine mammals are protected species, the sixth bullet (i.e., "marine mammal and protected species research") under Strategy RM-1 activity 1 is confusing. Perhaps what is meant here is "marine mammals and sea turtles" or "marine mammals and other protected species."

Page 100, Research and Monitoring Strategy 2: The description of Strategy RM-2 ("develop ecologically appropriate criteria, provisions, and constraints for Reserve permits and access") includes a list of five activities. The first two are (1) identifying threats and impacts of research work, and (2) drafting protocols or guidelines to reduce the risk of threats and impacts by identifying best management practices for conducting research. Although activity 1 is accorded the highest priority ranking (level "A"), activity 2, which would actually help prevent such impacts, is assigned a second-level priority (level "B"). We believe efforts to prevent impacts merit a higher priority level and that activity 2 under Strategy RM-2 should be given a level "A" priority. Also in this section, activity 5 would be better placed in strategy OP-4 of the Operations Action Plan.

Page 102, Research and Monitoring Strategy 3: The outputs described for Strategy RM-3 do not correspond well with the listed activities, and some rearranging or rewording is needed.

Pages 103, Research and Monitoring Strategy 4: Activity 2 of Strategy RM-4 should say "…and between the NWHI and the Main…"

Pages 105-106, Table 15: The title descriptions for a number of activities listed on Table 15 suggest that work should be completed within one or two years, yet costs are shown for all five years. The cost projections should be corrected or the activity titles should be revised to make it clear that they will be ongoing throughout all five years. Some of those items include Strategy RM-1, activity 1; Strategy RM-2, activities 1, 2, 4; and Strategy RM-3, activity 2. In Strategy RM-4 it is not clear why the monitoring programs in activities 4 and 5 do not require funding for all five years. Also, the funding levels indicated for activities 1 (develop biological baselines) and 6 (research and monitoring) appear to be far less than should be spent on these essential activities. Cost estimates for these activities should be revised based on preliminary results from the May 2003 workshop on "Information Needs for Conservation and Management in the NWHI" and other sources.

Page 111, Table 16: The title of activity 2 in Strategy MP-2 suggests that work should be completed within one or two years but costs are shown for all five years. This should be corrected.

Page 113, Action Plan: Response, Damage Assessment and Restoration: A strategy should be added to require adequate insurance for vessels operating in the Reserve (i.e., this should be adapted from the listed activity 6 in Strategy OP-4).

Pages 119-121, Action Plan: Marine Debris: This Action Plan responds to an Executive Order directive for addressing marine debris impacts on the Reserve and its resources. While the impacts of debris are many, the Commission notes that the entanglement and death of monk seals is well-documented and a serious concern for this endangered species. Both the Commission and the Hawaiian Monk Seal Recovery Team have previously recommended that the National Oceanic and Atmospheric Administration's debris cleanup efforts focus on areas that pose a high risk of monk seal entanglement (i.e., adjacent to places where monk seal pups are born and where young seals may learn to swim and feed). Given the magnitude of the debris problem and the length of time that will likely be required to adequately clean up the entire region, the Commission continues to believe that it is necessary to prioritize areas for cleanup. Therefore, the background section and Strategy MD-1 should indicate that the highest priority need is to remove debris from areas of particular importance to monk seals.

Page 120, Action Plan: Marine Debris: A performance measure should be added to correspond with strategy MD-2 stating something like "Reduction in the rate of accumulation of debris." This addition should also be made to Table 10. Also, the summary describes resource needs for clean up and does not, but should, identify resource needs for debris prevention.

Page 122, Marine Debris Strategy 2: A bullet should be added to the list of "Results of the Strategy" stating something like "A reduction in the amount of debris entering the oceans."

Page 123, Table 18: The draft plan distributed for public review mistakenly included the costs table for Response, Damage Assessment and Restoration, rather than for Marine Debris. The following comments are based on the Marine Debris costs table provided in the "track changes" version of the plan distributed to the Reserve Advisory Council.

Cost projections for Strategy MD-1 shows $2 million per year to charter boats to remove debris and $1 million per year to support people to remove debris. The text states that boats will be secured by the NOAA Fisheries Coral Reef Ecosystem Investigation and that participants in debris removal will be from "various agencies." Although debris removal is a high-priority issue for Reserve operations, clearly some of the obligation for this activity belongs to other parts of NOAA or other federal agencies. Including all such costs in the draft Operations Plan tables greatly inflates the estimate of total funding required for maintaining and operating the Reserve and makes the overall costs figures shown in Table 2 misleading (e.g., marine debris is shown as taking up 40 percent of Reserve operating costs over the next five years). Such costs should to be included within the budgets of agencies that will actually be expending the funds, to the extent that is feasible, or some explanation should be provided in the plan as to why these funds are included in the Reserve's budget estimates.

Pages 124-132, Action Plan: Enforcement: As discussed in the cover letter, the Marine Mammal Commission believes that, without the development of regulations or other mechanisms for enforcing the provisions of the Executive Orders, including the identification of available penalties, the Service will be unable to fully to meet its obligations to protect Reserve resources. The draft plan must be modified by adding a strategy to the Enforcement Action Plan describing the steps required to give effect to the full range of management and protective measures included in the Executive Orders establishing the Reserve. At a minimum, penalty schedules are needed. In some instances, promulgating implementing regulations would be appropriate, if not necessary.

Page 128, Enforcement Strategy 3: Throughout Strategy EN-3 reference is made to "permitting guidelines." As discussed in the cover letter, the Commission does not believe that guidelines, as opposed to permitting requirements, will be sufficient for restricting and monitoring activities that may affect resources of the Reserve. In Strategy EN-3, and in all other places in the draft plan where reference is made to "permitting guidelines," the text should be changed to read "permitting requirements."

Page 129, Enforcement Strategy 4: Strategy EN-4 calls for the development of a coordinated enforcement plan for the Reserve in consultation with agency partners. The description of the strategy references an agreement between NOAA and the Coast Guard "to continue devoting attention to the application of existing laws and regulations to maintain and protect the resources within the reserve." As described, it is not clear whether this includes an agreement that the Coast Guard is prepared to immediately begin enforcing all Executive Order measures as now written, whether further steps are needed for it to do so, and if further steps are needed, what are they and when they will be taken. The Coast Guard is a key partner in enforcement efforts, and the plan should clearly indicate whether and what further actions may be needed before the Coast Guard can fully enforce all Executive Order measures.

Page 130, Enforcement Strategy 4: Two bullets should be added to the "Results of the Strategy" stating something like "Violators of Executive Order provisions/Reserve regulations cited and prosecuted" and "A reduction in the number of violations of Executive Order provisions/Reserve regulations."

Page 131-132, Table 19: For activity 2 in Strategy EN-4, $1 million is indicated for each of years 2 through 5 to implement the enforcement plan. Presumably, most of this would be spent by NOAA Enforcement or the U.S. Coast Guard, not by the Reserve itself. While enforcement is a high priority issue for Reserve operations, clearly some of the responsibilities related to enforcement in this region resides with other parts of NOAA or with other federal agencies. Including all such costs in the draft Operations Plan tables greatly inflates the estimate of total funding required for maintaining and operating the Reserve and makes the overall costs figures shown in Table 2 misleading (e.g., enforcement is shown as taking up 13.2 percent of Reserve operating costs over the next five years). Such costs should be included within the budgets of the agencies that will actually be expending the funds, to the extent that is feasible, or some explanation should be provided in the plan as to why these funds are being included within the Reserve's budget estimates.

Page 138, Action Plan: Sanctuary Designation: The cost section states that approximately $250K will be needed to complete the EIS as part of Strategy DES-1 activity 4, but in Table 20 only $50K is shown for this activity. This difference should be reconciled.

Page 140, Sanctuary Designation Strategy 3: Activity 3 under strategy DES-3 indicates that draft proposed regulations are to be released as part of the draft sanctuary management plan. The Marine Mammal Commission strongly supports the development of regulations for sanctuary designation. We point out, however, that regulations or other implementing measures are also needed to guide management measures in the Reserve pending resolution of the questions related to possible sanctuary designation. Development of such measures should therefore be included as part of this Reserve Operations Plan's Enforcement Action Plan.

Page 142-143, Table 20: For Strategy DES-3, this table shows costs of $360K in year 1 and $150K in year 2. However, on page 140, under costs, the draft plan states "costs associated with this Strategy consist mainly of in-house staff time." Apparently revisions are needed to reconcile the text and the tables.