



Pacific Island Network Vital Signs Monitoring Plan

Appendix J: Laws and Policy

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Pacific Island Network (PACN)

Territory of Guam

War in the Pacific National Historical Park (WAPA)

Commonwealth of the Northern Mariana Islands

American Memorial Park, Saipan (AMME)

Territory of American Samoa

National Park of American Samoa (NPSA)

State of Hawaii

USS Arizona Memorial, Oahu (USAR)

Kalaupapa National Historical Park, Molokai (KALA)

Haleakala National Park, Maui (HALE)

Ala Kahakai National Historic Trail, Hawaii (ALKA)

Puukohola Heiau National Historic Site, Hawaii (PUHE)

Kaloko-Honokohau National Historical Park, Hawaii (KAHO)

Puuhonua o Honaunau National Historical Park, Hawaii (PUHO)

Hawaii Volcanoes National Park, Hawaii (HAVO)

<http://science.nature.nps.gov/im/units/pacn/monitoring/plan/>

Suggested citation:

Stephens, S. H. and P. Else. 2006. Appendix J: Laws and policy. *In*: HaySmith, L., F. L. Klasner, S. H. Stephens, and G. H. Dicus. Pacific Island Network vital signs monitoring plan. Natural Resource Report NPS/PACN/NRR—2006/003 National Park Service, Fort Collins, Colorado.

Last revision: 16 June 2005

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Acknowledgements:

This appendix was prepared with assistance from the Hawaii-Pacific Islands Cooperative Ecosystems Studies Unit (HPI-CESU), Task Agreement Numbers: J8080040032 and J8080050039.

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EVOLUTION OF NPS POLICY ON NATURAL RESOURCE MANAGEMENT AND MONITORING

National park managers are directed by federal law and National Park Service policies and guidance to know the status and trends in the condition of natural resources under their stewardship in order to fulfill the NPS mission to conserve parks unimpaired (see Summary of Laws, Policies, and Guidance¹). The mission of the National Park Service (National Park Service Organic Act, 1916) is:

"...to promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified by such means and measures as conform to the fundamental purposes of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

Congress strengthened the National Park Service's protective function, and provided language important to recent decisions about resource impairment, when it amended the Organic Act in 1978 to state that *"the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established...."*

More recently, the National Parks Omnibus Management Act of 1998 established the framework for fully integrating natural resource monitoring and other science activities into the management processes of the national park system. The act charges the secretary of the interior to *"continually improve the ability of the National Park Service to provide state-of-the-art management, protection, and interpretation of and research on the resources of the National Park System,"* and to *"assure the full and proper utilization of the results of scientific studies for park management decisions."* Section 5934 of the act requires the secretary of the interior to develop a program of *"inventory and monitoring of National Park System resources to establish baseline information and to provide information on the long-term trends in the condition of National Park System resources."*

Congress reinforced the message of the National Parks Omnibus Management Act of 1998 in its text of the FY 2000 Appropriations bill when it funded the Natural Resource Challenge:

"The Committee applauds the Service for recognizing that the preservation of the diverse natural elements and the great scenic beauty of America's national parks and other units should be as high a priority in the Service as providing visitor services. A major part of protecting those resources is in knowing what they are, where they are, how they interact with their environment and what condition they are in. This involves a serious commitment from the leadership of the National Park Service to insist that the superintendents carry out a systematic, consistent, professional inventory and monitoring program, along with other scientific activities, that is regularly updated to ensure that the Service makes sound resource decisions based on sound scientific data."

¹ <http://science.nature.nps.gov/im/monitor/ProgramGoals.cfm#LawsPolicy>

The 2001 NPS Management Policies updated previous policy and specifically directed the service to inventory and monitor natural systems:

"Natural systems in the national park system, and the human influences upon them, will be monitored to detect change. The Service will use the results of monitoring and research to understand the detected change and to develop appropriate management actions."

Further, *"The Service will:*

- *Identify, acquire, and interpret needed inventory, monitoring, and research, including applicable traditional knowledge, to obtain information and data that will help park managers accomplish park management objectives provided for in law and planning documents.*
- *Define, assemble, and synthesize comprehensive baseline inventory data describing the natural resources under its stewardship, and identify the processes that influence those resources.*
- *Use qualitative and quantitative techniques to monitor key aspects of resources and processes at regular intervals.*
- *Analyze the resulting information to detect or predict changes, including interrelationships with visitor carrying capacities, that may require management intervention, and to provide reference points for comparison with other environments and time frames.*
- *Use the resulting information to maintain-and, where necessary, restore-the integrity of natural systems"* (2001 NPS Management Policies).

Additionally, several federal, state, territory, and commonwealth statutes exist that provide legal direction for expending funds to determine the condition of natural resources and specifically guide natural resource management in parks. The remainder of this appendix consists of a summary of these laws and directives.

INTERNATIONAL TREATIES

The United States is signatory to several international treaties which regulate resource use. Other relevant international treaties to which the U.S. is a signatory are mentioned under their accompanying federal legislation in the next section.

- *Convention on Wetlands (1971):* Also known as the Ramsar Convention, this treaty's original emphasis was on the conservation and wise use of wetlands primarily to provide habitat for waterbirds. Over the years the Convention has broadened its scope to cover all aspects of wetland conservation and wise use, recognizing wetlands as ecosystems that are extremely important for biodiversity conservation in general and for the well-being of human communities. No wetlands within the PACN are designated as "Wetlands of International Importance" under this treaty².
- *International Convention for the Prevention of Pollution from Ships (1973):* The International Convention for the Prevention of Pollution from Ships (MARPOL) is an international treaty regulating the disposal of waste generated by vessel operation and

² <http://www.ramsar.org>

includes regulations for oil, noxious liquids carried in bulk, harmful substances carried in packaged form, sewage from ships, garbage from ships, and air emissions³.

- *Convention Against International Trade in Endangered Species of Wild Fauna and Flora (1975)*: The Convention Against International Trade in Endangered Species (CITES) is an international agreement ensures that international trade does not threaten the existence or survival of endangered or threatened species. It regulates the trade of species listed as endangered or threatened by the country of origin, the importing country, or any countries that the species might travel or pass through⁴.

FEDERAL POLICIES & LEGISLATION

The following section summarizes nearly 40 federal policies that pertain to, and have a direct bearing on, the regulation and conservation of natural and cultural resources of the national parks in the Pacific Island Network.

- *Rivers and Harbors Act (1899)*: Regulates activities that may affect navigation and navigable waters, including coastal waters, wetlands and streams. Permits are needed for any activity that crosses these aquatic ecosystems (e.g., utility lines, roads)⁵.
- *National Park Service Organic Act (1916)*: This Act formed the National Park System to “conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations”. While long considered a dual mission, court decisions (e.g., Southern Utah Wilderness Alliance vs. Dabney) support only a single mission: conservation (preservation) of natural and cultural resources. According to the courts, without conservation of these irreplaceable resources, the perceived second mission could not be accomplished⁶.
- *Migratory Bird Treaty Act (1918)*: Established that all migratory birds are protected from commercial trade. The Migratory Bird Treaty Act is the domestic law that affirms, or implements, the United States' commitment to four international conventions (with Canada, Japan, Mexico, and Russia) for the protection of a shared migratory bird resource. Each of the conventions protect selected species of birds that are common to both countries (i.e., they occur in both countries at some point during their annual life cycle). Several species present in PACN wetlands are protected by this Act⁷.
- *Sport Fish Restoration Act (1950)*: Also known as the Dingell-Johnson Act, it was created for management, conservation, and restoration of fishery resources. It authorizes the Secretary of the Interior to provide financial assistance for fish restoration and management plans. Furthermore, the Sport Fish Restoration Program was created under this Act and was funded by revenues from taxes on fishing equipment. Amendments included the enactment of excise taxes with the Wallop-Breaux Amendment in 1984, inclusion of wetlands conservation in 1990, and creation of boat-related waste disposal facilities in 1992⁸.

³ http://www.imo.org/Conventions/contents.asp?doc_id=678&topic_id=258

⁴ <http://laws.fws.gov/lawsdigest/treaty.html>; see also <http://www.cites.org/>

⁵ <http://laws.fws.gov/lawsdigest/riv1899.html>

⁶ <http://www.nps.gov/legacy/organic-act.htm>

⁷ <http://laws.fws.gov/lawsdigest/migtrea.html>, see also <http://laws.fws.gov/lawsdigest/treaty.html>

⁸ <http://ipl.unm.edu/cwl/fedbook/djact.html>

- *Watershed Protection and Flood Prevention Act (1954)*- This act authorizes the Secretary of the Interior to cooperate with state and local governments, including soil and water conservation districts and flood control districts, in planning and analyzing trends in flood protection and watershed conservation activities and facilities. The Secretary is to be consulted about such proposed "works of improvement," with regard to activities or facilities that may affect DOI lands⁹.
- *Wilderness Act of 1964*: Established the National Wilderness Preservation System (Wilderness Areas)¹⁰.
- *National Historic Preservation Act of 1966*: Included preserving 'the historical and cultural foundations of the Nation' and preserving irreplaceable examples important to our national heritage¹¹.
- *Estuary Protection Act (1968)*: Authorized the Secretary of the Interior to study and inventory estuaries of the United States. Federal agencies were also required to assess the impacts of commercial and industrial developments on estuaries¹².
- *National Environmental Policy Act (1969)*: Mandates that all federal projects and actions undergo a systematic analysis of potential environmental effects of proposed activities, and provides for public input¹³.
- *Clean Air Act (1970)*: Established a nationwide program for the prevention and control of air pollution. The act regulates airborne emissions of a variety of pollutants from area, stationary, and mobile sources¹⁴.
- *General Authorities Act (1970)*: Reinforced the Organic Act, and stated that all park lands are united by a common preservation purpose regardless of title or designation, uniting individual parks into the National Park System¹⁵.
- *Geothermal Steam Act (1970)*: This act prohibits leasing of federally owned geothermal resources in all units of the National Park System, including the three units specifically open to mineral leases. The Geothermal Steam Act Amendments of 1988 provide added protection for selected parks by requiring BLM to obtain NPS consent before issuing a geothermal lease on lands adjacent to listed park units. The regulations at 43 CFR 3200 govern geothermal leasing on lands adjacent to park units¹⁶.
- *Water Quality Improvement Act (1970)*. The Act requires federal regulated activities to have state certification stating that the activity will not violate water quality standards¹⁷.
- *Coastal Zone Management Act (1972)*: Established policy to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone. Established a program to assist states and territories in developing and implementing

⁹ http://straylight.law.cornell.edu/uscode/html/uscode16/usc_sup_01_16_10_18.html

¹⁰ <http://www.wilderness.net/index.cfm?fuse=NWPS&sec=legisAct&error=404>

¹¹ <http://www.cr.nps.gov/hps/laws/NHPA1966.htm>

¹² <http://www4.law.cornell.edu/uscode/16/ch26.html>

¹³ http://www.cr.nps.gov/local-law/FHPL_NtlEnvirnPolcy.pdf

¹⁴ http://www.epa.gov/oar/oaq_caa.html/

¹⁵ <http://www.nps.gov/legacy/legacy.html>

¹⁶ <http://www.eere.energy.gov/geothermal/docs/30-23.doc>

¹⁷ <http://www.nature.nps.gov/water/laws.htm>

coastal zone management programs, including designating coastal areas, identifying uses to be regulated and use priorities and establishing mechanisms for regulating uses¹⁸.

- *Federal Water Pollution Control Act (Clean Water Act) (1972)*: Authorized the EPA to develop programs to restore and maintain the physical, biological and chemical integrity of the nation's waters. The Act also established a permit program which is run by the U.S. Army Corps of Engineers and EPA, who regulate activities affecting all "waters of the United States", including streams, lakes, and "special aquatic sites", such as wetlands and anchialine ponds. This program applies to all park properties in the Pacific. Also, regard was to be given to improvements necessary to conserve waters for public water supplies, propagation of fish and aquatic life, recreational purposes and agricultural and industrial uses.¹⁹ Water quality criteria have been established for aquatic life separately from human water quality criteria²⁰.
- *Marine Protection, Research, and Sanctuaries Act (1972)*: Intended to improve the conservation, understanding, management, and wise and sustainable use of marine resources; (to) enhance public awareness, understanding, and appreciation of the marine environment; and (to) maintain for future generations the habitat, and ecological services, of the natural assemblage of living resources that inhabit these areas²¹.
- *The Marine Mammal Protection Act (1972)*: Protects the many mammals that live in the world's oceans. MMPA legislation is the basis for policies preventing the harassment, capture, injury, or killing of all species of whales, dolphins, seals, and sea lions, as well as walruses, manatees, dugongs, sea otters, and polar bears²².
- *Endangered Species Act (1973)*: Provides for protection of fish, wildlife and plant species that are listed as threatened or endangered in the U.S. or elsewhere. Guidance is provided for listing species, as well as for establishing recovery plans and designating critical habitat for listed species. Procedures for federal agencies to follow when taking actions that may jeopardize listed species are outlined. The Act also includes provision for exceptions and exemptions²³.
- *Magnuson-Stevens Fishery Conservation and Management Act (1976)*: This act recognizes that marine and anadromous fish are valuable and renewable natural resources and that they have been damaged by loss of essential habitat and overfishing. This law finds it necessary to implement a national program for the conservation and management of fisheries to prevent overfishing, rebuild stocks, and ensure conservation before irreversible harm occurs. This act specifically applies to anadromous fish species regardless of their location and also offers protection for offshore species when their juveniles use nearshore habitats such as reefs²⁴.
- *Resource Conservation and Recovery Act (1976)*: Regulated identification, transportation and management of solid and hazardous waste²⁵.

¹⁸ http://coastalmanagement.noaa.gov/czm/czm_act.html

¹⁹ <http://www4.law.cornell.edu/uscode/33/ch26.html>

²⁰ <http://www.epa.gov/region5/water/cwa.htm>

²¹ <http://epw.senate.gov/mprsa72.pdf>

²² <http://www.nmfs.noaa.gov/pr/laws/mmpa.htm>

²³ <http://endangered.fws.gov/ESA/ESA.html>

²⁴ <http://laws.fws.gov/lawsdigest/fishcon.html>

²⁵ <http://www4.law.cornell.edu/uscode/42/ch82.html>

- *Mining in the Parks Act (1976)*: Sec. 1901 states that “the level of technology of mineral exploration and development has changed radically in recent years and continued application of the mining laws of the United States to those areas of the National Park System to which it applies, conflicts with the purposes for which they were established; and all mining operations in areas of the National Park System should be conducted so as to prevent or minimize damage to the environment and other resource values, and, in certain areas of the National Park System, surface disturbance from mineral development should be temporarily halted while Congress determines whether or not to acquire any valid mineral rights which may exist in such areas.”²⁶.
- *Redwood National Park Act (1978)*: Expanded the General Authorities Act to state that all parks were to be managed and protected “in light of the high public value and integrity of the national park system”, and that no activities were to take place in the parks detrimental to the values for which they were established, unless mandated by law or act of Congress²⁷.
- *Emergency Wetlands Resources Act (1986)*: Required the establishment of a National Wetlands Priority Conservation Plan and required states to include wetlands in their Comprehensive Outdoor Recreation Plans. It also required the Secretary of the Interior to report to Congress on wetlands loss, including an analysis of the role of Federal programs and policies in inducing such losses and to complete the National Wetlands Inventory²⁸.
- *National Park Service Overflights Act (1987)* and *National Parks Air Tour Management Act (2000)*: These acts are legislative efforts to mitigate or prevent significant adverse sound impacts from air tours^{29 30}.
- *Geothermal Steam Act Amendments (1988)*: Specifically called for a monitoring program for certain parks with thermal resources³¹.
- *Clean Air Act Amendments (1990)*: The amendments were intended to fill the gaps in the earlier regulations, such as acid rain, ground level ozone, stratospheric ozone depletion and air toxics. The amendments identify a list of 189 hazardous air pollutants. The U.S. Environmental Protection Agency must study these chemicals, identify their sources, determine if emissions standards are warranted, and promulgate appropriate regulations³².
- *Coastal Zone Management Act Reauthorization Amendments (1990)*: The amendments addressed non-point pollution problems among other issues³³.
- *Park System Resource Protection Act (1990)*: The Park System Resource Protection Act has been successfully used in instances of vessel groundings and provides specific protection to all natural resources. While this Act does not authorize the removal of a vessel, it does provide legal means for recovering costs for response and recovery for “all necessary actions to prevent or minimize the destruction, loss of, or injury to park

²⁶ http://www.cr.nps.gov/local-law/FHPL_MininginNPPrks.pdf

²⁷ <http://www.nps.gov/legacy/legacy.html>

²⁸ <http://www4.law.cornell.edu/uscode/16/ch59.html>

²⁹ http://www.nature.nps.gov/naturalsounds/laws_policies/index.htm

³⁰ http://www.atmp.faa.gov/npatm_act2000.htm

³¹ <http://www.eere.energy.gov/geothermal/docs/30-23.doc> (p.5)

³² <http://www.nature.nps.gov/water/laws.htm>

³³ <http://www.epa.gov/owow/nps/czmact.html>

resources.” It is especially powerful in this particular situation given the challenges associated with maritime law in the U.S. and legal difficulties that can arise with grounded vessels. The act was strengthened in 1996 with the passage of the Omnibus Parks and Public Lands Management Act³⁴.

- *Hawaii Tropical Forest Recovery Act (1992)*: Authorized biological control agents for non-native species, and created a task force to develop an action plan to promote public awareness of the harm caused by introduced species and develop management recommendations for the protection of Hawaii’s native biota from non-native species³⁵.
- *Omnibus Parks and Public Lands Management Act (1996)*: Amended the Park System Resource Protection Act of 1990. As a result, the National Park Service is now authorized to seek compensation from third parties for any resource damage in any park. Thus, the amended statute provides another means for seeking compensation and provides broader protection to park resources than the Oil Pollution Act³⁶.
- *National Invasive Species Act (1996)*: Mandates federal agencies to manage aquatic invasive species, including developing and carrying out control programs and developing programs to understand ecological impacts of alien species³⁷.
- *Sustainable Fisheries Act (1997)*: Addresses the issues associated with “overfishing, protection of fish habitats, and Pacific Insular Areas.” The Act’s purposes include “promotion of catch-and-release programs, non-wasteful development of underutilized fisheries, and protection of fish habitats”; and its policies concern “efficiency, bycatch, and Pacific Insular Areas”³⁸.
- *National Parks Omnibus Management Act (1998)*: Commonly called the “Thomas Bill”, this act clarified the role of NPS as a conservation and science agency. Among the items it specifically mandated were the establishment of an inventory and monitoring program to obtain baseline information on natural resources, the development of a broad, rigorous scientific research program which could be expanded by establishing cooperative agreements with outside groups and the hiring and training of scientists within the NPS. Additionally, NPOMA granted protection for key natural resources within the parks by restricting sensitive information from release under the Freedom of Information Act³⁹.
- *Federal Cave Resources Protection Act (1998)*: Sec. 4301 states, “Significant caves on Federal lands are an invaluable and irreplaceable part of the Nation’s natural heritage; and in some instances, these significant caves are threatened due to improper use, increased recreational demand, urban spread, and a lack of specific statutory protection. The purposes of this chapter are - to secure, protect, and preserve significant caves on Federal lands for the perpetual use, enjoyment, and benefit of all people; and to foster increased cooperation and exchange of information between governmental authorities and those who utilize caves located on Federal lands for scientific, education, or recreational

³⁴ http://www2.nature.nps.gov/yearinreview/Yr_rvw97/chapter05/to_chapter05_a05.html

³⁵ <http://www.ncseonline.org/NLE/CRSreports/Biodiversity/biodv-26c.cfm#Hawaii%20Tropical%20Forest%20Recovery%20Act%20of%201992>

³⁶ http://www2.nature.nps.gov/yearinreview/Yr_rvw97/chapter05/to_chapter05_a05.html

³⁷ <http://www4.law.cornell.edu/uscode/16/ch67.html>

³⁸ <http://www.nmfs.noaa.gov/sfa/>

³⁹ <http://www4.law.cornell.edu/uscode/16/ch79.html>

purposes. It is the policy of the United States that Federal lands be managed in a manner which protects and maintains, to the extent practical, significant caves”⁴⁰.

- *Estuaries and Clean Waters Act (2000)*: Encouraged the restoration of estuary habitat through more efficient project financing and enhanced coordination of Federal and non-Federal restoration programs. Established an interagency council charged with developing a national estuary habitat restoration strategy and providing grants to entities to restore and protect estuary habitat⁴¹.
- *Coral Reef Conservation Act (2000)*: The Coral Reef Conservation Act was created to preserve, sustain, and restore the condition of coral reef ecosystems, while promoting wise management and sustainable use of these valuable marine resources. The U.S. Coral Reef Task Force was formalized through this act⁴².
- *Shark Finning Prohibition Act (2000)*: The Shark Finning Prohibition Act (H.R. 3535) is an amendment to the Magnuson-Stevens Fishery Conservation Management Act that eliminates the practice of shark finning. Shark finning refers to the practice of removing fins and usually discarding the remainder of the body⁴³.
- *National Aquatic Invasive Species Act (2003)*: Aims to prevent the introduction of aquatic invasive species by ships, interbasin transfers, and other pathways. Also makes funding available for aquatic invasive species management plans, rapid response teams, research, education, and monitoring⁴⁴.
- *Marine Turtle Conservation Act (2004)*: The Marine Turtle Conservation Act (H.R. 3378 and SB1210) was enacted to “assist in the conservation of marine turtles and the nesting habitats of marine turtles in foreign countries by supporting and providing financial resources for projects to conserve the nesting habitats, conserve marine turtles in those habitats, and address other threats to the survival of marine turtles.” The importance of this is realized because many of the sea turtles found in waters of the US and its territories travel large distances, often in international waters⁴⁵.

FEDERAL EXECUTIVE ORDERS WITH RELEVANCE TO MONITORING

The following section summarizes seven federal executive orders that pertain to the monitoring of natural and cultural resources within the national parks of the Pacific Island Network.

- *Executive Order 11988 (Floodplain Management; 1977)*: “Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.”

⁴⁰ <http://www.caves.org/section/ccms/fcrpa.htm>

⁴¹ <http://www4.law.cornell.edu/uscode/33/ch42.html>

⁴² <http://www.coralreef.noaa.gov/funding/grants/reefconservation.pdf>

⁴³ [http://thomas.loc.gov/cgi-bin/bdquery/z?d106:h.r.05461:](http://thomas.loc.gov/cgi-bin/bdquery/z?d106:h.r.05461)

⁴⁴ <http://www.nemw.org/NAISA%20one%20pager.pdf>

⁴⁵ http://takeaction.worldwildlife.org/action/index.asp?step=2&item=16006&ms=wwf_wildplaces

- *Executive Order 11990 on Protection of Wetlands (1977); amended by EO 12608 (1987)*: Intended to minimize the destruction, loss, and degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. Directs federal agencies not to undertake or provide assistance for new construction in wetlands unless no practicable alternative is found and all practicable steps are taken to minimize harm to wetlands.
- *Executive Order 12962 on Recreational Fisheries (1995)*: Mandates that Federal agencies improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities. Federal agencies are instructed to aggressively work to identify and minimize conflicts between recreational fisheries and their respective responsibilities under the ESA.
- *Executive Order 13089 on Coral Reef Protection (1998)*: E.O. 13089 provided federal protection to coral reefs within the U.S., its territories and commonwealths such that federal agencies may not fund or participate in actions that can have a detrimental impact on coral reef ecosystems. This Executive Order also established the Coral Reef Task Force.
- *Executive Order 13158 on Marine Protected Areas (1999)*: Executive Order 13158 commits the federal government to the protection of marine resources through the development and protection of Marine Protected Areas (MPAs). This Executive Order extends to all federal lands and water over which the U.S. exercises jurisdiction.
- *Executive Order 13112 on Invasive Species (1999)*: Federal agencies whose actions may affect the status of invasive species shall: (1) identify such actions, (2) use relevant programs and authorities to prevent, control, monitor, and research such species, and (3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.
- *Executive Order 13186 on Migratory Birds (2001)*: Federal agencies are required to protect migratory birds on the Migratory Bird Treaty list (50 C.F.R. 10.13). This list includes the Hawaiian coot (*Fulica alai*), Hawaiian duck (*Anas wyvilliana*), Hawaiian moorhen (*Gallinula chloropus sandvicensis*), Marianas moorhen (*Gallinula chloropus guami*), Black-crowned night heron (*Nycticorax nycticorax*), and Hawaiian stilt (*Himantopus mexicanus knudseni*), as well as several species of migratory shorebirds which are frequently present in PACN parks.

STATE, TERRITORY, AND COMMONWEALTH LEGISLATION

STATE, TERRITORIAL, AND COMMONWEALTH JURISDICTIONS

Several parks contain leased lands and provide for differing management (and thus monitoring) considerations based on local arrangements. For example, NPSA leases all park lands in a 50-year renewable lease (with either party able to renege under certain conditions). Kalaupapa NHP (KALA) leases lands from the Department of Hawaiian Homelands, and works closely with the Hawaii Department of Health in managing park resources. American Memorial Park (AMME) on Saipan is an affiliated area that is controlled by CNMI (NPS presence is through lease agreements with CNMI via the US Navy). Several other parks have lease or other arrangements for use of or access to lands within authorized park boundaries. Such agreements also provide a foundation for partnerships and leveraging of resources for the joint administration, management and long-term stewardship, inventory and monitoring of resources.

ADMINISTRATIVE CONTROL OF SUBMERGED LANDS

Unlike emergent, dry, or fast lands, submerged lands and their resources are often not owned or administered by the NPS, creating a unique problem when implementing or enforcing management decisions. Some National Parks in the PACN have legislated boundaries that extend into adjacent waters, while others do not. Parks with submerged lands within their boundary (regardless of ownership or control) include: WAPA, NPSA, KALA, and KAHO. Parks with adjacent marine waters, but whose boundaries end at the mean high tide line include: AMME, HALE, PUHE, PUHO and HAVO. ALKA, at present, is still trying to determine trail alignment, but historically followed 282 kilometers of the shoreline on the island of Hawaii. USAR has administrative control over two submerged vessels, the USS Arizona and the USS Utah. They have no legal jurisdiction over any other submerged lands or objects.

The State of Hawaii owns and administers the submerged lands below the high tide line within 4.8 kilometers (three miles in their written regulations) of all fast land within the state. The jurisdiction falls under the Department of Land and Natural Resources (DLNR).

War in the Pacific NHP (WAPA) has 6.4 kilometers of coastline and 1002 acres of submerged resources divided between two shorefront units within its boundary. Approximately one third of the submerged lands within WAPA are owned by the NPS; the remaining lands are owned by the Territory of Guam, which, through a Memorandum of Understanding (MOU) with the NPS, has ceded administrative control of these lands to WAPA. A condition of the MOU, however, ensures the continuation of traditional subsistence fishing within the park in accordance with territorial fishing regulations. The situation in Guam is further complicated because some submerged lands within WAPA are owned by the Department of Defense (U.S. Navy), which has its own resource mandates and MOU with the territorial government.

The Commonwealth of the Northern Mariana Islands (CNMI) also owns and administers the submerged land adjacent to American Memorial Park. The present jurisdiction of the park ends at the mean high tide mark, so all marine waters are adjacent to the designated AMME boundary.

The marine area of NPSA encompasses 2,550 acres with 32 kilometers of coastline. The park boundary extends 0.4 kilometers offshore (6 fathom depth) with three coastal units. The NPS has 50-year lease agreements with 8 villages that share boundaries with the park units. The offshore waters for all the park units are under the American Samoan government's jurisdiction but administered by the local villages. The Department of Marine and Wildlife Resources manages and protects marine resources.

STATE, TERRITORY, AND COMMONWEALTH STATUTES WITH RELEVANCE TO MONITORING

The following section summarizes the state, territorial and commonwealth statutes that pertain to monitoring within the national parks of the Pacific Island Network, beginning with the parks of Hawaii and followed by the parks of American Samoa, Guam and the Commonwealth of the Northern Mariana Islands.

Hawaii (USAR, KALA, HALE, ALKA, PUHE, KAHO, PUHO, HAVO)

Hawaii State Constitution:

- Article XI, Section 1: Conservation & Development of Resources states that “the State and its political subdivisions shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, air, mineral and energy sources, and shall promote the

development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.”

- Article XI, Section 7: “The legislature shall provide for a water resources agency which, as provided by law, shall set overall water conservation, quality and use policies; define watersheds and natural stream environments; establish criteria for water use priorities while assuring appurtenant rights and existing correlative and riparian uses and establish procedures for regulating all uses of Hawaii’s water resources. (Add. Constitutional Convention 1978 and election November 7, 1978)”
- Article XII, Section 9: Environmental Rights. Section 9 states that “each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources.”
- Traditional uses of biological resources by native Hawaiians are protected under the State Constitution. Such rights include gathering plants, algae, and animals from forests, streams, and the ocean. Cultivation of kalo (taro, *Colocasia esculenta*), an aquatic plant, is also protected. Access to these resources is maintained within parks unless specifically limited. For example, Kalo farming is practiced in the Kipahulu section of HALE by the Kipahulu `Ohana, a native Hawaiian nonprofit group.
- Hawaii Administrative Rules, Title 13, Subtitle 5: All Hawaiian plants recognized on the Federal endangered species list have been listed as threatened or endangered by the State.
- Hawaii Administrative Rules, Title 4, Subtitle 6: The State of Hawaii has noxious weed regulations that recognize some alien plant species as particularly invasive and permits State agencies to cooperate with landowners and provide herbicides, equipment, and personnel to control infestations.
- State of Hawaii Administrative Rules 11-54: These rules mandate the conservation of coral reefs in class AA waters. Marine waters are classified as AA (in their natural pristine state as nearly as possible with an absolute minimum of pollution or alteration of water quality from any human-caused source or actions. To the extent practicable, the wilderness character of these areas shall be protected. No zones of mixing shall be permitted in this class) or A.
- Hawaii Revised Statutes §171-58.5: Sand, dead coral or coral rubble are allowed to be collected but are protected from commercial purposes and can only taken for personal purposes seaward of the shoreline.
- Hawaii Revised Statutes §188-68: This statute prohibits any person to take any live stony corals, including live reef or mushroom corals in Hawaiian waters under state jurisdiction. It is also unlawful to take any rock to which living marine species are attached. Sale of some corals is prohibited in Hawaii.
- Hawaii Revised Statutes §205A: This law restricts anchoring on coral reefs.
- Shark Finning Prohibited (2000): Shark finning was prohibited by law with HB 1947 which bans landing of any shark fins in the State.
- Hawaii County Code-Chapter 14, Article 9: Outdoor Lighting (enacted Ord. No. 88-122, sec. 3, in 1988), specifies timing, shielding, and wattage/lumens requirements for outdoor lighting. This county statute applies to the Island of Hawaii.

American Samoa (NPSA)

The American Samoa Code Annotated, under Title 24, includes a number of statutes concerning general (physical) environmental quality. There are also two provisions for biological conservation. Chapter 07 establishes a natural resources commission for the purpose of conservation and management of federally listed endangered species, as well as those whose harvest is deemed in need of regulation. Chapter 10 establishes a system of inspections for detection and control of coconut beetle, a serious pest of coconut crops.

- American Samoa Code Annotated (ASCA): Natural Resources and Environmental Ecosystem Protection and Development (Title 24). Both subsistence farming (agriculture and livestock) and fishing are permitted within NPSA. The next four chapters that follow below are in title 24 and pertain to the marine environment
- Environmental Quality Act of 1972 (ASCA 24.02). Contains standards for water quality. This program is administered by the American Samoa Environmental Protection Agency/Environmental Quality Commission.
- Office of Marine and Wildlife Resources (ASCA 24.03): It is the policy of American Samoa “to preserve, protect, perpetuate and manage the marine and wildlife resources within the territory.” Some of the Public Laws contained within this policy are a prohibition on drift gill net fishing, and requirements for reporting by fishermen and processors (including a duty).
- American Samoa Coastal Management Act of 1990 (ASCA 24.05). Mandates “the establishment of a system of environmental review, along with economic and technical considerations, at the territorial level intended to ensure that environmental concerns are given appropriate consideration in the land use decision-making process.” This program is administered by the Economic Development Planning Office/American Samoa Coastal Management Program.
- Endangered Species (ASCA 24.07): In this chapter, a commission was recommended to be formed to identify both endangered and threatened species for the Territory and to suggest programs for conservation, protection and propagation of these species.
- Executive Order (2001): This executive order was issued by the Governor to ban the use of scuba equipment while fishing in American Samoan waters. It was believed that this practice contributed to the decline of reef fish abundance.

Guam (WAPA)

- The Endangered Species Act of Guam (1979): The Endangered Species Act of Guam (Guam Public Law 15-36) protects both locally and federally listed endangered species on Guam.
- Revised Guam Water Quality Standards (2001): Public Law 26-32 was enacted to amend the Guam Environmental Protection Agency water quality standards.
- Guam Soil Erosion and Sediment Control Regulations (2000): The Guam Soil Erosion and Sediment Control Regulations (P.L. 25-152) regulates “soil erosion and sedimentation resulting from the construction of sub-divisions, industrial and commercial developments, highways and other activities requiring excavation and filling” through a permit and review process.

- Guam Territorial Seashore Protection Act (GC §13410 enacted by P.L. 12-108): Under this act, coral can be removed only by permit from the Department of Agriculture. This same act regulates fishing mesh size used in coastal waters as well as illegal fishing methods.
- An Act to Establish Rules and Regulations for the Control of Fisheries by the Department of Agriculture (1997): This act (P.L. 24-21) instituted territorial fishing regulations and mandated the establishment of Marine Protected Areas.

CNMI (AMME)

- Coastal Resources Management Act (PL 3-47): Established the Coastal Resources Management Office (CRMO) and regulation for activities permitted in ‘Wetland and Shoreline Areas of Particular Concern’ (APCs). Regulations protect mangroves and critical wetland habitat and protect endangered or rare species.
- Fish and Game Endangered Species Act (PL 2-51): Established the Division of Fish and Wildlife and contains regulation regarding fish and wildlife management. This act also authorizes the designation of endangered species and critical habitat.
- Environmental Protection Act (PL 3-23): Established the Division of Environmental Quality. This act also includes regulations for water quality certification and waste water discharge.
- Public Land Exchange Act (PL 5-33): Includes framework for land acquisition for public purposes including wetland protection.
- Fisheries Act (Proposed in 2003): The Fisheries Act (HB 13-178) proposed to provide management, enforcement and data collection authority for commercial fisheries in CNMI waters.
- Managaha Marine Conservation Act (2000): The Managaha Marine Conservation Act (MMCA) was established by the CNMI Legislature to protect the island and the surrounding waters for recreational and cultural purposes. These waters were established as Class I no-take marine protected areas with human activity based on permit basis. The Division of Fish and Wildlife (DFW) is authorized to monitor natural resources and enforce protection of these waters and land.
- Other Marine Protected Areas include the following. PL 10-18 in 1997 established Sasanhaya Fish Reserve on Rota, PL 12-46 in 2001 established Bird Island Marine Sanctuary on Saipan, PL 12-46 established Forbidden Island Marine Sanctuary on Saipan in 2001, and in 2000 DFW Regulations that established Lighthouse Reef Trochus Reserve and Lau-Lau Bay Sea Cucumber Reserve. Fishing and anchoring are restricted in MPAs.

NPS MANAGEMENT POLICIES WITH RELEVANCE TO MONITORING

This section summarizes National Park Service management policies that pertain to monitoring of natural and cultural resources within all national parks in the United States.

- *1993 Western Regional Directive WR-94*: Guidelines for revegetation in disturbed areas of National Parks were given in the 1993 Western Regional Directive WR-94. The primary goal of park revegetation is “...the preservation of native plant species,

community types, and ecosystem processes.” Culturally significant vegetation may also be preserved by revegetation, particularly in the Historical Parks.

- *Natural Resources Inventory and Monitoring Guidelines (NPS-75)*⁴⁶: The Servicewide Inventory and Monitoring Program will chart the course and provide the leadership and information resources needed by the National Park Service to preserve and protect the natural resources placed under its trust by the American people into the 21st Century and beyond.
- *NPS Management Policies (2001); Natural Resource Management Reference Manual 77*⁴⁷: This document is the Service's comprehensive guideline on natural resource management. Its purpose is to guide the actions of park managers so that natural resource management activities planned and initiated at field areas comply with federal law and regulation and Department of the Interior and NPS policy. Relevant sections include Freshwater Resources Management, Marine Resources Management, Geologic Resources Management, Soil Resources Management, Cave Management, and Paleontological Resources Management. For instance, Section 4.8 states, “the Park Service will preserve and protect geologic resources as integral components of park natural systems. As used here, the term "geologic resources" includes both geologic features and geologic processes. The Service will (1) assess the impacts of natural processes and human-related events on geologic resources, (2) maintain and restore the integrity of existing geologic resources, (3) integrate geologic resource management into Service operations and planning, and (4) interpret geologic resources for park visitors.”
- *Restoration of Natural Systems 4.1.5*. Re-establishes natural functions and processes, biological and physical components, and biological community structure. Examples include removal of exotic species, removal of contaminants and non-historic structures, and restoration of native plants and animals.
- *Plant and Animal Population Management Principles 4.4.1.1*. Specifies that parks should work with partners to manage species that cross park boundaries as well as those found outside parks.
- *Management of Native Plants and Animals 4.4.2*. Specifies when intervention is permissible to maintain native species. For example, this may apply if a population occurs in an unnaturally high or low concentration as a result of human influences and it is not possible to mitigate the effects of the human influences. This policy protects rare, threatened, or endangered species and allows for intervention where it meets specific park management objectives.
- *Restoration of Native Plant and Animal Species 4.4.2.2*. Specifies when restoration may occur and limits highly manipulative activities for restoration.
- *Management of Threatened or Endangered Plants and Animals 4.4.2.3*. Requires that NPS will survey for, protect, and strive to recover all species native to the NPS units that are listed under the Endangered Species Act. Requires that NPS meets obligations under the NPS Organic Act.

⁴⁶ <http://www.nature.nps.gov/im/monitor/nps75.pdf>

⁴⁷ <http://www.nature.nps.gov/RM77/>

- *Maintenance of Altered Plant Communities 4.4.2.5.* Limits and prohibits the use of exotic species. Maintains threatened and endangered species.
- *Removal of Exotic Species Already Present 4.4.4.2.* Prioritizes management and eradication of exotic species already present within a park.
- *Biotic Cultural Resources 5.3.5.2.5.* Management of biological resources with cultural significance.
- *NPS-supported Studies 8.11.2.* Inventory, monitoring, and research studies to support management needs and objectives.
- *Natural Resource Management Guidelines:* Establishes guidelines for native animal management, hunting and trapping, as well as subsistence and other traditional uses.
- *The National Natural Landmarks (NNLs) program:* The NPS seeks to periodically verify the condition of NNLs and maintain good rapport with landowners to comply with 90 Stat. 1940; U.S.C. 1a-5. This law requires monitoring of the condition of NNLs in order to prepare an annual report for the Secretary of Interior to transmit to the Congress identifying all designated NNLs with known or anticipated damage or threats to the integrity of their resources, and the source of such threats or damage.

DIRECTOR'S ORDERS AND OTHER NPS DOCUMENTS

Several DOI and NPS directives and documents provide guidance and support for natural resource management.

- *Memorandum to Secretary of the Interior from the Solicitor (16 April 1998):* This memorandum analyzes the Secretary's legal duty to protect parks from activities on non-NPS land adjacent to park boundaries. While not explicit in the Redwoods Amendment, this memo provides support for involvement in natural resource issues lying outside the park boundary.
- *D.O. #55 (2000):* Further clarifies language within the NPS Organic Act and the 1970 Act for Administration including the Redwood Amendment by reiterating the single mission of the NPS: to preserve resources. This Director's Order also clarifies what constitutes impairment, park resources and values, and provides guidance for decision making, including requiring scientific data in accordance with the National Parks Omnibus and Management Act.
- *Director's Order #47: Soundscape Preservation and Noise Management.* This order identifies planning goals and identifies inventorying and monitoring the soundscape as essential to understanding the relationship between the baseline natural soundscape and human-made components of the soundscape- both existing and proposed. *36 CFR Section 2.12 Audio Disturbances*, provides additional regulation on federal property.
- *Director's Order #77-1: Wetland Protection:* the purpose of this Director's order is to establish NPS policies, requirements, and standards for implementing *Executive Order 11990- Protection of Wetlands*, to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practical alternative.

PARK ENABLING LEGISLATION

Legislation enabling the National Parks describes the purpose and mission of each park. (An exception in the PACN is USAR, which operates under a Memorandum of Understanding with the US Navy.) Legislation establishing individual parks may also identify specific resources for research, monitoring and protection. Mandates for park resource preservation may also require maintaining these resources in a way that is incompatible with restoration of a natural landscape, such as maintaining vegetation as it occurred during a certain historical period. These mandates may supercede other restoration objectives for the park. Enabling legislation of an individual park, where it exists, provides insight into the natural and cultural resources and resource values for which it was created to preserve. These values may evolve with time, through evolution of park management and legal interpretations and explicit additions to park enabling legislation. Relevant passages include:

AMME: “...administered for the primary purpose of honoring the dead in the World War II Mariana Island campaign. Secondary interpretive themes would encompass the ecological and environmental resources of the park.”

WAPA: “Conserve and interpret outstanding natural, scenic, historic values, and objects on the island of Guam for the benefit and enjoyment of future generations.”

NPSA: Recognized the importance of the park’s tropical vegetation as one of the last remaining undisturbed paleotropical forests and as habitat of Pacific flying foxes (*Pteropus samoensis*, *P. tonganus*).

HALE: “...preservation from injury of all timber, birds, mineral deposits, and natural curiosities or wonders within, and that these parks should be retained in their natural condition as nearly as possible.”

KALA: “...to research, preserve, and maintain...natural features...” 16 U.S.C. § 410jj.

ALKA: Enabling legislation identifies that all significant natural, cultural and historical resources be preserved.

PUHE: The historic scene, including vegetation, at the time of John Young and Kamehameha the Great are to be preserved.

KAHO: “Sec. 505 (d) (4) – Secretary shall consult with and may enter into agreements with other government entities and private landowners to establish adequate controls on air and water quality and the scenic and esthetic values of the surrounding land and water areas. In consulting with and entering into any such agreements, the secretary shall to the maximum extent feasible utilize the traditional native Ahupuaa (sic.) concept of land and water management.” The era of Hawaiian inhabitation is the model for the landscape, including vegetation.

PUHO: The era of Hawaiian inhabitation is the model for the landscape, including vegetation.

HAVO: “...preservation from injury of all timber, birds, mineral deposits, and natural curiosities or wonders within, and that these parks should be retained in their natural condition as nearly as possible.”

Some parks will have park-specific management policies required to meet the mission or conditions of their enabling legislation. These park-specific policies, such as Superintendent’s compendia, must be considered in the development of the park’s monitoring plan and in the Vital Signs selection process. Various park management plans also recognize different habitats or species as important natural resources.

STRATEGIC PLANNING AND PERFORMANCE MANAGEMENT GOALS

The Government Performance and Results Act (GPRA) of 1993 requires federal agencies to develop strategic plans as part of the performance management business system. The National Park Service uses the strategic plan and performance management system to set goals and then align activities, staffing, and funding to meet those goals. The GPRA goals relevant to monitoring in the PACN are listed in the table below (please note that USAR and ALKA are not formally included in national I&M program tallies). Mission goals Ia and Ib are identified in this table. Other mission goals are not explicitly identified, though the I&M program will facilitate parks meeting these additional goals in various capacities. Within mission goals Ia and Ib, the PACN is directly responsible for goals Ib3A and Ib3B. The PACN will provide baseline inventories and monitoring data and information that will assist parks in determining how they meet these other identified goals, including resources that share natural and cultural values and associated museum collections to which the I&M program contributes.

In addition to these GPRA goals, the NPS has outlined five Land Health goals in the 2005-2008 NPS Technical Guidance for Strategic Goals. They apply to uplands (Ia1E), wetlands (Ia1C), riparian/stream areas (Ia1D), marine and coastal areas (Ia1F) and mined areas (Ia1G). It is anticipated that in the future, the I&M program will contribute substantially towards many parks' ability to report their selected goals. Parks are currently directed to delay subscribing to these goals until they can meet the following three conditions:

- 1) There is a standardized basis for measurement of the acreage in a park, and the total acreage of the resource type is known.
- 2) There is documentation of a specific "desired condition" for a resource type in an approved management plan. The "desired condition" as stated in approved management documents must be in place for all occurrences of the resource type in the park.
- 3) The park has knowledge of the current condition of all occurrences of a resource type within its boundaries based on objective, science-based information. I&M data will be a large part of the information that parks use to report on these goals.

Government Performance and Results Act Goals for the PACN, from NPS 2005-2008 strategic goals and 2005 park data.

Mission Goal	NPS Long-Term Goal	Goal #	WAPA	AMME	NPSA	USAR	KALA	HALE	ALKA	PUHE	KAHO	PUHO	HAVO
Ia. Natural and cultural resources and associated values are protected, restored, and maintained in good condition and managed within their broader ecosystem and cultural context.	Disturbed lands restored	Ia1A	X				X			X			X
	Exotic Vegetation	Ia1B			X		X	X		X	X	X	X
	Land Health: Wetland areas	Ia1C											
	Land Health: Riparian and Stream areas	Ia1D											
	Land Health: Upland areas (includes caves)	Ia1E											
	Land Health: Marine and Coastal areas	Ia1F											
	Land Health: Mined Lands	Ia1G											
	Federally Listed Threatened and Endangered Species	Ia2A		X				X			X		X
	Species of Management Concern	Ia2B											
	Exotic Animals	Ia2C						X					X
	Air quality	Ia3						X					X
	Surface Waters Quality - Rivers and Streams	Ia4A											
	Surface Waters Quality - Lakes, reservoirs, etc.	Ia4B											
	Water Quantity	Ia4C											
	Museum Collections	Ia6	X			X	X	X		X	X	X	X
	Cultural Landscapes	Ia7	X				X			X		X	X
	Paleontological Resources	Ia9											
Wilderness Areas - Wilderness Character	Ia10						X					X	
Ib. The National Park Service contributes to knowledge about natural and cultural resources and associated values; management decisions about resources and visitors are based on adequate scholarly and scientific information.	Natural Resources Inventories	Ib1			X								X
	Cultural Resources Baselines: Archeological Baseline	Ib2A			X		X	X		X		X	X
	Cultural Resources Baselines: Cultural Landscapes	Ib2B			X		X			X		X	
	Cultural Resources Baselines: Museum Collections	Ib2D			X			X		X	X	X	X
	Cultural Resources Baselines: Ethnographic Resources Baseline	Ib2E			X								
	Cultural Resources Baselines: Historical Research Baseline	Ib2F	X	X									
	Vital Signs Identification	Ib3A	X	X	X		X			X	X	X	X
	Vital Signs Monitoring	Ib3B						X			X	X	X
	NPS Administered National Historic and Scenic Trails	Ib4C											
Wilderness Plans	Ib5						X					X	