

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawaii 96813

September 26, 2008

Board of Land
and Natural Resources
Honolulu, Hawaii

Request for Amendment to Papahānaumokuākea Marine National Monument Research Permit
PMNM-2008-062, Previously Approved for Dr. Russell E. Brainard of the NOAA Pacific
Islands Fisheries Science Center, to Increase Autonomous Reef Monitoring Structure (ARMS)
Deployments.

The Division of Aquatic Resources (DAR) hereby submits a request for your authorization and approval by the Board, to amend the Papahānaumokuākea Marine National Monument research permit previously approved for Dr. Russell Brainard, Division Chief, Coral Reefs Ecosystem Division, NOAA Pacific Islands Fisheries Science Center, pursuant to § 187A-6, Hawaii Revised Statutes (HRS), chapter 13-60.5, Hawaii Administrative Rules (HAR), and all other applicable laws and regulations.

AMENDMENT REQUEST:

The research permit amendment would increase the number of Autonomous Reef Monitoring Structures (ARMS) to be deployed in the Monument. Specifically, it would allow for an additional 12 ARMS, increasing the number from 63 to 75. These additional deployments would occur in the lagoon patch reef systems at French Frigate Shoals, Pearl and Hermes Atoll, Kure Atoll, and Midway Atoll. These locations, as well as the currently permitted fore and back reef environments were included in the original permit application, and were thus reviewed. An oversight was simply made as to the number of ARMS to be deployed in each environment. In order to accomplish the goal of the ARMS, establishing a baseline metric of the biodiversity of cryptic invertebrates, it is necessary to compare the biota from each of the different habitats in atoll systems.

Dr. Russell Brainard's current permit, PMNM-2008-062, was approved by the Board at its regular meeting on August 8, 2008. See attachment F-5a.

STAFF OPINION:

DAR staff is of the opinion that the amendment request would add value to the currently permitted research, without significant impact to resources of the NWHI State waters, and should be approved.

MMB OPINION:

The MMB is of the opinion that the amendment request would add value to the currently permitted research, without significant impact to Monument resources, and should be approved.

RECOMMENDATION:

“That the Board authorize and approve the amendment to Research Permit PMNM-2008-062, approved by the Board on August 8, 2008, to Dr. Russell Brainard, NOAA Pacific Islands Fisheries Science Center.”

Respectfully submitted,



DAN POLHEMUS
Administrator

APPROVED FOR SUBMITTAL



LAURA H. THIELEN
Chairperson

**PAPAHĀNAUMOKUĀKEA
MARINE NATIONAL MONUMENT
RESEARCH PERMIT**



Permittee:
Dr. Russell E. Brainard
National Oceanic and Atmospheric
Administration / Pacific Islands Fisheries
Science Center
1601 Kapiolani Blvd, Suite 110
Honolulu, Hawaii 96814

Permit Number: PMNM-2008-062
Effective Date: September 1, 2008
Expiration Date: October 30, 2008

Project Title: Reef Assessment and Monitoring Program Activities within the Papahānaumokuākea Marine National Monument

This permit is issued for activities in accordance with Proclamation 8031 (Proclamation) establishing the Papahānaumokuākea Marine National Monument (Monument) under the Antiquities Act of 1906, 16 USC §§ 431-433 (Antiquities Act) and implementing regulations (50 CFR Part 404). All activities must be conducted in accordance with the Proclamation and the regulations (attached). No activity prohibited by the Proclamation or 50 CFR Part 404 is allowed except as specified below. Chapter 13-60.5, Hawaii Administrative Rules remains in effect for proposed activities in State waters.

Subject to the terms and conditions of this permit, the National Oceanic and Atmospheric Administration (NOAA), the State of Hawai'i, and the U.S. Fish and Wildlife Service (collectively, the Co-Trustees) hereby authorize the permittee listed above to conduct research activities within the Monument. All activities are to be conducted in accordance with this permit. The permit application is incorporated into this permit and made a part hereof; provided, however, that if there are any conflicts between the permit application and the terms and conditions of this permit, the terms and conditions of this permit shall be controlling.

PERMITTED ACTIVITY DESCRIPTION:

The following activities are authorized by this permit:

1. The permittee and a maximum of twenty-one (22) individuals are authorized to enter the Papahānaumokuākea Marine National Monument and conduct activities under this permit. The roles of four (4) Fish Rapid Ecological Assessment specialists, six (6) Benthic

Papahānaumokuākea
Marine National Monument
6600 Kalaniana'ole Hwy
Suite 300
Honolulu, HI 96825

specialists, four (4) Towed-diver surveyors, five (5) Oceanography specialists, one (1) Divemaster/Chamber operator, one (1) Data Manager, and one (1) Outreach specialists may be filled from the following list: Paula Ayotte, Amanda Meyer, Yumi Yasutake, Cori Kane, Stephanie Schopmeyer, Jason Helyer, Molly Timmers, Russell Moffitt, Cristi Richards, Ben Richards, Bonnie DeJoseph, Jake Asher, Oliver Vetter, Ellen Smith, Danny Merritt, Kevin Lino, Jim Bostick, Peter Vroom, Greg Marshal, and 3 TBD.

2. Swimming, snorkeling, and closed or open circuit SCUBA diving within the Special Preservation Areas and Midway Atoll Special Management Area necessary to support research activities covered under this permit.
3. Touching coral, living or dead for the purpose of conducting research activities covered under this permit.
4. Anchoring of authorized vessels on non-coral substrate only.
5. Collection of no more than one specimen of each macro-algal species that cannot be identified in the field. Total collections not to exceed one 4" x 6" Ziploc sample bag.
6. Collection of no more than 110 coral disease samples (5 cm) from the following species: (*Acropora cytherea*, *Pocillopora meandrina*, *Pocillopora eydouxi*, *Porites lobata*, *Porites evermanni*, *Porites compressa*, *Montipora*).
7. Collection of no more than 2 type samples (healthy and disease) of each disease state of any new coral diseases observed.
8. Collection of no more than 2 type samples (7 cm) of each new coral species observed.
9. Collection of invertebrates as listed in Appendix 1 (attached) by hand with pliers, forceps, scissors, or hammer and chisel. These opportunistic collections are to aid Dr. Toonen's work covered under PMNM-2008-047.
10. Collection of approximately four water samples for both chlorophyll (125 mL) and nutrients (60 mL) at each selected site.
11. Deployment of no more than 63 Autonomous Reef Monitoring Structures (ARMS), measuring 14in x 18in x 8in, secured with stainless steel stakes and weights to non-coral substrate only.
12. Repair, replacement, or establishment of permanent transects utilizing stainless steel stakes on hard, dead substrate only.

13. Maintenance and replacement of oceanographic instrument arrays (instruments, anchors, mooring systems, and buoys).

14. Operation of small boats for permitted activities number 2 through 13.

No further disturbance of the cultural or natural resources of the Monument is allowed.

PERMITTED ACTIVITY LOCATIONS:

Other than entrance into the Monument, the permitted activities listed above are allowed at the following locations:

1. Nihoa Island Special Preservation Area
2. Necker (Mokumanamana) Island Special Preservation Area
3. French Frigate Shoals Special Preservation Area
4. Gardner Pinnacles
5. Maro Reef
6. Laysan Island Special Preservation Area
7. Lisianski Island Special Preservation Area
8. Pearl and Hermes Atoll Special Preservation Area
9. Midway Atoll Special Management Area
10. Kure Atoll Special Preservation Area

NOTE: Specific collection sites and list of specimens collected must be provided in the summary report indicated in General Condition # 22b.

GENERAL TERMS AND CONDITIONS:

In accordance with the Proclamation and applicable regulations, the permitted activities listed above are subject to the following general terms and conditions:

1. The permittee must sign and date this permit on the appropriate line below. Once signed and dated, the permittee must provide a signed original copy to the Monument official identified below. The permit becomes valid on the date the last Monument official signs the permit and shall remain valid for not more than one (1) year from that date.

Permit Coordinator
Papahānaumokuākea
Marine National Monument
6600 Kalaniana'ole Hwy. Suite 300
Honolulu, HI 96825

2. This permit is neither transferable nor assignable and must be carried by the permittee while engaging in any activity authorized by this permit. All other persons entering the Monument under the authority of this permit must provide

the name of the permittee or the permit number to any authorized enforcement or management personnel upon request.

3. This permit may only be modified by written amendment approved by the Co-Trustees. Modifications to this permit must be requested in the same manner as the original request was made. Any modifications requested by the permittee, such as adding or changing personnel to be covered by the permit or to change the activities that are allowed, must be made in writing.
4. This permit is subject to suspension, modification, non-renewal, or revocation for violation of the Proclamation, implementing regulations, or any term or condition of the permit. Any verbal notification of a violation from an authorized Monument representative may require immediate cessation of activities within the Monument. The issuance of a permit shall not constitute a vested or property right to receive additional or future permits. This permit may, in the sole discretion of the Co-Trustees, be renewed or reissued. However, there is no right to a renewal or re-issuance. Failure to fulfill permit requirements may affect consideration of future permit applications.
5. Permit terms and conditions shall be treated as severable from all other terms and conditions contained in this or any other ancillary permit. In the event that any provision of this permit is found or declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms or conditions of this permit.
6. This permit does not relieve the permittee of responsibility to comply with all federal, state and local laws and regulations. Activities under this permit may be conducted only after any other permits or authorizations necessary to conduct the activities have been obtained.
7. The permittee may be held liable for the actions of all persons entering the Monument under the authority of this permit.
8. All persons entering the Monument under the authority of this permit are considered under the supervision of the permittee and may be liable in addition to the permittee for any violation of this permit, the Proclamation and implementing regulations in conjunction with this permit. The permittee must ensure that all such persons have been fully informed of the permit terms and conditions prior to entry into the Monument. Each such person must provide written acknowledgment to the permittee, prior to entry into the Monument, that he/she has received a copy of the permit, agrees to abide by all applicable terms and conditions, and may be liable for violations of the permit. The permittee shall maintain all signed acknowledgments and submit them with the summary report described in General Condition #22.b.

9. Notification of entry into the Monument must be provided at least 72 hours, but no longer than one month, prior to the entry date. Any updates to the list of personnel must also be provided at least 72 hours before entering the Monument. Notification of departure from the Monument must be provided within 12 hours of leaving the Monument. Notification may be made via e-mail, or telephone by contacting: E-mail: nwhi.notifications@noaa.gov; Telephone: 1-866-478-6944; or 1-808-395-6944. No other methods of notification will be considered valid.
10. The permittee and any person entering the Monument under the authority of this permit shall, before entering the Monument, attend a cultural briefing or view designated cultural informational materials on Papahānaumokuākea regarding the region's cultural significance and Native Hawaiians' spiritual and genealogical connection to the natural and cultural resources. Persons entering the Monument at Midway Atoll may satisfy this requirement upon arrival.
11. All vessels (including tenders and dive boats), engines and anchor lines shall be free of introduced species prior to entry into the Monument. To ensure this, all vessels, engines and anchor lines shall be inspected for potential introduced species prior to departing the last port before entering the Monument. No later than 24 hours prior to entry, the permittee shall provide the Monument Permit Coordinator with a report prepared by the individual conducting the inspection that: a) sets forth when and where the inspection occurred; b) identifies any introduced species observed, including where found; c) summarizes efforts to remove any species observed; and d) certifies the vessel as free of all introduced species. The Monument Permit Coordinator shall review the report and, based on the review, may delay the entry into the Monument until all concerns identified by the Monument Permit Coordinator have been addressed.
12. All hazardous materials, biohazards and sharps, must be pre-approved by the Co-Trustees. For purposes of this permit, "hazardous material" has the same meaning as the definition found at 49 CFR §105.5 (U.S. Department of Transportation). All hazardous materials, biohazards and sharps must be stored, used, and disposed of according to applicable laws and Monument-approved protocols. The permittee, or a designated individual entering the Monument under the authority of this permit must be properly trained in the use and disposal of all such materials proposed. Proof of appropriate training may be required by the Co-Trustees. No such material may be left in the Monument after the departure of the permittee unless it has been previously approved by Monument staff. Immediately after the project is complete the permittee must remove all such materials from the Monument. The permittee will be responsible for all costs associated with use, storage, transport, training, disposal, or HazMat response for these materials.
13. All equipment or supplies brought into the Monument, or structures of any kind built in the Monument by the permittee are the responsibility of the permittee. All materials that are brought to the Monument by the permittee must be removed by

the permittee except as otherwise permitted. Any permanent structures, equipment, or supplies that require maintenance, are determined to be unserviceable, or are a safety hazard, must be immediately repaired or removed from the Monument by the permittee. No structures, equipment, or supplies may be left in the Monument following the completion of the project except as listed in the permit.

14. If Monument staff are present at the field site, the permittee must meet with them before beginning permitted activities. Even with a valid permit, authorized Monument staff may prohibit entry into any location(s) within the Monument as they may deem appropriate to conserve or manage resources, particularly in areas where cumulative impacts of permitted activities are concentrated.
15. In order to facilitate monitoring and compliance, any person entering the Monument under the authority of this permit, including assistants and ship's crew shall, upon request by authorized Monument enforcement personnel, promptly: a) allow access to and inspection of any vessel or facility used to carry out permit activities; b) produce for inspection any sample, record, or document related to permit activities, including data, logs, photos, and other documentation obtained under, or required by, this permit; and c) allow inspection on board the vessel or at the permittee's premises of all organisms, parts of organisms, and other samples collected under this permit.
16. It is prohibited to possess or consume alcohol on any National Wildlife Refuge, other than Midway Atoll in accordance with refuge regulations. Any violations will result in immediate removal of the offender from the Monument at the individual's own cost. Offenders may not be readmitted to the Monument.
17. All persons entering the Monument under the authority of this permit are responsible for the cost of removing themselves from the Monument at the conclusion of the term of the permit or upon revocation or suspension of the permit. All such persons are also responsible for the cost of removing themselves from the Monument in the event of a necessary medical evacuation, emergency evacuation, including weather, or for the cost of any necessary search and rescue operation.
18. Except as expressly required by applicable law, the Co-Trustees are not liable for any damages to equipment or injuries to the permittee and persons entering the Monument under the authority of this permit. The permittee and any person entering the Monument under the authority of this permit shall release, indemnify, and hold harmless the National Oceanic and Atmospheric Administration, the Department of Commerce, the U.S. Fish and Wildlife Service, the Department of the Interior, the United States Government, the State of Hawai'i, and their respective employees and agents acting within the scope of their duties from and against any claims, demands, actions, liens, rights, subrogated or contribution interests, debts, liabilities, judgments, costs, and attorney's fees, arising out of,

claimed on account of, or in any manner predicated upon the issuance of this permit or the entry into or habitation upon the Monument or as the result of any action of the permittee or persons participating in the activity authorized by this permit. In the event that a government employee, acting in his official capacity, is the permittee, or is entering the Monument under the authority of this permit, then he shall be subject to all applicable federal and State laws that pertain to claims by or against him predicated upon the issuance of this permit or entry into or habitation upon the Monument.

19. Monument managers or their designees may verbally require the permittee to modify or cease activities not identified in this permit if, in the opinion of the managers or designees, such action is necessary to limit disturbance to or protect Monument resources, to protect government equipment, or to ensure the safety of personnel. After providing such verbal instructions, the managers or designees will provide the permittee with a written modification, suspension or revocation to this permit at the earliest practicable opportunity. The failure to follow verbal instructions or modified permit terms, or to cease activities upon suspension or revocation of this permit, may constitute a violation of this permit, the Proclamation, the regulations, or other applicable law.
20. Disturbance of any cultural or historic property, including but not limited to Native Hawaiian cultural sites, burials, archaeological deposits, and WWII structures and features, such as stone walls and mounds, stone uprights, bunkers, batteries, camp sites, hospitals, housing areas, and radio towers; or the disturbance or collection of any historic or cultural materials and artifacts, including but not limited to bottles, dishes, cartridges, hospital materials, carvings, human remains, or Native Hawaiian bone or stone implements, found within the Monument, including the sale or trade in such items, is prohibited.
21. All Monument resources within the jurisdiction of the State of Hawai'i are held in trust under the Hawai'i State Constitution, Article XI, Sec. 1. The State of Hawai'i and the Government of the United States reserve ownership or control, as the case may be, of Monument resources, both living and nonliving, that may be taken or derived from those found in the Monument.
22. The permittee must satisfy the following reporting requirements:
 - a. For activities on State lands or within State waters, the permittee must submit a monthly report on the specified form.
 - b. The permittee must maintain a cruise log including, but not limited to: anchoring locations and small boat dive locations. The log must contain a description of cruise activities and the geographic locations of those activities. Within thirty (30) days after the end of the cruise or the expiration date of this permit, the permittee must submit the cruise log and a summary report of activities conducted under

this permit. The permittee having authority over the vessel must maintain a daily vessel discharge log, which must be submitted with the cruise log.

- c. Annual Report. The comprehensive annual report is a summary of all activities undertaken, including but not limited to: dates of all arrivals and departures from islands and atolls within the Monument, names of all persons involved in permitted activities, details of all specimens collected, handled, etc., any other pertinent information, GPS locations of all samples collected, transects, etc., results of work to date, copy of all data collected, and a proposed schedule of publication or production of final work. The report shall include a concise summary or abstract for use in Monument reports. Two hard copies and one electronic copy (Microsoft Word preferred, but not required), must be submitted to the Co-Trustees. The annual report is due by the end of the second week of January of the calendar year that follows the year that the permit was in effect or before a new permit is issued, whichever comes first. Subsequent annual reports are required each year until all data collected under research permits are fully analyzed.
 - d. The permittee must debrief the Co-Trustees following the completion of all activities in the Monument covered under this permit. The permittee must schedule the debriefing upon submitting the annual report.
 - e. The permittee must submit two copies of any article, publication, or other product created as a result of the information gained or work completed under this permit, including materials generated at any time in the future following expiration of this permit.
 - f. Any publications and/or reports resulting from activities conducted under the authority of this permit must include the notation that the activity was conducted under permit number PMNM-2008-062. This requirement does not apply to publications or reports produced by the news media.
 - g. All required submissions (including plans, logs, reports, and publications) shall be provided to the Monument official at the address indicated in General Condition #1.
23. All data acquired or created in conjunction with this permit will be submitted with the summary report, and annual report. Photographic and video material is considered data. The permittee retains ownership of any data, (including but not limited to any photographic or video material), derivative analyses, or other work product, or other copyrightable works, but the Federal Government and the State of Hawai'i retain a lifetime, non-exclusive, worldwide, royalty-free license to use the same for government purposes, including copying and dissemination, and making derivative works. The permittee will receive acknowledgment as to its ownership of the data in all future use. This requirement does not apply to data acquired or created by the news media.

24. Because photographic or video material that is created for personal use (i.e., not specifically acquired or created in conjunction with this permit) could unintentionally collect data that is also valuable for management purposes, the Co-Trustees reserve the right to request copies of any such material and the permittee agrees to provide a copy of such material within a reasonable time. The Co-Trustees may use such material for management purposes.
25. Any question of interpretation of any term or condition of this permit will be resolved by the Co-Trustees.

SPECIAL TERMS AND CONDITIONS:

1. This permit is not to be used for nor does it authorize the sale of collected organisms. Under this permit, the authorized activities must be for noncommercial purposes not involving the use or sale of any organism, by-products, or materials collected within the Monument for obtaining patent or intellectual property rights.
2. The permittee may not convey, transfer, or distribute, in any fashion (including, but not limited to, selling, trading, giving, or loaning) any coral, live rock, or organism collected under this permit without the express written permission of the Co-Trustees.
3. To prevent introduction of disease or the unintended transport of live organisms, the permittee must comply with the disease and transport protocols attached to this permit.
4. Tenders and small vessels must be equipped with engines that meet EPA emissions requirements.
5. Refueling of tenders and all small vessels must be done at the support ships and outside the confines of lagoons or near-shore waters in the State Marine Refuge.
6. No fishing is allowed in State Waters except as authorized under State law for subsistence, traditional and customary practices by Native Hawaiians.

Your signature below, as permittee, indicates that you accept and agree to comply with all terms and conditions of this permit. This permit authorizes only those activities listed above. This permit becomes valid on the date when signed by the last Monument Official. Please note that the expiration date on this permit will not be extended by a delay in your signing below.

Dr. Russell Brainard
National Oceanic and Atmospheric Administration
Pacific Islands Fisheries Science Center

Date

Attachments (8):

1. Proclamation 8031, June 15, 2006
2. 50 CFR Part 404
3. Hawaii Administrative Rules 13-60.5
4. Permit Acknowledgement Form
5. Maps of the Papahānaumokuākea Marine National Monument
6. Disease and Introduced Species Prevention Protocol
7. Sampling and Transport Protocol
8. Appendix 1 – Invertebrate Collections

Laura H. Thielen
Chairperson
Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawaii

Date

Susan White
Superintendent, U.S. Fish and Wildlife
Papahānaumokuākea Marine National Monument

Date

T. 'Aulani Wilhelm
Superintendent, NOAA
Papahānaumokuākea Marine National Monument

Date