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**APPENDIX E:**  
**Maintenance of Wilderness Character**  
**of the Proposed Hawaiian Islands Wilderness**

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## **Maintenance of Wilderness Character of the Proposed Hawaiian Islands Wilderness**

On June 13, 1974, the President transmitted to Congress a proposal to designate the 1,742 emergent acres of the Hawaiian Islands National Wildlife Refuge (HINWR), except Tern Island, as wilderness. Congress has not acted on this wilderness proposal. The proposal did not include the surrounding marine waters and submerged lands. Since the time the proposal was transmitted to Congress, the area has been managed as proposed wilderness by the FWS. In compliance with Departmental regulations, the FWS manages proposed wilderness to maintain its wilderness character. By policy, this means that management activities and uses are evaluated for consistency with the Wilderness Act and Department of the Interior (DOI) and U.S. Fish and Wildlife Service (FWS) regulations and policies.

The FWS, National Oceanic and Atmospheric Administration (NOAA), and the State of Hawai‘i (State) – as Co-Trustees of the Papahānaumokuākea Marine National Monument – propose to conduct or allow by permit Generally Prohibited Uses (GPU), as defined by the Wilderness Act of 1964, in the Proposed Hawaiian Islands Wilderness (PHIW) per the draft Monument Management Plan.

The FWS, as the manager of the proposed wilderness, is in the process of preparing an updated Minimum Requirement Analysis (MRA), in coordination with the Co-Trustees, to ensure that management decisions included in the Monument Management Plan will preserve the wilderness character of the proposed wilderness. The updated MRA will replace a more general programmatic MRA that is currently in effect. The MRA is a two-step process in which the wilderness manager first must determine whether a proposed activity (e.g., a FWS refuge management activity, or use by another agency or the public) is the minimum requirement necessary to administer the area as wilderness and achieve refuge purposes and wilderness objectives in accordance with the Wilderness Act. Secondly, the MRA identifies the minimum tool that will have the least impact on wilderness character. Once completed, a copy of the updated MRA will be posted on the Refuge web site and available in hardcopy upon request to the FWS.

### **Legal and Policy Considerations**

In areas designated by Congress as wilderness, the FWS implements the Wilderness Act of 1964, as amended (16 U.S.C. 1131-1136) through DOI regulations (Title 43 of the Code of Federal Regulations Part 19.6, 34 CFR 19.6), FWS regulations (50 CFR 35) and policy found in Part 6, Section 8, of its Refuge Manual (6 RM 8). Regulation at 43 CFR 19.6 states: “[r]egulations respecting administration and use of areas under the jurisdiction of the Secretary which may be designated as wilderness areas by statute shall be developed with a view to protecting such areas and preserving their wilderness character for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, with inconsistent uses held to a minimum.” For those areas pending designation as wilderness, it is FWS policy at 6 RM 8.1 that “...all wilderness areas and those outside Alaska pending Congressional establishment as wilderness on national wildlife refuges” are managed “...using the minimum tools necessary to safely accomplish the Service’s refuge objectives and preserve, to the extent practicable, the interaction of natural forces with the land. The minimum tool is defined as that combination of methods and equipment that least degrades the wilderness values of the land while meeting refuge objectives in a safe and economical manner” (6 RM 8.2). Minimum tool is alternatively defined at 6 RM 8.5 as “[t]he minimum action or instrument necessary to successfully, safely, and economically accomplish wilderness management objectives.”

### **Prohibited and Generally Prohibited Uses of Proposed Wilderness**

The Co-Trustees will consider how to implement the GPU policy in a MRA and management plan. Although the Wilderness Act of 1964 permits many activities in a wilderness area so long as they do not permanently alter the natural processes that interact with the land, Congress has superimposed constraints

on the manner in which the lands and waters that have been designated as wilderness could be administered in the course of managing to achieve refuge objectives (6 RM 8.7). These constraints are found in Section 4(c) of the Wilderness Act which includes strict prohibitions against permanent roads and commercial enterprises. This section also generally prohibits temporary roads, motor vehicles, motorized equipment or motorboats, mechanical transport, landing of aircraft, other forms of mechanical transport, and structures and installations, unless they are “necessary to meet minimum requirements for the administration of the area for the purpose of this Act” or for “measures required in emergencies involving the health and safety of persons within the area...” We evaluate whether these GPU are necessary to meet the minimum requirements exception and necessary to accomplish the purposes of the refuge, including Wilderness Act purposes, through an MRA.

Some terms require definition for common understanding. Mechanical transport is any device for moving people or material on, over, or through land, water, or air that has moving parts, provides a mechanical advantage to the user, and is powered by a living or nonliving power source. This includes, but is not limited to, sailboats, hang gliders, parachutes, bicycles, carts, and wagons. This does not include wheelchairs when used by those whose disabilities require wheelchairs for locomotion, skis, snowshoes, rafts, canoes, sleds, travois, or similar devices, or wheeled game carriers.

Motorized equipment includes machines that use or are activated by a motor, engine, or other power source, including, but not limited to, motorized portable tools, chain saws, aircraft, snowmobiles, generators, motorboats, and motor vehicles. It does not include small, handheld, portable devices such as shavers, wristwatches, flashlights, cameras, stoves, cellular telephones, radios, GPS units, or other similar small equipment or motorized wheelchairs designed solely for use by a mobility-impaired person for locomotion and that is suitable for use in an indoor pedestrian area.

A temporary structure is one with no permanent foundation that is easy to assemble, dismantle, and transport and is removed from a site between periods of actual use except as specifically permitted otherwise.

#### **Purpose of a Minimum Requirement Analysis**

An MRA documents and analyzes a specific activity, event, policy, improvement, etc., to determine whether it is indeed the minimum requirement and minimum tool necessary to administer the wilderness area and accomplish refuge purposes, including Wilderness Act purposes. At a minimum, FWS evaluates the direct, indirect, and cumulative impacts of alternatives on wilderness character. FWS considers alternatives where it:

1. Takes no management action inside the wilderness;
2. Uses no GPU inside the wilderness area; and
3. Conducts GPU activities inside and outside the wilderness.

The baseline for impact evaluation in an MRA, under the nondegradation principle, is the conditions prevailing at the time of wilderness designation or proposal. Mere convenience or cost is not a factor in determining the minimum tool.

There are several categories of use for the purposes of the MRA including refuge management activities conducted by the FWS (called ‘activities’ in the MRA), management activities conducted by our agency partners, access for traditional Native Hawaiian practices, and other public uses (called ‘uses’ in the MRA). The MRA does not suggest or determine the Appropriateness or Compatibility of proposed uses within the PHIW – merely whether the proposed use is the minimum requirement and minimum tool necessary to administer the area as wilderness and accomplish refuge purposes. Uses – as distinct from FWS refuge management activities – are evaluated as to whether they are Appropriate and Compatible. Findings of Appropriateness and Compatibility Determinations for uses are found in Appendix D.

The MRA being prepared in conjunction with the Monument Management Plan will evaluate whether the GPU proposed in the Plan employ the minimum tools necessary to achieve not only refuge purposes and wilderness objectives, but also Monument goals. This is necessary in order to ensure currently proposed GPU are properly evaluated and create thresholds of use as standards against which to assess future requests for Monument permits (see Strategy HMC-10).

The MRA analyses do not replace requirements for National Environmental Policy Act (NEPA) compliance and the three types of alternatives evaluated in the MRA are not intended to mirror the No Action and Preferred Alternatives found in NEPA Environmental Assessment associated with the attached Monument Management Plan.

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