

Public Hearing Notice for Proposed Rules to Create the
Northwestern Hawaiian Islands Marine Refuge

The Department of Land and Natural Resources (DLNR) will hold public hearings to discuss proposed establishment of a marine refuge in the Northwestern Hawaiian Islands in Hawaii Administrative Rules (HAR) Chapter 13-60.5, entitled "Northwestern Hawaiian Islands Marine Refuge." The hearings are scheduled to begin at 6:00 P.M. or shortly thereafter, as follows:

Wednesday, July 21, 2004, at McCoy Pavilion, Ala Moana Beach Park, 1201 Ala Moana Blvd.,
Honolulu, HI 96814

Thursday, July 22, 2004, at Maui Community College, Laulima Bldg. Room 107,
310 Kaahumanu, Kahului, HI 96732

Tuesday, July 27, 2004, at Lihue Public Library, 4344 Hardy Street, Lihue, HI 96766

Wednesday, July 28, 2004, at the King Kamehameha's Kona Beach Hotel, Honu Room,
75-5660 Palani Road, Kailua-Kona, Hawaii 96740

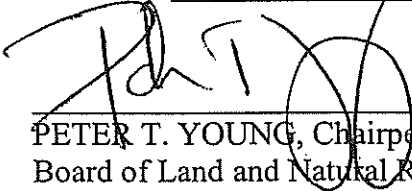
Thursday, July 29, 2004, at the Waiakea High School Cafeteria, 155 W. Kawili St., Hilo, HI
96720

The proposed marine refuge would establish long-term conservation measures and implement an entry permit program for the Northwestern Hawaiian Islands (NWHI) within the jurisdictional boundaries of the State of Hawaii. The proposed refuge would strengthen coordinated management in the region by supporting appropriate research, monitoring, enforcement, restoration, and marine debris removal. Fishing by hook-and-line methods would still be allowed in some specified areas. These proposed rules may minimally affect some fishing vessels currently operating within State waters in the NWHI.

All interested persons are urged to attend the public hearing to present relevant information and individual opinion for the DLNR to consider. Persons unable to attend or wishing to present additional comments may mail written testimony by August 13, 2004, to the Department of Land and Natural Resources, Division of Aquatic Resources (DAR), 1151 Punchbowl Street, Room 330, Honolulu, Hawaii 96813.

Anyone with a hearing impairment who desires to attend the public hearing may request assistance of a sign language interpreter. The request may be made in writing (to the DAR address in the preceding paragraph) or by calling (808)587-0100 (voice or TDD) in Honolulu. The request will need to be received at least 72 hours before the hearing is scheduled to start.

Additional information or a copy of the proposed rule will be mailed at no charge upon receipt of verbal or written request to DAR. The proposed rule may also be viewed at our website at www.state.hi.us/dlnr/dar.



PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

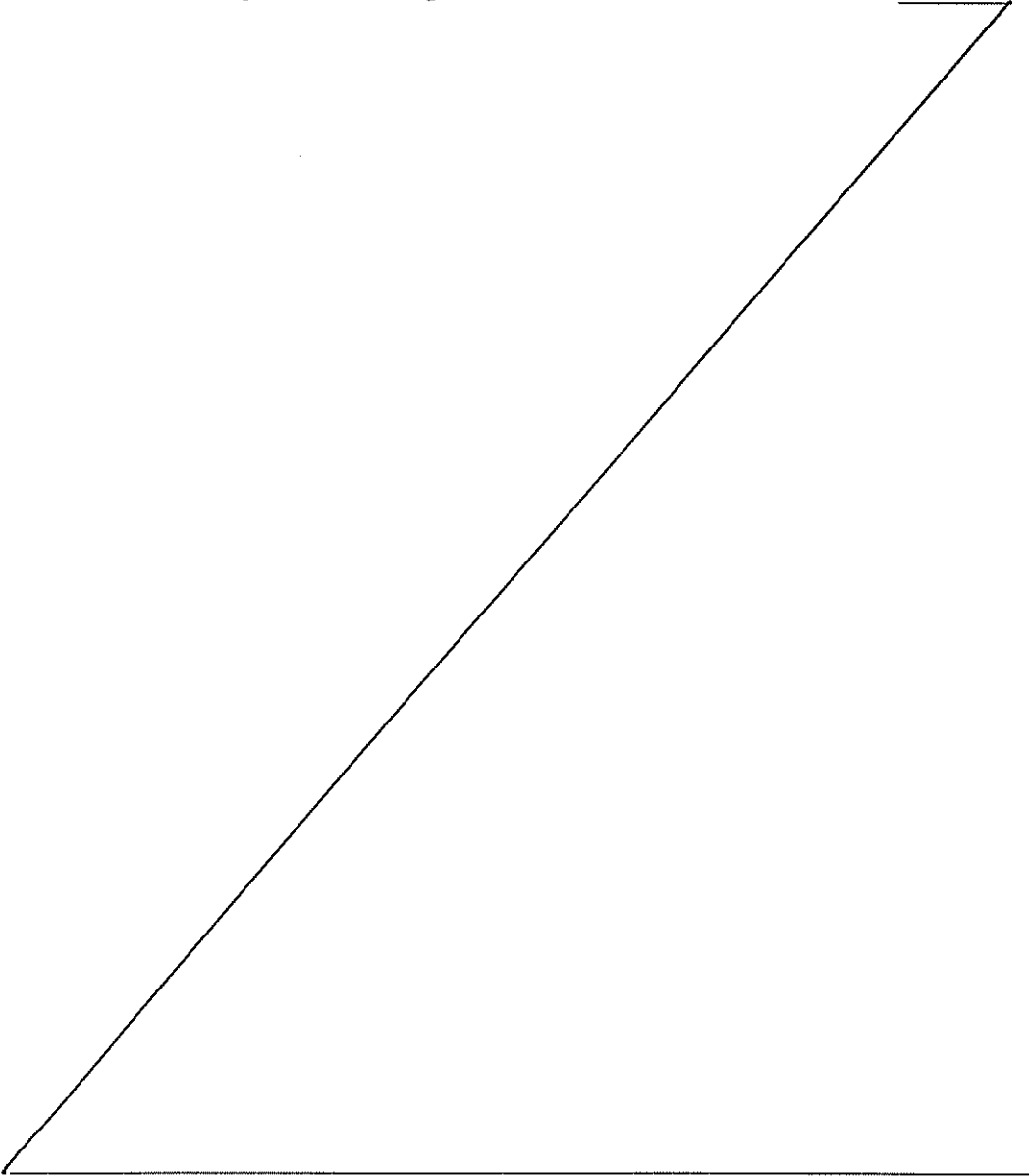
Honolulu Star-Bulletin (6/20/2004)
Honolulu Advertiser (6/20/2004)
Maui News (6/20/2004)
The Garden Isle (6/20/2004)
West Hawaii Today (6/20/2004)
Hawaii Tribune-Herald (6/20/2004)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-60.5
Hawaii Administrative Rules

(date)

1. Chapter 60.5 of Title 13, Hawaii
Administrative Rules, entitled "Northwestern Hawaiian
Islands Refuge" is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4

FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.5

NORTHWESTERN HAWAIIAN ISLANDS MARINE REFUGE

- \$13-60.5-1 Intent and purpose
- \$13-60.5-2 Boundaries
- \$13-60.5-3 Definitions
- \$13-60.5-4 Prohibited activities
- \$13-60.5-5 Permitted activities
- \$13-60.5-6 Permits
- \$13-60.5-7 Penalties

\$13-60.5-1 Intent and purpose. The department intends:

- (1) To establish a marine refuge in the Northwestern Hawaiian Islands for the long-term conservation and protection of the unique coral reef ecosystems and the related marine resources and species, to ensure their conservation and natural character for present and future generations;
- (2) To manage, preserve, protect, and conserve the unique resources in the marine refuge, using the best available science and a precautionary management approach to resource protection to minimize risks of possible adverse effects on the regional ecosystem, its biodiversity or its indigenous wildlife in this area, especially where data is limited;

- (3) To implement an entry permit program for the area that will cause no harm to the refuge resources and be consistent with the management programs in the adjacent National Wildlife Refuge and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve for this area, that preserves the area by limiting entries and restricting access to specific areas;
- (4) To support, promote, and coordinate appropriate scientific research and assessment, and long-term monitoring of the refuge resources, and the impacts or threats thereto from human and other activities, to help better understand, protect, and conserve consistent with applicable law;
- (5) To allow Native Hawaiian cultural, subsistence, and religious practices, and identification and coordination of Native Hawaiian interests, that are consistent with applicable law and the long-term conservation and protection of the resources of the marine refuge;
- (6) To coordinate management and process permit review among the department, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the National Ocean Service, and other entities, as appropriate, to provide comprehensive conservation of the coral reef ecosystem and related marine resources and species throughout the area, consistent with applicable authorities and management principles, including cleanup and prevention of marine debris, restoration or remediation of degraded or injured resources, enforcement and surveillance, management of potential tourism, recreational, and commercial activities and actions needed to ensure they do not degrade the resources or diminish the natural character of the marine refuge; and
- (7) To be consistent with federal law where federal law is applicable. [Eff]

(Auth: HRS §§187A-5, 188-37, 188-53) (Imp:
HRS §§187A-8, 188-37, 188-53)

§13-60.5-2 Boundaries. For enforcement purposes, the Northwestern Hawaiian Islands marine refuge area shall include, but is not limited to, the islands, reefs, and shoals, and their appurtenant reefs and all state waters extending three miles seaward of any coastline beginning and including Nihoa Island and Kure Atoll, but excluding Midway Atoll, as shown as fisheries refuges on exhibit "A", map of Nihoa Island (date 8/10/02); exhibit "B", map of Necker Island (date 8/10/02); exhibit "C", map of French Frigate Shoals; exhibit "D" (date 8/10/02), map of Laysan Island; exhibit "E" (date 8/10/02), map of Maro Reef; exhibit "F" (date 8/10/02), map of Gardner Pinnacles; exhibit "G" (date 8/10/02), map of Lisianski Island; exhibit "H" (date 8/10/02), map of Pearl and Hermes Atoll (date 8/10/02); and exhibit "I" (8/10/02), a map of Kure Atoll, located at the end of this chapter, and made a part of this chapter. [Eff] (Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§188-37, 188-53)

§13-60.5-3 Definitions. As used in this chapter: "Refuge" means the Northwestern Hawaiian Islands marine refuge.

"Board" means the board of the department of land and natural resources.

"Department" means the department of land and natural resources.

"Documentation" means documents or a number that verifies that the United States coast guard has recorded the vessel pursuant to 46 C.F.R. Part 46 and other applicable federal laws.

"Emergent land" means any land that is exposed, or would be exposed, above the surface of the water at the lowest tide.

"Extractive uses" means any method, means, actions or activity that removes natural or cultural resources from the refuge.

"Marine life" means any type of species of

saltwater fish, shellfish, mollusks, crustaceans, coral, or other marine animals, including any part, product, egg, or offspring thereof; or seaweeds or other marine plants, including any part, product, seed, or root thereof, and protected species of turtles, marine mammals and seabirds.

"Non-extractive" means any action that does not involve the taking of marine life.

"Registration" means to assign a number to a vessel pursuant to chapter 13-241.

"Scientific purposes" means observing, identifying, describing, investigating, collecting marine life and abiotic samples for analysis and study and theoretically explaining natural phenomena, including the principles and processes necessary to form concepts, to conduct observations or experiments, and to validate hypotheses by observation or experiment.

"State marine waters" means the area extending from the upper reaches of the wash of the waves on shore seaward to the limit of the State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary.

"Subsistence" means harvesting for direct personal or family consumption and not for commercial purposes.

"Take" means to fish for, catch, capture, and confine, collect, or harvest or attempt to fish for, catch, capture, confine, collect, or harvest marine life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, confine, or harvest, or to attempt to fish for, catch, capture, confine, collect, or harvest, marine life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, captured, confined, collected, or harvested, shall be construed as taking.

"Traditional and customary practices" means Native Hawaiian traditional and customary practices as defined under the Hawaii State Constitution, statutes and case law. [Eff] (Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§187A-5, 188-37, 188-53)

§13-60.5-4 Prohibited activities. Unless otherwise authorized by law, it is unlawful for any person:

- (1) To enter the refuge without a permit issued pursuant to Section 13-60.5-6 except for freedom of navigation, innocent passage, interstate commerce, and activities related to national defense or enforcement, foreign affairs, and in response to emergencies;
- (2) To take for the purpose of sale or sell marine life taken from the refuge and to take marine life in violation of section 13-60.5-5;
- (3) To set foot on shore, on any emergent land or reef;
- (4) To engage in any activity, including the anchoring of a vessel that can or does result in damaging or destroying coral;
- (5) To discharge from a vessel as defined in federal and state law; and
- (6) To engage in any activity that is not authorized by this chapter. [Eff _____]
(Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§187A-5, 188-37, 188-53)

§13-60.5-5 Permitted activities. (a) A person shall, with a valid permit or authorization issued from the board, enter the refuge, subject to the restrictions of subsection (d).

(b) A person shall only enter the refuge to engage in activities that do no harm and do not degrade the coral reef ecosystem, related marine resources and species, as specifically authorized by law, for the following purposes:

- (1) Scientific or education purposes;
- (2) Non-extractive purposes undertaken to further the knowledge of resources or which provide for enhanced resources protection or benefit resource management; and
- (3) Subsistence, traditional and customary practices by Native Hawaiians consistent with the long-term preservation of the refuge resources in accordance with permit

conditions specified in section 13-60.5-6.

(c) Even with a valid permit, the department may prohibit entry into any location or locations within the refuge as it may deem appropriate to conserve or manage resources.

(d) No entry is allowed for extractive activities, except as may be permitted in subsection (b) in the following areas:

- (1) All State marine waters surrounding Nihoa Island, Necker Island, French Frigate Shoals, Laysan Island, Maro Reef, Gardner Pinnacles, Lisianski Island, Pearl and Hermes Atoll, and Kure Atoll in the marine refuge as defined in section 13-60.5-2 and shown on exhibits "A", "B", "C", "D", "E", "F", "G", "H" and "I", respectively, located at the end of this chapter; [Eff _____] (Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§187A-5, 187A-6, 188-37, 188-53)

§13-60.5-6 Permits. (a) The board shall issue permits to enter the refuge and conduct activities as provided in section 13-60.5-5, subject to the following conditions:

- (1) Receipt of complete information the department shall require on an application provided by the department that lists the applicant's name, street and mailing addresses, number of persons entering with the applicant, vessel registration number or documentation number, name and length of the vessel, proposed dates of entry, purpose of entry, area of activities, and other pertinent information;
- (2) A public comment period during the board hearing after receipt of a complete application;
- (3) When reviewing an application, the board shall consider whether the applicant has violated or not complied with any term or condition of previous permits issued by the board under this chapter. The board shall deny an application based on a past violation

or non-compliance with any term or condition of a permit issued under this chapter; and

(4) Approval may be granted by the board after an assessment of the appropriateness of the activity described in the application based on:

- (i) Factors that the board and department consider relevant to section 13-60.5-1, the intent and purpose of this chapter, and
- (ii) All applicable state and federal laws, including written proof of compliance with the federal permit requirements governing commercial and recreational fishing in the adjacent waters.
- (iii) Submission of an application or the receipt of public comments on the application shall not obligate the board to issue a permit or constitute a right on the part of an applicant to receive a permit.

(b) The board may issue a permit for a limited term, subject to this section, and an approved permit shall not be valid for longer than one year from date of issuance. The issuance of a permit shall not constitute a vested right to receive additional or future permits.

(c) Permits are non-transferable.

(d) The permit holder shall submit monthly access reports on forms provided by the department for activities engaged in while in the refuge, with the information from any report remaining confidential as proprietary information.

(e) The board may require and impose such terms and additional conditions in the permit as it deems necessary to fulfill the intent and purpose of this chapter, such as a vessel monitoring system as a future requirement once the technology and capacity is sufficiently advanced or requirements for vessel hull inspections to reduce introductions of alien species.

(f) The board may determine that the protection and conservation of resources in all or a part of the area requires cessation of some or all of the activities allowed by permit especially in areas where

the cumulative impacts of permitted activities may be concentrated. This includes considerations of damage to the ecosystem integrity such as direct harm to habitat and/or reduction in biodiversity. After notification by any reasonable means to a permit holder of such determination, the permit will automatically expire on the date provided in the notification.

(g) There is no right to a renewal or re-issuance of a permit.

(h) The board may revoke a permit for an infraction of any term or condition of a permit.

(i) Any person whose permit has been revoked shall not be eligible to apply for another permit until the expiration of one year from the date of revocation. [Eff _____] (Auth: HRS §§187A-5, 188-37, 188-53) (Imp: HRS §§187A-5, 188-37, 188-53)

§13-60.5-7 Penalties. Any person violating a provision of this chapter, or the terms and conditions authorized by rule or statute in any permit under this chapter, shall be punished as provided in sections 187A-12.5, 187A-13, and 188-70, HRS, and as may be otherwise provided by law." [Eff _____] (Auth: HRS §§187A-5, 187A-12.5, 187A-13, 188-70) (Imp: HRS §§187A-12.5, 187A-13, 188-70)

2. The adoption of chapter 13-60.5, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____, and filed with the Office of the Lieutenant Governor.

APPROVED AS TO FORM:

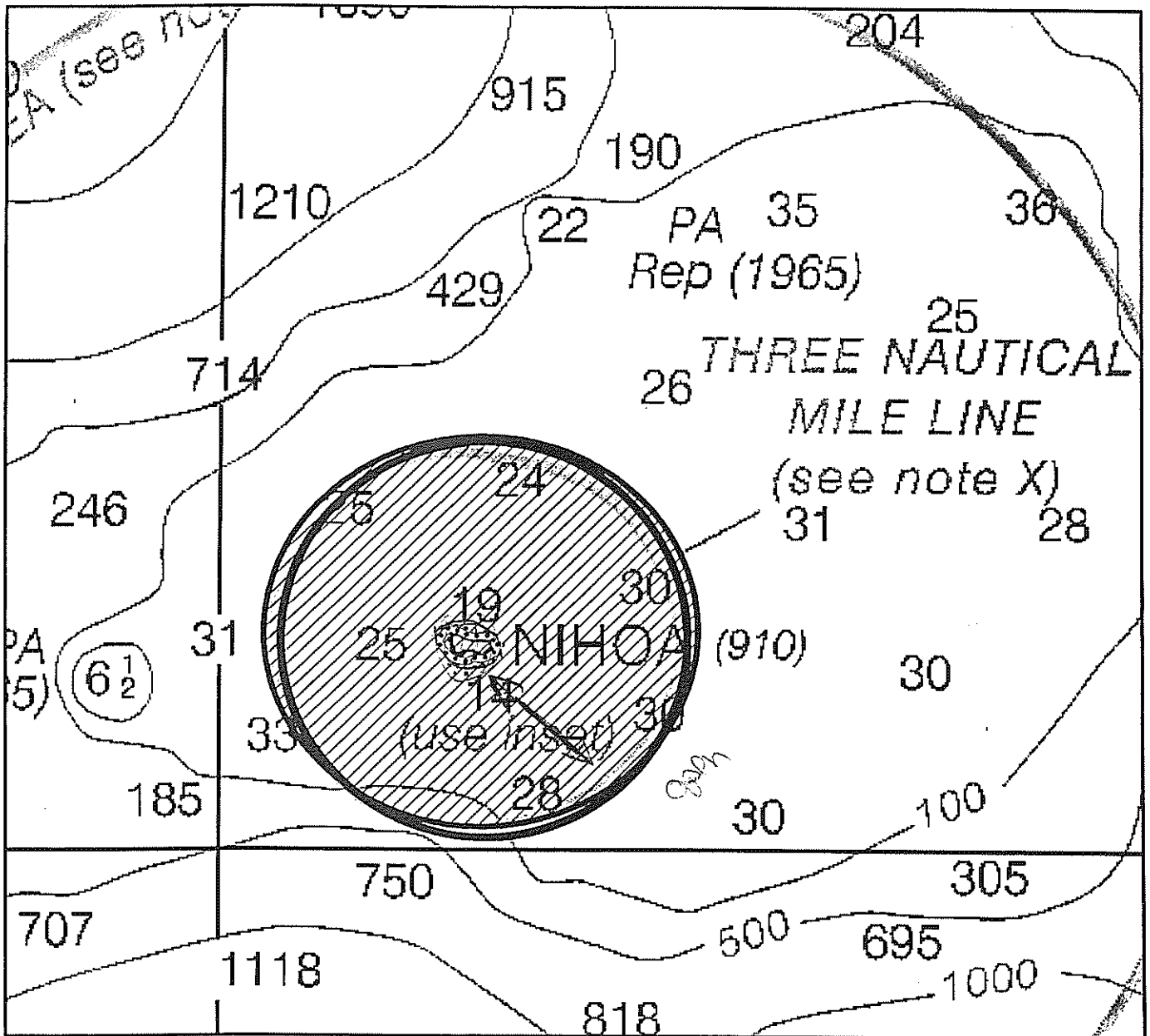
Deputy Attorney General

PETER T. YOUNG, Chairperson
Board of Land and Natural
Resources

EXHIBIT "A"

Nihoa Island
Exhibit "A" 1/26/04

1:201,000



State Waters



3 nautical mile boundary



Closure to all extractive uses 3 miles and shallower

Hawaiian Islands National Wildlife Refuge



Concurrent with State 10 fathoms and shallower



Division of Aquatic Resources
Department of Land and Natural Resources
State of Hawaii

"Fish for the Future"

Overview Map of the Northwestern Hawaiian Islands

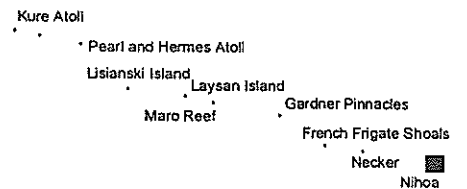


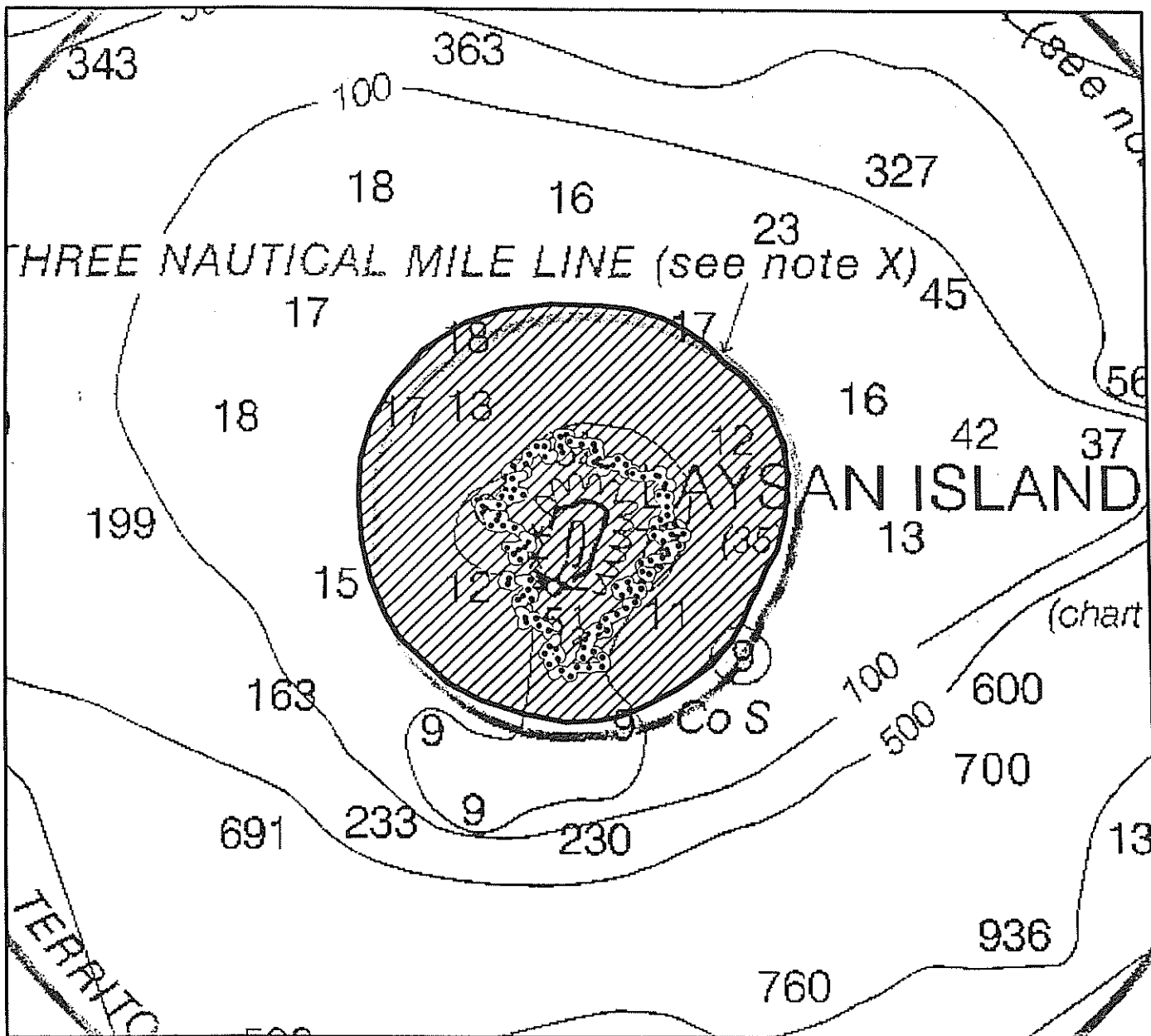
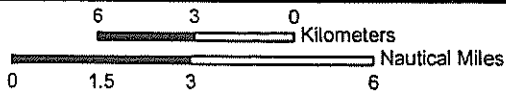
EXHIBIT "D"

Laysan Island

Exhibit "D"

1/26/04

1:221,000



State Waters



3 nautical mile boundary



Closure to all extractive uses all State waters

Hawaiian Islands National Wildlife Refuge



Concurrent with State 10 fathoms and shallower



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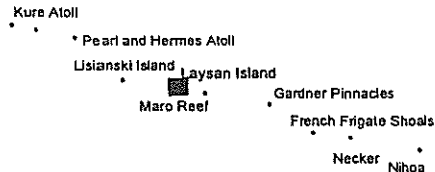


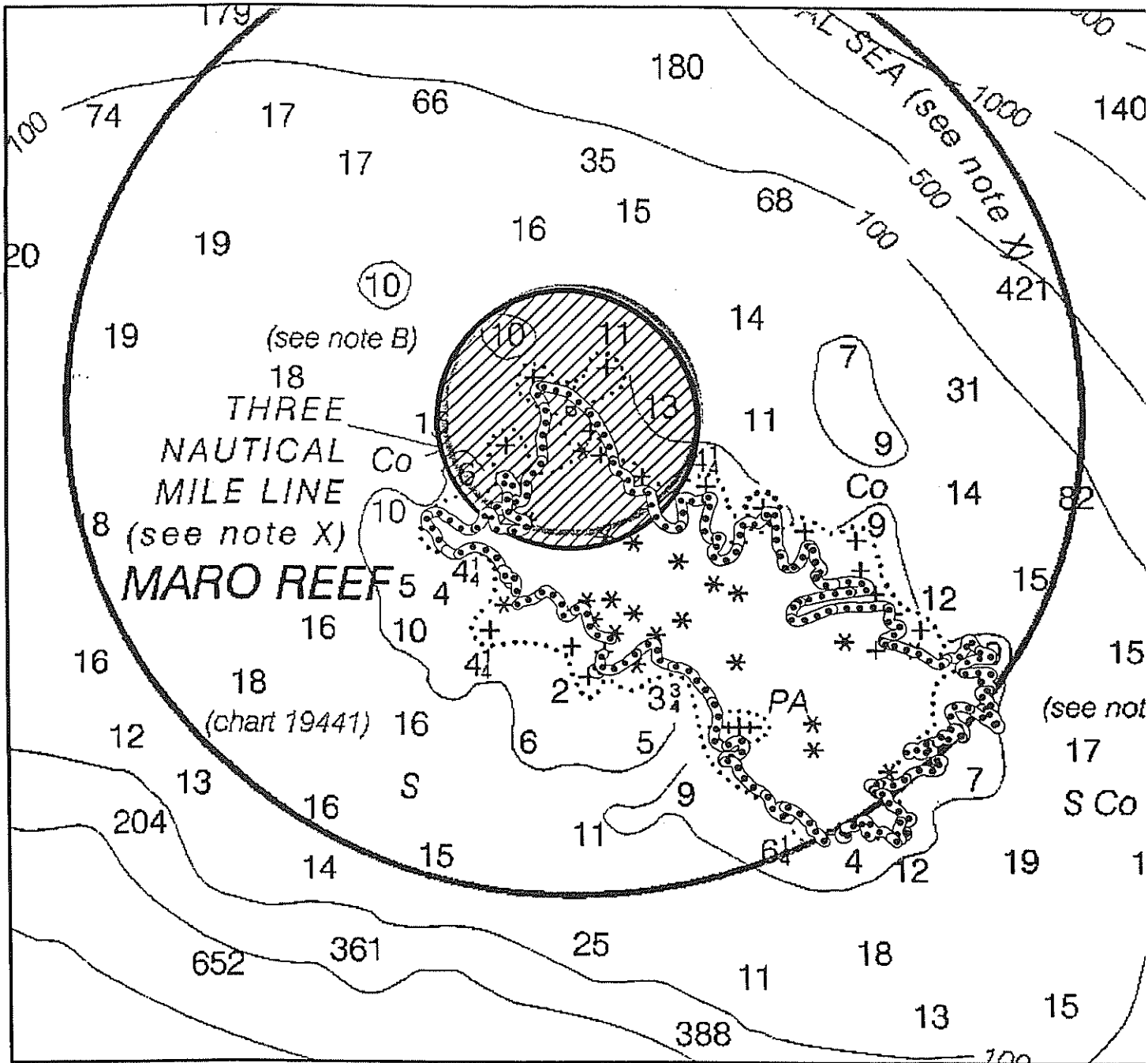
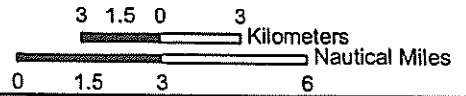
EXHIBIT "E"

Maro Reef

Exhibit "E"

1/26/04

1:300,000



State Waters

3 nautical mile boundary

Closure to all extractive uses all State waters

Hawaiian Islands National Wildlife Refuge

Some areas concurrent with State 10 fathoms and shallower



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Department of Land and Natural Resources
State of Hawaii

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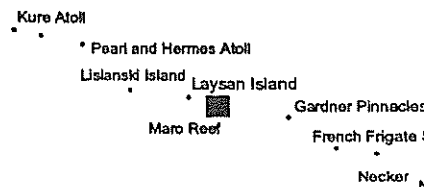
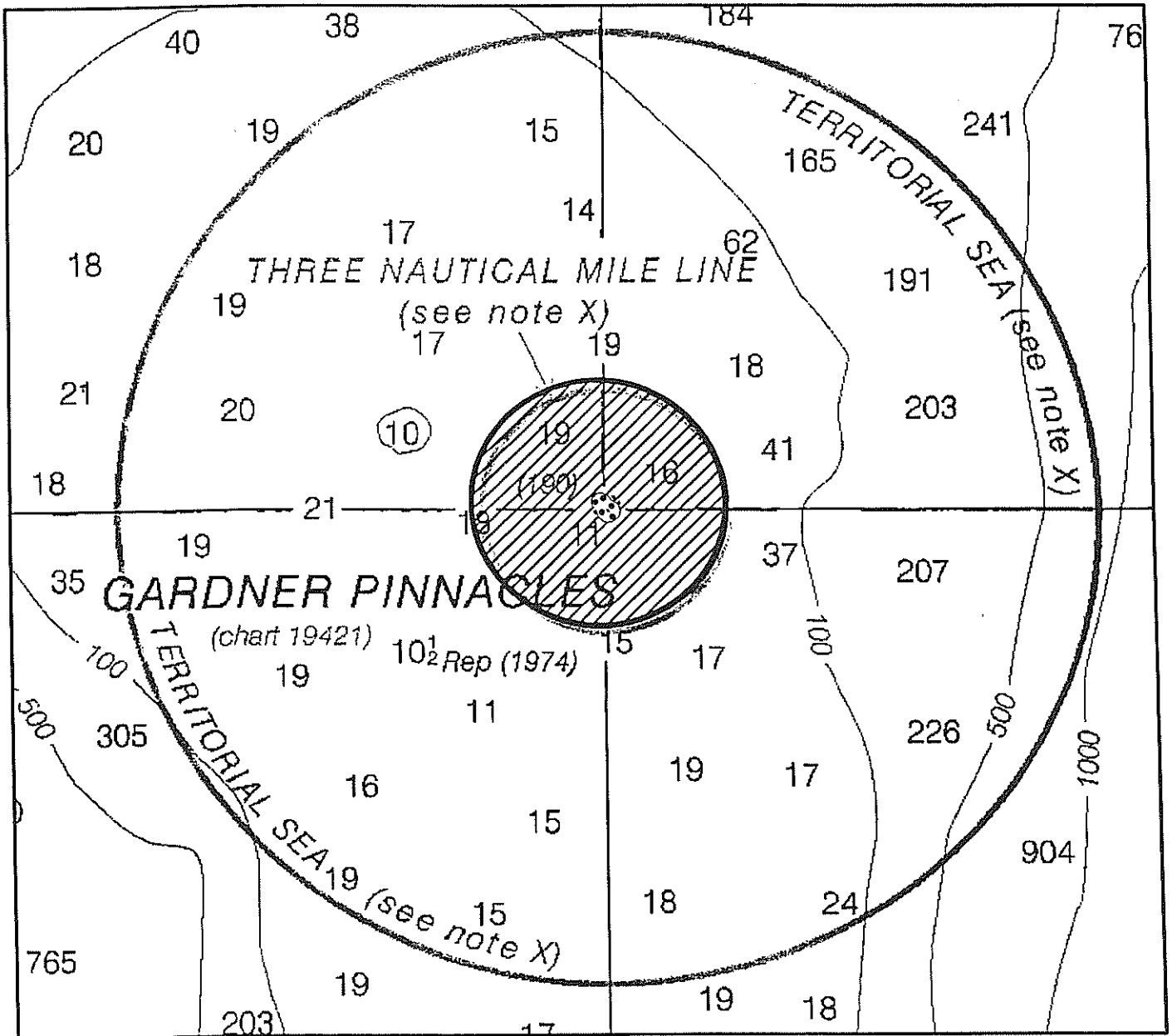
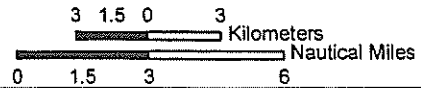




EXHIBIT "F"

Gardner Pinnacles


Exhibit "F" 1/26/04 1:301,000



State Waters

-  3 nautical mile boundary
-  Closure to all extractive uses all State waters

Hawaiian Islands National Wildlife Refuge

-  Concurrent with State 10 fathoms and shallower



Division of Aquatic Resources
Department of Land and Natural Resources
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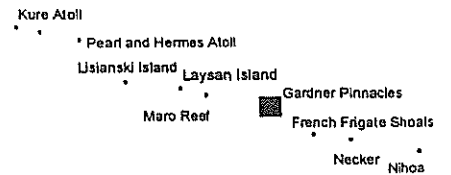


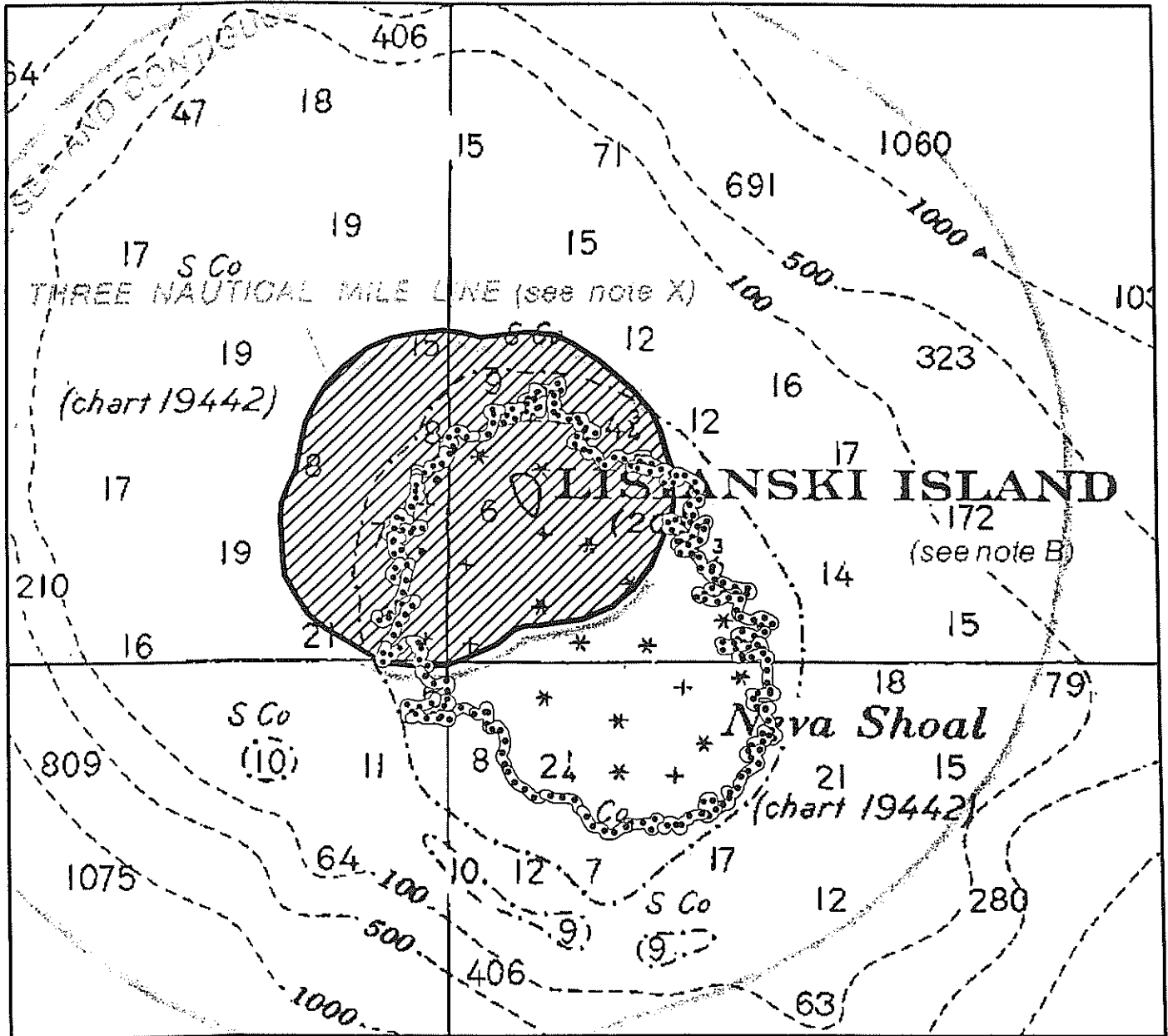
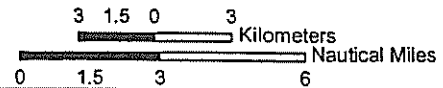
EXHIBIT "G"

Lisianski Island

Exhibit "G"

1/26/04

1:281,000



State Waters



3 nautical mile boundary



Closure to all extractive uses all State waters

Hawaiian Islands National Wildlife Refuge



Some areas concurrent with State 10 fathoms and shallower



Division of Aquatic Resources
Department of Land and Natural Resources
State of Hawaii

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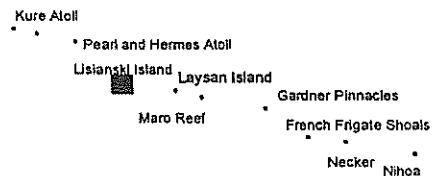
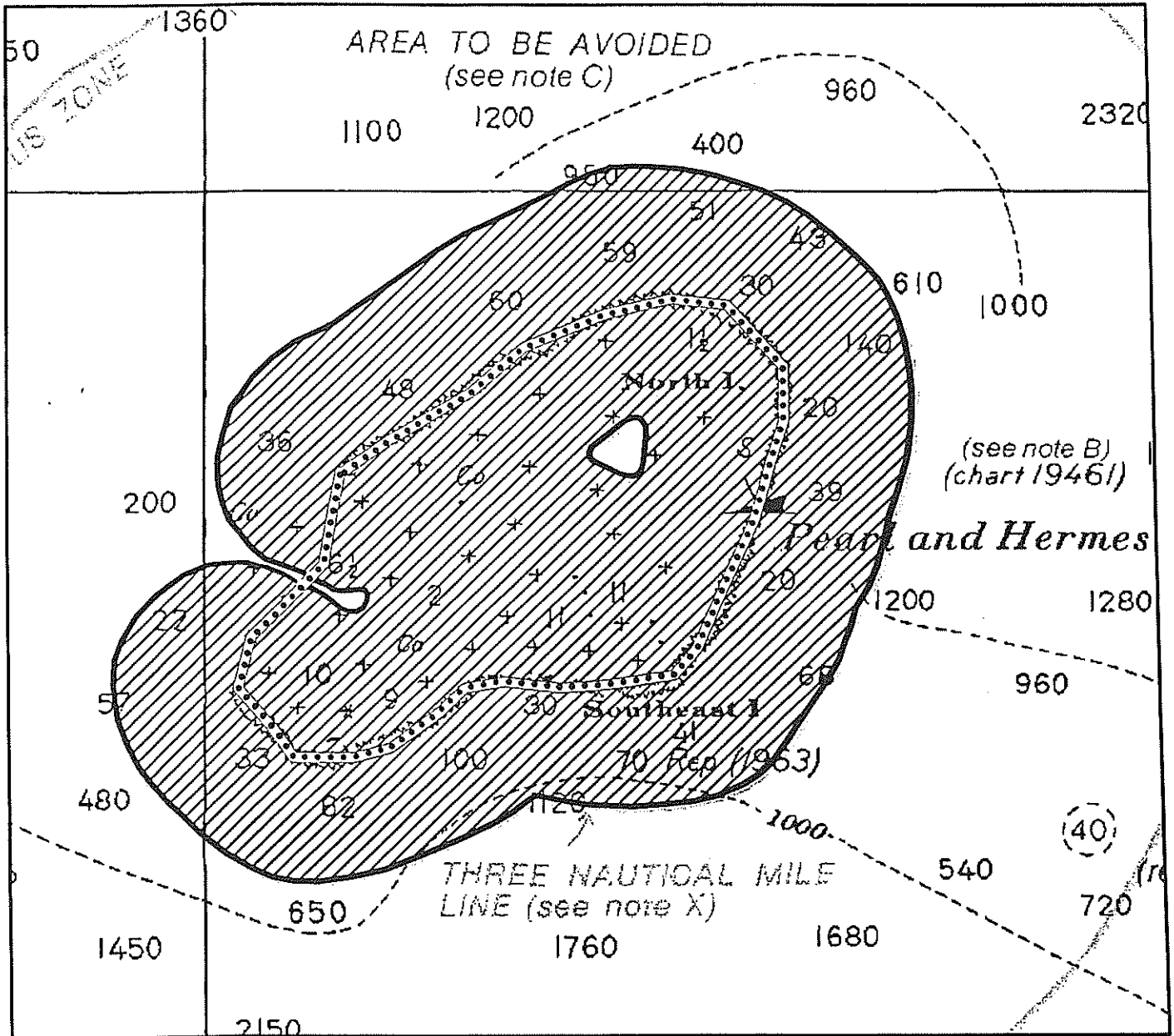
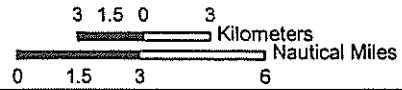


EXHIBIT "H"

Pearl and Hermes Atoll

Exhibit "H" 1/26/04 1:320,000



State Waters



3 nautical mile boundary



Closure to all extractive uses all State waters

Hawaiian Islands National Wildlife Refuge



Concurrent with State 10 fathoms and shallower



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Department of Land and Natural Resources
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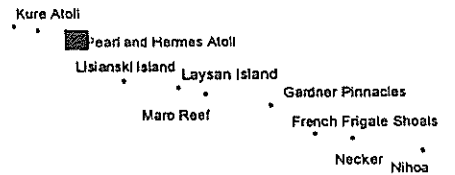


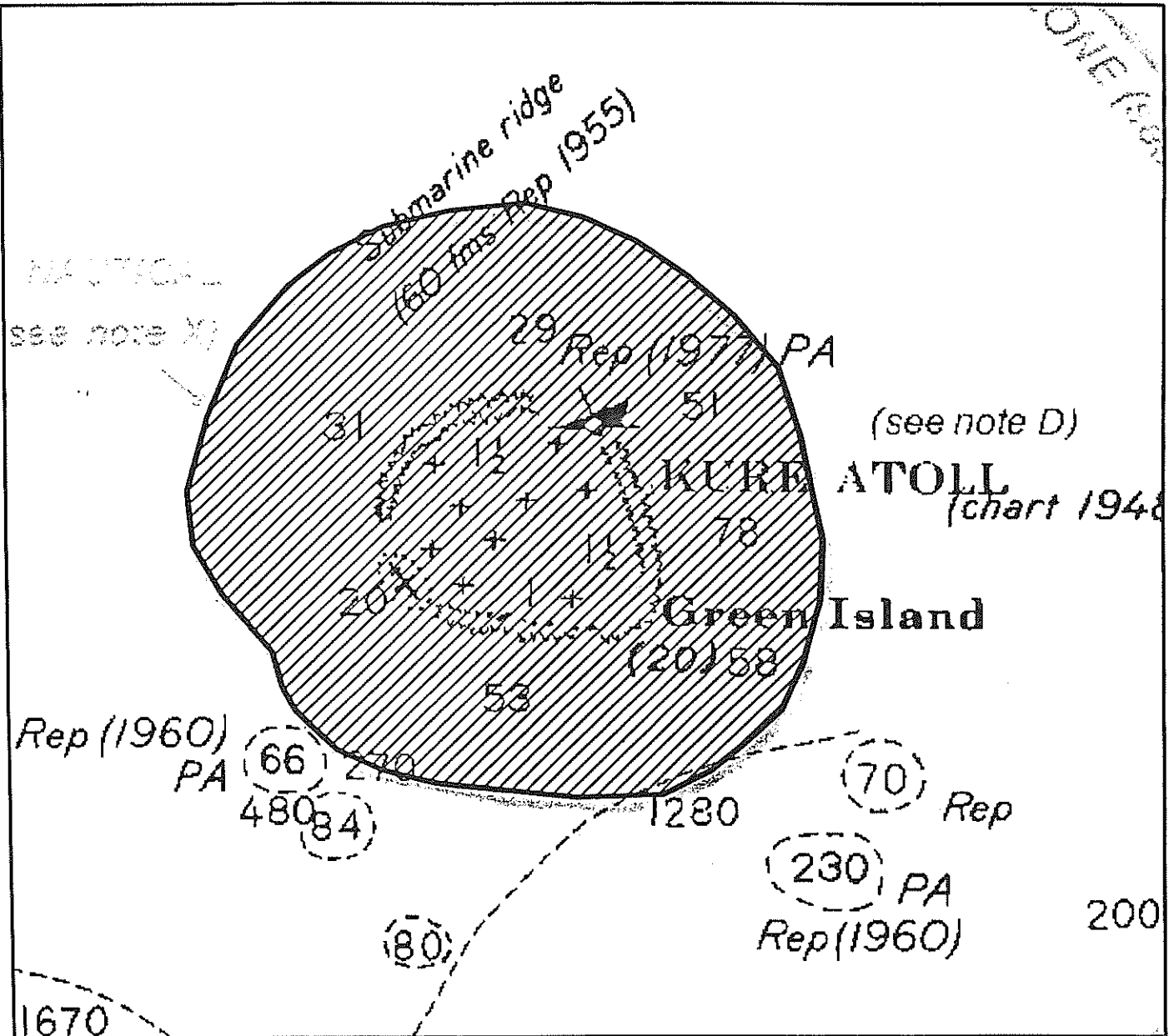
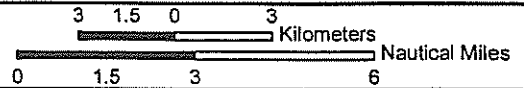
EXHIBIT "I"

Kure Atoll

Exhibit "I"

1/26/04

1:320,000



State Waters



3 nautical mile boundary



Closure to all extractive uses all State waters



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