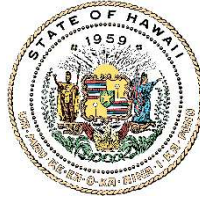


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

December 16, 2024

Ms. Mary Alice Evans, Director
Office of Planning and Sustainable Development
c/o Environmental Review Program
235 South Beretania Street, 6th Floor
Honolulu, Hawaii 96813

SUBJECT: Final Environmental Impact Statement for the proposed Papahānaumokuākea National Marine Sanctuary

Dear Ms. Evans,

The State of Hawai'i through the Department of Land and Natural Resources (DLNR) requests the Final Environmental Impact Statement (FEIS) for the proposed Papahānaumokuākea National Marine Sanctuary overlay of the marine areas of Papahānaumokuākea Marine National Monument be published in the December 23, 2024 issue of the Environmental Review Program periodic bulletin, The Environmental Notice. The required publication forms and files, including the completed ERP publication form and an electronic copy of the FEIS, have been provided via the ERP online submission platform.

The proposed action is a continuation of the national marine sanctuary designation process, lead by the National Oceanic and Atmospheric Administration (NOAA) as directed by Congress, for the marine areas of Papahānaumokuākea, the Northwestern Hawaiian Islands. The project site falls under the Conservation Land Use District, (Resource and Protective Subzones), has no applicable Tax Map Keys, and is located within the Honolulu judicial district. Under the provisions of Act 172 (SLH 2012) and pursuant to Hawaii Revised Statutes (HRS) § 343-5(e) and Hawaii Administrative Rules (HAR) § 11-200.1-14(d)(2), DLNR is authorized to conduct an environmental impact statement (EIS) level analysis. In accordance with the 2017 Memorandum of Agreement between the Co-Trustees for Promoting Coordinated Management of the Papahānaumokuākea Marine National Monument, NOAA and DLNR cooperated with the Office of Hawaiian Affairs (OHA) and the U.S. Fish and Wildlife Service (FWS) on a single joint EIS that meets both the National Environmental Policy Act (NEPA) and Hawaii Environmental Policy Act (HEPA) requirements as allowed under HAR § 11-200.1-31.

On March 1, 2024, NOAA published a Notice of Proposed Rulemaking (89 FR 15272) to release the draft rule, draft EIS, and draft management plan; and to request public comments on the

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

CIARA W.K. KAHAHANE
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
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CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

proposed sanctuary designation documents in the Federal Register. On March 8, 2024 and March 23, 2024, the draft EIS was also published in The Environmental Notice, per HRS Chapter 343-3(c). The State of Hawai‘i public comment period took place over the course of 60 days from March 8–May 7, 2024. Comments were accepted during two virtual and nine in-person public meetings on O‘ahu, Kaua‘i, Hawai‘i Island, Maui, and Moloka‘i; through the Federal eRulemaking Portal; and by traditional mail. An estimated 237 people attended the 11 public meetings and 61 individuals provided oral comments. During the public comment period, more than 13,900 written comments were received from individuals, organizations and agencies, the overwhelming majority in support of sanctuary designation. In preparing the FEIS, final management plan, and final rule, NOAA and DLNR considered comments received on the draft EIS, identified substantive comments, and provided responses commensurate with the comment. A summary of these comments and the corresponding responses from NOAA and DLNR are provided in Appendix K. In response to these substantive comments, NOAA and DLNR clarified information and made changes to the FEIS and the draft sanctuary management plan, highlighted in yellow. The final rule is also consistent with these changes.

Through the analysis in the FEIS, the agencies have found that the preferred alternative would provide numerous beneficial impacts, including increased protection and conservation of resources and improved coordination of conservation and management. The agencies also considered the potential adverse impacts of the preferred alternative and anticipate that there would be no significant adverse impacts to biological and physical resources, cultural and historic resources, or socioeconomic resources. Identification of Alternative 1 as the preferred alternative is based on the need for additional resource protection, scientific research, and public education in areas that would be excluded by selecting the boundaries of Alternatives 2 or 3. Alternative 1 includes the Monument Expansion Area, an area which would benefit from the establishment of a NOAA permitting process and the promulgation of sanctuary regulations to protect resources. Alternative 1 also includes the waters of Midway Atoll and Hawaiian Islands National Wildlife Refuges, which are the areas of the proposed sanctuary subject to the highest level of human activity.

Should you have any questions about the FEIS, you may contact Edward (Luna) Kekoa, a Program Manager with the Division of Aquatic Resources, edward.l.kekoa@hawaii.gov.

Sincerely,



DAWN N.S. CHANG
Chairperson
Board of Land and Natural Resources

From: webmaster@hawaii.gov
To: [DBEDT OPSD Environmental Review Program](#)
Subject: New online submission for The Environmental Notice
Date: Monday, December 16, 2024 3:27:17 PM

Action Name

Proposed Papahānaumokuākea National Marine Sanctuary

Type of Document/Determination

Final environmental impact statement (FEIS)

HRS §343-5(a) Trigger(s)

- (1) Propose the use of state or county lands or the use of state or county funds
- (2) Propose any use within any land classified as a conservation district
- (3) Propose any use within a shoreline area
- (4) Propose any use within any historic site as designated in the National Register or Hawai'i Register

Judicial district

Honolulu, O'ahu

Tax Map Key(s) (TMK(s))

N/A

Action type

Agency

Other required permits and approvals

CZM, NHPA, HRS CH 6E

Proposing/determining agency

Department of Land and Natural Resources

Agency jurisdiction

State of Hawai'i

Agency contact name

Edward (Luna) Kekoa

Agency contact email (for info about the action)

edward.l.kekoa@hawaii.gov

Agency contact phone

(808) 587-0100

Agency address

1151 Punchbowl Street #330
Honolulu, Hawaii 96813
United States
[Map It](#)

Accepting authority

Office of the Governor, State of Hawai'i

Accepting authority contact name

Josh Green

Accepting authority contact email or URL

<https://governor.hawaii.gov/contact-us/contact-the-governor/>

Accepting authority contact phone

(808) 586-0034

Accepting authority address

415 South Beretania Street
Honolulu, Hawaii 96813
United States
[Map It](#)

Is there a consultant for this action?

No

Action summary

NOAA proposes to designate marine portions of Papahānaumokuākea Marine National Monument (Monument) as Papahānaumokuākea National Marine Sanctuary to protect nationally significant biological, cultural, and historical resources. The State of Hawai'i (the State) through the Department of Land and Natural Resources Division of Aquatic Resources proposes to include all State waters. The purpose of this action is to provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources. The proposed action would supplement the existing provisions for management of the Monument and further protect resources in the Northwestern Hawaiian Islands. The preferred alternative boundary includes the marine environment from the shoreline of the islands and atolls seaward to 200 nautical miles, including all State waters, approximately 582,570 square miles (439,910 square nautical miles).

Attached documents (signed agency letter & EA/EIS)

- [FEIS-Agency-Letter-part-1-signed2.pdf](#)
- [PNMS-FEIS-and-Appendices-Combined-updated1.pdf](#)

Shapefile

- The location map for this Final EIS is the same as the location map for the associated Draft EIS.

Action location map

- [Action_Location_022620242.zip](#)

Authorized individual

Kelli Ann Kobayashi

Authorization

- The above named authorized individual hereby certifies that he/she has the authority to make this submission.

PMNM Environmental Impact Statement (EIS) Preamble

Kekuewa Kikiloi, Nohopapa Hawai‘i

From the research that has been completed over the past several decades, no one can dispute that Native Hawaiians have historical connections to all parts of our homeland, including the Northwestern Hawaiian Islands, encompassing all the islands, atolls, shoals, coral reefs and submerged sea mounts, as well as the ocean waters that surround them. This region is rooted in Native Hawaiian creation and origin, as a cosmological place where all life began, and returns to after death.

While the islands themselves were focal points for landfalls and destinations for travel, the ocean and open waters were equally important and must be acknowledged as carrying a multitude of values that are sometimes not as obvious. A traditional understanding of the ocean as a cultural seascape is essential to understanding the need for designation of the marine portions of Papahānaumokuākea Marine National Monument as a National Marine Sanctuary. The ocean was not perceived as an unknown empty space, a meaningless void, or obstacle on a map that kept our island communities isolated and marginalized but, rather, it was conceived as a viable pathway of movement, an access point of mobility, and one that minimized risk in the most uncertain of environments that exist on the planet. The ocean, therefore, will always be an integral part of our identity, our being, and an essential dimension to our cognitive understanding of the world.

It is indeed not an empty space, but a living entity—a godly deity imbued with cultural meaning—and a home for a host of marine and avian life that continue to be connected to us in a genealogical web of ecological kinship. It is our duty to protect these bio-cultural resources and all the places which they inhabit and call home, including adjacent unprotected sea mounts and open ocean areas. The ocean must be understood in the context of its boundless nature; one that must be managed and protected in its totality and not limited by the current narrow management boundaries and delineations. It is in this context that we must champion Hawaiian values and become *kia‘i kai*, or guardians of the ocean. The ocean is a metaphor for a glorious ancestral past and holds the key to understanding the depths of our potential as a people.

“An identity that is grounded in something as vast as the sea should exercise our minds and rekindle in us the spirit that sent our ancestors to explore the oceanic unknown and make it their home, our home.”

— Epli Hau‘ofa, “The Ocean In Us”

Native Hawaiians share a deep concern for Oceania and the growing need to return to a traditional understanding of our ocean waters as a key part of our distinctive identity and heritage. The proposed designation of the marine portions of Papahānaumokuākea Marine National Monument as a National Marine Sanctuary is a scale of protection that is urgently needed in the eyes of our generation.

The push towards greater global marine protection is a movement that seeks to address the vanishing biological and cultural diversity in our world and the cumulative anthropogenic impacts that are altering and affecting our ocean waters. Hawai‘i and its indigenous people have a key role to play helping to reverse these trends through the adoption of important customary values and the application of generational knowledge passed down from our ancestors to address the complex challenges of restoring eco-cultural health to our islands. These solutions are to the

benefit of all of our collective interests, as they will protect the ocean for the general good and ensure a degree of marine integrity in the face of an uncertain global future.

Continuing down the current global path of resource extraction is pushing the ocean toward a point at which it will no longer provide life sustaining services. Currently, less than 8.17 percent of the planet's oceans are covered by marine protected areas¹, and we must increase the level and scale to meet the global coverage target of at least 30 percent if we are to ensure that the ocean will survive past this century. As Native Hawaiians, we see the expansion of the monument as a critical contribution Hawai'i can make to this goal, however we also need to recognize that both natural and social dimensions need to be addressed. In a Hawaiian worldview, man and nature are not separate entities but rather related parts of a unified whole. The health of one is intrinsically related to the health of the other. For us to achieve this holistic relationship again, the entire region must be protected and Native Hawaiians, as the indigenous people of this land, must be allowed to take on our rightful role as *kia'i kai*, or *ocean guardians*, once again.

The push towards more robust ocean protection in the Northwestern Hawaiian Islands was, in part, spurred on through the Hawaiian movement—a social-political movement in Hawai'i towards social justice for Native Hawaiians, the protection of their resources, and the return of their national lands and sovereignty. Over the past 15 years, the Hawaiian community has been one of the key voices fighting for marine protection, and this call to action has been met with unprecedented success: from the establishment of the Coral Reef Ecosystem Reserve in 2000, to the State Marine Refuge in 2005, the Marine National Monument in 2006 and, finally, the inscription of this region as World Heritage Site in 2010.

The traditional double-hulled voyaging canoe Hōkūle'a has played a significant role in this movement as it has transitioned from the period of the Hawaiian Renaissance to one of modern cultural resurgence. From voyaging around the Pacific to reconnect with regional pathways and related communities, Hōkūle'a's voyages took an introspective turn in the early 2000s with key trips extending to the far ends of our homeland: the Northwestern Hawaiian Islands (2003, 2004, 2005). Under the slogan "Navigating Change," the voyaging canoe became an ambassador for ocean protection, advocating for the people of Hawai'i to "navigate change" and using the Northwestern Hawaiian Islands as a beacon of hope of what our home ocean waters in the main Hawaiian Islands could be if we were to take care of them. Hōkūle'a continues to be critical in the establishment of all these layers of protection for Papahānaumokuākea. Currently, the message that is being spread by this remarkable canoe as it travels around the world is one of "Moananuiākea: A Voyage for Earth," which advocates a:

...move from exploration and understanding to mālama, or caring, and kuleana, or taking responsibility. With those values, we must move discovery toward choices and actions that we believe will help build a future good enough for our children. This is our most difficult voyage yet because the destination is not ours. It will be the most difficult island yet to find, because it is the future of island earth. [Polynesian Voyaging Society 2023²]

¹ A calculation based on the United Nations Environment Program (UNEP) - World Conservation Monitoring Center (WCMC), and prefaced by less than to account for error. IUCN, UNEP-WCMC 2015. The World Database on Protected Areas (WDPA). Cambridge (UK): UNEP World Conservation Monitoring Centre. Methodology at URL <https://www.protectedplanet.net/en/resources/calculating-protected-area-coverage>. The Marine Conservation Institute

² "Moananuiākea: A Voyage for Earth". Polynesian Voyaging Society. Online resource. <https://hokulea.com/moananuiakea/>. Accessed 8-30-23.

Our canoe Hōkūle‘a sends a powerful global message in regards to ocean advocacy. The proposed designation of the marine portions of Papahānaumokuākea Marine National Monument as a National Marine Sanctuary works in tandem with the message of Hōkūle‘a because it stands out as a model for large-scale marine protected areas around the world, helping to spread the message of protection to another 15–20 countries, many in Oceania, that have now established similar provisions over vast areas of previously unmanaged ocean territories.

Native Hawaiians have used the term “He Pu‘uhonua no Hawai‘i” as the banner term for this expansion and protection movement (lit. “a sanctuary for our ocean protection”). This term is used in honor of the late Uncle Buzzy Agard who always used this phrase when talking about the importance of this region. Uncle Buzzy was a Hawaiian fisherman who later dedicated his life to ocean protection, and he was one of the primary founders of the movement to protect the Northwestern Hawaiian Islands. While Hōkūle‘a has done its part in solidifying global commitments for the ocean, what better way to demonstrate Hawai‘i’s continued commitment to this vision than by declaring this region - the largest protected area anywhere on the face on the earth – a National Marine Sanctuary.

Long distance voyaging and wayfinding is one of the most unique and valuable traditional practices we have, as indigenous peoples, to offer the world. It is an ancient way of interacting with the ocean that can inspire and create social change. Seen in this context, the sanctuary designation of Papahānaumokuākea is even more critical because it is the only intact cultural voyaging seascape left in our islands. This expansive ocean environment was the setting for ancient Hawaiian chiefs to voyage back and forth between the main Hawaiian Islands and the Northwestern Islands over the course of a 400-year period in traditional times. In addition, smaller communities from Nī‘ihau, Kaua‘i, and O‘ahu in the post-contact period have been documented making continued voyages into this region, well into the 20th century. Today, with the rebirth of traditional Hawaiian voyaging, this region is a critical training ground for the ongoing survival of Hawaiian voyaging and wayfinding.

Hawaiian voyaging and wayfinding evolved from a system of non-instrument navigation used by our Polynesian predecessors to make long distant voyages across thousands of miles of open-ocean. This traditional science relied upon observations of the natural environment, often missed by modern sailors, including the position of the sun and the stars, rising and setting along known pathways, the movement of cloud clusters, wind direction, ocean swells or wave pilots, biological indicators of island targets such as migratory seabirds, and sea marks—distinctive natural occurrences at predictable places along sea routes, like regions where certain fish species leap above the water’s surface, or a zone of innumerable marine or avian life. There is no other place in Hawai‘i where islands are remote enough to simulate these target conditions for young navigating apprentices. This practice requires protection of the entire marine environment, not just the target islands, because only then will the full use of biological signs and natural phenomenon that help train navigators be available to them.

The proposed designation of the marine portions of Papahānaumokuākea Marine National Monument as a National Marine Sanctuary enhances one of the most important cultural and conservation initiatives of our generation – the protection and recognition of Papahānaumokuākea alongside the unique opportunity to protect and actively steward a very large part of Hawai‘i. Viewing and understanding this vast ocean region as a living cultural seascape acknowledges the importance of places like this, for both natural and cultural dimensions, and helps to maintain a core aspect of our identity as ocean people.

The ocean is our beginning and our end, and in the chaos of today's world, the ocean helps to quiet our minds, center our perceptions, and help us intuitively understand what we need to do to live in a healthy world again. To save our ocean we must acknowledge its power, its boundless nature, and its importance as a driving force that shapes all aspects of our natural world and, in turn, our well-being. We must all reaffirm our commitment to the global movement dedicated to protecting our oceans by creating large- scale protected areas for future generations. Likewise, we must all support the agency and authority of Native Hawaiians and the other Indigenous people of Oceania in their ancestral role of *kia'i kai* once again.



Papahānaumokuākea National Marine Sanctuary

Final Environmental Impact Statement: Volume I



Yellow highlights indicate changes made from the draft to the final and are only on the version of the final environmental impact statement published in The Environmental Notice.

U.S. Department of Commerce
Gina Raimondo, Secretary

National Oceanic and Atmospheric Administration
Richard W. Spinrad, Ph.D., Under Secretary of Commerce for Oceans and Atmosphere and
NOAA Administrator

National Ocean Service
Nicole LeBoeuf, Assistant Administrator

Office of National Marine Sanctuaries
John Armor, Director



**NATIONAL
MARINE
SANCTUARIES**

Cover photos: NOAA diver investigates whaling shipwreck; native fish swim on a coral reef; Hawaiian voyaging canoe sails in Papahānaumokuākea; Hawaiian monk seal and ulua swim over the seafloor. Photos: NOAA

About This Document

The National Oceanic and Atmospheric Administration (NOAA) is proposing to designate the Papahānaumokuākea National Marine Sanctuary to recognize the national significance of the area’s biological, cultural, and historical resources and to continue to manage this special place as part of the National Marine Sanctuary System. This final environmental impact statement (EIS) provides detailed information and analysis of a range of reasonable alternatives for the designation of marine portions of Papahānaumokuākea Marine National Monument and the Monument Expansion Area (collectively called the Monument) as a national marine sanctuary. The State of Hawai‘i (State) and NOAA prepared this final EIS in accordance with the Hawai‘i Environmental Policy Act (HEPA, Chapter 343 HRS, HAR Chapter 11-200.1); the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*); and the National Marine Sanctuaries Act (NMSA, 16 U.S.C. 1431 *et seq.*), which requires preparation of an environmental impact statement for all sanctuary designations. The EIS is accompanied by a sanctuary management plan that describes the proposed goals, objectives, strategies, and actions for managing the sanctuary.

NOAA is the lead agency for this proposed action. NOAA’s Office of National Marine Sanctuaries (ONMS) is the implementing office for this proposed action. Cooperating agencies include U.S. Fish and Wildlife Service, the State of Hawai‘i, the Department of the Navy, and the Office of Hawaiian Affairs.

For further information contact Eric Roberts, Papahānaumokuākea Marine National Monument Superintendent, at Eric.Roberts@noaa.gov or 808-294-7470; NOAA/Daniel K. Inouye Regional Center, 1845 Wasp Blvd, Building 176, Honolulu, HI 96818.

A note on terminology: The term Papahānaumokuākea, when used alone, refers to the place, also historically known as the Northwestern Hawaiian Islands, including the land and all waters to 200 nmi from shore. Papahānaumokuākea Marine National Monument or PMNM refers to the area designated as a monument via Presidential Proclamations 8031 and 8112, extending 50 nmi from all islands and emergent lands of the Northwestern Hawaiian Islands. The Papahānaumokuākea Marine National Monument Expansion Area or MEA refers to waters from 50 to 200 nmi designated as a monument in 2016 by Presidential Proclamation 9478. PMNM and the MEA are referred to collectively as the “Monument.” When describing the action alternatives, the term “Outer Sanctuary Zone” is used to describe the area of the sanctuary that is coextensive with the MEA. A glossary of Hawaiian terms and place names is found after Chapter 6.

Most of the islets, atolls, and reefs have both Hawaiian and English names. Names used in this document are (from Southeast to Northwest): Nihoa, Mokumanamana (Necker), Lalo (French Frigate Shoals), ‘Ōnūnui and ‘Ōnuiki (Gardner Pinnacles), Kamokuokamohoali‘i (Maro Reef), Kamole (Laysan Island), Kapou (Lisianski Island), Manawai (Pearl and Hermes Atoll), Kuaihelani (Midway Atoll), and Hōlanikū (Kure Atoll). Other banks, shoals, and seamounts within Papahānaumokuākea may also have Hawaiian and English names.



Recommended Citation

National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries.
2024. Papahānaumokuākea National Marine Sanctuary Final Environmental Impact Statement:
Volume I. Silver Spring, MD.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries
1305 East-West Highway
Silver Spring, Maryland 20910

Dear Reviewer:

In accordance with the National Environmental Policy Act (NEPA), we enclose for your review the National Oceanic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries final environmental impact statement (EIS) to designate marine portions of Papahānaumokuākea Marine National Monument and the Monument Expansion Area as Papahānaumokuākea National Marine Sanctuary.

NOAA prepared this document to assess the environmental impacts of designating a national marine sanctuary under the National Marine Sanctuaries Act (NMSA). The NMSA requires that an EIS be prepared for designation of a national marine sanctuary regardless of the significance of the impacts of the proposed action. The management plan contains the nonregulatory management actions for the proposed sanctuary. NOAA will publish a final rulemaking to establish the boundaries, regulations, and terms of designation for the sanctuary. Under the NMSA, after the publication of the final rule the designation becomes effective after 45 days of Congressional session. During this time, Congress and the Governor of Hawai'i will review NOAA's designation documents. NOAA will also develop the Record of Decision and publish the notice of effective date of the designation in the Federal Register after the review period is complete. Although NOAA is not required to respond to comments received as a result of issuance of the final EIS, any comments received will be reviewed and considered for their impact on issuance of a Record of Decision. Please send comments to the Sanctuary Official identified below by January 13, 2025. NOAA will make the Record of Decision publicly available following final agency action.

Sanctuary official: Eric Roberts, Superintendent
Papahānaumokuākea Marine National Monument
1845 Wasp Blvd., Bldg 176, Honolulu, HI 96818

Sincerely,




John Armor
Director



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Acknowledgements

This document was prepared by NOAA’s Office of National Marine Sanctuaries, with assistance from the State of Hawai‘i Department of Land and Natural Resources. A full list of preparers is in Appendix J.

Terms, Abbreviations, and Acronyms

BMP	Best Management Practice
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CIA	Cultural Impact Assessment
Co-trustees	Term used in this document to refer to the State of Hawai‘i, the U.S. Department of Commerce, the U.S. Department of the Interior, and the Office of Hawaiian Affairs
CWG	Papahānaumokuākea Native Hawaiian Cultural Working Group
CZMA	Coastal Zone Management
DLNR	Hawai‘i Department of Land and Natural Resources
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
ERP	State of Hawai‘i Environmental Review Program
ESA	Endangered Species Act
HAR	Hawaii Administrative Rules
HEPA	Hawaii Environmental Policy Act
HRS	Hawaii Revised Statutes
IMO	International Maritime Organization
MEA	Papahānaumokuākea Marine National Monument Expansion Area
MMB	Monument Management Board
Monument	Term used in this document to refer to the PMNM and MEA collectively
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NCCOS	National Centers for Coastal and Ocean Sciences
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
nmi	nautical miles
NMSA	National Marine Sanctuary Act
NOAA	National Oceanic and Atmospheric Administration
NWHI	Northwestern Hawaiian Islands

NWR	National Wildlife Refuge
NWRSAA	National Wildlife Refuge System Administration Act
OHA	Office of Hawaiian Affairs
OLE	Office of Law Enforcement
ONMS	Office of National Marine Sanctuaries
PMNM	Papahānaumokuākea Marine National Monument (Original Area)
PSSA	Particularly Sensitive Sea Area
RAC	Reserve Advisory Council
Reserve	Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve
SHPD	State of Hawai'i Historic Preservation Division
SMCA	Sunken Military Craft Act
State	State of Hawai'i
USFWS	U.S. Fish and Wildlife Service
USCG	U.S. Coast Guard
VMS	Vessel Monitoring System
WPRFMC	Western Pacific Regional Fishery Management Council

Executive Summary

Introduction

The National Oceanic and Atmospheric Administration (NOAA) proposes to designate marine areas of the Papahānaumokuākea Marine National Monument and Monument Expansion Area (collectively the “Monument”) as a national marine sanctuary. The purpose of this action is to provide comprehensive and coordinated conservation and management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources. This final EIS analyzes the impacts on the human environment of the proposed action and a range of alternatives for sanctuary designation, including proposed regulations for managing the new sanctuary.

Project Location and Characteristics

The area of the proposed sanctuary includes the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline of the islands and atolls seaward to 200 nmi.

Papahānaumokuākea is a place of special national significance that provides large-scale ecosystem services for the region and the world. The marine habitat includes several interconnected ecosystems, including coral islands surrounded by shallow reef, deeper reef habitat characterized by seamounts, banks, and shoals scattered across the area of the sanctuary, mesophotic reefs with extensive algal beds, pelagic waters connected to the greater North Pacific Ocean, and deep-water habitats and abyssal plains 5,000 meters below sea level. These connected ecosystems provide essential habitats for rare species such as the threatened green sea turtle and the endangered Hawaiian monk seal, as well as habitat for more than 14 million seabirds that forage in the pelagic waters to nourish the chicks they are raising on the tiny islets. Papahānaumokuākea is home to 20 cetacean species, protected by the Marine Mammal Protection Act, with some listed as endangered under the Endangered Species Act. At least a quarter of the nearly 7,000 known marine species found in the region are found nowhere else on Earth.

The area of the sanctuary is also a place of historical and cultural significance. The area of the proposed sanctuary includes the location of the Battle of Midway, a turning point in World War II for the allies in the Pacific Theater. Research indicates that 60–80 sunken military vessels and hundreds of sunken aircraft are scattered across the seafloor. In addition to Navy steamers and aircraft, there are whaling ships, ancient Japanese sailing ships known as junks, motorized East Asian style fishing vessels known as Hawaiian fishing sampans, Pacific colliers, and other vessels from the 19th and 20th centuries.

Papahānaumokuākea is also a sacred place to Kānaka ʻŌiwi, who regard the islands and wildlife as kūpuna, or ancestors. The region holds deep cosmological and traditional significance to the people of Hawaiʻi and the Native Hawaiian culture, and contains a host of intact and significant archaeological sites found on the islands of Nihoa and Mokumanamana, both of which are on the National Register of Historic Places and Hawaiʻi Register of Historic Places.

Papahānaumokuākea is as much a spiritual space as it is a physical geographical area, rooted deep in Native Hawaiian creation and settlement stories.

Purpose and Need for Sanctuary

NOAA’s proposed action is to designate marine areas of the Monument as a national marine sanctuary. The purpose of this proposed action is to provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources through a sanctuary designation. The area proposed for national marine sanctuary designation is a globally significant, interconnected set of marine ecosystems. Threats from climate change, marine debris, invasive species, human use and shipping traffic have and will continue to adversely impact these fragile resources. Through the proposed national marine sanctuary designation, NOAA aims to address these threats and discrepancies in management across the Monument by:

- developing objectives and actions that ensure lasting protections consistent with the existing Monument proclamations;
- safeguarding natural and cultural values of the marine environment;
- applying additional regulatory and non-regulatory tools to augment and strengthen existing protections for Papahānaumokuākea ecosystems, wildlife, and cultural and maritime heritage resources;
- authorizing NOAA to exercise enforcement authorities, including the assessment of civil penalties for violations of sanctuary regulations or violations of permits and to enforce provisions of the NMSA;
- imposing liability for the destruction, loss of, or injury to sanctuary resources and providing natural resource damage assessment to authorities for destruction, loss of, or injury to any sanctuary resource; and
- requiring interagency consultation for any federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource

By designating this area as a national marine sanctuary, NOAA would implement regulations to complement and supplement existing authorities under the Antiquities Act; National Wildlife Refuge System Administration Act; Presidential proclamations 8031, 8112, and 9478; Executive Order 13178; 50 CFR 404; as well as other existing federal and State statutes designed to protect marine resources. Through sanctuary designation, NOAA would add to and not diminish protections under existing authorities.

Through sanctuary designation, the National Marine Sanctuaries Act would provide additional regulatory and non-regulatory tools for management and protection of Monument resources. For more than 20 years, NOAA has developed robust and effective programs for conservation science; the weaving of Kānaka ‘Ōiwi (Native Hawaiian) heritage, knowledge, values, and practices into co-management; maritime heritage; and education, providing services and expertise that a sanctuary could leverage to support resource protection across the Monument.

Public Involvement and Interagency Coordination

Sanctuary designation and environmental review includes public involvement, as well as coordination and consultations with other federal, State, and local agencies.

On November 19, 2021, NOAA, in cooperation with the State of Hawai‘i and USFWS, published a Notice of Intent in the Federal Register (86 FR 64904) to conduct scoping and to prepare an EIS for the proposed sanctuary designation. The State’s EIS Preparation Notice was developed based upon the federal NOI, as the State and federal scoping processes, including comment-gathering, were combined. The public comment period took place over the course of 74 days from November 19, 2021–January 31, 2022. Comments were accepted during virtual public scoping meetings, through the Federal eRulemaking Portal, and by traditional mail. During the public comment period, 73 individuals and organizations provided written comments and nine people provided oral comments.

On March 1, 2024, NOAA published a Notice of Proposed Rulemaking (89 FR 15272) to release the draft rule, draft environmental impact statement, and draft management plan; and to request public comments on the proposed sanctuary designation documents. On March 8, 2024, the State of Hawai‘i Environmental Review Program also informed the public about the availability of the draft EIS through an announcement in its bulletin, The Environmental Notice, per HRS Chapter 343- 3(c). The public comment period took place over the course of 68 days from March 1–May 7, 2024. Comments were accepted during two virtual and nine in-person public meetings on O‘ahu, Kaua‘i, Hawai‘i Island, Maui, and Moloka‘i; through the Federal eRulemaking Portal; and by traditional mail. An estimated 237 people attended the 11 public meetings and 61 individuals provided oral comments. During the public comment period, more than 13,900 written comments were received from individuals, organizations and agencies, the overwhelming majority in support of sanctuary designation. In preparing the final EIS, final management plan, and final rule, NOAA and the State of Hawai‘i considered comments received on the draft EIS, identified substantive comments, and provided responses commensurate with the comment. A summary of these comments and the corresponding responses from NOAA are provided in Appendix K. In response to these substantive comments, NOAA clarified information and made changes to this final EIS, and the draft sanctuary management plan, as described further below (see Section 1.5 for a summary list of changes). The final rule is consistent with these changes.

NOAA also considered information received through cooperating agency review, coordination with the Monument Management Board, and coordination with the Reserve Advisory Council. NOAA also consulted with the Western Pacific Regional Fishery Management Council as required under NMSA. In fulfilling its responsibilities under Section 106 of the National Historic Preservation Act, NOAA consulted with the Hawai‘i State Historic Preservation Division. NOAA further initiated an effort to identify consulting parties to participate in the Section 106 process through distribution of over 500 letters to individuals, organizations, and families. Through this process NOAA identified 31 consulting parties.

Proposed Action and Alternatives

NOAA developed a reasonable range of alternatives as required by NEPA, 42 U.S.C. 4332(2)(C). The proposed action is to designate the marine portions of the Monument as a national marine sanctuary with terms of designation, regulations, and a sanctuary management plan. Action alternatives only differ by proposed boundaries, with Alternative 1 (Agency-Preferred Alternative) the largest and most comprehensive, and Alternatives 2 and 3 consider smaller

boundaries. As NOAA aims to provide coordinated conservation and management across the area, consistent with existing Monument management, the terms of designation, regulations, and sanctuary management plan are consistent across all action alternatives.

Proposed Boundaries

Alternative 1 is coextensive with the marine portions of the Monument. The boundary includes the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline of the islands and atolls seaward to 200 nmi, including all State waters and waters of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, the Battle of Midway National Memorial, and the State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge.

Alternative 2 includes the marine environment from the shoreline of the islands and atolls seaward to 50 nmi. This alternative includes all State waters and waters of the Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, the Battle of Midway National Memorial, and State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge. This alternative does not include the MEA. The area encompassed in Alternative 2 is approximately 139,782 square miles (105,552 square nmi). Alternative 2 does not include the MEA. The MEA encompasses 442,781 square miles of marine waters.

Alternative 3 has the same boundaries as Alternative 1, but excludes waters within the Midway Atoll and Hawaiian Islands National Wildlife Refuges and the Battle of Midway National Memorial. These excluded waters include portions of the State marine refuge and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve that overlap with national wildlife refuge waters. The area encompassed in Alternative 3 is approximately 581,263 square miles (438,923 square nmi).

NOAA has identified Alternative 1 as the Agency-Preferred Alternative. Alternative 1 also represents the area under consideration described by NOAA in the Notice of Intent (86 FR 64904[Nov. 19, 2021]), as well as the boundary reflected in the proposed rule (89 FR 15272[March 1,2024]). See Chapter 5 for a comparison of all alternatives, as well as details explaining the basis for identifying the Agency-Preferred Alternative.

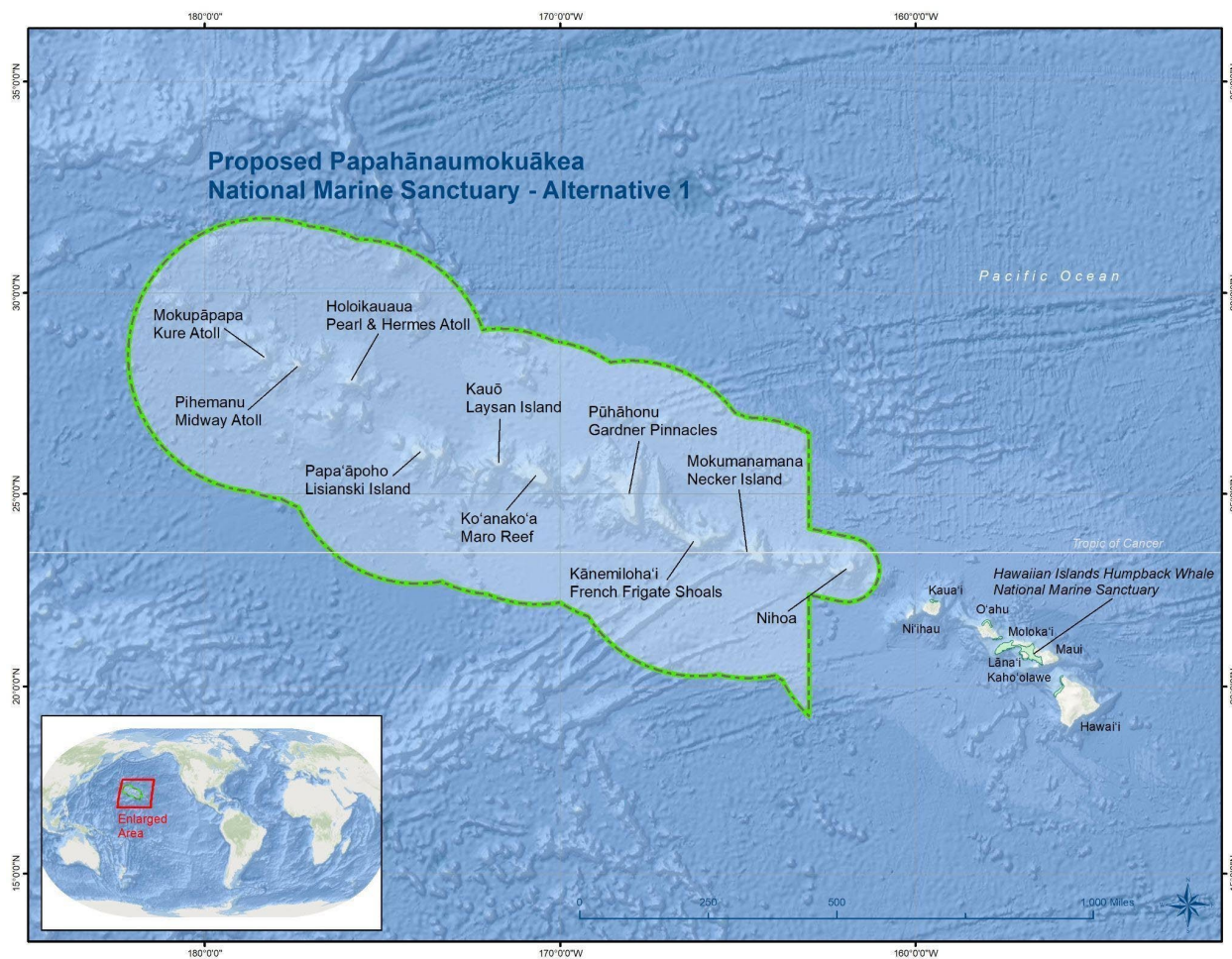


Figure E.1. Alternative 1 sanctuary boundary (marine areas only). Image: NOAA

Proposed Regulations

The purpose and need for the proposed sanctuary designation (Chapter 2) and NOAA's Preferred Alternative provide the framework for the development of the proposed sanctuary regulations. Presidential proclamations 8031, 8112, and 9478 served as benchmarks for drafting regulations for the proposed sanctuary. The proposed sanctuary would only add to and not diminish the management measures and protections provided by the presidential proclamations. In the proposed sanctuary regulations, NOAA has adopted the management measures from the presidential proclamations, and in a few places, added on to those measures to provide consistency in regulations and management across the proposed sanctuary. Minor changes in regulations for each area of the Monument (PMNM and MEA) are provided for in the proposed sanctuary regulations to remove discrepancies and gaps in prohibitions, regulated activities, and permitting across the two zones.

NOAA is proposing the following regulations under all alternatives to manage and protect the resources in the proposed sanctuary.

Cooperative Management

Through sanctuary designation, NOAA would supplement and complement existing management of the Monument. Existing authorities, including management authorities of all Monument co-trustees would remain in effect under all alternatives. Pursuant to the NMSA, states may choose to have a role in co-managing a sanctuary if all or part of the sanctuary is within the territorial limits of any state. As the sanctuary includes State waters, NOAA will co-manage the sanctuary with the State of Hawai‘i. NOAA will manage the sanctuary in partnership with the USFWS and OHA consistent with the management of the Monument.

Access

Access to the sanctuary would be prohibited and thus unlawful except under the following circumstances:

- for emergency response actions, law enforcement activities, and activities and exercises of the Armed Forces;
- pursuant to a sanctuary permit;
- when conducting non-commercial fishing activities in the Outer Sanctuary Zone authorized under the Magnuson-Stevens Fishery Conservation and Management Act provided that certain conditions are met;
- when conducting scientific exploration or research activities by or for the Secretary of Commerce or the Secretary of the Interior when the activity occurs within the Outer Sanctuary Zone); and
- when passing through the sanctuary without interruption.

A vessel may pass without interruption through the sanctuary without requiring a permit as long as the vessel does not stop or engage in prohibited activities within the sanctuary. NOAA would implement regulations for the ship reporting system (CORAL SHIPREP) adopted by the IMO, which would require entrance and exit notifications for vessels that pass without interruption through the sanctuary areas contained within a reporting area. The ship reporting requirements would apply to vessels of the United States; all other ships 300 gross tonnage or greater that are entering or departing a United States port or place; and all other ships of any size entering or departing a United States port or place and experiencing an emergency while transiting through the reporting area.

Prohibited or Otherwise Regulated Activities

NOAA is proposing prohibited or otherwise regulated activities as well as exemptions to the prohibited activities under 15 CFR part 922 subpart W.

The following activities would be prohibited within the proposed sanctuary, subject to specified exemptions:

1. Exploring for, developing, or producing oil, gas, or minerals, or any energy development activities.
2. Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a sanctuary resource.

3. Introducing or otherwise releasing an introduced species from within or into the sanctuary.
4. Deserting a vessel.
5. Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope
6. Commercial fishing, or possessing commercial fishing gear except when stowed and not available for immediate use.
7. Failing to comply with the vessel monitoring system requirements in violation of § 922.246.
8. Failing to comply with ship reporting requirements in violation of § 922.243.
9. Non-commercial fishing, or possessing non-commercial fishing gear except when stowed and not available for immediate use.
10. Drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands.
11. Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource.
12. Attracting any living sanctuary resource.
13. Touching coral, living or dead.
14. Swimming, snorkeling, or closed or open circuit SCUBA diving.
15. Discharging or depositing any material or other matter, or discharging or depositing any material or other matter outside of the sanctuary that subsequently enters the sanctuary and injures any resources of the sanctuary, except for
 - a. Fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity within the sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the sanctuary;
 - b. Discharge incidental to vessel operations such as approved marine sanitation device effluent, cooling water, and engine exhaust, consistent with federal statute or regulation; and
 - c. Within Special Preservation Areas or the Midway Atoll Special Management Area, discharging or depositing material or other matter is limited to vessel engine cooling water, weather deck runoff, and vessel engine exhaust, consistent with federal statute or regulation.
16. Anchoring a vessel.

Prohibitions 1–8 could never be allowed via permit, while prohibitions 9–16 could be regulated via a permit. Obtaining a permit to conduct activities relating to Prohibition 10 within the Outer Sanctuary Zone would be further restricted to scientific instruments only, consistent with Presidential Proclamation 9478.

Exemptions

The proposed prohibitions would not apply to:

- Activities necessary to respond to emergencies that threaten life, property, or the environment.
- Activities necessary for law enforcement purposes.

- Activities and exercises of the U.S. Armed Forces including those carried out by the U.S. Coast Guard (USCG).
- Scientific exploration or research activities by or for the Secretary of Commerce and/or the Secretary of the Interior in the Outer Sanctuary Zone.

NOAA will also exempt non-commercial fishing authorized under the MSA in the area of the sanctuary that overlaps with the MEA (i.e., the Outer Sanctuary Zone) from needing a sanctuary permit for prohibitions 9 through 12 and 14 in the final rule, provided that

- Fish harvested, either in whole or in part, are not intended to enter commerce and shall not enter commerce through sale, barter, or trade, and that the resource is managed sustainably;
- Fish harvested, either in whole or in part, are not intended to be sold and shall not be sold for any purposes, including, but not limited to, cost-recovery; and
- The exempted activities are only conducted as incidental to and necessary to lawful non-commercial fishing activity

Permitting

The proposed sanctuary's permitting system will complement the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by the MMB, which includes ONMS. The proposed permitting system would not supplant the joint permitting system for the Monument.

The final regulations would allow prohibited activities 9–16 to be permitted under certain conditions pursuant to 15 CFR part 922, Subpart D and the site-specific regulations proposed for this sanctuary, which are consistent with PMNM regulations and the Monument permit criteria. Sanctuary general permits may be issued if the proposed activities fall within one of three categories in the national regulations (15 CFR § 922.30(b)) relevant to this proposed sanctuary: (1) Research—activities that constitute scientific research or scientific monitoring of a national marine sanctuary resource or quality; (2) Education—activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resource or quality; (3) Management—activities that assist in managing a national marine sanctuary. NOAA would add two additional categories specific to the sanctuary within 15 CFR 922.30 for which a sanctuary general permit could be issued: Native Hawaiian Practices—activities that allow for Native Hawaiian practices within the sanctuary, and Recreation—recreational activities within the sanctuary limited to the Midway Atoll Special Management Area. NOAA is proposing these two additional general permit categories to maintain the types of activities permitted under PMNM regulations, to allow for integration with the existing Monument permitting system.

Special Use Permits

Pursuant to Section 310 of the NMSA (16 U.S.C. § 1441), special use permits may be issued to authorize the conduct of specific activities in a national marine sanctuary under certain circumstances. NOAA is not proposing any new category of activity subject to a special use permit as part of this designation. In evaluating applications for special use permits, NOAA will

consider all applicable permitting requirements, including permitting procedures and criteria under the Monument's existing management framework.

Sustenance Fishing

The Secretary may authorize sustenance fishing outside of any Special Preservation Area as a term or condition of any sanctuary permit.

Vessel Monitoring System

To complement existing regulations and provide consistency across the sanctuary, an owner or operator of a vessel that has been issued a general permit or special use permit must have a working NOAA Office of Law Enforcement (OLE) type-approved Vessel Monitoring System (VMS) on board when operating within the Sanctuary.

Sunken Military Craft

Sunken military craft are administered by the respective Secretary concerned pursuant to the Sunken Military Craft Act (Pub. L. 108-375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note). The Director will enter into a Memorandum of Agreement regarding collaboration with other Federal agencies charged with implementing the Sunken Military Craft Act that may address aspects of managing and protecting sunken military craft. The Director will request approval from the Secretary concerned for any terms and conditions of ONMS permits that may involve sunken military craft.

Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation for national marine sanctuaries include: (1) the geographic area included within the sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and (3) the types of activities subject to regulation by NOAA to protect those characteristics. The full text of the terms of designation will be in the final rule. The proposed sanctuary terms of designation establish the authorities to regulate and prohibit activities to the extent necessary and reasonable to ensure the protection and management of the area's conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities.

Sanctuary Management Plan

NOAA is proposing to implement the same draft sanctuary management plan under all alternatives. The NMSA requires preparation of a sanctuary management plan as part of the proposed action, included as Appendix A to the final EIS. The core elements and framework for the sanctuary management plan were designed in coordination with the Monument's co-trustees, in order to ensure concurrence of plans between the proposed sanctuary designation and the overarching monument designation. The core elements of this sanctuary management plan—vision, mission, principles, and goals—are the same as those that have been developed by the co-trustees for the future monument management plan update.

At the heart of the sanctuary management plan, there are five kūkulu (pillars of management):

1. Resource Protection and Conservation
2. Research and Monitoring
3. Governance and Operations
4. Partnerships and Constituent Engagement
5. Education, Interpretation, and Mentoring.

Each kūkulu includes a goal and five to 13 strategies. The strategies identified in the sanctuary management plan entail actions already being conducted by ONMS, many in coordination with Monument co-managers, as well as aspirational actions. Performance indicators and measures provided for each kūkulu provide an indication of types of actions that would typically occur, and that would be assessed in tracking management plan strategy implementation.

Summary of Impacts for the Preferred Alternative

NOAA evaluated the impacts of its alternatives on the existing laws and management, physical resources, biological resources, cultural and maritime heritage resources, human uses and socioeconomic resources. Because of the existing protections summarized in History of Management (Section 1.2.2) this proposed sanctuary designation primarily supplements existing management and resource protections and imparts few minor adverse impacts. Sanctuary designation would not remove the Monument designation or accompanying regulations. While the Monument is managed as a unit, several federal and State conservation areas exist and specific authorities apply. Note that these existing authorities would also remain in effect under all action alternatives, including Alternative 1.

Impacts to Laws and Management. Sanctuary designation would provide moderate beneficial impacts and negligible adverse impacts. Sanctuary designation would include the enactment of National Marine Sanctuary Program regulations (15 CFR part 922), allowing ONMS to supplement existing authorities through: 1) emergency regulations; 2) penalties; and 3) authorities to respond to and hold financially liable those responsible for destruction or loss of, or injury to sanctuary resources. Emergency regulations give ONMS the authority to implement immediate temporary regulations where necessary to prevent or minimize the loss or injury to a sanctuary resource. Civil penalty authority provides law enforcement with a new tool for violations of sanctuary regulations, potentially providing stronger incentives for compliance. Additionally, there would be new authorities to respond to and hold financially liable those responsible for destruction, loss of, or injury to any sanctuary resources through liability for response costs and damages resulting from such destruction, loss, or injury. Vessels wishing to conduct regulated activities within the area of the proposed sanctuary that overlaps with the MEA would be required to obtain a permit and adhere to all regulations and permit conditions, including installing VMS that remains on and working when in sanctuary waters.

Impacts to Physical Resources. Sanctuary designation would provide moderate benefits and no adverse impacts to physical resources (e.g., water quality, benthic habitat). Regulations promulgated for the area of the proposed sanctuary that overlaps with the MEA would provide additional protection through permitting requirements, as well as prohibitions related to seafloor disturbance and vessel discharge, both for permitted vessels and those conducting passage without interruption through the sanctuary.

Impacts to Biological Resources. Sanctuary designation would provide moderate beneficial impacts and negligible adverse impacts. Codified regulations in the area of the proposed sanctuary that overlaps with the MEA provides NOAA's Office of Law Enforcement the option to impose civil penalties. NOAA has not documented direct negative impacts to Monument resources based on the lack of penalty authorities. However, based on NOAA's extensive experience in enforcing federal statutes in the marine environment, NOAA concludes that NMSA regulations may better inform users and dissuade user violations by creating a stronger deterrent to permit and regulatory violations through the supplemental penalty authority specific to the proposed regulations, therefore deterring illegal fishing and other prohibited activities, and benefiting biological resources. These additional authorities also provide enhanced protection and response mechanisms, benefiting biological resources from accidental or intentional loss or damage to sanctuary resources, particularly due to ship groundings in the shallow coral reef ecosystem.

Impacts to Cultural and Maritime Heritage Resources. Sanctuary designation provides minor beneficial impacts on cultural resources and moderate beneficial impacts on maritime heritage resources. Cultural heritage is a primary focus of current management, and these efforts would be expanded to the area of the proposed sanctuary that overlaps with the MEA under sanctuary designation. Sanctuary designation provides new protections for maritime heritage resources, particularly in the Outer Sanctuary Zone. Permitting authority and new prohibitions, including disturbance of the seafloor and access regulations, would complement existing federal and State regulations for all underwater maritime resources throughout the sanctuary.

Impacts to Socioeconomic Resources. Sanctuary designation would have minor adverse impacts on socioeconomic resources and human uses, due to new regulations and permitting for the area of the sanctuary that overlaps with the MEA. For example, the establishment of new discharge regulations in the area of the proposed sanctuary that overlaps with the MEA may represent a burden to vessels operating within the sanctuary. Sanctuary designation also provides some minor beneficial impacts to socioeconomic resources and human uses. Sanctuary designation may provide alternative sources of funding to support education initiatives and programs in Hawai'i (outside the waters of the proposed sanctuary), including from Friends Groups, the National Marine Sanctuary Foundation, and other non-profit organizations. Additional funding sources provide opportunities to strengthen the public's appreciation of the proposed sanctuary.

NOAA determined that implementing Alternative 1 would have direct, long-term, moderate beneficial impacts for laws and management, physical, biological, and maritime heritage resources, direct, long-term, minor beneficial impacts for cultural resources, and indirect, long-term, minor adverse impacts for socioeconomic resources and human uses for the largest proposed sanctuary area of the three alternatives.

NOAA has maintained Alternative 1 as the agency-preferred alternative based on its comparative merits. NOAA selected its final preferred alternative after considering input from the Monument Management Board, the State of Hawai'i, cooperating agencies, other agencies consulted, and the public on the draft designation documents. Through the analysis in the final EIS, NOAA has determined that the final preferred alternative would provide numerous beneficial impacts, including increased protection and conservation of resources, and improved coordination of

conservation and management. NOAA has also considered the potential adverse impacts of the final preferred alternative and anticipates that there would be no significant adverse impacts to biological and physical resources, cultural and historic resources, or socioeconomic resources.

NOAA's identification of Alternative 1 as the final preferred alternative is based on the need for additional resource protection, scientific research, and public education in areas that would be excluded by selecting the boundaries of Alternatives 2 or 3. Alternative 1 includes the MEA, an area which would benefit from the establishment of a NOAA permitting process, and the promulgation of sanctuary regulations to protect resources. Alternative 1 also includes the waters of Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge, which are the areas of the sanctuary subject to the highest level of human activity.

Chapter 1: Introduction

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) proposes to designate marine areas of Papahānaumokuākea Marine National Monument (PMNM) and the Monument Expansion Area (MEA) as a national marine sanctuary. When referring to these two areas together, as a combined entity, the term Monument is used in this document. This final environmental impact statement (EIS), prepared in coordination with the State of Hawai‘i (State), analyzes the environmental impacts of a range of alternatives associated with the proposed sanctuary designation in accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) and the Hawai‘i Environmental Policy Act (HEPA, Chapter 343 HRS, HAR Chapter 11-200.1). This document is also a resource assessment detailing present and future uses of the areas identified for potential designation and includes a sanctuary management plan (Appendix A) that describes goals and strategies for managing sanctuary resources.

1.1 National Marine Sanctuary System

The NOAA ONMS serves as the trustee for a network of underwater parks encompassing more than 621,000 square miles of marine and Great Lakes waters from Washington to the Florida Keys and from New England to American Samoa. The network currently includes a system of 16 national marine sanctuaries and two marine national monuments (Figure 1.1).

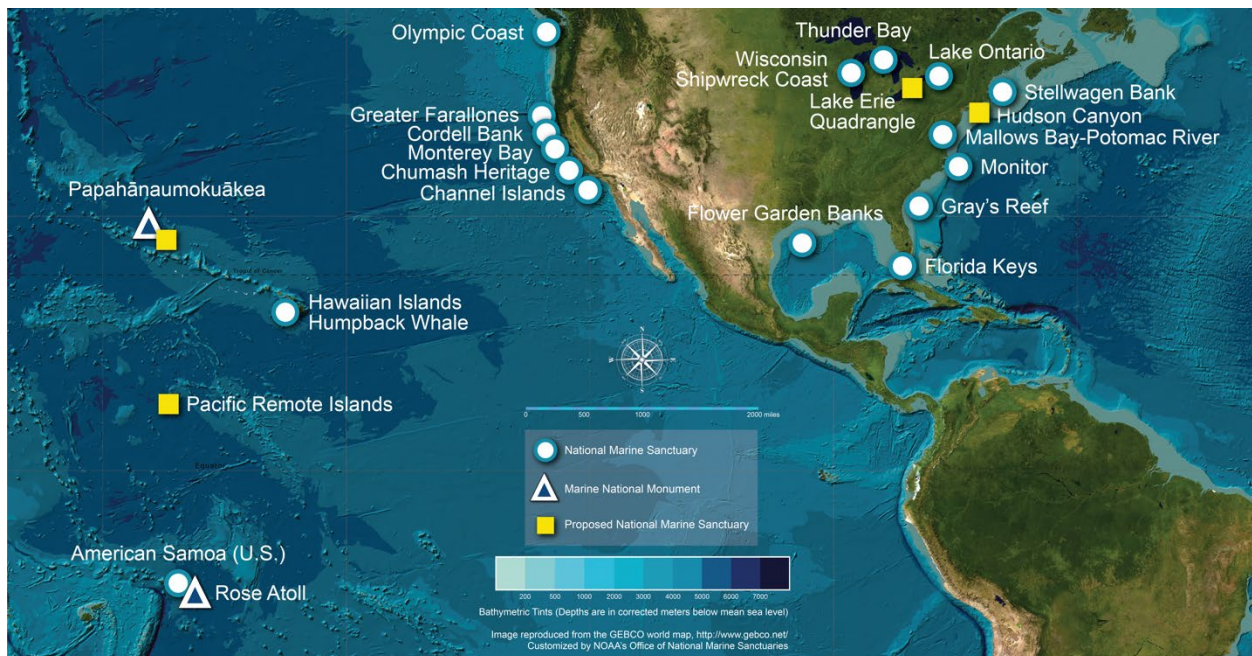


Figure 1.1. A map of the National Marine Sanctuary System. Image: NOAA

National marine sanctuaries are special areas set aside for long-term protection, conservation, and management, and are part of our nation’s legacy to future generations. They contain deep ocean habitats of resplendent marine life, kelp forests, coral reefs, whale migration corridors, deep-sea canyons, historically significant shipwrecks, and other important underwater

archaeological sites. Each sanctuary is a unique place worthy of special protection. Because they serve as natural classrooms, cherished recreational spots, and places for valuable commercial activities, national marine sanctuaries represent many things to many people.

ONMS works with diverse partners and stakeholders to promote responsible, sustainable ocean and Great Lakes uses that ensure the health of our most valued places. A healthy ocean and Great Lakes are also the basis for thriving recreation, tourism, and commercial activities that drive coastal economies.

1.1.1 National Marine Sanctuaries Act of 1972

The [National Marine Sanctuaries Act](#) (NMSA; 16 U.S.C. § 1431 *et seq.*) is the legislation governing the National Marine Sanctuary System. The NMSA authorizes the Secretary of Commerce to identify and designate as a national marine sanctuary any discrete area of the marine environment that is of special national, and in some cases international, significance, and to manage these areas as the National Marine Sanctuary System. Day-to-day management of national marine sanctuaries is delegated by the Secretary of Commerce to ONMS.

Congress first passed the NMSA into law in 1972. Since then, Congress amended and reauthorized the statute in 1980, 1984, 1988, 1992, 1996, and 2000. The purposes and policies of the NMSA are:

- To identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System;
- To provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;
- To maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations and ecological processes;
- To enhance public awareness, understanding, appreciation and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System;
- To support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas;
- To facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;
- To develop and implement coordinated plans for the protection and management of these areas with appropriate federal agencies, State and local governments, Native American tribes and organizations¹, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

¹ Terminology from the National Marine Sanctuaries Act

- To create models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques; and
- To cooperate with global programs encouraging conservation of marine resources.

1.1.2 Comprehensive Management of the National Marine Sanctuary System

The NMSA includes a finding by Congress that the National Marine Sanctuary System will “improve the conservation, understanding, management, and wise and sustainable use of marine resources” (16 U.S.C. § 1431(a)(4)(A)). The NMSA further recognizes that “while the need to control the effects of particular activities has led to enactment of resource-specific legislation, these laws cannot in all cases provide a coordinated and comprehensive approach to the **conservation** and management of special areas of the marine environment” (16 U.S.C. § 1431(a)(3)). Accordingly, ONMS promotes partnerships among resource management agencies, the scientific community, stakeholders, and the public-at-large to realize the coordination and program integration that the NMSA calls for in order to comprehensively manage national marine sanctuaries.

1.2 Background on the Process to Designate a National Marine Sanctuary Within Papahānaumokuākea

1.2.1 Significance of the Area and Rationale for Proposed Sanctuary Designation

The area that encompasses Papahānaumokuākea includes a globally significant marine ecosystem, as well as maritime, historic, and cultural resources. While human activity, including resource exploitation and habitat destruction, marked much of the 19th and 20th centuries, these islands, surrounding reefs, and oceanic habitat continue to be among the last of the planet’s wild places.

Papahānaumokuākea is a place of unique environmental resources that provide large-scale ecosystem services for the region and the world. As one of Earth’s few healthy, large-scale marine protected areas, it provides a window into the complex food web and overall dynamics of the sub-tropical Pacific Ocean. The marine habitat includes several interconnected ecosystems, including coral islands surrounded by shallow reef; deeper reef habitats characterized by seamounts, banks, and shoals scattered across Papahānaumokuākea; mesophotic reefs with extensive algal beds; pelagic waters connected to the greater North Pacific Ocean; and

National Marine Sanctuaries Act Designation Standards

The area is of special national significance for:

Its conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities

The communities of living resources it harbors

Its resource or human-use values

Existing state and federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive management

The area is of a size and nature that will permit comprehensive and coordinated management

deep-water habitats and abyssal plains 5,000 meters below sea level. These ecosystems are connected as essential habitats for rare species such as the threatened honu (Hawaiian green turtle) and the endangered 'Īlioholoikauaia (Hawaiian monk seal), as well as over 14 million seabirds that forage in the pelagic waters to nourish the chicks they are raising on the tiny islets. Papahānaumokuākea is home to 20 cetacean species, protected by the Marine Mammal Protection Act, with some listed as endangered under the Endangered Species Act (ESA). The importance of these waters to the humpback whale is only recently becoming understood. At least a quarter of the nearly 7,000 known marine species found in the region are found nowhere else on Earth.

The area of the proposed sanctuary also includes the location of the Battle of Midway, a turning point in World War II for the Allies in the Pacific Theater. While management and preservation of land-based historic properties at Kuaihelani (Midway Atoll) is well established, research indicates 60–80 sunken military vessels and hundreds of sunken aircraft are scattered across the seafloor. In addition to Navy steamers and aircraft, there are whaling ships, **ancient Japanese sailing ships known as junks, motorized east Asian style fishing vessels known as Hawaiian fishing sampans**, Pacific colliers, and other vessels from the 19th and 20th centuries. Of these, the locations of more than 30 vessel wreck sites have been confirmed by diving or bathymetric surveys, with only a handful of those identified (by vessel name) or otherwise evaluated. Nevertheless, the research that has been conducted has provided books, films, and websites with information that fascinates history and military enthusiasts and the general public alike.

Papahānaumokuākea is also a sacred place to Kānaka 'Ōiwi (Native Hawaiians), who regard the islands and wildlife as kūpuna, or ancestors. The region holds deep cosmological and traditional significance to living Native Hawaiian culture and contains a host of intact and significant archaeological sites found on the islands of Nihoa and Mokumanamana (Necker), both of which are on the National and State Register for Historic Places. Papahānaumokuākea is as much a spiritual space as a physical geography, rooted deep in Native Hawaiian creation and settlement stories. Since nature and culture are considered to be one and the same, the protection of one of the last nearly pristine, natural, marine ecosystems in the archipelago is akin to preserving the living culture of Hawai'i.

On July 30, 2010, Papahānaumokuākea was inscribed as a mixed (natural and cultural) World Heritage site by the United Nations Educational, Scientific, and Cultural Organization. It is the only mixed World Heritage site in the U.S., and the second World Heritage site in Hawai'i. With a specific aim to protect the natural and cultural heritage of the vast area, Papahānaumokuākea has become a globally recognized, best practice model for the governance and management of remote marine ecosystems, honoring the inextricable link between nature and culture. Importantly, Papahānaumokuākea has, in a sense, reunited the entire archipelago and renewed a sense of pride in the natural environment and understanding of 'āina momona (healthy and productive communities of people and place based on reciprocal relationships).

1.2.2 History of Management of Papahānaumokuākea

Portions of the area now known as Papahānaumokuākea have been federally protected in some form since 1903, when President Theodore Roosevelt first placed Midway Atoll under control of the Navy in response to reports of large numbers of seabirds being slaughtered for feathers and eggs. Later in 1909, through Executive Order No. 1019, he designated the islets and reefs from Nihoa to Kure (excluding Midway Atoll) as the Hawaiian Islands Reservation to protect breeding habitat for native birds. In 1940, President Franklin D. Roosevelt issued Presidential Proclamation No. 2416, renaming the Reservation the Hawaiian Islands National Wildlife Refuge (NWR).

Domestic fishery management of the area began with the passage of the Magnuson-Stevens Fishery Conservation and Management Act of 1976. NOAA and the Western Pacific Regional Fishery Management Council (WPRFMC) developed four fishery management plans, with two of the plans (Crustaceans and Bottomfish) focused almost exclusively on resource management in the Northwestern Hawaiian Islands (NWHI). In 1991, in response to interactions with endangered ʻĪlioholoikauaua (Hawaiian monk seals), NOAA and the WPRFMC created the Protected Species Zone, prohibiting commercial longline fishing within 50 nautical miles (nmi) of these islands.

In the 1980s and 1990s, Presidents Ronald Reagan and William Clinton transferred management of Midway Atoll and its Defensive Sea area from the Navy to the U.S. Fish and Wildlife Service (USFWS), and the State of Hawaiʻi designated Kure Atoll a State Wildlife Sanctuary (HAR 13-126).

On May 26, 2000, President Clinton issued Executive Order 13158, directing the establishment and management of a scientifically based, comprehensive national system of marine protected areas. At the same time, President Clinton also issued a memorandum to the Secretaries of Commerce and the Interior directing them to work cooperatively with the State of Hawaiʻi, in consultation with the WPRFMC, to develop recommendations for a new, coordinated management regime of the NWHI coral reef ecosystem, and called for public participation in the design of final recommendations. Thereafter, the 2000 amendments to the NMSA authorized designation of a NWHI Coral Reef Ecosystem Reserve (Reserve) to be managed by the Secretary of Commerce. In December 2000, President Clinton issued Executive Order 13178 that began the public process to establish the Reserve, and directed the Secretary of Commerce to initiate the process to designate the Reserve as a national marine sanctuary pursuant to sections 303 and 304 of the NMSA. Executive Order 13178 also established a Reserve Advisory Council (RAC) pursuant to Section 315 of the NMSA to provide advice and recommendations on the Reserve Operations Plan and designation and management of any sanctuary. In January 2001, President Clinton issued Executive Order 13196 finalizing the establishment of the Reserve.

Beginning in February 2002, NOAA began public scoping meetings on the potential for the Reserve to become a national marine sanctuary. In 2005, to complement existing management actions, the State of Hawaiʻi established the Northwestern Hawaiian Islands Marine Refuge, with waters extending three miles seaward of any coastline from Nihoa Island to Hōlanikū, excluding Kuaihelani (Midway Atoll).

In 2006, via Presidential Proclamations 8031 and 8112, President George W. Bush designated the land and waters of Papahānaumokuākea as a marine national monument under the authority of the Antiquities Act of 1906 (54 U.S.C. §§ 320301 et seq.), extending protection to include the national wildlife refuges, the Reserve and the nearshore State waters extending out 50 nmi around the NWHI. The Papahānaumokuākea Marine National Monument designation included the prohibition of commercial fishing, creation of access restrictions, and led to regulations that codified a permitting system with application criteria, prohibitions, and regulated activities (50 CFR Part 404). Presidential Proclamation 8031 also stated that the Secretary of Commerce, through NOAA, will have primary responsibility regarding management of the marine areas, in consultation with the Secretary of the Interior. Presidential Proclamation 8031 also stated that the Secretary of the Interior, through the USFWS, will have sole responsibility for management of the areas of the Monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce.

On December 8, 2006, the State of Hawai‘i, U.S. Department of Commerce, and U.S. Department of the Interior (collectively referred to as the co-trustees) signed a memorandum of agreement to carry out coordinated resource management for the long-term comprehensive conservation and protection of PMNM. The memorandum of agreement established functional relationships to effectively coordinate management actions in PMNM among co-trustees and included the Monument’s Vision, Mission, and Guiding Principles. The co-managers, including NOAA’s Office of National Marine Sanctuaries, developed a stringent permitting process in which permits must adhere to terms and conditions that satisfy Presidential Proclamations 8031 and 8112, 50 CFR part 404, and relevant federal and State agency mandates and policies.

In 2008, the International Maritime Organization (IMO) designated PMNM as a Particularly Sensitive Sea Area (PSSA). As part of the PSSA designation process, the IMO adopted U.S. proposals for associated protective measures consisting of (1) expanding and consolidating the six existing recommendatory Areas To Be Avoided (established in 1981) in the Monument into four larger areas and expanding the class of vessels to which they apply; and (2) establishing a reporting system for vessels transiting PMNM, as detailed in the existing PMNM regulations at 50 CFR 404.

On August 26, 2016, President Barack Obama issued Presidential Proclamation 9478, which established the MEA to include the waters and submerged lands seaward of PMNM and extending to the seaward limit of the United States Exclusive Economic Zone (EEZ) west of 163° West longitude. Presidential Proclamation 9478 also stated that the Secretary of Commerce, through NOAA, and in consultation with the Secretary of the Interior, shall have responsibility for management of activities and species within the MEA under Magnuson-Stevens Fishery Conservation and Management Act (MSA), ESA (for species regulated by NOAA), and any other applicable legal authorities. Presidential Proclamation 9478 also stated that the Secretary of the Interior, through the USFWS, and in consultation with the Secretary of Commerce, shall have responsibility for management of activities and species within the MEA under its applicable legal authorities, including the National Wildlife Refuge System Administration Act, the Refuge Recreation Act, and the ESA (for species regulated by USFWS), and Public Law 98-532 and Executive Order 6166 of June 10, 1933. The MEA covers 442,781 square miles. Combined, and

for brevity, PMNM and the MEA are “the Monument” in this document, but as described in Chapter 4, were established separately and contain variations in the findings made within and the requirements imposed by their establishing proclamations. In 2017, the memorandum of agreement between the State, U.S. Department of Commerce, and U.S. Department of the Interior was amended to include management direction for the MEA and the request of the governor of Hawai‘i that the Office of Hawaiian Affairs (OHA) be added as a co-trustee, to support the protection of cultural and natural resources in a manner aligned with Native Hawaiian resource management best practices.

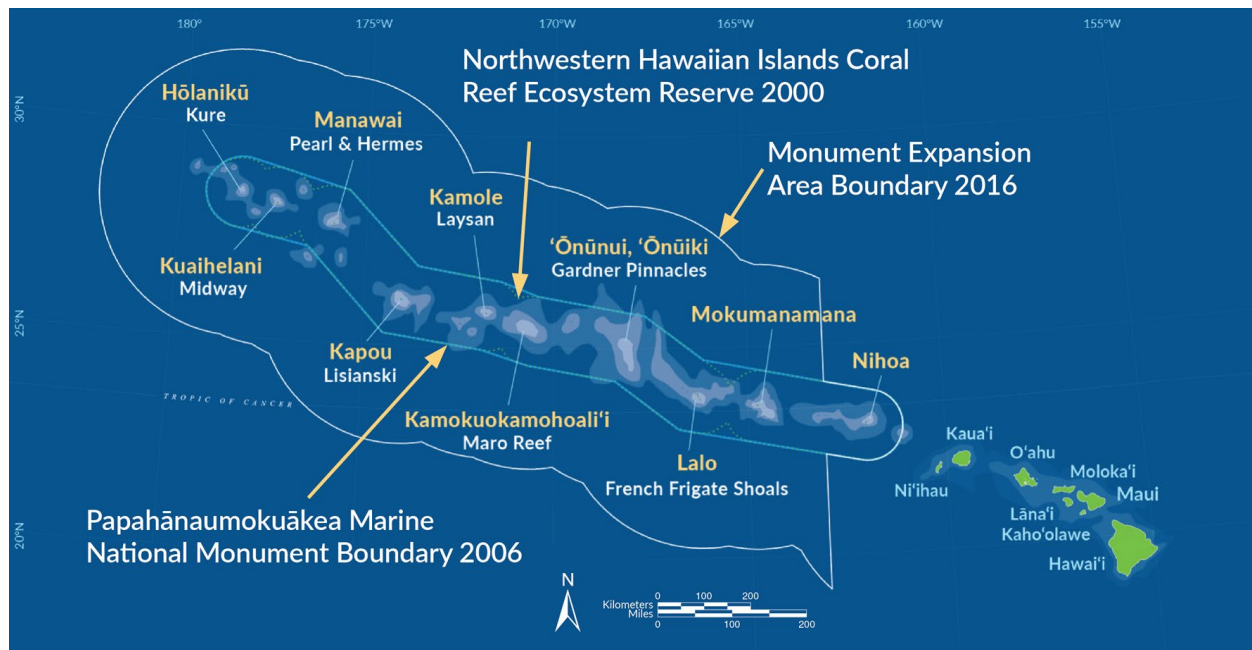


Figure 1.2. Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, Papahānaumokuākea Marine National Monument, and Monument Expansion Area. Image: NOAA

As one of the largest, most remote places on Earth, one of the Monument’s goals is to bring the place to the people. This is achieved in multiple ways that include virtual visits (e.g., Google Street Views at Kuaihelani, Manawai (Pearl and Hermes Atoll), Kamole (Laysan Island), Kapou (Lisianski Island), and Lalo (French Frigate Shoals)), as well as a host of activities and exhibits at museums, aquariums, and learning centers throughout Hawai‘i, including the [Mokupāpapa Discovery Center in Hilo, Hawai‘i](#) and the Kaua‘i Ocean Discovery facility in Līhu‘e, Kaua‘i, both centers managed by ONMS and the National Marine Sanctuary Foundation, the official nonprofit partner to the National Marine Sanctuary System. Monument materials and exhibits are also on display at the Waikīkī Aquarium and Bernice Pauahi Bishop Museum in Honolulu, Hawai‘i. Monument co-managers continue to prioritize investments in educational strategies and partnerships to build the next generation of ecologically- and culturally-grounded managers and leaders.

1.2.3 Actions Leading to Proposed Sanctuary Designation

The numerous conservation and management measures described in the previous section emphasize the value and need for protection of this unique ecosystem, and highlight the deliberate actions for comprehensive protection of the area proposed for sanctuary designation.

Following Executive Order 13178's direction that "[t]he Secretary shall initiate the process to designate the Reserve as a national marine sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act," on January 19, 2001, NOAA issued a notice of intent to designate the Reserve as a national marine sanctuary (66 FR 5509). NOAA engaged the Kānaka ʻŌiwi community, scientific community, educators, businesses, fishers, interagency partners, and other community members and stakeholders to seek input and gather information toward developing a unified plan for Reserve operations and the proposed sanctuary. Ten public scoping meetings were hosted in Hawaiʻi and Washington, D.C., with more than 13,000 comments received during the initial scoping period. Additional input was collected from the public, stakeholder groups, and interagency partners via workshops (Gittings et al., 2004), focus group discussions (Sustainable Resources Group, 2004), and RAC and associated subcommittee meetings. The Reserve Operations Plan was finalized with extensive consultation with partner agencies and the RAC (NOAA, 2004) and served as the foundation for the initial draft sanctuary management plan. In total, more than 100 meetings and close to 52,000 public comments guided development of a draft sanctuary management plan. In addition, the State of the Reserve Report (NOAA, 2006) provided a comprehensive summary of the previous five years of Reserve operations. The initial draft sanctuary management plan included several companion documents packaged into the draft sanctuary designation proposal, including a draft EIS and a proposed rule.

The sanctuary designation process was curtailed when the area was designated a Marine National Monument on June 15, 2006. Presidential Proclamation 8031 recognized the extensive public input, the relevancy of the public process and draft sanctuary documents, and directed the Secretary of Commerce, in consultation with the Secretary of the Interior and the State of Hawaiʻi, to modify, as appropriate, the draft sanctuary management plan in developing a plan to manage PMNM and to provide for public review of that plan. The Papahānaumokuākea Marine National Monument Management Plan (MMP, December 2008) and associated environmental assessment extensively reflect the draft sanctuary documents.

In 2016, Presidential Proclamation 9478 established the MEA to include the waters and submerged lands seaward of the PMNM and extending to the seaward limit of the United States Exclusive Economic Zone (EEZ) west of 163° West longitude. The proclamation described objects of historic and scientific interest including geological and biological resources that are part of a highly pristine deep sea and open ocean ecosystem with unique biodiversity and that constitute a sacred cultural, physical, and spiritual place for the Kānaka ʻŌiwi community. Presidential Proclamation 9478 directed the Secretary of Commerce to "consider initiating the process under the National Marine Sanctuaries Act (16 U.S.C. 1431 §§ et seq.) to designate the Monument Expansion Area and the Monument seaward of the Hawaiian Islands National Wildlife Refuge and Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial as a National Marine Sanctuary to supplement and complement existing authorities."

The Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2021 directed NOAA to initiate the process under the NMSA to designate Papahānaumokuākea as a national marine sanctuary "to supplement and complement, rather than supplant, existing authorities."

1.2.4 Responsibility to the Native Hawaiian Community

The management of Papahānaumokuākea has been based on Native Hawaiian values and practices that incorporate observation and understanding of the natural world, indigenous principles and philosophies, cultural norms, community relationships, and unique epistemologies deeply imbedded in and formed by relationships of people with place.

U.S. Congress has acknowledged or recognized the Native Hawaiian community by establishing a special political and trust relationship through over 150 enactments (see 81 Fed. Reg. 71278 (October 14, 2016)). Through certain laws, including the National Historic Preservation Act and the Native American Graves Protection and Repatriation Act, Congress directed federal agencies to work with the Native Hawaiian community through consultation with Native Hawaiian Organizations, as defined under these acts. To provide background information for the reader, this final EIS acknowledges the definition for the term Native Hawaiian, as it is commonly defined per existing federal law, as any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai‘i (see e.g., 36 CFR 800.16, 43 CFR 50.4, 43 CFR 10.2).

In 2017, the Office of Hawaiian Affairs (OHA) was named as a co-trustee at the request of the Governor of Hawai‘i, with full support from NOAA and the other co-trustees. OHA is a constitutionally established body, set as a separate state entity independent of the Executive Branch of the State of Hawai‘i. OHA has the primary responsibility for representing the interests of the Native Hawaiian community in the Monument through the perpetuation of Hawaiian cultural resources, including the customary and traditional practices of Native Hawaiians.

1.3 Sanctuary Designation and Environmental Review Process

1.3.1 Overview

The NMSA authorizes the Secretary of Commerce to identify and designate as a national marine sanctuary any discrete area of the marine environment that is of special national significance. Section 304 of the NMSA, 16 U.S.C. § 1434, describes the sanctuary designation process, including required notices, the preparation of documents, and opportunities for public participation. The process includes the following:

- A notice in the *Federal Register* of the proposed designation, proposed regulations, and a summary of the draft sanctuary management plan;
- A resource assessment that describes present and potential uses of the area (see Chapter 4);
- A draft sanctuary management plan for the proposed national marine sanctuary, which is a document that outlines the proposed goals, objectives, and strategies for managing sanctuary resources for the next five years (see Appendix A);
- Maps depicting the boundaries of the proposed sanctuary (see sections 3.4, 3.5, and 3.6);

- An assessment of whether the proposed sanctuary meets the designation standards and factors for consideration, as described in sections 303(a) and 303(b)(1) of the NMSA (discussed in chapters 1 and 2).

In addition, Section 304(a)(2) of the NMSA requires NOAA to prepare an EIS pursuant to NEPA as part of the sanctuary designation process. NEPA requires that federal agencies include in their decision-making processes appropriate and careful consideration of all potential environmental effects of proposed actions and analyze them and their alternatives. The NEPA process is intended to encourage and facilitate public involvement in decisions that affect the quality of the human environment.

The State of Hawai‘i co-developed this final EIS and recommends the inclusion of all State waters and submerged ceded lands within Papahānaumokuākea. The term “ceded lands” refers to Hawaiian lands transferred to the United States at the time of annexation and includes benthic marine habitats underlying State waters. Requirements for the Hawai‘i environmental review process are codified in Hawai‘i Revised Statutes (HRS) Chapter 343, known as the Hawai‘i Environmental Policy Act (HEPA), and in corresponding Hawai‘i Administrative Rules (HAR) Chapter 11-200.1. Under HRS Section 343-5, the Proposed Action triggers environmental review as it involves the use of State lands (HRS Section 343-5(a)(1)), lands classified as in the Conservation District by the State Land Use Commission under HRS Chapter 205 (HRS Section 343-5(a)(2)), and lands classified as historic sites or districts (HRS Section 343-5(a)(4)). The purpose of the HEPA process is to ensure that environmental, economic, and technical concerns are given appropriate consideration in decision-making. HRS Section 343-5(f) allows for a single EIS for actions subject to both NEPA and HEPA.

As described above, several analyses are required to meet federal and State environmental review requirements. The four required documents are listed below:

1. Draft Environmental Impact Statement;
2. [Cultural Impact Assessment](#) (CIA);
3. Sanctuary Management Plan (Appendix A); and
4. Draft Regulations (Notice of Proposed Rulemaking)

1.3.2 Public Involvement and Scoping

Sanctuary designation and environmental review includes public involvement, as well as coordination and consultations with other federal, State, and local agencies, described below.

Scoping

On November 19, 2021, NOAA, in cooperation with the State of Hawai‘i and USFWS, published a Notice of Intent in the Federal Register (86 FR 64904) to conduct scoping and to prepare an EIS for the proposed sanctuary designation. **The State’s EIS Preparation Notice was developed based upon the federal NOI, as the State and federal scoping processes, including comment-gathering, were combined.** The public comment period took place over the course of 74 days from November 19, 2021–January 31, 2022, and included virtual public scoping meetings on the following dates where comments were solicited:

- Wednesday, December 8, 2021, 6 p.m. HST

- Saturday, December 11, 2021, 12 p.m. HST
- Tuesday, December 14, 2021, 6 p.m. HST
- Thursday, December 16, 2021, 3 p.m. HST

Comments were accepted 1) during the virtual public scoping meetings, 2) through the Federal eRulemaking Portal, and 3) by traditional mail through January 31, 2022. An estimated 165 people attended the four public scoping meetings. During the public comment period, 73 individuals and organizations provided written comments and nine people provided oral comments. Sixty-five of these 82 total comments mentioned support for resource protection, while 31 mentioned sanctuary regulations. Other comments noted Native Hawaiian values and practices (21), historic properties (20), fishery management (19), threats (15), sanctuary boundaries (13), economics (8), and enforcement (6). A summary Public Scoping Report, which documents oral and written comments, is included as Appendix F to this EIS.

Nohopapa Hawai‘i, LLC created the document *E Ho‘i I Ke Au A Kanaloa* (2023) containing the CIA and legal analysis relating to Native Hawaiian rights and cultural resources. Nohopapa Hawai‘i, LLC interviewed 25 people with connections to Papahānaumokuākea.

Reserve Advisory Council

The existing Reserve Advisory Council, which was formed in 2001, was created by Executive Order 13178 pursuant to the National Marine Sanctuaries Act. The RAC has served as a mechanism for public input and a venue for public comment to NOAA on Monument management activities. The RAC adheres to the policies and procedures of a Sanctuary Advisory Council.

Since publication of the Notice of Intent to conduct scoping and prepare an EIS for the proposed sanctuary designation, the RAC has forwarded several recommendation letters to ONMS. During the scoping period, the RAC provided recommendations to ONMS for the draft sanctuary management plan’s framework and content; boundary options; fishing regulations for the MEA; and sanctuary regulations and permitting that provides for equal or greater protections compared to the Monument. The RAC also provided comments during the public review of the draft sanctuary proposal, including recommendations for socioeconomic analysis, boundary, and compliance with international treaties. These recommendations were drafted by a subcommittee and voted upon and approved by the RAC.

Public Review of Draft Designation Documents

On March 1, 2024, NOAA published a Notice of Proposed Rulemaking (89 FR 15272) to release the draft rule, draft environmental impact statement, and draft management plan; and to request public comments on the proposed sanctuary designation documents. On March 8, 2024, the State of Hawai‘i Environmental Review Program also informed the public about the availability of the draft EIS through an announcement in its bulletin, *The Environmental Notice*, per HRS Chapter 343-3(c). The draft EIS is also available online through the State Environmental Review Program (ERP) [website](#).

Per NEPA and HEPA, publication of the Notice of Availability of the draft EIS in federal and State bulletins, on March 1 and March 8, respectively, initiated the draft EIS public review

period. The State of Hawai‘i also widely distributed public notifications and information through a virtual informational meeting, flyers, web updates, and social media to solicit public participation. The public comment period took place over the course of 68 days from March 1–May 7, 2024. Public meetings were held to provide information to the public and to receive public input in the form of oral and written comments. Public meetings were held on the following dates:

- Saturday, April 6, 2024, 9 a.m. HST – Virtual
- Monday, April 8, 2024, 5 p.m. HST – Honolulu, O‘ahu
- Tuesday, April 9, 2024, 5 p.m. HST – Kāne‘ohe, O‘ahu
- Wednesday, April 10, 2024, 5 p.m. HST – Wai‘anae, O‘ahu
- Thursday, April 11, 2024, 5 p.m. HST – Waimea, Kaua‘i
- Friday, April 12, 2024, 5 p.m. HST – Virtual
- Saturday, April 13, 2024, 5 p.m. HST – Līhu‘e, Kaua‘i
- Monday, April 15, 2024, 5 p.m. HST – Hilo, Hawai‘i
- Tuesday, April 16, 2024, 5 p.m. HST – Kahalu‘u Kona, Hawai‘i
- Wednesday, April 17, 2024, 5 p.m. HST – Kahului, Maui
- Thursday, April 18, 2024, 5 p.m. HST – Kaunakakai, Moloka‘i

Comments were accepted 1) during two virtual and nine in-person public meetings on O‘ahu, Kaua‘i, Hawai‘i Island, Maui, and Moloka‘i; 2) through the Federal eRulemaking Portal; and 3) by traditional mail through May 7, 2024. The public meeting on April 12 was planned to be hosted in Hanalei, but was changed to virtual format due to hazardous weather and flooding conditions. NOAA notified the public through a media alert, notifications to local radio stations, and social media announcements. An estimated 237 people attended the 11 public meetings and 61 individuals provided oral comments. During the public comment period, more than 13,900 written comments were received from individuals, organizations and agencies, the overwhelming majority in support of sanctuary designation.

Major themes of comments included sanctuary access, permitting, prohibitions, enforcement, Native Hawaiian and Indigenous rights, cultural integration, fishing, co-management, resource protection, education and outreach, partnerships, and community participation. After the public comment period closed, the comments were carefully reviewed and cataloged by substantive issues contained in the comments. In preparing the final EIS, final management plan, and final rule, NOAA and the State of Hawai‘i considered comments received on the draft EIS, identified substantive comments, and provided responses commensurate with the comment. A summary of these comments and the corresponding responses from NOAA are provided in Appendix K. In response to these substantive comments, NOAA clarified information and made changes to this final EIS, and the draft sanctuary management plan, as described further below (see Section 1.5 for a summary list of changes). The final rule is consistent with these changes.

Like the draft EIS, a Notice of Availability for the final EIS will be published in the Federal Register and at the State of Hawai‘i Office of Planning and Sustainable Development’s Environmental Review Program (ERP) website. The Governor of Hawai‘i, as the State’s accepting authority for this EIS, will conduct its HEPA acceptability determination within 30

days of publication of final EIS availability in the ERP Bulletin. The Governor's determination will be published in The Environmental Notice.

Under NEPA, there is no public review period for the final EIS. If NOAA moves forward with a final action, a 30-day mandatory waiting period will occur after issuance of the final EIS, and then NOAA will issue its Record of Decision (see 40 C.F.R. § 1506.11). In addition, a final rule that promulgates sanctuary regulations and terms of designation would be published in the Federal Register. Under Section 304(b) of the NMSA (16 U.S.C. 1434(b)), after the publication of the final rule the designation and regulations become effective after 45 days of continuous Congressional session. During this time, the governor of the State of Hawai'i will review NOAA's designation documents and certify if the designation or any of its terms regarding State waters is unacceptable, in which case the designation or any unacceptable term affecting State waters shall not take effect.

1.3.3 Relationship to Other Applicable Laws, Regulations, and Executive Orders

In addition to NEPA, NOAA must comply with several related statutes, regulations, and Executive Orders as part of this federal action, including the National Historic Preservation Act (NHPA); Coastal Zone Management Act (CZMA); ESA; Marine Mammal Protection Act (MMPA); Migratory Bird Treaty Act (MBTA); Essential Fish Habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act (MSA); and Executive Order 12898 on addressing environmental justice in minority populations and low-income populations. Appendices C and E describe the requirements of the statutes, executive orders, and other regulations applicable to the proposed sanctuary designation and NOAA's compliance with these applicable laws and policies.

1.4 Scope of the Environmental Review

This final EIS analyzes the environmental impacts associated with the no action alternative, and all action alternatives under consideration for the proposed designation of Papahānaumokuākea National Marine Sanctuary. Specifically, this final EIS evaluates how implementing the proposed sanctuary boundaries, regulations, and a sanctuary management plan could affect the environment. The EIS also considers additional environmental protections for resources and any loss of opportunity to resource users created by sanctuary designation.

The action alternatives focus on implementing relatively minor changes to existing restrictions, regulations, and protections for the action area. These changes are designed to improve consistency of regulations across the area of the proposed sanctuary and to impart additional protections. Because of the existing management measures and protections enacted over the years, the proposed sanctuary designation primarily supplements existing protections and enacts only a few new restrictions and requirements on users. Sanctuary designation would not remove Monument designation or accompanying regulations. Rather, it would give NOAA the authority under the NMSA to supplement existing protections and management.

The geographic scope of the analysis includes areas of the marine environment within PMNM and the MEA, including the marine areas within Midway Atoll NWR and Hawaiian Islands

NWR, and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. The geographic scope for socio-economic impacts extends to the State of Hawai‘i. The timeframe for this analysis evaluates current conditions and conditions that are likely to be present for approximately five years.

Sanctuary activities that may occur at a later time, within the proposed sanctuary, including issuing permits for specific future activities, are outside the scope of this proposed action and are not described in this final EIS because the specific nature, timing, and location of these activities cannot be known at this time. In the event that the sanctuary is designated, through the permit process, NOAA would review these future management activities to ensure that those actions are addressed under NEPA and other applicable environmental laws.

The effects of fishing regulations in the area of the proposed sanctuary that overlaps with PMNM are not considered in the final EIS. Commercial fishing has been prohibited in the PMNM since June 15, 2011, in accordance with Presidential Proclamation 8031 and regulations at 50 CFR § 404.10(b)(3). Non-commercial fishing is regulated in the PMNM in accordance with Presidential Proclamation 8031 and regulations at 50 CFR § 404.11. These existing restrictions on fishing in the area of the proposed sanctuary that overlaps with PMNM would not be changed under any of the alternatives, including the No Action Alternative.

Commercial fishing is prohibited and non-commercial fishing may be regulated in the MEA in accordance with Presidential Proclamation 9478. NOAA consulted with the Western Pacific Regional Fishery Management Council (WPRFMC) as required by section 304(a)(5) of the NMSA, to provide the WPRFMC with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. To reflect the outcome of the NMSA 304(a)(5) process, NOAA is preparing a proposed rule for regulations governing fishing in the MEA under the authority of the MSA. NOAA will complete an environmental compliance analysis consistent with NEPA as part of that rulemaking process. Therefore, the analysis of environmental effects of commercial and noncommercial regulations in the MEA is outside the scope of this final EIS.

This final EIS also serves as a resource assessment under the NMSA (16 U.S.C. § 1434(a)(2)(B)), which includes (i) present and potential uses of the areas considered in the alternatives; (ii) commercial, governmental, or recreational resource uses in the areas that are subject to the primary jurisdiction of the Department of the Interior; and (iii) any past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary.

1.5 Revisions from the Draft EIS to the Final EIS

Public and agency comments on the draft EIS, draft management plan, and proposed rule were considered by NOAA and the State of Hawai‘i and no new significant adverse impacts were identified. The following minor changes have been incorporated into the draft designation materials. These do not constitute substantial changes relevant to environmental concerns. NOAA and the State of Hawai‘i consolidated public comments from the draft environmental impact statement, draft sanctuary management plan, and Notice of Proposed Rulemaking, and collectively responded to those comments in Appendix K.

EIS

- Additional information was added to the “About this Document” section and elsewhere to clarify who served as a cooperating agency for this action, and the role of the cooperating agencies for the development of the EIS. (Comment G.3)
- Information about the draft EIS public review process has been added to Section 1.3.2.
- More information about the public engagement process, including the number of public comment meetings, was added to Section 1.3.2. (Comment G.1)
- Clarifications regarding the role of the RAC and SAC have been made in Section 1.3.2. (Comment K.21)
- Additional information about the history of management and actions leading up to the proposed designation of a sanctuary in Papahānaumokuākea has been added to sections 1.2.2, 1.2.3, and 2.2.1.
- Recognition of the Native Hawaiian community and a definition for the term Native Hawaiian per existing federal law are provided in a new section, 1.2.4.
- Additional information was added to sections 3.2 and 3.3 to provide more details regarding the No Action Alternative and its analysis, including the description of the No Action Alternative, the existing management framework and authorities that govern the area of the proposed sanctuary, and the existing prohibited and regulated activities, exemptions, and permitting process. (Comments J.1, J.15, and J.23)
- Additional information has been added throughout the final EIS about how the proposed sanctuary has been specifically designed to be integrated and consistent with the existing co-management framework and to complement and supplement other State and federal authorities to manage the nationally significant resources of Papahānaumokuākea. (Comments E.1, E.2, E.3, E.5, and E.6)
 - Section 1.2.2 includes new text about the co-management framework.
 - Sections 2.2.1 and 2.2.2 include additional information about ways the sanctuary may complement and supplement other authorities.
 - Section 3.3.1 clarifies the proposed framework for management and permitting in partnership with USFWS and the other Monument managers (comments E.1, E.2, E.3, E.5, F.4, and F.6). This section also contains updated text describing how NOAA is developing an agreement with the USFWS to provide details on the supplemental authority under the NMSA to protect resources where the sanctuary overlaps with national wildlife refuges (comment E.6). NOAA also has made revisions to the description of the No Action Alternative (Section 3.2) to better articulate the existing roles of each Monument co-trustee, including their jurisdiction and authorities that guide their role in managing the Monument (comments J.24, J.25, and others).
 - In response to a comment regarding how Midway Atoll NWR operations may be affected by sanctuary designation, NOAA has provided additional clarity in Section 3.3 describing elements specific to all action alternatives regarding how NOAA would supplement and complement existing management, including management of Midway Atoll NWR. (Comment J.24)

- Section 4.2.2 provides a minor clarification regarding management authorities of the Monument’s co-managing agencies.
- Section 3.2 (No Action Alternative) has been revised to include more detail on the existing management framework and authorities that govern the area of the proposed sanctuary, as well as a description of the existing prohibited and regulated activities, exemptions, and permitting process. (Comments J.15 and J.16)
- Sections 3.2 (No Action Alternative) and 4.6.2 (Recreation) have been revised to acknowledge that the USFWS has the authority to charge fees for services including public visitation. (Comment B.7)
- Information on NOAA’s intent to work in coordination with the Monument co-trustees to update the existing memorandum of agreement for Promoting Coordinated Management of Papahānaumokuākea Marine National Monument was added to Section 3.3.1. (Comment E.1)
- Section 3.3.1 (Exemptions) includes an updated description of the non-commercial fishing exemption in the area of the sanctuary that overlaps with the MEA/Outer Sanctuary Zone. (Comments D.5, D.15, and F.4)
- Section 3.3.1 (Permitting) includes an updated description of the proposed permitting process. (Comments B.3, B.13, and F.6)
- Addition to Section 3.3.1 (Regulations) clarifies that, consistent with the current interagency permitting regime in place for the Monument, there would be no appeals process for a sanctuary permit.
- Clarification was added to Section 3.7 regarding that Middle Bank is managed by both NOAA and the State of Hawai‘i. (Comment J.22)
- Clarifications regarding NOAA’s consideration of a sanctuary boundary extending beyond the existing boundary of the Monument were added to Section 3.7.1 (Comment I.3). NOAA provided additional reasoning for its elimination of a boundary that included all of Middle Bank (Comment J.18), as well as acknowledgment that comments of support, as well as opposition, were received for this boundary alternative (comments J.20 and J.21).
- Clarifications have been added to sections 1.4 and 3.7.2 regarding how NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA. (Comment D.19)
- Information in Table 4.5, Seabirds of Papahānaumokuākea, and Table 4.6e. ESA and State-Listed Seabird Species within the Project Area were updated.
- The word “empower” was removed from sections 4.5.1 and 4.6.2, and replaced with language conforming to current standards regarding equity and justice.
- NOAA has revised Section 5.5.1 by removing the referenced portion of the impact analysis related to the potential need for two permits under Alternative 3. (Comment J.26)
- NOAA has revised Section 5.3.5 describing adverse impacts to socioeconomic resources and human uses. In the draft EIS, NOAA included a description of vessel hull inspections as a requirement for sanctuary permits. Vessel hull inspections are not included in the proposed regulations for the sanctuary; therefore, NOAA has removed the analysis of this impact. Vessel hull inspections are currently required as a permit condition (as

indicated under the No Action Alternative in Chapter 4), and would continue to occur under existing Monument management.

- Minor revisions have been made to Section 5.2.3 to include a description of existing management actions taken to address invasive species. (Comment J.10)
- Minor revisions have been made to Appendix C and elsewhere to better reflect the existence of Battle of Midway National Monument, and to clarify that the Battle of Midway occurred at both Midway Atoll and at sea. (Comment L.4)
- The word “conservation,” when referring to the purpose of the proposed sanctuary, has been added to sections 1.1 and 2.1. (Comment L.2)
- Throughout the document minor revisions have been made to better reflect USFWS management authority over the Midway Atoll and Hawaiian Islands National Wildlife Refuges (sections 1.2, 2.2, 3.0, 3.1, 3.3, 3.4, 3.5, 4.2, 5.3).
- All instances of “OSZ” have been replaced with “Outer Sanctuary Zone.” (Comment L.3)
- Appendix F has been revised to provide exact copies of scoping comments. (Comment G.2)
- More detailed information on the findings of the Cultural Impact Assessment *E Hoi I Ke Au A Kanaloa* relating to the sanctuary proposal was added in Section 5.1.4. (Comment C.7)

Sanctuary Regulations

The following revisions and clarifications were made to the sanctuary regulations in response to public comment, and are reflected in the EIS as follows:

- In Section 3.3.1, when describing cooperative management, additional information has been added about the current co-management framework and how the proposed sanctuary has been specifically designed to complement and supplement other State and federal resource protection laws, and to be integrated with existing management. (Comment E.2) NOAA has also clearly stated that the sanctuary will be managed in partnership with other State and federal agencies, including the Office of Hawaiian Affairs and USFWS. (Comment E.2)
- Changes have been made to Section 3.3.1 – *Exemptions*, to clarify that a non-commercial fishing permit authorized under the MSA is only exempt from a specific subset of prohibited or otherwise regulated activities that are conducted as incidental to and necessary to conduct lawful non-commercial fishing activity. NOAA has also clarified that the exemption from the sanctuary’s permitting requirements is only applicable for non-commercial fishing provided that the fish harvested, either in whole or in part, are neither intended to enter commerce nor enter commerce through sale, barter, or trade and that the resource is managed sustainably, consistent with Presidential Proclamation 9478. Moreover, for the exemption to apply, the fish harvested, either in whole or in part, are not intended to be sold and shall not be sold for any purposes, including, but not limited to, cost-recovery. (Comments D.5, F.4)
- Changes have been made to Section 3.3.1 (Sunken Military Craft) and Appendix C to clarify that sunken military craft in the sanctuary will continue to be administered by the respective Secretary concerned pursuant to the Sunken Military Craft Act of 2004

(SMCA; Pub. L. 108-375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note); and that NOAA will enter into a memorandum of agreement with the appropriate agencies regarding the implementation of our respective authorities.

Management Plan

The following changes were made to the final sanctuary management plan, as reflected in Appendix A.

- New text was added to several sections of the plan to better reflect how sanctuary designation may affect future co-management of the Monument. A new sub-section on Cooperative and Coordinated Management was added to Section 2: Purpose of the Sanctuary Plan. This describes how the sanctuary plan shares the vision, mission, management principles, and framework with the Monument, and how NOAA will manage the sanctuary in partnership with the Monument co-trustees. Revisions were also made to Section 1: Foundations, to include information about the 2017 co-trustee memorandum of agreement and to emphasize NOAA's intent to integrate the sanctuary management plan with Monument management. Similarly, text was added to the Acknowledgements section to better reflect NOAA's commitment to integrated, collaborative management. (Comments E.1, E.2, E. 5, and E.10)
- Minor modifications were made to the following kūkulu in Section 3:
 - Kūkulu 3, Governance and Operations: The order of strategies was modified, and a slight text revision was made to the goal.
 - Kūkulu 4, Partnerships and Constituent Engagement: In response to a public comment, text changes were made to Strategy 4.1 to clarify that the existing Reserve Advisory Council will be transitioned to serve as the Sanctuary Advisory Council. (Comment K.21)
- An abbreviations section was added in response to a public comment. (Comment L.1)
- Additional background information on the sanctuary management plan development process was added to the Acknowledgements section.
- Corrections were made in the management plan and EIS to reflect that the timeframe of the management plan is 5–7 years

1.6 Organization of This Final Environmental Impact Statement

This final EIS is organized as follows:

Chapter 1: Provides background on the National Marine Sanctuary System, the proposed sanctuary designation for Papahānaumokuākea, and the sanctuary designation and environmental review processes under NMSA, NEPA, and HEPA.

Chapter 2: Outlines the purpose and need for the proposed designation of a national marine sanctuary in Papahānaumokuākea.

Chapter 3: Describes the process to develop alternatives. Identifies the No Action Alternative, the three action alternatives, and the alternatives considered but eliminated from detailed

evaluation. For each alternative, Chapter 3 describes the proposed boundary, regulations, and final sanctuary management plan.

Chapter 4: Describes the existing conditions in the geographic scope of the action to provide a baseline for assessing environmental impacts including an overview of marine ecosystems, shipwrecks, the cultural landscape, and human uses within the proposed sanctuary.

Chapter 5: Provides an analysis of the potential environmental consequences of each alternative and compares the environmental consequences across alternatives. Direct, indirect, short-term, long-term, and cumulative impacts are evaluated.

Chapter 6: Describes the unavoidable adverse impacts, the relationship of short- and long-term productivity, and irreversible or irretrievable commitment of resources associated with the alternatives, per the requirements of NEPA.

Chapter 2: Purpose and Need for Action

2.1 Purpose of the Proposed Action

NOAA’s proposed action is to designate marine areas of the Monument as a national marine sanctuary. The purpose of this action is to provide comprehensive and coordinated **conservation** and management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources. See Section 1.2.1, “Significance of the Area and Rationale for Proposed Sanctuary Designation,” for more information on the national significance of the area proposed as a national marine sanctuary. Additionally, the purpose of the designation is to implement the provisions of Presidential Proclamation 9478 **that directed NOAA to consider initiating the sanctuary designation process**, and Executive Order 13178 and the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2021, that directed NOAA **to initiate the sanctuary designation process**.

Executive Order 13178 states “*The Secretary shall initiate the process to designate the Reserve as a national marine sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act.*”

Presidential Proclamation 9478 states “[T]he Secretary of Commerce should consider initiating the process under the National Marine Sanctuaries Act to designate the Monument Expansion area and the Monument seaward of the Hawaiian Islands National Wildlife Refuge and Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial as a National Marine Sanctuary to supplement and complement existing authorities.”

The NMSA authorizes the Secretary of Commerce to designate national marine sanctuaries to meet the purposes and policies of the NMSA, including:

- “to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities” (16 U.S.C. § 1431(b)(2));
- “to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes” (16 U.S.C. § 1431(b)(3));
- “to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the ... historical, cultural, and archaeological resources of the National Marine Sanctuary System” (16 U.S.C. § 1431(b)(4));
- “to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas” (16 U.S.C. § (b)(5)); and
- “to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities” (16 U.S.C. § 1431(b)(6)).

2.2 Need for the Proposed Action

The area proposed for national marine sanctuary designation is a globally significant, interconnected set of marine ecosystems, including coral islands; shallow, deep, and mesophotic reefs; seamounts; banks; and pelagic waters connected to the greater Pacific Ocean. This area supports rare and endangered wildlife, is the location of the historic Battle of Midway, and holds deep cosmological and traditional significance to the people of Hawai‘i and the Native Hawaiian culture. While its remote location protects the area from impacts from local human uses, threats from climate change, marine debris from across the Pacific, in conjunction with the threat of invasive species, combined with shipping traffic, have and will continue to adversely impact these fragile resources. Through the proposed national marine sanctuary designation, NOAA aims to address these threats and discrepancies in management across the Monument by:

- developing objectives and actions that ensure lasting protections consistent with the existing Monument proclamations;
- safeguarding natural and cultural values of the marine environment;
- applying additional regulatory and non-regulatory tools to augment and strengthen existing protections for Papahānaumokuākea ecosystems, wildlife, and cultural and maritime heritage resources;
- authorizing NOAA to exercise enforcement authorities, including the assessment of civil penalties for violations of sanctuary regulations or violations of permits and to enforce provisions of the NMSA;
- imposing liability for the destruction, loss of, or injury to sanctuary resources and providing natural resource damage assessment to authorities for destruction, loss of, or injury to any sanctuary resource; and
- requiring interagency consultation for any federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource

2.2.1 Complement and Supplement Existing Regulatory Authorities

The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, established by Executive Order 13178, is managed by the U.S. Department of Commerce under the National Marine Sanctuaries Act, through NOAA’s Office of National Marine Sanctuaries. As a result of the existing Reserve, and the existing Monument management framework, of which ONMS is a critical part, the proposed sanctuary has been specifically designed to complement and supplement other federal and State resource protection laws to manage the nationally significant resources of Papahānaumokuākea. See sections 1.2.2 and 1.2.3 for an overview of existing management of the area and actions leading to the proposed designation of a sanctuary.

Congress has declared that one purpose of the NMSA is to provide coordinated and comprehensive conservation and management of special areas of the marine environment that would complement other existing regulatory authorities (16 U.S.C. § 1431(b)(2)). By designating this area as a national marine sanctuary, NOAA would implement regulations to complement and supplement existing authorities under the Antiquities Act; National Wildlife Refuge System Administration Act; presidential proclamations 8031, 8112, and 9478; Executive Order 13178; 50 CFR 404; as well as other existing federal and State statutes designed to protect marine

resources. Through sanctuary designation, NOAA would add to and not diminish protections under existing authorities, such as the USFWS' sole management authority over refuges pursuant to the National Wildlife Refuge System Administration Act. See Section 3.3.1 for an overview of proposed sanctuary regulations and appendices C and E for a comprehensive list of existing federal and State authorities that the NMSA would complement and supplement. See Section 4.4 for further discussion of protected species and habitats and Section 4.5 for discussion of cultural and historic resources in the proposed sanctuary.

The directives in presidential proclamations 8031 and 8112 (codified in 50 CFR part 404) and those in Presidential Proclamation 9478 address similar resource management concerns but exhibit technical differences in structure and content. At present, there are no implementing regulations to authorize permitting or enforce the prohibitions in the MEA as outlined in Presidential Proclamation 9478. The lack of implementing regulations presents a lack of clarity in management, enforcement, and allowed activities in the MEA. Sanctuary designation provides the opportunity to develop a cohesive set of regulations that maintains and enhances existing resource protection by adopting management measures from the presidential proclamations and, in some places, adding to those measures to allow for consistency in the management of resources and values throughout the Monument and sanctuary.

Through sanctuary designation, the NMSA provides additional regulatory tools for management and protection of resources within Papahānaumokuākea. Sanctuary designation provides regulations for a permitting system under the NMSA to manage waters of both PMNM and the MEA, developed to be integrated with the Monument permitting system, and eliminating potential gaps in management. This provides clarity for permittees, managers, and enforcement personnel, including for permitted activities that occur across PMNM and the MEA. With sanctuary designation, the NMSA authorizes NOAA to assess civil penalties for violations of sanctuary regulations and permits, and to enforce other provisions of the NMSA. The NMSA allows NOAA to implement emergency regulations, where necessary, to prevent or minimize the destruction of, loss of, or injury to a sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury. Under Section 312 of the NMSA, NOAA can impose liability for destruction, loss of, or injury to sanctuary resources and provide natural resource damage assessment to authorities for destruction, loss of, or injury to any sanctuary resource.

Section 304(d) of the NMSA allows NOAA to further protect resources by requiring federal agencies to consider alternatives to proposed actions that are “likely to destroy, cause the loss of, or injure any sanctuary resource.” These and other directives in the NMSA would supplement and help to ensure a stable and comprehensive framework deserving of this place of special national significance.

Sanctuary designation also provides additional non-regulatory tools to further manage and protect Monument resources. For more than 20 years, NOAA has developed robust and effective programs for conservation science; the weaving of Kānaka ‘Ōiwi (Native Hawaiian) heritage, knowledge, values, and practices into co-management; maritime heritage; and education, providing services and expertise that a sanctuary could leverage to support resource protection across the Monument.

2.2.2 Approach to Management of the Proposed Sanctuary

Through the proposed sanctuary designation, NOAA is proposing to supplement and complement existing management of the area and would manage the sanctuary **in partnership with Monument co-trustees**. The sanctuary management plan (Appendix A), required by the NMSA and developed in consultation with the State, USFWS, and OHA, provides the framework, goals, and comprehensive suite of adaptive strategies required to address management needs in the areas of resource protection, research and monitoring, cultural heritage, and outreach and education. This collaborative approach was followed to explicitly “ensure concurrence of plans between the sanctuary and the overarching Monument” (Appendix A). The sanctuary management plan also reflects the strengths of the National Marine Sanctuary System which includes national programs for conservation science, maritime heritage, climate change, and education.

2.3 State of Hawai‘i Designation Responsibility

The State of Hawai‘i, who co-developed this final EIS, proposes that NOAA include all State waters and submerged lands within the Monument in the proposed national marine sanctuary. These waters and submerged lands run from zero to three nautical miles (nmi) around Nihoa, Mokumanamana, Lalo (French Frigate Shoals), Kamole (Laysan Island), Kamokuokamohoali‘i (Maro Reef), ‘Ōnūnui and ‘Ōnūiki (Gardner Pinnacles), Kapou (Lisianski Island), Manawai (Pearl and Hermes Atoll), and Hōlanikū (Kure Atoll). The State waters and submerged lands within Papahānaumokuākea serve significant ecological, cultural, and historic purposes. The State also recognizes the Kānaka ‘Ōiwi spiritual connection to Papahānaumokuākea and its significance in Kānaka ‘Ōiwi traditions and culture. The State of Hawai‘i would co-manage the proposed sanctuary, pursuant to the NMSA. This proposed sanctuary management structure would be incorporated into the larger co-management framework for the Monument.

2.3.1 State of Hawai‘i Constitutional Public Trust Duties

The State has constitutional public trust duties to protect these waters and submerged lands for the benefit of the public and Native Hawaiians. Article XI, Section 1 of the Constitution of the State of Hawai‘i stipulates a State duty to “conserve and protect Hawaii’s natural beauty and all natural resources” for the benefit of the people and future generations. The State also has constitutional duties particular to Native Hawaiians.

2.3.2 Native Hawaiian Rights

Article XII, Section 7 of the Constitution of the State of Hawai‘i stipulates that the State must protect Native Hawaiian rights “customarily and traditionally exercised for subsistence, cultural and religious purposes.” The Admission Act, Section 5 and Article XII, Section 4 of the Constitution of the State of Hawai‘i provide additional protection through a separate public land

trust with the State as trustee for the ceded lands granted to it during its admission to the U.S. as a state.² Native Hawaiians and the “general public” are beneficiaries of both trusts.³

HEPA requires analysis of impacts to cultural resources resulting in the State’s CIA within the document titled *E Ho‘i I Ke Au A Kanaloa* (Nohopapa Hawai‘i, 2023). To support the State’s constitutional duties to protect Native Hawaiian traditional and customary practices, this document also contains a legal analysis.

The CIA presents a detailed genealogy of Papahānaumokuākea, its connection to Hawaiian history and the main Hawaiian Islands, and the cultural resources, practices, beliefs, and spirituality associated with this biocultural seascape that are fundamental to Kānaka ‘Ōiwi. Following extensive outreach to identify individuals and groups interested in participating, Nohopapa Hawai‘i, LLC interviewed 25 people with connections to Papahānaumokuākea. These interviewees identified their cultural practices and connection to Papahānaumokuākea, potential impacts to these practices and cultural resources, recommendations, and other considerations. The CIA outlines several Kānaka ‘Ōiwi customs such as voyaging, kilo (indigenous observational science), feather gathering, and fishing. Based on analysis in the CIA, these traditions and customary practices would be afforded greater protection and would not be significantly impacted by sanctuary designation.

The legal analysis associated with the CIA provides a legal background and support for the State to meet its duty to “affirmatively protect” religious, traditional, and customary practices of Kānaka ‘Ōiwi, as required under the Constitution of the State of Hawai‘i. The legal analysis highlights the need for the State to conduct a three-step Ka Pa‘akai Analysis:

- (1) the identity and scope of “valued cultural, historical, or natural resources” in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area;
- (2) the extent to which those resources—including traditional and customary native Hawaiian rights—will be affected or impaired by the proposed action; and
- (3) the feasible action, if any, to be taken ... by the [State and/or its political subdivisions] to reasonably protect native Hawaiian rights if they are found to exist.⁴

² The public land trust has five trust purposes: the support of the public schools and other public educational institutions, the betterment of the conditions of native Hawaiians, the development of farm and home ownership on as widespread a basis as possible, for the making of public improvements, and for the provision of lands for public use. HI ADMISSION ACT § 5(f).

³ The Admission Act refers to the definition of “native Hawaiian” as used in the Hawaiian Homes Commission Act (1920) which is applied to “any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778” HI HHCA § 201. Article XII of the Constitution of the State of Hawai‘i applies to descendants of native Hawaiians regardless of their blood quantum. Pub. Access Shoreline Hawai‘i by Rothstein v. Hawai‘i Cnty. Plan. Comm’n by Fujimoto, 79 Haw. 425, 449, 903 P.2d 1246, 1270 (1995). All Hawaiians fall under the classification of the general public. Off. of Hawaiian Affs. v. Hous. & Cmty. Dev. Corp. of Hawai‘i, 121 Haw. 324, 334, 219 P.3d 1111, 1121 (2009), as amended (Nov. 24, 2009).

⁴ Ka Pa‘akai O Ka ‘Aina v. Land Use Comm’n, 94 Hawai‘i 47, 7 P.3d 1084 (2000).

The Ka Pa‘akai Analysis is based on information provided in the legal analysis, CIA, EIS, and other supporting documents.

2.3.3 State Jurisdiction and the Hawaiian Islands National Wildlife Refuge Waters

State waters and submerged lands overlap with the Hawaiian Islands NWR. The original designation of the Hawaiian Islands NWR in 1909 describes its seaward boundary with a simple map, noting that it includes the “islets and reefs” of all Northwestern Hawaiian Islands except Midway (Executive Order 1019). Navigational maps could not be generated based on this description. Ongoing communication and collaboration between the State and USFWS, beginning soon after the admission of the State to the U.S., have not yet resulted in an agreed-upon seaward boundary. The State, USFWS, OHA, and NOAA have successfully co-managed the area without an official seaward boundary for the Hawaiian Islands NWR. The State proposes to continue this co-management structure for the proposed sanctuary.

Chapter 3: Alternatives

This chapter describes the alternatives NOAA has identified and the process used to develop them. NOAA developed its reasonable range of alternatives as required by NEPA. In accordance with NEPA, this section presents the no action alternative, a reasonable range of alternatives, and alternatives considered but eliminated from detailed study and the reasons for eliminating them. See 42 U.S.C. 4332(2)(C).

The proposed action is to designate the marine portions of the Monument as a national marine sanctuary with terms of designation, regulations, and a sanctuary management plan. Action alternatives only differ by proposed boundaries, with Alternative 1 (Proposed Action) the largest and most comprehensive, and Alternatives 2 and 3 consider smaller boundaries.

The boundary alternatives include the following:

- Alternative 1 is coextensive with the marine portions of the Monument. The boundary includes the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline⁵ of the islands and atolls seaward to 200 nmi, including all State waters and waters of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, the Battle of Midway National Memorial, and State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge. The area encompassed in Alternative 1 is approximately 582,570 square miles (439,910 square nmi).
- Alternative 2 includes the marine environment from the shoreline of the islands and atolls seaward to 50 nmi. This alternative includes all State waters and waters of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, the Battle of Midway National Memorial, and State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge. This alternative does not include the MEA. The area encompassed in Alternative 2 is approximately 139,782 square miles (105,552 square nmi).
- Alternative 3 has the same boundaries as Alternative 1, but excludes approximately 1,307.6 square miles of waters within the Midway Atoll and Hawaiian Islands National Wildlife Refuges and the Battle of Midway National Memorial. These excluded waters include portions of the State marine refuge and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve that overlap with Hawaiian Islands National Wildlife Refuge waters. The area encompassed in Alternative 3 is approximately 581,263 square miles (438,923 square nmi).

Under each action alternative, NOAA would designate a national marine sanctuary with terms of designation, regulations, and a management plan. As NOAA aims to provide coordinated conservation and management across the area, consistent with existing Monument

⁵ The State defines shoreline as “the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occur, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves” (HAR § 13-222).

management, the terms of designation, regulations, and sanctuary management plan are consistent across all alternatives. The alternatives differ only to the extent necessary to reflect the different boundaries. The analysis of impacts related to implementation of the sanctuary management plan is limited, and primarily focused on socioeconomic impacts, because the sanctuary management plan is an overarching administrative document that includes no specific implementation level projects or activities. The sanctuary management plan is available as Appendix A. Principally, the final EIS focuses on potential impacts to existing laws and management, physical resources, biological resources, cultural and maritime heritage resources, and human uses from the proposed designation.

NOAA has identified Alternative 1 as the Agency-Preferred Alternative. Alternative 1 also represents the area under consideration described by NOAA in the Notice of Intent (86 FR 64904 [Nov. 19, 2021]), as well as the boundary reflected in the proposed rule (89 FR 15272 [March 1, 2024]). See Chapter 5 for a comparison of all alternatives, as well as details explaining the basis for identifying the Agency-Preferred Alternative.

3.1 Development of Alternatives

Developing alternatives required assessing a range of technically and economically feasible options that meet the purpose and need of the proposed action of designating a sanctuary. As noted previously, the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2021 directed NOAA to initiate the process under the NMSA to designate Papahānaumokuākea as a national marine sanctuary “to supplement and complement, rather than supplant, existing authorities.” In response to this instruction, NOAA’s proposed action and the development of all reasonable alternatives were guided by two themes:

1. The protections described in presidential proclamations 8031, 8112, and 9478, provide the foundation for developing alternatives, and the proposed sanctuary would add to and not diminish those protections.
2. The **organizational** features related to co-management of the Monument would be maintained if a sanctuary is designated.

In developing alternatives, NOAA considered the following questions:

- Is the alternative consistent with the purposes and policies of the NMSA?
- Does the alternative meet the purpose and need of the proposed action?
- Does the alternative add to and not diminish existing protections?
- Does the alternative enhance, improve, or maintain public awareness and/or conservation of the natural, ecological, historical, scientific, cultural, archaeological, and/or educational resources, esthetic qualities, and/or resolve user conflicts in the area?

3.1.1 Development of Boundary Alternatives

A wide range of boundary alternatives were suggested and supported through public scoping comments from a variety of interested parties. The majority of boundary-related comments suggested that NOAA should include all waters of PMNM and the MEA in the proposed

sanctuary. Others suggested that the sanctuary include the marine environment within PMNM and exclude the MEA.

Others suggested an even smaller boundary, including the marine environment within PMNM but excluding the waters within Midway Atoll NWR. No public scoping comments supported excluding marine waters within the Hawaiian Islands NWR. However, USFWS, a cooperating agency for this action and a co-manager of the Monument, specifically requested that NOAA consider an alternative that excludes marine areas of the Hawaiian Islands National Wildlife Refuge and Midway Atoll National Wildlife Refuge from the proposed sanctuary, for the following reasons:

- Presidential Proclamation 8031 (2006) states that “The Secretary of the Interior, through the Fish and Wildlife Service (FWS), will have sole responsibility for management of the areas of the monument that overlay the Midway Atoll [NWR], the Battle of Midway National Memorial, and the Hawaiian Islands [NWR], in consultation with the Secretary of Commerce.”
- Presidential Proclamation 9478 (2016) states “the Secretary of Commerce should consider initiating the process...to designate the Monument Expansion area and the Monument seaward of the Hawaiian Islands National Wildlife Refuge and Midway Atoll National Wildlife Refuge...as a National Marine Sanctuary to supplement and complement existing authorities.”

Some scoping comments expressed support for a sanctuary boundary that extends beyond the footprint of the Monument to adjacent areas, including nearby seamounts and the entirety of Middle Bank. Other commenters did not want Middle Bank to be included in the sanctuary.

All of the proposed boundary alternatives have been included as action alternatives or as alternatives that were considered but subsequently eliminated from detailed study, with a brief discussion of the reason for elimination in Section 3.7.1 of the final EIS.

The rationale for the boundary alternatives carried forward (alternatives 1, 2, and 3) is described in sections 3.4–3.6. Table 3.1 briefly summarizes some main features of the three boundary action alternatives.

Table 3.1. Description of Alternative Boundaries

Alternative	Total Area	Overlay of Marine Environment	Features
Alternative 1	582,570 square miles	Reserve, PMNM, MEA, National Wildlife Refuges, National Memorial, State Marine Refuge	Largest sanctuary alternative.
Alternative 2	139,782 square miles	Reserve, PMNM, National Wildlife Refuges, National Memorial, State Marine Refuge	Smallest sanctuary alternative; excludes MEA.
Alternative 3	581,263 square miles	Part of Reserve, Part of PMNM, MEA, Part of State Marine Refuge	Similar to Alternative 1, but excludes the National Wildlife Refuges and National Memorial.

3.1.2 Development of Proposed Regulations

The NMSA authorizes NOAA to establish site-specific regulations for each national marine sanctuary. The purpose and need for the proposed sanctuary designation (Chapter 2) and NOAA's Preferred Alternative provide the framework for the development of the proposed sanctuary regulations. Scoping comments from numerous individuals, non-governmental organizations, and agencies stressed the need for consistency with existing Monument management and permitting, as well as augmentation of some Monument regulations and exemptions for certain activities. Presidential proclamations 8031, 8112, and 9478 served as benchmarks for drafting regulations for the proposed sanctuary. The proposed sanctuary would only add to and not diminish the management measures and protections provided by the presidential proclamations. Note, the PMNM regulations at 50 CFR Part 404 apply to the part of the Monument designated by presidential proclamations 8031 and 8112 (Original Area, 0–50 nmi). The text of the regulations found at 50 CFR Part 404 is essentially identical to the directives in Presidential Proclamation 8031. Therefore, the 50 CFR Part 404 regulations do not expand on the nature of the action that was taken through Presidential Proclamation 8031 and modified by Presidential Proclamation 8112.

In the proposed sanctuary regulations, NOAA has adopted the **management measures** from the presidential proclamations, and in a few places, added on to those measures to provide consistency in **regulations and management** across the proposed sanctuary. Minor changes in regulations for each area of the Monument (PMNM and MEA) are provided for in the proposed sanctuary regulations to remove discrepancies and gaps in prohibitions, regulated activities, and permitting across the two zones.

Per Section 304(a)(5) of the NMSA, NOAA provided the WPRFMC with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA initiated this consultation on November 19, 2021 ([letter](#)). NOAA accepted the majority of the WPRFMC's recommendation, as it was found to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, the WPRFMC's recommendation providing Native Hawaiian subsistence practices fishing permit applicants the ability to request limited cost recovery by selling their catch in the permit application process through a Statement of Need for cost recovery along with expected costs, failed to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation ([NOAA response letter, May 31, 2023](#)). **NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (MSA) to reflect the outcome of the NMSA Section 304(a)(5) process.** Appendix C provides further details of this consultation process.

3.1.3 Development of Sanctuary Management Plan

Sanctuary management plans are site-based planning and implementation documents used by all national marine sanctuaries. Sanctuary management plans fulfill many functions, including describing non-regulatory programs; outlining collaborations with partners; setting priorities for resource protection, research, and education programs; and guiding development of future

budgets, staffing needs, and management activities. They identify immediate, mid-range, and long-range opportunities, and outline future activities. The sanctuary management plan substantially adopts the core values and integrated approach to management developed by the Monument co-managers, weaving together knowledge systems from biocultural and co-management perspectives. The integration between the sanctuary management plan and Monument management is a priority identified in the sanctuary's vision, mission, and guiding principles, which are consistent with the vision, mission, and guiding principles of the Monument. The sanctuary management plan will chart the course for the proposed sanctuary over the next five to seven years. The sanctuary management plan is included as Appendix A to this final EIS. The sanctuary management plan was developed in consultation with the State, USFWS, and OHA. This collaborative approach was followed to explicitly ensure concurrence of plans between the proposed sanctuary and the Monument.

3.2 No Action Alternative

NOAA evaluated a No Action Alternative to serve as a baseline against which to compare the impacts of the action alternatives. 42 U.S.C. 4332(2)(C); 40 CFR § 1502.14(c). Under the No Action Alternative, NOAA would not designate a national marine sanctuary and existing Monument operations and management within the proposed sanctuary area would continue. The protection and management of biological, physical, historical, cultural, and other resources within the Monument would continue at the current management direction and level of management intensity under existing federal authorities and programs, and would not be strengthened by supplementary sanctuary regulations or management activities.

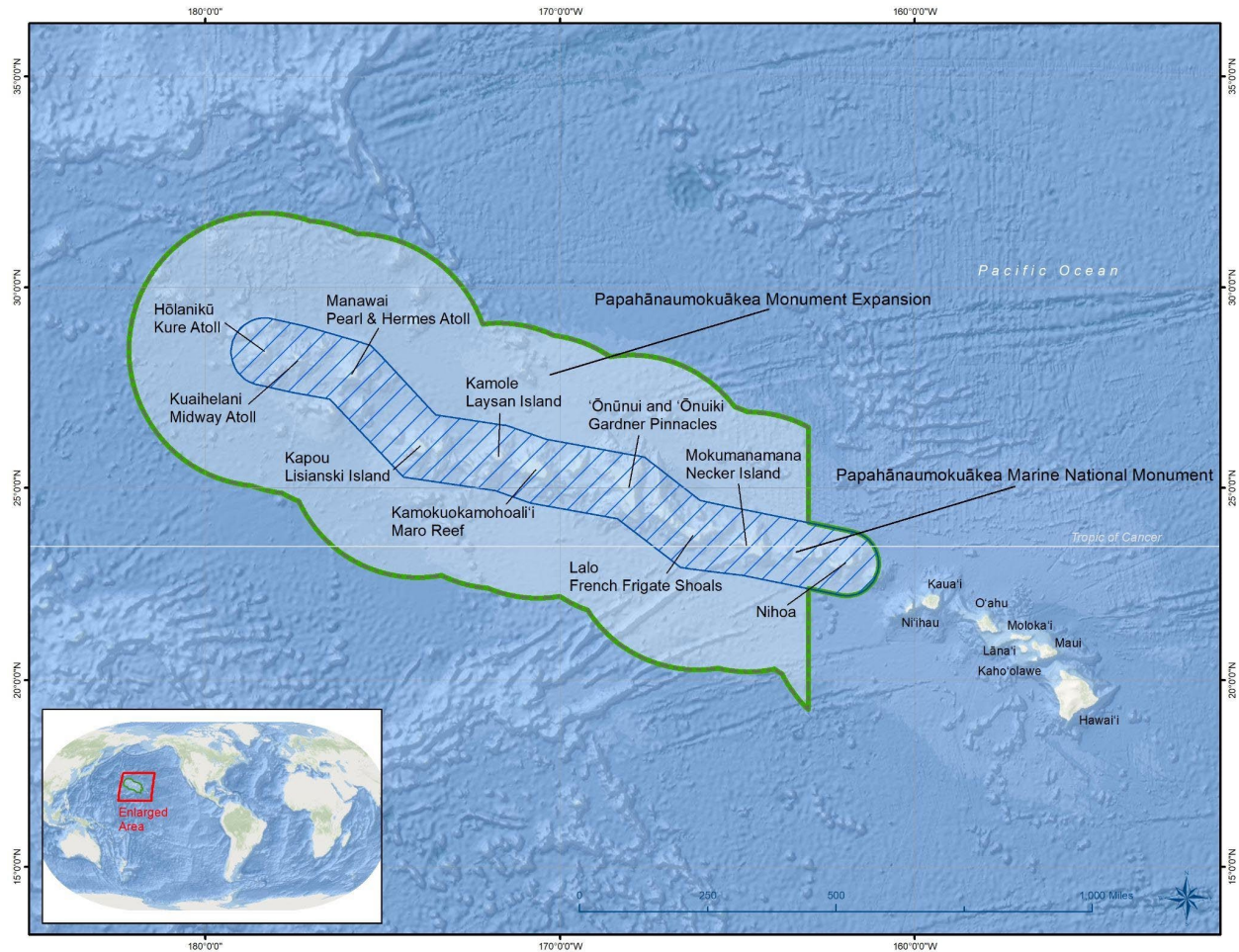


Figure 3.1. No Action Alternative showing existing monument boundaries. Image: NOAA

Under the No Action Alternative, resource management within Papahānaumokuākea would continue to be primarily guided by presidential proclamations 8031, 8112, and 9478, the joint regulations at 50 CFR § 404, Executive Order 13178, and other applicable authorities such as the MSA, the National Wildlife Refuge System Administration Act (NWRSA), MMPA, ESA, MTBA and others that pertain to the conservation of natural, cultural, and historical resources in the area (Appendix E).

The Monument co-trustees (the State of Hawai‘i, DOI, DOC, and OHA) would continue to share joint responsibility for managing the Monument’s emergent and submerged lands and waters. Co-management by the seven-member Monument Management Board (MMB) (Figure 3.2) which oversees day-to-day management consists of NOAA-ONMS, NOAA-Fisheries, USFWS Ecological Services, USFWS Refuges, DLNR-Division of Aquatic Resources, DLNR-Division of Forestry and Wildlife, and OHA. Prohibitions codified in 50 CFR part 404 based on Presidential Proclamation 8031 are subject to enforcement by law enforcement personnel.

While the Monument is managed as a unit, several federal and State conservation areas exist and specific authorities apply. Table 3.1 identifies these areas where specific authorities apply and individual agencies maintain jurisdictions and act as leads for Monument management

(Table 3.2). Note that these existing authorities would also remain in effect under all action alternatives.

Table 3.2. The areas subject to protection within Papahānaumokuākea and the existing authorities that would also remain in effect under all action alternatives.⁶

Areas subject to protection	Managing Agencies	Primary Authority	Established	Basic Boundary
Hawaiian Islands Bird Reservation (Executive Order 1019); Hawaiian Islands National Wildlife Refuge (Presidential Proclamation 2416)	USFWS	NWRSAA	1909/1940	All islets and reefs of the Northwestern Hawaiian Islands, approx 400 sq miles of marine waters, except Kuaihelani and Hōlanikū
U.S. Waters	NOAA Fisheries	MSA	1976	Waters from 3 nmi to 200 nmi
Midway Atoll National Wildlife Refuge	USFWS	NWRSAA	1988/1996	Kuaihelani and waters to 12 nmi
Kure Atoll Wildlife Sanctuary	DLNR Division of Forestry and Wildlife	HAR	1993	Green and Sand Islands
Northwestern Hawaiian Islands (NWHI) Coral Reef Ecosystem Reserve	NOAA ONMS	EO 13178, NMSA	2000	Approximately 3-50 nmi around all Northwestern Hawaiian Islands, except for Midway Atoll
State of Hawai'i NWHI Marine Refuge	DLNR Division of Aquatic Resources	HAR	2005	Waters from shoreline of all islets to 3 nmi, except Kuaihelani
Particularly Sensitive Sea Area	IMO, NOAA, USFWS	IMO	2008	Waters of PMNM plus a 10 mile buffer
Papahānaumokuākea MNM	NOAA, USFWS, State of Hawaii, OHA	Antiquities Act, PP 8031, 50 CFR 404 et seq.	2006	All land in the NWHI and surrounding waters to 50 nmi
Papahānaumokuākea MNM Expansion Area	NOAA, USFWS	Antiquities Act, PP 9478	2016	All NWHI waters 50 - 200 nmi

Regulations promulgated for these management regimes remain in place, and where conflicting regulations exist, the more stringent (resource protective) regulation applies. A complete description of the current management regime can be found on the [Monument's website](#).

⁶ Some jurisdictional authorities overlap, but for simplicity's sake, overlaps are not listed here.



Figure 3.2. Papahānaumokuākea Marine National Monument management structure. Image: NOAA

A memorandum of agreement between the Monument's co-trustees outlines the co-trustees' responsibility to carry out the coordinated management for the long-term comprehensive conservation and protection of the Monument. Each co-trustee identifies a Senior Executive Board (SEB) member who is responsible for management of the Monument through the MMB. The Secretary of Commerce, through NOAA, has primary responsibility regarding the management of the marine areas of PMNM, in consultation with the Secretary of the Interior. The Secretary of the Interior, through the USFWS, has sole responsibility for management of the areas of PMNM that overlay the Midway Atoll NWR and Hawaiian Islands NWR, in consultation with the Secretary of Commerce. The Secretary of Commerce, through NOAA, and in consultation with the Secretary of the Interior, has responsibility for management of activities and species within the MEA under MSA, ESA (for species regulated by NOAA), and any other applicable legal authorities. The Secretary of the Interior, through the USFWS, and in consultation with the Secretary of Commerce has responsibility for management of activities and species within the MEA under applicable legal authorities, including the NWRSA, the Refuge Recreation Act, and the ESA (for species regulated by FWS). The State of Hawai'i has primary responsibility for managing the State waters of the Monument. OHA has primary responsibility for representing the interests of the Kānaka 'Ōiwi community in the Monument through the perpetuation of Hawaiian cultural resources and practices. Note that these existing jurisdictions and responsibilities would also remain in effect under all action alternatives.

While the Monument is jointly administered, some areas are also guided by specific management documents and specific authorities may apply. For example, USFWS also has the authority to charge fees for services including public visitation (50 CFR Part 25 Subpart E). The USFWS has also created numerous management documents, in cooperation with the MMB, specifically for Midway Atoll, including the 2022 Midway Atoll Comprehensive Master Plan, the 2008 Midway Atoll Visitor Services Plan, and the Monument's 2008 Midway Atoll NWR Conceptual Site Plan. As another example, Monument permit applications that include proposed activities within the State's Northwestern Hawaiian Islands Marine Refuge are posted to the Board of Land and Natural Resources website for seven days prior to a scheduled Board of Land and Natural Resources public hearing as part of the overall Land Board submittal and permit review process.

3.2.1 Regulations

Under the No Action Alternative, the Monument's existing management and operations would remain in place. In managing the Monument, the co-trustees rely on the provisions outlined in Presidential Proclamations 8031 and 8112, which established PMNM, and Presidential Proclamation 9478, which created the MEA, the joint regulations at 50 CFR § 404 for PMNM, as well as other applicable authorities including MSA, NWRSA, and others. There are currently no implementing regulations for the provisions of Presidential Proclamation 9478 for the MEA.

Access

Under regulations at 50 CFR § 404 for PMNM, access to PMNM is prohibited and thus unlawful except for emergency response actions, law enforcement activities, and activities and exercises of the U.S. Armed Forces; pursuant to a Monument permit; or when conducting passage without interruption. In addition, the owner or operator of a vessel that has been issued a permit for

accessing the Monument must ensure that such vessel has a NOAA Office of Law Enforcement type-approved, operating vessel monitoring unit (VMS) on board when voyaging within the Monument. Presidential Proclamation 9478 for the MEA does not explicitly address access, but it did provide a list of prohibited activities, and a list of regulated activities that may be permitted (see Table 3.3 below).

The International Maritime Organization designated PMNM as a PSSA in 2008, to protect marine resources of ecological or cultural significance from damage by ships while helping keep mariners safe. In PMNM, entry and exit reporting for vessels passing without interruption is mandatory for all U.S. registered vessels and some foreign vessels (50 CFR part 404) and is encouraged for exempted vessels. **The ship reporting system exempts vessels entitled to sovereign immunity under international law from the reporting requirements.**

Prohibited or Otherwise Regulated Activities

Table 3.3 includes activities that are prohibited or otherwise regulated specific to the Monument. **Other regulations in addition to Monument regulations may also apply, where other federal and State conservation areas exist.** Prohibited activities are not allowed, while regulated activities may be allowed via a permit.

Table 3.3. Activities prohibited or otherwise regulated in the Monument.

Activity	PMNM (original area)	MEA
Exploring for, developing, or producing oil, gas, or minerals within the monument	Prohibited	Prohibited (also prohibits any energy development activities)
Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a monument resource	Prohibited	Prohibited
Introducing or otherwise releasing an introduced species from within or into the monument	Prohibited	Prohibited
Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope	Prohibited	Prohibited
Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving Monument resource	Regulated	Prohibited (unless conducted pursuant to a regulated activity)
Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands	Regulated	Prohibited (except for scientific instruments, which may be regulated)

Activity	PMNM (original area)	MEA
Anchoring a vessel	Regulated	Not addressed (except for the specific prohibition on anchoring on living or dead coral)
Deserting a vessel aground, at anchor, or adrift	Regulated	Prohibited
Discharging or depositing any material or other matter into Special Preservation Areas (SPAs) or the Midway Atoll Special Management Area (SMA) except vessel engine cooling water, weather deck runoff, and vessel engine exhaust	Regulated	N/A – SPAs and Midway Atoll SMA do not fall within the MEA boundary
Discharging or depositing any material or other matter into the Monument, or discharging or depositing any material or other matter outside of the Monument that subsequently enters the Monument and injures any resources of the Monument, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine sanitation device effluent, cooling water, and engine exhaust	Regulated	Not addressed
Touching coral, living or dead	Regulated	Not addressed (except for the specific prohibition on anchoring on living or dead coral)
Possessing fishing gear except when stowed and not available for immediate use during passage without interruption	Regulated	Regulated (explicitly regulates commercial fishing gear)
Swimming, snorkeling, or closed or open circuit scuba diving	Regulated	Not addressed
Attracting any living monument resources	Regulated	Not addressed
Commercial fishing	Prohibited*	Prohibited
Non-commercial fishing	Regulated*	Regulated

*Commercial fishing has been prohibited in PMNM since June 15, 2011, in accordance with Monument regulations at 50 CFR § 404.10(b)(3), and within the MEA since August 25, 2016, in accordance with Presidential Proclamation 9478. Sustenance fishing, a form of non-commercial fishing, is regulated in PMNM in accordance with Monument regulations at 50 CFR § 404.11.

Five activities in Table 3.3 are not explicitly mentioned in Presidential Proclamation 9478. However, many of these activities are already effectively regulated via the Presidential Proclamation 9478 prohibition on “removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving monument resource.” Presidential Proclamation 9478

provided additional categories of activities that may be regulated. These are addressed further in the “Permitting” section below.

Exemptions

- Activities necessary to respond to emergencies that threaten life, property, or the environment.
- Activities necessary for law enforcement purposes.
- Activities and exercises of the U.S. Armed Forces including those carried out by the U.S. Coast Guard.
- Scientific exploration or research activities by or for the Secretary of Commerce and/or the Secretary of the Interior in the MEA.

Permitting

The coordinated management of natural, cultural, and maritime heritage resources is achieved through a unified Monument permitting process, including a unified Monument permit application, instructions, and template. Proclamation 8031 requires a permit for access to PMNM (0–50 nmi). State regulations (HAR sections 13-60.5 and 13-125; 50 CFR Part 25, 26, 38, and 404) require that activities in State waters are subject to additional permit requirements. All permitted activities are authorized under the issuance of a single Monument permit signed by designees of USFWS, NOAA, and the State of Hawai‘i, with input from the Office of Hawaiian Affairs. Most of the co-trustee agency mandates and policies are met by this unified permit. The co-trustees issue Monument permits under the authority of the implementing regulations for the Monument, as described in 50 CFR 404.11 and consistent with all other applicable federal and State laws.

Subject to such terms and conditions as the secretaries deem appropriate, regulated activities may be permitted to occur within the Monument only if an applicant can demonstrate that their proposed activities are consistent with the goals of the Monument and meet all relevant findings criteria to support issuance of the permit. The joint Monument permit application template and review process were developed and implemented by the MMB in 2007.

The six types of activities regulated through the PMNM permitting process are research; education; conservation and management; Native Hawaiian practices; recreation; and special ocean use. The 50 CFR Part 404 regulations apply only to PMNM (to 50 nmi). Regulations for PMNM also provide that sustenance fishing may be allowed outside of any Special Preservation Area as a term or condition of a permit, including at Midway Atoll NWR.

Management in the MEA is governed by Presidential Proclamation 9478, which identifies certain regulated activities, including science and research, education, conservation and management, Native Hawaiian practices, and non-commercial fishing. Regulations to issue permits in the MEA have not yet been established. Until a formal permitting process is developed, activities in the MEA have been approved via a Letter of Authorization signed by USFWS. The use of Letters of Authorization is only temporary until a formal permitting process is implemented and should not be considered precedent setting. The co-trustees agreed to implement this process as an interim measure.

3.2.2 Management

The [Monument Management Plan](#) was written in 2008 by the Monument co-trustees to guide management decisions over a 15-year horizon. The Monument Management Plan incorporates content from, among others, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Operations Plan; the USFWS Refuge Comprehensive Conservation Plans and Visitor Service Plan; and State of Hawai‘i plans. Monument management is also guided by a memorandum of agreement signed by the Monument co-trustees. The agreement establishes functional relationships to effectively coordinate management and terms and conditions under which the co-trustees will cooperate to manage Monument resources.

3.3 Elements Common to All Action Alternatives

3.3.1 Regulations

Under all action alternatives, proposed regulations include site-specific definitions, co-management, access provisions, prohibited or otherwise regulated activities, and permit procedures. In addition, applicable sections of the *National Marine Sanctuary Program Regulations* (15 CFR part 922) Subpart A—*Regulations of General Applicability* and Subpart D—*National Marine Sanctuary Permitting* would apply within the proposed sanctuary. Within Subpart D, Section 922.36 (NMSA Authorizations) and Section 922.37 (Appeals of Permitting Decisions) would not be applicable for the proposed action. **Consistent with the current interagency permitting regime that has been in place for the Monument, there would be no appeals process for the sanctuary. Should a permit applicant want NOAA and the other agencies to reconsider a permitting decision, they would need to file a new permit application.**

Definitions

The proposed sanctuary adopts common terms defined in the Regulations of General Applicability at 15 CFR § 922.11. In addition, NOAA proposes to include site-specific definitions within the proposed rule. To the extent that a term appears in 15 CFR § 922.11 and in the site-specific regulations, the site-specific definition governs. NOAA is proposing to adopt 20 site-specific definitions for the proposed sanctuary. The terms NOAA has defined for this site are:

- Bottomfish Species and Pelagic Species (adopted from regulations for Fisheries in the Western Pacific, 50 CFR § 665.201 and 50 CFR § 665.800).
- Ecological integrity, Midway Atoll Special Management Area, Native Hawaiian practices, Pono, Recreational activity, Special Preservation Area, Stowed and not available for immediate use, Sustenance fishing, and Vessel Monitoring System or VMS (adopted from Presidential Proclamation 8031).
- Commercial fishing and Non-commercial fishing (adopted from the Magnuson-Stevens Fishery Conservation and Management Act and, in part, Western Pacific Fisheries regulations, 50 CFR § 665.12).
- Particularly Sensitive Sea Area (PSSA) (adopted from IMO Resolution A.982(24), December 1, 2005).

- Areas To Be Avoided, **categories of hazardous cargoes**, and Office of Law Enforcement (adopted from Papahānaumokuākea Marine National Monument regulations, 50 CFR § 404.3).
- Outer Sanctuary Zone, to define the area of the sanctuary that would extend from approximately 50 nautical miles from all the islands and emergent lands of the Northwestern Hawaiian Islands to the extent of the seaward limit of the United States Exclusive Economic Zone west of 163° West Longitude. This area of the proposed sanctuary would correspond with the area designated as a marine national monument by Presidential Proclamation 9478, referred to as the “Papahānaumokuākea Marine National Monument Expansion Area” or MEA.
- Reporting area, to define the area of the proposed sanctuary that extends outward ten nautical miles from the Particularly Sensitive Sea Area (PSSA) boundary, as designated by the IMO, and excludes the Areas to be Avoided that fall within the PSSA boundary. NOAA is proposing to define the “reporting area” to clarify in which areas of the proposed sanctuary ship reporting requirements apply.
- Scientific instrument, a term used in Presidential Proclamation 9478, but not defined. The proposed rule defines scientific instruments to mean “a device, vehicle, or tool used for scientific purposes and is inclusive of structures, materials, or other matter incidental to proper use of such device, vehicle, or tool.”

Cooperative Management

Through sanctuary designation, NOAA would supplement and complement existing management of the Monument. **Existing authorities, including management authorities of all Monument co-trustees would remain in effect under all alternatives.**

Pursuant to the NMSA, states may choose to have a role in cooperatively managing a sanctuary if all or part of the sanctuary is within the territorial limits of any state. As the sanctuary includes State waters, NOAA will co-manage the sanctuary with the State of Hawai‘i. NOAA and the State of Hawai‘i will develop additional agreements as necessary to provide details on the execution of sanctuary management, such as activities, programs, and permitting that can be updated to adapt to changing conditions or threats to the sanctuary resources.

Co-management of the proposed sanctuary with the State of Hawai‘i would not supplant the existing co-management structure of the Monument. **NOAA will manage the sanctuary in partnership with the USFWS and OHA consistent with the management of the Monument. The existing co-management structure of the Monument is critical to the success of the sanctuary. Sanctuary regulations and permitting were developed to be seamlessly integrated into existing Monument management and permitting. NOAA will work in cooperation with the Monument co-trustees to update the memorandum of agreement for Promoting Coordinated Management of Papahānaumokuākea Marine National Monument that reflects the addition of the proposed sanctuary, and specifically addresses how the addition of a sanctuary will supplement and complement, and not supplant, existing Monument management. This is consistent with the existing Monument memorandum of agreement, which includes a provision that states that “In the event of the designation of the Monument or any portion of the Monument as a National**

Marine Sanctuary under the National Marine Sanctuaries Act, nothing herein shall be construed as automatically terminating or otherwise amending this Agreement.”

NOAA recognizes that the USFWS will retain its sole authority over the Midway Atoll and Hawaiian Island National Wildlife Refuges under the National Wildlife Refuge System Administration Act.

Any future proposed changes to sanctuary regulations or boundaries would be coordinated with the State and other Monument co-trustees and subject to public review as mandated by the NMSA and other federal statutes.

Access

Access to the sanctuary would be prohibited and thus unlawful except under the following circumstances:

- for emergency response actions, law enforcement activities, and activities and exercises of the Armed Forces;
- pursuant to a sanctuary permit;
- when conducting non-commercial fishing activities in the Outer Sanctuary Zone authorized under the Magnuson-Stevens Fishery Conservation and Management Act provided that certain conditions are met;
- when conducting scientific exploration or research activities by or for the Secretary of Commerce or the Secretary of the Interior when the activity occurs within the Outer Sanctuary Zone); and
- when passing through the sanctuary without interruption.

A vessel may pass without interruption through the sanctuary without requiring a permit as long as the vessel does not stop or engage in prohibited activities within the sanctuary. The access restrictions will be applied in accordance with generally recognized principles of international law and in accordance with treaties, conventions, and other agreements to which the United States is a party, consistent with sections 305(a) and 307(k) of the NMSA and the NMSA’s Regulations of General Applicability at 15 CFR 922.1(b). No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States unless in accordance with generally recognized principles of international law, or applicable treaties, conventions, and other agreements.

NOAA would implement regulations for the ship reporting system (CORAL SHIPREP) adopted by the IMO, which would require entrance and exit notifications for vessels that pass without interruption through the sanctuary areas contained within a reporting area, which would be defined as “the area of the proposed sanctuary that extends outward ten nautical miles from the PSSA boundary, as designated by the IMO, and excludes the Areas To Be Avoided that fall within the PSSA boundary.”⁷ The ship reporting requirements would apply to vessels of the United States; all other ships 300 gross tonnage or greater that are entering or departing a

⁷ The boundary areas for Alternatives 2 and 3 exclude areas of the proposed reporting area. Therefore, the reporting area would be reduced in size under Alternatives 2 and 3, and only include areas that fall within each respective boundary alternative.

United States port or place; and all other ships of any size entering or departing a United States port or place and experiencing an emergency while transiting through the reporting area.

Prohibited or Otherwise Regulated Activities

NOAA is proposing prohibited or otherwise regulated activities as well as exemptions to the prohibited activities under 15 CFR part 922 subpart W.

The following activities would be prohibited within the proposed sanctuary, subject to specified exemptions:

1. Exploring for, developing, or producing oil, gas, or minerals, or any energy development activities.
2. Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a sanctuary resource.
3. Introducing or otherwise releasing an introduced species from within or into the sanctuary.
4. Deserting a vessel.
5. Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope
6. Commercial fishing or possessing commercial fishing gear except when stowed and not available for immediate use.
7. Failing to comply with the vessel monitoring system requirements in violation of § 922.246.
8. Failing to comply with ship reporting requirements in violation of § 922.243.
9. Non-commercial fishing, or possessing non-commercial fishing gear except when stowed and not available for immediate use.
10. Drilling into, dredging, or otherwise altering the submerged lands; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands.
11. Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource.
12. Attracting any living sanctuary resource.
13. Touching coral, living or dead.
14. Swimming, snorkeling, or closed or open circuit scuba diving.
15. Discharging or depositing any material or other matter, or discharging or depositing any material or other matter outside of the sanctuary that subsequently enters the sanctuary and injures any resources of the sanctuary, except for
 - a. Fish, fish parts, or chumming materials (bait) used in or resulting from lawful fishing activity within the sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activity within the sanctuary;
 - b. Discharge incidental to vessel operations such as approved marine sanitation device effluent, cooling water, and engine exhaust, consistent with federal statute or regulation; and
 - c. Within Special Preservation Areas or the Midway Atoll Special Management Area, discharging or depositing material or other matter is limited to vessel

engine cooling water, weather deck runoff, and vessel engine exhaust, consistent with federal statute or regulation.

16. Anchoring a vessel.

Prohibitions 1–8 could never be allowed via permit, while prohibitions 9–16 could be regulated via a permit. Obtaining a permit to conduct activities relating to Prohibition 10 within the Outer Sanctuary Zone would be further restricted to scientific instruments only, consistent with Presidential Proclamation 9478.

Exemptions

The proposed prohibitions would not apply to:

- Activities necessary to respond to emergencies that threaten life, property, or the environment.
- Activities necessary for law enforcement purposes.
- Activities and exercises of the U.S. Armed Forces including those carried out by the U.S. Coast Guard (USCG).
- Scientific exploration or research activities by or for the Secretary of Commerce and/or the Secretary of the Interior in the Outer Sanctuary Zone.

NOAA will also exempt non-commercial fishing authorized under the MSA in the area of the sanctuary that overlaps with the MEA (i.e., the Outer Sanctuary Zone) from needing a sanctuary permit for prohibitions 9 through 12 and 14 in the final rule, provided that

- Fish harvested, either in whole or in part, are not intended to enter commerce and shall not enter commerce through sale, barter, or trade, and that the resource is managed sustainably;
- Fish harvested, either in whole or in part, are not intended to be sold and shall not be sold for any purposes, including, but not limited to, cost-recovery; and
- The exempted activities are only conducted as incidental to and necessary to lawful non-commercial fishing activity.

NMSA Regulations

Sanctuary designation imparts a specific set of new benefits afforded by the NMSA. *National Marine Sanctuary Program Regulations* (15 CFR part 922) Subpart A—Regulations of General Applicability includes sections relevant to the action. The NMSA allows ONMS to supplement existing authorities, in part with the following:

- **Emergency regulations (§ 922.7).** Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition.
- **Penalties (§ 922.8(a))** Each violation of the NMSA, any NMSA regulation, or any permit issued pursuant thereto, is subject to a civil penalty. Each day of a continuing violation constitutes a separate violation.

- **Response costs and damages (§ 922.9)** Under section 312 of the NMSA, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury. Any vessel used to destroy, cause the loss of, or injure any sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.

In addition, NMSA Section 304(d) requires interagency consultation for any federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource. This requirement applies to all federal agencies, including agencies that are otherwise exempt from sanctuary prohibitions. If the federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource, the federal agency proposing the action shall provide the Secretary of Commerce with a written statement describing the action and its potential effects on sanctuary resources. If the Secretary of Commerce finds that the federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource, the secretary shall recommend reasonable and prudent alternatives.

Permitting

The Monument joint permitting system has been in place and permits have been issued by the co-trustees within PMNM since 2007, as described in Section 3.2.1. The Monument permitting process incorporates the presidential proclamations' directives, and follows USFWS, NOAA, and State regulations and procedures. The proposed sanctuary's permitting system will complement the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by the MMB, which includes ONMS. The proposed permitting system would not supplant the joint permitting system for the Monument. The proposed regulations and permit categories were designed to provide the same management function and permittee interface as the current Monument permit categories. Co-trustees may modify the existing or develop a new memorandum of agreement to add further clarification on joint permitting.

Sanctuary General Permits

The final regulations would allow prohibited activities 9–16 to be permitted under certain conditions pursuant to 15 CFR part 922, Subpart D and the site-specific regulations proposed for this sanctuary, which are consistent with PMNM regulations and the Monument permit criteria. Sanctuary general permits may be issued if the proposed activities fall within one of three categories in the national regulations (15 CFR § 922.30(b)) relevant to this proposed sanctuary: (1) Research—activities that constitute scientific research or scientific monitoring of a national marine sanctuary resource or quality; (2) Education—activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resource or quality; (3) Management—activities that assist in managing a national marine sanctuary. NOAA will add two additional categories specific to the sanctuary within 15 CFR 922.30 for which a sanctuary general permit could be issued: Native Hawaiian Practices—activities that allow for Native Hawaiian practices within the sanctuary, and Recreation—recreational activities within the sanctuary limited to the Midway Atoll Special Management

Area.⁸ NOAA is proposing these two additional general permit categories to maintain the types of activities permitted under PMNM regulations, **to allow for integration with the existing Monument permitting system.**

Per 15 CFR § 922.33, the ONMS Director must make findings prior to issuing a sanctuary general permit, based on nine review criteria, including if the proposed activity will be conducted in a manner compatible with the primary objective of protection of national marine sanctuary resources and qualities, and if it is necessary to conduct the proposed activity within the national marine sanctuary to achieve its stated purpose. These findings parallel nine of the 10 existing Monument permitting criteria. One general criteria and all permit-specific criteria for Native Hawaiian practices and recreation permits from 50 CFR § 404.11 would be added to be consistent with the general findings criteria and permit-specific findings criteria for the Monument. This proposed rule would also amend 15 CFR § 922.37 “Appeals of permitting decisions,” to reflect that the general appeals process for sanctuary permits will not apply to permit applications for the proposed sanctuary. **This would be consistent with the existing permit system for the Monument, which does not include a process to appeal a permit decision. Under the existing Monument permitting system,** should a permit applicant want the co-managers to reconsider a permitting decision, the applicant would need to file a new permit application.

Special Use Permits

Section 310 of the NMSA (16 U.S.C. § 1441) states that special use permits may be issued to authorize the conduct of specific activities in a national marine sanctuary under certain circumstances. This provision for special use permits applies to any national marine sanctuary. A permit issued under Section 310 of the NMSA: (1) shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources; (2) shall not authorize the conduct of any activity for a period of more than five years unless otherwise renewed; (3) shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and (4) shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims. The NMSA also authorizes NOAA to assess and collect fees for the conduct of any activity under a Special use permit, including costs incurred, or expected to be incurred, in issuing the permit and the fair market value of the use of sanctuary resources. Implementing regulations at 15 CFR § 922.35 provide additional detail on assessment of fees for special use permits. Like with sanctuary general permits, NOAA can place conditions on special use permits specific to the activity being permitted. NOAA shall provide appropriate public notice before identifying any category of activity subject to a special use permit.

NOAA is not proposing any new category of activity subject to a special use permit as part of this designation. In evaluating applications for special use permits, NOAA will consider all applicable permitting requirements, including permitting procedures and criteria under the

⁸ Recreation permits would not be added under Alternative 3, as Midway Atoll NWR (the only location these permits would be issued) would not be included in the sanctuary designation.

Monument's existing management framework. For example, certain activities may be subject to the requirements of special ocean use permits, as authorized by Presidential Proclamation 8031, and issued by the MMB in the PMNM via 40 CFR § 404.11. Special ocean use permit requirements were modeled after special use permits authorized by Section 310 of the NMSA, but also include a few additional requirements, such as for activities within the Midway Atoll Special Management Area. For special use permits in the national wildlife refuges, the director of the USFWS would also determine that the activity is compatible with the purposes for which the national wildlife refuges were designated.

Sustenance Fishing

The Secretary may authorize sustenance fishing⁹ outside of any Special Preservation Area as a term or condition of any sanctuary permit. Sustenance fishing in the Midway Atoll Special Management Area would not be allowed unless the activity has been determined by the director of the USFWS or their designee to be compatible with the purposes for which the Midway Atoll National Wildlife Refuge was established. Sustenance fishing is allowed incidental to an activity permitted in the PMNM under Presidential Proclamation 8031, and in regulations at 50 CFR part 404. Sustenance fishing was not specifically identified in Presidential Proclamation 9478 governing the MEA, but is allowable. For consistency in management and permitting, NOAA proposes managing this activity as a term or condition of a general permit or special use permit for the proposed sanctuary.

Vessel Monitoring System

To complement existing regulations for PMNM, and provide consistency across the sanctuary, an owner or operator of a vessel that has been issued a general permit or special use permit must have a working NOAA Office of Law Enforcement (OLE) type-approved Vessel Monitoring System (VMS) on board when operating within the Sanctuary. OLE has approval authority over the type of VMS, installation of the VMS, and operation of the VMS unit. The owner or operator of a vessel must coordinate with OLE to install and activate an approved VMS prior to operating within the sanctuary. If the VMS is not operating properly within the sanctuary, the owner or operator must immediately contact OLE, and follow instructions from that office. A vessel owner or operator subject to the requirements for a VMS must allow OLE, USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS. NOAA may have access to, and use of, collected data for scientific, statistical, and management purposes, and to monitor implementation of the VMS requirements. The following activities regarding VMS are prohibited and thus unlawful for any person to conduct or cause to be conducted:

- Operating any vessel within the sanctuary without an OLE-type approved VMS;
- Failing to install, activate, repair, or replace a VMS prior to entering the sanctuary.
- Failing to operate and maintain a VMS on board the vessel.
- Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS, or VMS signal.

⁹ Sustenance fishing means fishing for bottomfish or pelagic species in which all catch is consumed within the Monument, and that is incidental to an activity permitted under this part (50 CFR § 404.3).

- Failing to contact OLE or follow OLE instructions when automatic position reporting has been interrupted.
- Registering a VMS to more than one vessel permitted to operate within the sanctuary at the same time.
- Connecting or leaving connected additional equipment to a VMS unit without the prior approval of OLE.
- Making a false statement, oral or written, to an authorized officer regarding the installation, use, operation, or maintenance of a VMS unit or communication service provider.

Sunken Military Craft

Sunken military craft are administered by the respective Secretary concerned pursuant to the Sunken Military Craft Act (Pub. L. 108-375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note). The Director will enter into a Memorandum of Agreement regarding collaboration with other Federal agencies charged with implementing the Sunken Military Craft Act that may address aspects of managing and protecting sunken military craft. The Director will request approval from the Secretary concerned for any terms and conditions of ONMS permits that may involve sunken military craft.

Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation for national marine sanctuaries include: (1) the geographic area included within the sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and (3) the types of activities subject to regulation by NOAA to protect those characteristics. **The full text of the terms of designation will be in the final rule.**

The proposed sanctuary terms of designation establish the authorities to regulate and prohibit activities to the extent necessary and reasonable to ensure the protection and management of the area's conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities.

3.3.2 Sanctuary Management Plan and Program Support

Sanctuary Management Plan

The NMSA requires preparation of a sanctuary management plan as part of the proposed action, included as Appendix A to the final EIS. The core elements and framework for the sanctuary management plan were designed in coordination with the Monument's co-trustees, in order to ensure concurrence of plans between the proposed sanctuary designation and the overarching monument designation. The core elements of this sanctuary management plan—vision, mission, principles, and goals—are the same as those that have been developed by the co-trustees for the future monument management plan update. This approach ensures that when Monument management planning resumes, there is a foundation to build on that would not alter the Monument's co-management structure.

At the heart of the sanctuary management plan, there are five kūkulu (pillars of management):

1. Resource Protection and Conservation
2. Research and Monitoring
3. Governance and Operations
4. Partnerships and Constituent Engagement
5. Education, Interpretation, and Mentoring

Each kükulu includes a goal and five to 13 strategies. The strategies identified in the sanctuary management plan entail actions already being conducted by ONMS, **many in coordination with Monument co-managers**, as well as aspirational actions. Performance indicators and measures provided for each kükulu provide an indication of types of actions that would typically occur, and that would be assessed in tracking management plan strategy implementation.

Program Support

While co-trustee agencies provide staff and program support for the Monument, sanctuary designation would ensure access to ONMS resources, including national programs for conservation science, maritime heritage, climate change, and education. To augment this support, NMSA Section 311(b) authorizes non-profit organizations to solicit private donations on behalf of the sanctuary, and NMSA Section 311(f) allows ONMS to apply for, accept, and use grants from other federal agencies, states, local governments, regional agencies, interstate agencies, foundations, or other persons.

3.4 Action Alternative 1

This section describes the components of Alternative 1, the Agency-Preferred Alternative.

3.4.1 Sanctuary boundary

Alternative 1 is coextensive with the marine portions of the Monument. The boundary includes the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline of the islands and atolls seaward to 200 nmi, including all State waters and waters of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, **the Battle of Midway National Memorial**, and the State of Hawai'i Northwestern Hawaiian Islands Marine Refuge. The area encompassed in Alternative 1 is approximately 582,570 square miles (439,910 square nmi).

Alternative 1 includes all of the resources, habitats, and interconnected ecosystems described in Section 1.2.1 and in Chapter 4. Shallow-water coral reefs supporting sea turtles and monk seals, schools of apex predatory fish, and other species occur in the nearshore habitat. Deeper waters overlying algal beds and non-photosynthetic corals occur seaward of the shallow reefs, where pelagic fish migrate along the chain and monk seals and seabirds forage. Deep offshore waters of the MEA contain numerous offshore banks and seamounts, which support oases of life, as well as hundreds of military vessels and aircraft at the bottom of these deep waters.

Under Alternative 1, the sanctuary would overlay the pre-existing Midway Atoll and Hawaiian Islands National Wildlife Refuges, which are administered by the USFWS pursuant to the National Wildlife Refuge System Administration Act. The USFWS would retain sole management authority over the lands and waters within the boundaries of the refuges. Where

the sanctuary overlays the refuges, NOAA may provide supplemental authority to strengthen protection of resources.

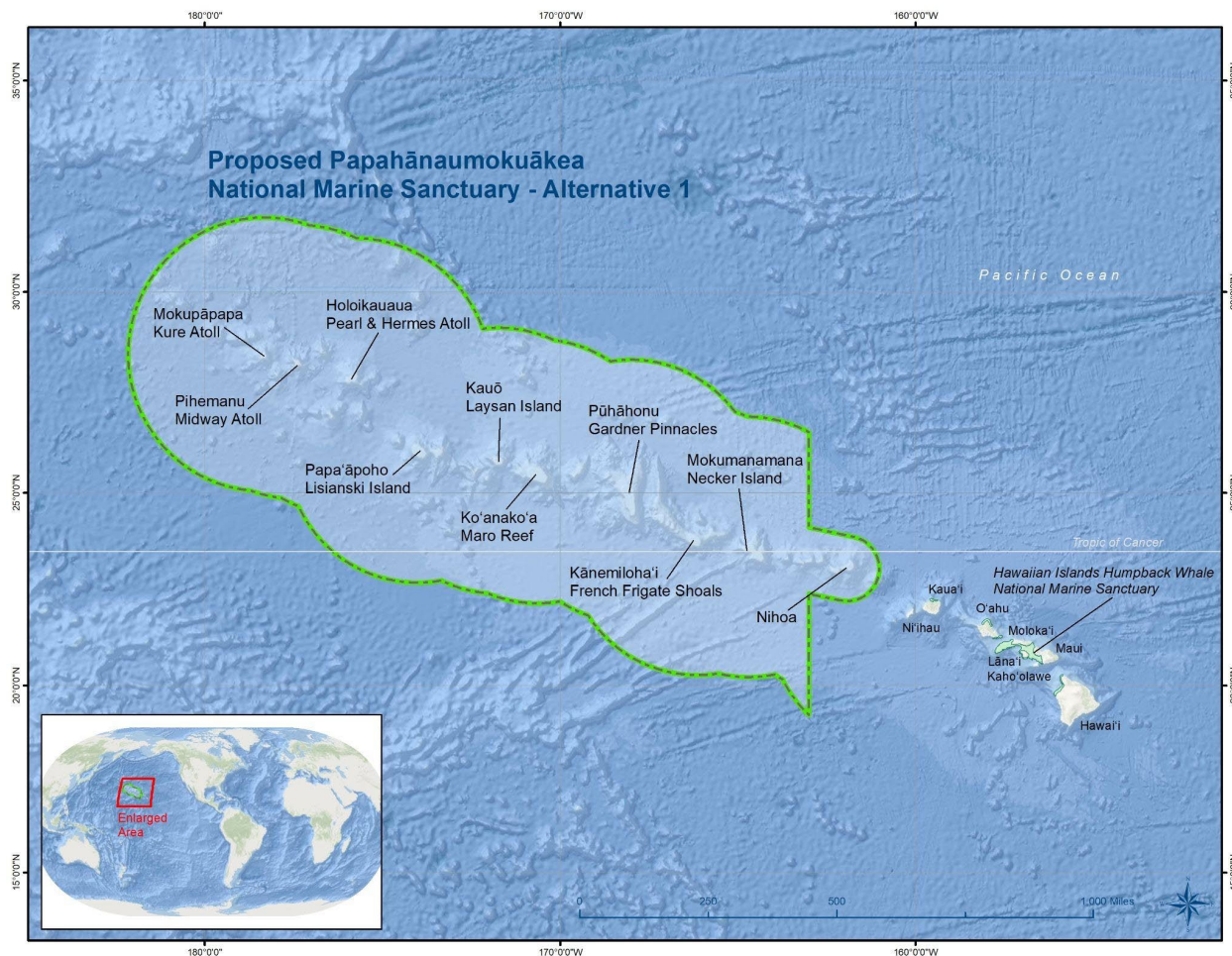


Figure 3.2. Alternative 1 sanctuary boundary (marine areas only). Image: NOAA

3.4.2 Regulations

The regulations under Alternative 1 would be the same as those described above under Section 3.3.1 “Actions Common to All Action Alternatives” for the area of the proposed sanctuary. Under Alternative 1, regulations promulgated under the NMSA would largely be consistent with existing regulations for the Monument. Minor changes have been presented in the proposed regulations to remove discrepancies and gaps in prohibitions, regulated activities, and permitting across the two zones (PMNM and MEA) of the proposed sanctuary. The following are the effective differences between Alternative 1 and the existing management framework under the No Action Alternative.

Access

While access restrictions for areas of the proposed sanctuary that overlap with the PMNM (shoreline of the islands and atolls to 50 nmi) are already in place under the No Action Alternative, the MEA (50–200 nmi) currently has no access restrictions. Under Alternative 1,

access would be regulated for the entire sanctuary, including portions of the sanctuary that overlap with the MEA, referred to as the Outer Sanctuary Zone.

Cooperative Management

Under Alternative 1, all the elements of co-management described in section 3.3.1 would apply. In addition, the Director of the USFWS has agreed that Papahānaumokuākea National Marine Sanctuary will provide supplemental authorities where the sanctuary overlays the Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge. NOAA and USFWS are developing an agreement to memorialize this decision, and to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge, consistent with the spirit of cooperative management of the area and recognizing USFWS has sole authority in Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge pursuant to the National Wildlife Refuge System Administration Act.

Implementation of NOAA and USFWS authorities would not enlarge or diminish the jurisdiction of the State of Hawai‘i, including the State’s responsibilities and requirements to manage Kure Atoll Wildlife Sanctuary and the State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge.

Prohibited or Otherwise Regulated Activities

Under the No Action Alternative, the sanctuary prohibitions are all effectively in place for PMNM through 50 CFR part 404 except for prohibitions 1 and 4 (detailed below). Minor changes are proposed to prohibitions 1 and 4 to remove discrepancies across the two zones (PMNM and MEA) of the proposed sanctuary. Under Alternative 1, the proposed sanctuary regulations would prohibit:

- (1) “Exploring for, developing, or producing oil, gas, or minerals, or any energy development activities.”
 - Consistent with Presidential Proclamation 8031 for PMNM and Presidential Proclamation 9478 for the MEA, NOAA is proposing to prohibit exploring for, developing, or producing oil, gas, or minerals. The addition of the prohibition on “any energy development activities” would be new for PMNM, and was added to create consistency in the management framework across the proposed sanctuary.
- (4) “Deserting a vessel.”
 - This is a regulated activity (allowed only with a permit) in PMNM pursuant to Presidential Proclamation 8031. Prohibiting this activity in the Original Area would align with the prohibition provided for the MEA in Presidential Proclamation 9478.

NOAA would also add prohibition (7) “failing to comply with the vessel monitoring system requirements in violation of § 922.246.”; and (8) “failing to comply with ship reporting requirements in violation of § 922.243.” The addition of these prohibitions is not substantive, but rather are technical additions to clarify for the public the full scope of activities listed that are prohibited or otherwise regulated within the proposed sanctuary.

Under Alternative 1, the final rule provides, in part, the first set of implementing regulations for many of the directives in Presidential Proclamation 9478. Therefore, promulgation of regulations in the area of the proposed sanctuary that overlaps with the MEA under the proposed action is also an effective difference. Most of the prohibitions adopted in the proposed rule are identified in Presidential Proclamation 9478, however, prohibitions 7–9 and 12–16 would be new prohibitions for the MEA.

Exemptions

With the exception of the exemption for non-commercial fishing, the list of proposed exemptions under Alternative 1 is consistent with current management under the No Action Alternative. Non-commercial fishing authorized under the Magnuson-Stevens Fishery Conservation and Management Act in the Outer Sanctuary Zone would require a permit obtained through NOAA Fisheries and be subject to other exemption requirements as described in Section 3.3.1.

Permitting

Under Alternative 1, a person may conduct prohibited activities 9–16 if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of a sanctuary general permit or special use permit. Under Alternative 1, the establishment of a permit process to allow some prohibited activities under certain conditions via a national marine sanctuary general permit in portions of the sanctuary that overlap with the MEA is an effective difference from No Action. In addition, ONMS would have the ability to collect fees for the conduct of specific activities in the area of the proposed sanctuary that overlaps with the MEA under a special use permit. However, the proposed permitting system was modeled after the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by the MMB, which includes ONMS. For permittees, there would be no effective difference in the permitting process between the status quo for permitting within PMNM and permitting once a sanctuary has been designated.

Sustenance Fishing

Under the No Action Alternative, regulations for the PMNM provide that sustenance fishing may be allowed outside of any Special Preservation Area as a term or condition of a permit, including at Midway Atoll NWR, therefore, there is no effective difference for the management or permittee allowance for sustenance fishing for the area of the sanctuary that overlaps with PMNM. Under Alternative 1, these regulations would extend to areas of the proposed sanctuary that overlap with the MEA, and is an effective difference from the No Action Alternative.

Vessel Monitoring System

Under Alternative 1, the VMS requirement for permittees operating within the areas of the proposed sanctuary that overlap with the MEA would be a new requirement, and is an effective difference from the No Action Alternative.

3.5 Action Alternative 2

3.5.1 Sanctuary Boundary

Alternative 2 includes the marine environment from the shoreline of the islands and atolls seaward to 50 nmi. This alternative includes all State waters and waters of the Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, **the Battle of Midway National Memorial**, and State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge. This alternative does not include the MEA. The area encompassed in Alternative 2 is approximately 139,782 square miles (105,552 square nmi).

Alternative 2 does not include the MEA. The MEA encompasses 442,781 square miles of marine waters, which include numerous seamounts, known and undiscovered maritime heritage resources, and a vast unexplored abyss. Human uses and ecological threats described in Chapter 4 are substantially less in the deep and vast pelagic offshore waters of the MEA. Since 2016, eight Monument permits have been issued for activities within the MEA, with only one of these exclusively for activities within the MEA. The potential impact from threats to resources, such as storm surge, vessel groundings, and invasive species introductions are greatly reduced in these waters.

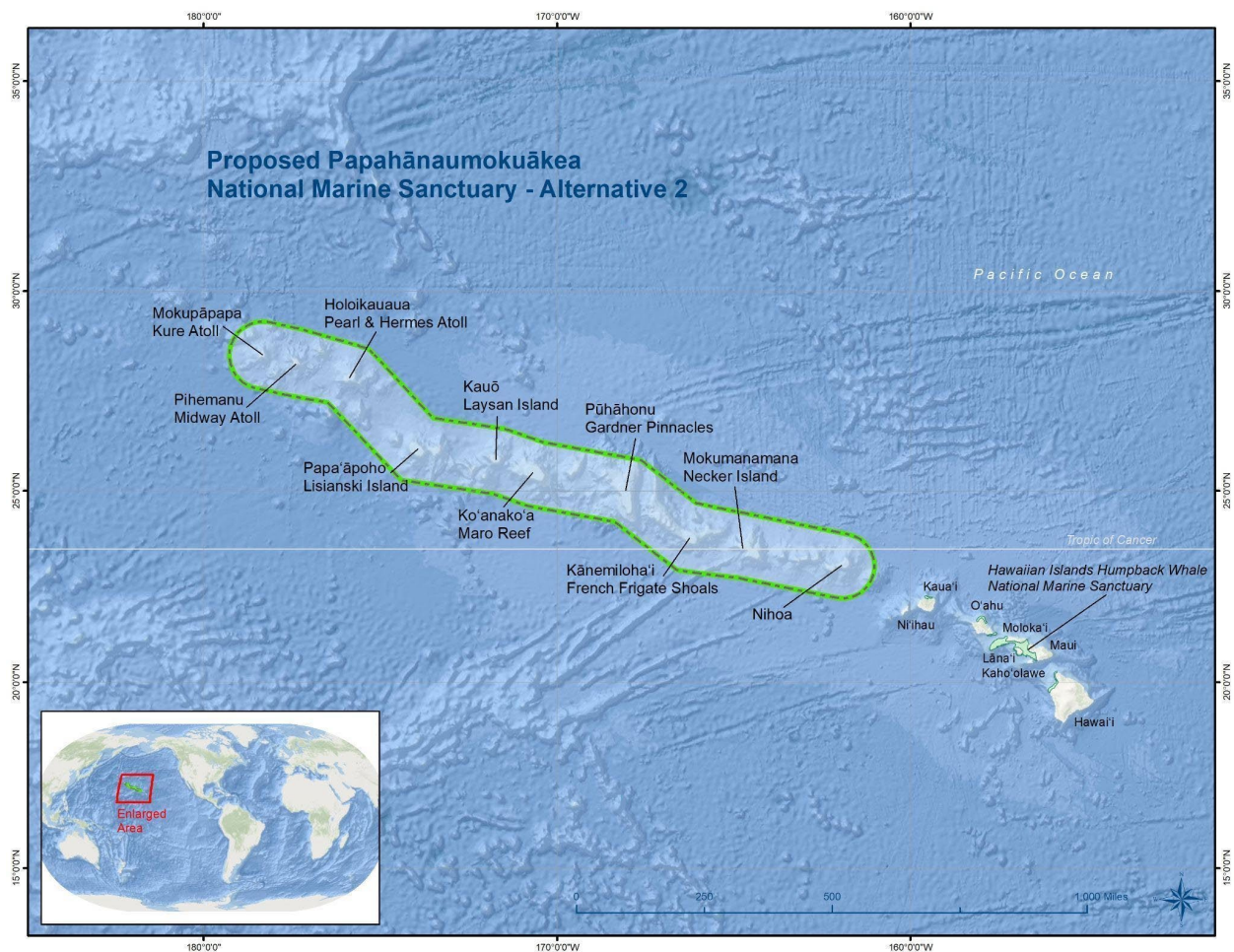


Figure 3.3. Alternative 2 sanctuary boundary (marine areas only). Image: NOAA

3.5.2 Regulations

The regulations under Alternative 2 would be the same as those described above under Section 3.3.1 “Actions Common to All Alternatives” for the area of the proposed sanctuary which extends from the shoreline of the islands and atolls to 50 nmi. Under Alternative 2, Presidential Proclamation 9478 would continue to guide Monument management in the MEA. The following are the effective differences between Alternative 2 and the existing management framework under the No Action Alternative.

Cooperative Management

Under Alternative 2, all the elements of cooperative management described in Section 3.3.1 would apply. Alternative 2 would not diminish USFWS’ authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act. Where the sanctuary overlays Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge, NOAA will implement the NMSA to provide supplemental authority to protect resources. NOAA and the USFWS are developing an agreement to provide details on the execution of sanctuary management where the sanctuary overlaps with national wildlife refuges.

Implementation of NOAA and USFWS authorities would not enlarge or diminish the jurisdiction of the State of Hawai‘i, including the State’s responsibilities and requirements to manage Kure Atoll Wildlife Sanctuary and the State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge.

Prohibited or Otherwise Regulated Activities

Within PMNM, the proposed prohibitions are all **effectively** in place through 50 CFR part 404 except for prohibitions 1 and 4 (detailed below). Minor changes are proposed to prohibitions 1 and 4. Under Alternative 2, the proposed sanctuary regulations would prohibit:

- (1) “Exploring for, developing, or producing oil, gas, or minerals, or any energy development activities.”
 - Consistent with Presidential Proclamation 8031 for PMNM and Presidential Proclamation 9478 for the MEA, NOAA is proposing to prohibit exploring for, developing, or producing oil, gas, or minerals. The addition of the prohibition on “any energy development activities” would be new for PMNM, and was added to create consistency in the management framework across the proposed sanctuary.
- (4) “Deserting a vessel.”
 - This is a regulated activity (allowed only with a permit) in PMNM pursuant to Presidential Proclamation 8031. Prohibiting this activity in the Original Area would align with the prohibition provided for the MEA in Presidential Proclamation 9478.

Permitting

Under Alternative 2, a person may conduct prohibited activities **9–16** if such activity is specifically authorized by, and conducted in accordance with the scope, purpose, terms, and

conditions of, a sanctuary general permit or special use permit. The ability for ONMS to collect fees for specific activities under a special use permit is an effective difference from the No Action Alternative.

3.6 Action Alternative 3

3.6.1 Sanctuary Boundary

Alternative 3 has the same boundaries as Alternative 1, but excludes waters within the Midway Atoll and Hawaiian Islands National Wildlife Refuges and the Battle of Midway National Memorial. These excluded waters include portions of the State marine refuge and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve that overlap with national wildlife refuge waters. The area encompassed in Alternative 3 is approximately 581,263 square miles (438,923 square nmi). Alternative 3 is a single alternative, but will be analyzed in Chapter 5 in two parts. The exclusion of Midway Atoll NWR (from land to 12 nmi, totaling 907.4 square miles of marine waters) and the exclusion of Hawaiian Islands NWR (from land to a boundary which varies by islet, estimated to total 400.2 square miles of marine waters), are analyzed separately. For the Hawaiian Island NWR, 327 square miles are within State waters (shoreline to 3 nmi) and 73 square miles are in federal waters. NOAA used data from the USFWS National Realty Tracts database to generate these values. **Figure 3.4 illustrates the boundaries of this alternative, although the seaward boundaries depicted are area estimates only, and are presented to provide the public with an indication of the total area difference between Alternatives 1 and 3.**

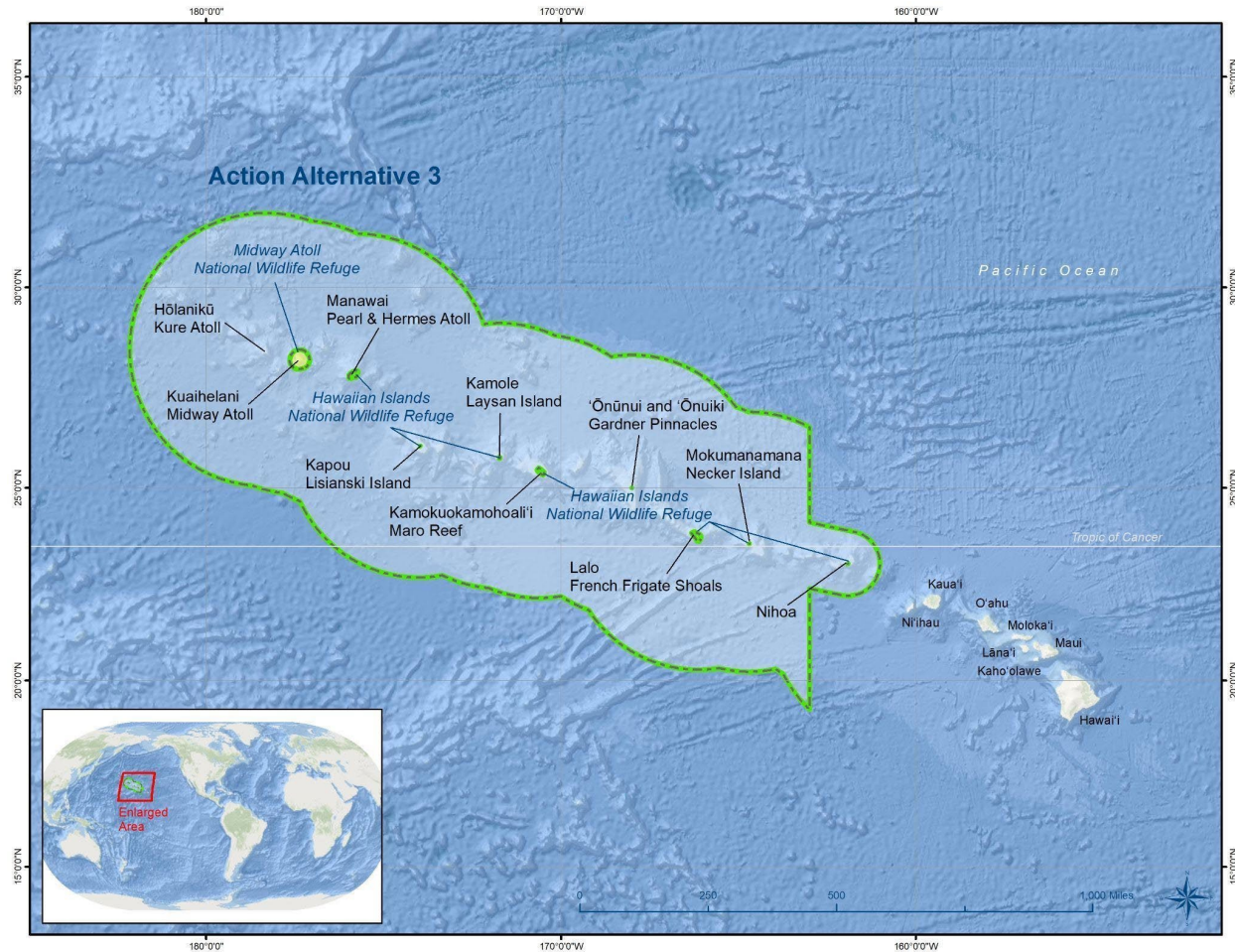


Figure 3.4. Alternative 3 sanctuary boundary (marine areas only). The map illustrates approximate seaward boundaries of the Midway Atoll and Hawaiian Islands National Wildlife Refuges. The State and USFWS have not established an agreed-upon seaward boundary for the Hawaiian Islands NWR. Image: NOAA; Source: USFWS National Realty Tracts database.

Alternative 3 does not include the waters of Midway Atoll NWR or the Hawaiian Islands NWR. Information on the areas excluded under Alternative 3 is detailed below. Under Alternative 3, supplemental authority under the NMSA would not be available to protect refuge marine resources.

Midway Atoll NWR. Midway Atoll NWR encompasses 907.4 square miles of the marine environment and is managed by the USFWS pursuant to its management authority under the National Wildlife Refuge System Administration Act, and other authorities. The established boundary of the Midway Atoll NWR extends 12 nmi from shore (69 FR 1756 [Jan. 12, 2004]); and the land and waters to 12 nmi around Kuaihelani are designated in the Monument as the Midway Atoll SMA (50 CFR part 404). Monument recreation permits are only issued at Midway Atoll SMA (50 CFR part 404), meaning recreational activities are prohibited in all other waters of the Monument.

With regards to human activity, Kuaihelani is unique within the Monument. Because Kuaihelani has experienced the highest levels of human activity in the Monument, human-caused impacts—

accidental, intentional, or unavoidable—including vessel groundings, water quality issues, invasive species introduction, and wildlife disturbance, have altered the ecosystem and continue to have a higher likelihood of occurring in and around the atoll. Currently, an average of 60 people are operating under permits within the Monument on any given day, with approximately 50 individuals necessary to manage the refuge, operate facilities, and conduct ongoing environmental remediation (NOAA ONMS, 2020). Most of the activity at **Kuaihelani** is land-based and is only indirectly related to this action. **Kuaihelani** is the only location within the Monument with a working runway, accepting between 22 and 41 flights each year. **Kuaihelani** experiences an above-average level of vessel traffic for Papahānaumokuākea, including resupply barges from Honolulu, providing critical logistical support for activities that occur across the northwestern portion of the Monument (PMNM, 2017).

Hawaiian Islands NWR. The Hawaiian Islands NWR is managed by the USFWS pursuant to its management authority under the National Wildlife Refuge System Administration Act, and other authorities. As discussed in Section 2.3.3, ongoing communication and collaboration between the State and USFWS have not yet resulted in an agreed-upon seaward boundary for the Hawaiian Islands NWR. Co-management of the Hawaiian Islands NWR between the State and USFWS continues. By excluding the Hawaiian Islands NWR from the proposed sanctuary in Alternative 3, ONMS estimates the area excluded consists of 400.2 square miles of marine waters distributed across Nihoa, Mokumanamana, Lalo, ‘Ōnūnui and ‘Ōnuiki, Kamokuokamohoali‘i, Kamole, Kapou, and Manawai.

The shallow waters within the refuge boundary encompass a significant amount of the coral reef habitat of Papahānaumokuākea, as well as the grounds where seals, turtles, seabirds, and other species forage. It includes much of the designated monk seal critical habitat in Hawai‘i. Because of the high density and diversity of natural resources, the Hawaiian Islands NWR experiences a relatively high amount of human activity, such as marine debris removal, protected species management, and climate change research. NOAA has been conducting important research and conservation activities in the Hawaiian Islands NWR waters, including the Reef Assessment and Monitoring Program with study sites in the shallow waters around Lalo, Kapou, and Manawai, and work on Rapture Reef at Lalo assessing the impact and recovery after Hurricane Walaka in 2018, and potential future extreme weather events. Many of the non-military heritage sites, including the significant whaling shipwreck sites, are in shallow waters, possibly within NWR boundaries. NOAA’s Maritime Heritage Program has been researching these sites, developing field studies, and conducting the searches and assessments within NWR waters.

3.6.2 Regulations

The regulations under Alternative 3 would be the same as those described above under Section 3.3.1 “Actions Common to All Alternatives” for the area of the proposed sanctuary which extends from the seaward edge of the National Wildlife Refuges to 200 nmi. Under Alternative 3, regulations at 50 CFR part 404 would continue to apply within the areas of the PMNM excluded from the proposed sanctuary. Regulations promulgated under the NMSA would largely be consistent with regulations for the Monument. Minor changes have been presented in the proposed regulations to remove discrepancies and gaps in prohibitions, regulated activities, and permitting across the two zones (PMNM and MEA) of the proposed sanctuary. The effective

differences between Alternative 3 and existing regulations under the No Action Alternative are the same as described under Alternative 1 and are not repeated here, except for the following.

Cooperative Management

Under Alternative 3, all the elements of cooperative management described in Section 3.3.1 would apply.

3.7 Alternatives Considered but Eliminated From Detailed Study

Other boundary alternatives and suggested prohibited activities were put forth during the public scoping process to designate the marine areas of Papahānaumokuākea as a national marine sanctuary. The following were eliminated from detailed study for the reasons discussed below.

3.7.1 Boundary Alternatives

NOAA eliminated from detailed study three of the boundary alternatives that were suggested during the public scoping period.

NOAA received scoping comments of support and opposition for an alternative that included all of Middle Bank. This first alternative eliminated from detailed study included the expansion of the southeastern portion of the PMNM boundary toward the main Hawaiian Islands to encompass all of Middle Bank, a geological feature that rises to 60 meters below the water. The southeastern boundary of PMNM was delineated in 2006 by Presidential Proclamation 8031. When Presidential Proclamation 9478 created the MEA, extending from 50 to 200 nmi in 2016, the southeastern boundary of the Monument which already included a portion of Middle Bank (Figure 3.5), remained unchanged. During outreach for this sanctuary designation process, including during scoping and public review of draft designation documents, there remained significant opposition, including from Native Hawaiian fishers, to expand the boundary to include all of Middle Bank. Additionally, in consultations during scoping, Monument co-managers expressed some concerns with this proposed alternative, and the challenges associated with managing an additional area beyond the boundaries of the Monument. State government officials indicated that the State would not support any expansion towards the main Hawaiian Islands due to the lack of support in the community (Nohopapa Hawai‘i, 2023). NOAA Fisheries and the State of Hawai‘i manage fishing activity at Middle Bank and have repeatedly acknowledged the importance of this area for Kaua‘i fishers. Comments of opposition regarding the inclusion of Middle Bank focused on socio-cultural and political/jurisdiction considerations, including references to assurances from NOAA to Kaua‘i fishers during public meetings during the 2016 Monument Expansion that the Monument boundary would not extend further towards Kaua‘i (Nohopapa Hawai‘i, 2023). OHA noted in 2022, a federal change on this original commitment would undermine trust in the management agencies and be an overreach of federal authority.

The second boundary eliminated from detailed study was the expansion of the boundary focused on designating sanctuary waters east of the Monument Expansion boundary at 163°W, to include seamounts as well as weather buoys fished by small-scale boats from Kaua‘i and

Ni‘ihau. No explicit rationale was provided in public comments for expanding into these largely pelagic waters. The rationale not to consider extending the proposed sanctuary boundary eastward from 163°W is similar to that for not including all of Middle Bank. The socioeconomic impact to small-scale local fishers, originally acknowledged and committed to by NOAA during public meetings regarding the 2016 Monument Expansion, remains for any expansion east of 163°W. This boundary option would have included Middle Bank and weather buoys important to Kaua‘i and Ni‘ihau fishers, who have fished these grounds for many years. Encroachment of the sanctuary towards Kaua‘i would erode trust and support from many in the Kānaka ‘Ōiwi community (Nohopapa Hawai‘i, 2023).

In consideration of the comments that suggested NOAA consider both of these sanctuary boundary alternatives that extend eastward of the Monument boundary, NOAA concluded that maintaining the eastern boundary of the sanctuary, consistent with the Monument, fulfills the purposes and policies of the NMSA. The State of Hawai‘i opposed a sanctuary that expanded towards the main Hawaiian Islands. The purposes and policies of the NMSA state that ONMS “develop and implement coordinated plans for the protection and management of these areas with appropriate federal agencies, state and local governments, etc.” As the State of Hawai‘i is a co-trustee for the Monument and a co-manager for the proposed sanctuary, NOAA concluded that designating a sanctuary that disregards the State’s opposition of expanding towards the main Hawaiian Islands would not fulfill the purposes and policies of the NMSA, and therefore not meet the purpose and need for the proposed designation. **In accordance with the NMSA, NOAA may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if it is determined that the area is of a size and nature that will permit comprehensive and coordinated conservation and management. NOAA concluded that any boundary alternative that expands beyond the existing boundaries of PMNM and the MEA would not be practicable in light of the need for comprehensive and coordinated management in a manner which complements the existing Monument management framework.**

The final boundary eliminated from detailed study was designating the mean high tide line as the landward boundary at all islands and atolls of Papahānaumokuākea. The landward boundary chosen for action alternatives is the high tide line as defined by the State of Hawai‘i in its administrative rules (HAR 13-222). NOAA typically uses a state’s definition of the shoreline for sanctuary boundaries because, as determined by the Submerged Lands Act, the State’s shoreline definition describes the boundary between public and private land. NOAA strives to designate a sanctuary which supplements and complements existing authorities, and this designation adheres to both the State’s definition as well as the current landward boundary designation of the Monument.

3.7.2 Regulatory Alternatives

Two regulatory suggestions were put forth during public scoping: 1) prohibiting non-commercial fishing within the MEA, and 2) not applying the discharge regulations of PMNM to the MEA.

Per Section 304(a)(5) of the NMSA, NOAA provided the WPRFMC with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA initiated the consultation on November 19, 2021. On March 22,

2022, the WPRFMC agreed to develop fishing regulations for the proposed sanctuary, and provided a final recommendation to NOAA on April 14, 2023. To reflect the outcome of the NMSA 304(a)(5) process, NOAA Fisheries is preparing a proposed rule for regulations governing fishing in the MEA under the authority of the MSA, and will complete the environmental compliance analysis consistent with NEPA as part of that rulemaking process. The proposed sanctuary regulations reflect the outcome of the NMSA section 304(a)(5) process through a prohibition on non-commercial fishing except when authorized under the MSA in the Outer Sanctuary Zone.

One organization recommended that NOAA not regulate discharge in the area of the proposed sanctuary which overlaps with the MEA. They noted that “discharge restrictions applied to this substantial area (the MEA) would have far-reaching operational impacts, including ships in transit.” While not explicitly stated in the comment, the organization was advocating to allow release of untreated sewage, including from cruise ships with as many as 4,000 people aboard. This request did not meet sanctuary designation objectives to strengthen protections of sanctuary ecosystems and resources and manage the sanctuary as a sacred site (draft sanctuary management plan). Further, the prohibition on discharges within or into the sanctuary is proposed in recognition that various substances can be discharged from vessels that can harm sanctuary resources or quality. Allowing unregulated discharges does not meet the purpose and need for the proposed designation, including “safeguarding natural and cultural values of the marine environment” and “applying additional regulatory and non-regulatory tools to augment and strengthen existing protections for Papahānaumokuākea ecosystems, wildlife, and cultural and maritime heritage resources” as described in Chapter 2.

Chapter 4: Affected Environment

This chapter describes the resources and human uses within or near the proposed sanctuary that could be affected by the proposed action and alternatives. This description of the affected environment serves as the environmental baseline for analyzing the environmental consequences of implementing the proposed action and alternatives in Chapter 5.

This chapter also serves as the resource assessment of present and potential uses of the area to meet the requirements of Section 304(a)(2)(B) of the NMSA.

4.1 Introduction: Scope of Affected Environment

For most of the resources described in this chapter, the study area for the affected environment is the largest proposed sanctuary boundary (0–200 nmi) and, to the extent necessary for analysis, the land areas of Papahānaumokuākea. For socioeconomic resources, the affected environment is defined as the State of Hawai‘i. The temporal scope of the analysis begins with the designation of the Monument in 2006 and projects five years past the anticipated date of sanctuary designation, concurrent with the timeframe projected for the sanctuary management plan. The resources addressed in this chapter include:

- **Laws and existing management** (Section 4.2).
- Physical resources, including essential fish habitat designations (Section 4.3).
- Biological resources (Section 4.4).
- Cultural and maritime heritage resources (Section 4.5).
- Socioeconomic resources, human uses, and environmental justice (Section 4.6).

The 2020 *State of Papahānaumokuākea Marine National Monument Report* (NOAA ONMS 2020), available on the [Monument’s website](#), represents a joint effort by the Monument co-trustees and partners to assess the status and trends of Monument resources. The report includes sections on threats to resources, the condition of the physical, biological, and heritage (Native Hawaiian and Maritime Archaeological) resources, as well as a section describing the co-managers’ actions to mitigate threats and conserve these resources. This document is incorporated by reference to provide greater detail to the affected environment. This final EIS only presents the environmental, cultural heritage, and socioeconomic conditions and the threats associated with these resources that are specifically relevant to the proposed action and alternatives. The below resources determined to have no potential for impacts by the proposed action or alternatives are not discussed in this final EIS.

- Air Quality
- Geology
- Oceanography
- Viewsheds and View Planes

4.2 Laws and Existing Management of the Action Area

In addition to meeting the purpose and policies of NEPA, NOAA must also meet the requirements of the NMSA. Under the NMSA, NOAA must determine whether existing **federal and State** authorities are adequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area proposed for designation. The analysis of laws and management allows NOAA to consider this requirement of NMSA and meet the purpose and function of NEPA. This section, **in conjunction with Section 3.2 describing the No Action Alternative**, provides a description of the current management regime, jurisdiction, regulations, and ongoing activities in the area under consideration for sanctuary designation.

4.2.1 Particularly Sensitive Sea Area Designation

Navigation through the Monument is dangerous and must be done with extreme caution, as transiting ships pose a threat to this fragile ecosystem. The International Maritime Organization designated PMNM as a PSSA in 2008 to protect marine resources of ecological or cultural significance from damage by ships while helping keep mariners safe. This status ensures that recently updated nautical charts include boundaries for the PSSA, Areas To Be Avoided, and Ship Reporting Area (extending 10 miles out and entirely around the PMNM boundary, except within the Areas To Be Avoided, Figure 4.1). Entry and exit reporting is mandatory for all U.S. registered vessels and certain foreign vessels as described below and in 50 CFR part 404, and is encouraged for exempted vessels. Each Area To Be Avoided includes one or more Monument-designated Special Preservation Areas, which cover 6,802 square miles of discrete, biologically important shallow-water habitats, including the 907 square mile Midway Atoll Special Management Area (SMA). Areas To Be Avoided have been designated where seamounts, shoals and emergent features present a significant challenge to safe and environmentally sound navigation and where vulnerable and endangered wildlife and sensitive habitats occur.

The boundaries of these areas and the requirement for ship reporting were codified in Monument regulations (50 CFR part 404). These regulations require the following vessels conducting passage without interruption transiting through the PMNM Ship Reporting Area (50 CFR part 404 appendix D) to report to ONMS as described in 50 CFR part 404 appendix E:

- (1) Vessels of the United States (except as provided in 50 CFR § 404.4(f)).
- (2) All other ships 300 gross tonnage or greater, entering or departing a United States port or place.
- (3) All other ships in the event of an emergency, entering or departing a United States port or place.

The ship reporting system adopted by the IMO specifically exempts all sovereign immune vessels from the reporting requirements, therefore, the regulations adopted to implement the ship reporting system at 50 CFR part 404 do not apply to sovereign immune vessels.

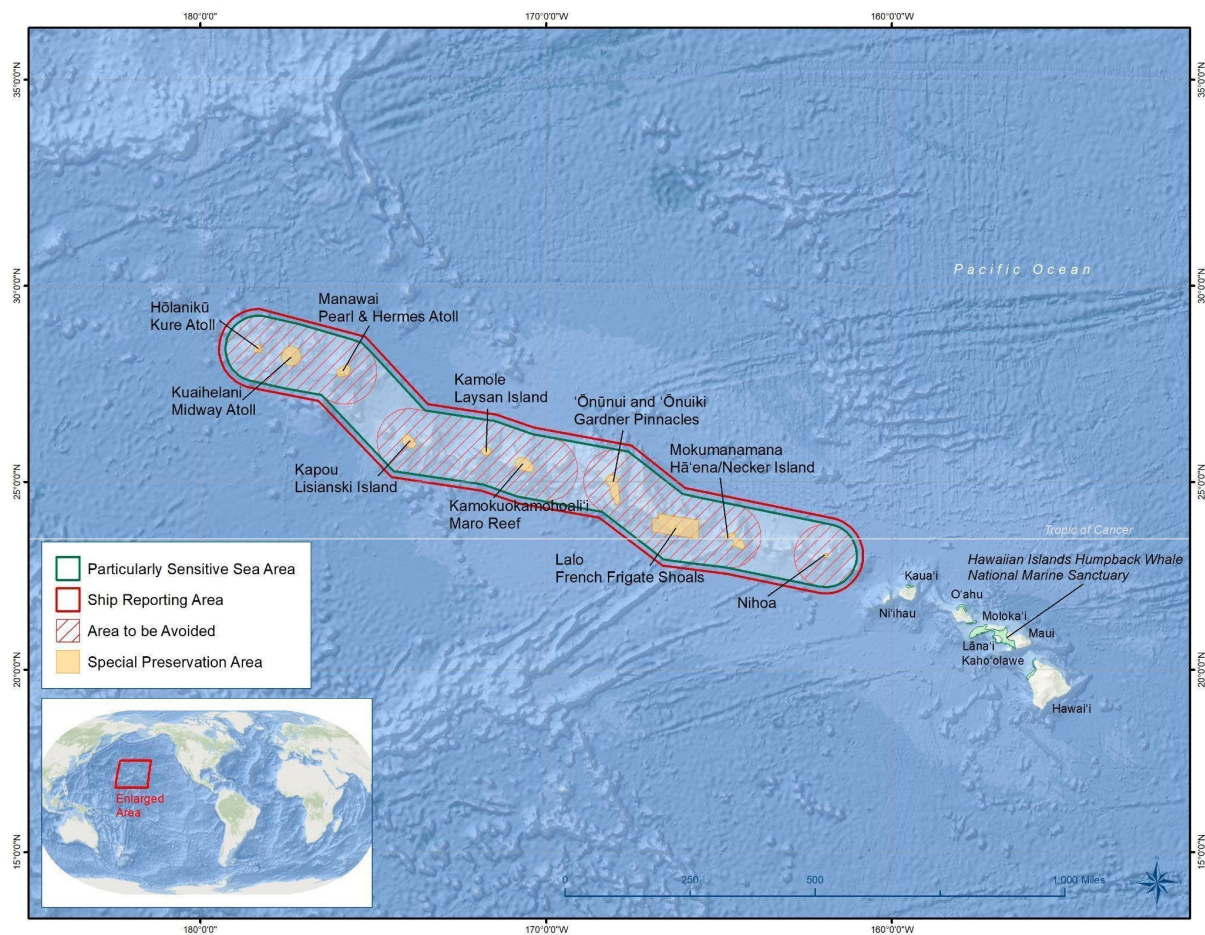


Figure 4.1. Particularly Sensitive Sea Area and Areas to Be Avoided. Image: NOAA

4.2.2 Management Authorities in the Action Area

Co-management by NOAA, USFWS, OHA, and the State of Hawai'i is guided by a memorandum of agreement between the Monument's co-trustees **and coordinated implementation is detailed in the Monument Management Plan.** The prohibitions codified in 50 CFR part 404 are based on Presidential Proclamation 8031 and may be subject to enforcement by law enforcement personnel. **While the Monument is managed as a unit, several federal and State conservation areas exist in Papahānaumokuākea and specific authorities apply.** Marine protected areas that pre-date the Monument and continue conservation management include the Midway Atoll and Hawaiian Islands National Wildlife Refuges, the Battle of Midway National Memorial, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, and the State of Hawai'i Northwestern Hawaiian Islands Marine Refuge and Kure Atoll Wildlife Sanctuary. See Table 3.2 in Chapter 3, which identifies these areas where individual agencies maintain jurisdictions and act as leads for Monument management.

Regulations promulgated for these management regimes remain in place, and where conflicting regulations exist, the more stringent (resource protective) regulation applies. A complete description of the current management regime can be found on the [Monument's website](#).

4.2.3 Management Structure

The Monument is jointly administered by the four co-trustees through the seven-member Monument Management Board (MMB) (Figure 4.2) which oversees day-to-day management. The MMB consists of NOAA ONMS, NOAA Fisheries, USFWS Ecological Services, USFWS Refuges, DLNR-Division of Aquatic Resources, DLNR-Division of Forestry and Wildlife, and OHA, working with many partners to carry out its mission. Activities of the co-managers, as well as other permitted activities in the Monument, are developed and conducted in consideration of multiple goals in the 2008 Monument Management Plan, integrating Hawaiian culture, natural resource management and restoration, science and research, coordinating agency effort, education, and community involvement.

The MMB maintains working groups to engage in ongoing and emerging issues, providing these working groups time to deliberate and recommend an appropriate action to the MMB. **The permitting working group, currently chaired by ONMS, reviews submitted permit applications and works with applicants to ensure completeness, address justification deficiencies, and revise proposals before working group recommendations are provided to the MMB.** Other working groups (e.g., logistics, climate change) address both ongoing and emerging management issues.

Additionally, a Papahānaumokuākea Native Hawaiian Cultural Working Group (CWG), composed of Kānaka ʻŌiwi kūpuna, researchers, cultural practitioners, educators, and community members with deep connections and historical ties to Papahānaumokuākea, represents a Kānaka ʻŌiwi community voice, advising OHA as a co-trustee of the Monument. The CWG has taken major roles in developing cultural protocols, perpetuating ancestral knowledge, and developing the Mai Ka Pō Mai management guidance document (OHA, 2021) for Papahānaumokuākea.

Given the unique position in the Monument, special discussion is provided for Kuaiahelani. USFWS has managed Midway Atoll NWR since 1988. In addition, Presidential Proclamation 8031 states “[t]he Secretary of the Interior, through the Fish and Wildlife Service (FWS), will have sole responsibility for management of the areas of the monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce.” USFWS management is guided by the NWRSA, as the organic authorization of the National Wildlife Refuge System; its regulations and policies. The USFWS has also created numerous management documents, with review and input from co-management agencies, applicable to Midway Atoll, including the Midway Atoll Comprehensive Master Plan (2022), the Midway Atoll Visitor Services Plan (2008) and the Monument’s Midway Atoll NWR Conceptual Site Plan (2008).

Monument Management Plan

The Monument Management Plan was written in 2008 by the Monument co-trustees. Because this Monument Management Plan is a mixture of the existing Reserve Operations Plan, the subsequent draft sanctuary management plan, the refuge Comprehensive Conservation Plans, and State plans, as fully described in Section 2.2 of the plan, it does not resemble typical sanctuary management plans, typical refuge CCPs, or typical State of Hawai‘i management

plans. However, this plan and the accompanying environmental analysis meet all applicable federal and State requirements. The Monument Management Plan is a guidance document for management decisions over a 15-year horizon that sets forth desired outcomes through six priority management needs, focused by 22 Action Plans, each with strategies and activities. The Monument Management Plan addresses management needs for lands and waters (nearshore and pelagic) of the Monument.

Key Monument management framework elements described in the 2008 Monument Management Plan include:

- The legal and policy basis for establishment of the Monument.
- The vision, mission, and guiding principles that provide the Monument’s overarching policy direction.
- Institutional arrangements between co-trustees and stakeholders.
- Regulations and zoning to manage human activities and threats.
- Goals to guide the implementation of action plans and priority management needs.
- Concepts and direction for moving toward a coordinated ecosystem approach to management.

Other Guiding Documents

In addition to the Monument Management Plan, the co-trustees have developed a number of issue-specific documents to meet the management Goals and Objectives of the Monument. These include:

- [Mai Ka Pō Mai Native Hawaiian guidance document](#)
- [PMNM Climate Change Vulnerability Assessment](#)
- [PMNM Maritime Heritage Research, Education, and Management Plan](#)
- [PMNM Natural Resources Science Plan](#)
- [2020 PMNM State of the Monument Report](#)
- [Midway Atoll Visitor Services Plan](#)
- Midway Atoll Comprehensive Master Plan
- [BMP Requirements](#) (attached as conditions to Monument permits)

These ancillary documents provide more specific information and guidance for management, including the incorporation of cultural components. In particular, the Mai Ka Pō Mai guidance provides protocols to help federal and State agencies further integrate Kānaka ‘Ōiwi culture into all areas of management. Mai Ka Pō Mai articulates values and principles that align with Kānaka ‘Ōiwi culture and values, as well as various federal and State agency mandates and missions.

4.2.4 Monument Access and Prohibitions

Per Monument regulation 50 CFR § 404.4, access is prohibited within PMNM (to 50 nmi), except for: (1) emergencies, law enforcement and Armed Forces activities; (2) an individual or group operating under a valid Monument permit; or (3) a vessel passing through the Monument without interruption. **Per Monument regulations at 50 CFR § 404.12, these regulations are applied in accordance with international law. No restrictions shall apply to or be enforced**

against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law, or applicable treaties, conventions, and other agreements.

Permitted vessels, those conducting activities within PMNM, must possess a working VMS allowing NOAA's Office of Law Enforcement to track their movements. Certain vessels passing uninterrupted through the Monument are required to provide entry and exit notifications (Section 4.2.1). The MEA (50–200 nmi) currently has no access restrictions.

50 CFR part 404 provides a list of prohibited activities within PMNM. Similarly, Presidential Proclamation 9478 includes these and additional prohibitions for the MEA. Across both areas, the following are prohibited:

- Gas, oil, and mineral exploration or activities.
- Harvesting Monument resources using poisons, electrical charges, or explosives.
- Releasing, either accidentally or intentionally, a non-native species.
- Having an anchor, anchor chain, or anchor rope contact living or dead coral.
- Commercial fishing.

Additional prohibitions in the MEA are:

- Any energy development.
- Disturbing, damaging or taking any living or non-living Monument resource except as regulated.
- Altering or placing any structure on the seafloor, except for scientific instruments.
- Deserting a vessel at anchor or adrift.

4.2.5 Permitting and Regulated Activities

A joint permitting process has been in place and permits have been issued by the MMB since 2007. The Monument permitting process incorporates the Presidential Proclamations' directives, and follows USFWS, NOAA, and State regulations and procedures. For example, multi-year permits may be granted in federal waters, while the State requires one-year permits for activities in State waters. 50 CFR part 404 provides the authority to issue six permit types, each with specific criteria that the applicant must meet. Specifically, the applicant must demonstrate how the proposed activity meets management needs and adheres to the goals and objectives of the MMP. The six types of activities regulated through the PMNM permitting process are research; education; conservation and management; Native Hawaiian practices; recreation; and special ocean use.

The 50 CFR part 404 regulations apply only to PMNM (0–50 nmi). Management in the MEA is governed by Presidential Proclamation 9478, which explicitly names research, education, conservation and management, and Native Hawaiian practices, in addition to non-commercial fishing. Presidential Proclamation 9478 does not discuss permit application criteria. While Presidential Proclamation 9478 states that the Secretaries of Commerce and the Interior shall share management responsibility of the MEA, regulations to issue permits have not yet been promulgated. Until a formal permitting process is developed, activities in the MEA have been approved via a Letter of Authorization signed by USFWS. The use of Letters of Authorization is

only temporary until regulations are promulgated and a formal permitting process is implemented and should not be considered precedent setting. The co-trustees agreed to implement this USFWS process as an interim measure.

Permit Criteria

In the PMNM, the general and permit specific criteria that each proposed activity must meet are codified in 50 CFR § 404.11 and full descriptions of the application process and review, Monument Best Management Practices (BMP), and permittee reporting are on the [Monument's website](#). The MMB determines whether a permit will be issued based upon meeting the below criteria. Specific terms and conditions can be attached to a permit, as appropriate.

- The activity can be conducted with adequate safeguards for the resources and ecological integrity of the Monument.
- The activity will be conducted in a manner compatible with the goals of the Monument, considering the extent to which the conduct of the activity may diminish or enhance Monument resources, qualities, and ecological integrity, any indirect, secondary or cumulative effects of the activity, and the duration of such effects.
- There is no practicable alternative to conducting the activity within the Monument.
- The end value of the activity outweighs its adverse impacts on Monument resources, qualities, and ecological integrity.
- The duration of the activity is no longer than necessary to achieve its stated purpose.
- The applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct.
- The applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct.
- The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to Monument resources, qualities, and ecological integrity.
- The applicant's vessel has been outfitted with a VMS unit approved by NOAA's Office of Law Enforcement.
- There are no other factors that would make the issuance of a permit for the activity inappropriate.

If the applicant has applied for a Native Hawaiian practices permit, the following must be met:

- The activity is non-commercial and will not involve the sale of any organism or material collected.
- The purpose and intent of this activity are appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (pono), and demonstrate an understanding of, and background in, the traditional practice, and its associated values and protocols.
- The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community.
- The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands.

- Any resource harvested from the Monument will be consumed in the Monument.

If the applicant has applied for a recreation permit for activities to be conducted within the Midway Atoll Special Management area the following must be met:

- **The activity is for the purpose of recreation as defined in the regulations at 50 CFR 404.**
- The activity is not associated with any for-hire operation.
- The activity does not involve any extractive use.

If the applicant has applied for a special ocean use permit the following must be met:

- The purpose of the activity is for research, education, or conservation and management related to the resources or qualities of the Monument.
- The activity will directly benefit the conservation and management of the Monument.
- The activities can be conducted in a manner that does not destroy, cause the loss of, or injure Monument resources.
- The permittee has purchased and maintained comprehensive general liability insurance throughout the duration of the activity, or agreed to post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.
- The activity does not involve the use of a commercial passenger vessel.
- For special ocean use within the Midway Atoll Special Management Area, the Director of the U.S. Fish and Wildlife Service or their designee has determined that the activity is compatible with the purposes for which the Midway Atoll National Wildlife Refuge was designated.

Permitting Requirements

The following requirements must be fulfilled based on method of entry (e.g., vessel or plane), permit type, location, and permitted activities:

- Vessel must be equipped with an approved and operating VMS unit before departure.
- Vessel Hull, Tender Vessel, Gear and Ballast Water must be inspected and certified free of non-indigenous and invasive species before departure.
- Permittee must provide a certificate or other proof that their respective vessel is free of rodents prior to entering the Monument:
- Permittee must adhere to the following eight general terms and conditions.
 - Vessel reporting, annual and summary reporting.
 - Submittal of a copy of all data acquired under each Monument permit.
 - Compliance with all applicable federal, State, and local laws and regulations.
 - Coordination with Monument staff while in the field.
 - Adherence to hazardous material storage and transport guidelines.
 - Requirement to demonstrate proof of insurance or financial capability to cover evacuation in the event of an emergency, medical evacuation, or weather.
 - Requirement for permittees to attend a cultural briefing on the significance of Monument resources to Native Hawaiians.
 - Prohibition against the disturbance of any cultural or historic property.

- Appropriate activity-specific BMPs are included in the permit conditions. The activity-specific BMPs can be found on the [Monument website](#).

Regulated Activities

Activities are regulated through the Monument permitting system. In any permit application in which the project description includes conducting a regulated activity, the permit will explicitly describe where, when, and how this activity can be conducted within the Monument. Activities regulated in PMNM area include:

- Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving Monument resource.
- Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands.
- Anchoring a vessel.
- Deserting a vessel aground, at anchor, or adrift (prohibited in the Expansion Area).
- Touching coral, living or dead.
- Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument.
- Swimming, snorkeling, or closed or open circuit scuba diving within any Special Preservation Area or the Midway Atoll Special Management Area.
- Attracting any living Monument resource.

Permit Application and Review Process

Subject to such terms and conditions as the Secretaries deem appropriate, regulated activities may be permitted to occur within the Monument only if an applicant can demonstrate that their proposed activities are consistent with the goals of the Monument and meet all relevant findings criteria to support issuance of the permit. The joint Monument permit application template and review process were developed and implemented in 2007. Applications are reviewed by managers, scientists, and other experts from the co-trustee agencies and by Kānaka ‘Ōiwi cultural reviewers. The MMB may require applicants to submit additional information, comply with special conditions, or undergo additional training to meet this requirement.

Permit applications are posted for public notification, and applications with activities in State waters are approved by the State of Hawai‘i Board of Land and Natural Resources. All approved permits must meet NEPA and HEPA requirements and comply with all other required federal and State permits and consultations. All permits specify the requirements for compliance with quarantine protocols to avoid introduction of non-indigenous and invasive species, and list prohibited activities such as the disturbance of cultural or historical artifacts or sites. Special Conditions may also be applied to particular permits, placing additional restrictions on activities in order to minimize impacts to Monument resources.

In addition to the requirement that each permit applicant meet the permit review criteria described above, applicants must agree to the General Conditions of their respective permit as

well as any Special Conditions that may apply. Special permit conditions are incorporated into each permit as deemed appropriate by the MMB to achieve effective conservation and management. Before entering the Monument, all permitted personnel must attend a pre-access briefing to review the cultural significance of Papahānaumokuākea. In addition, all permitted vessels require mandatory rodent inspection, hull and tender inspection, and ballast water inspection (if applicable) be completed before entrance to minimize the potential for introduction of non-indigenous or invasive species. Inspection results may result in denial of entrance into the Monument or a list of measures that need to be implemented before the vessel may enter the Monument.

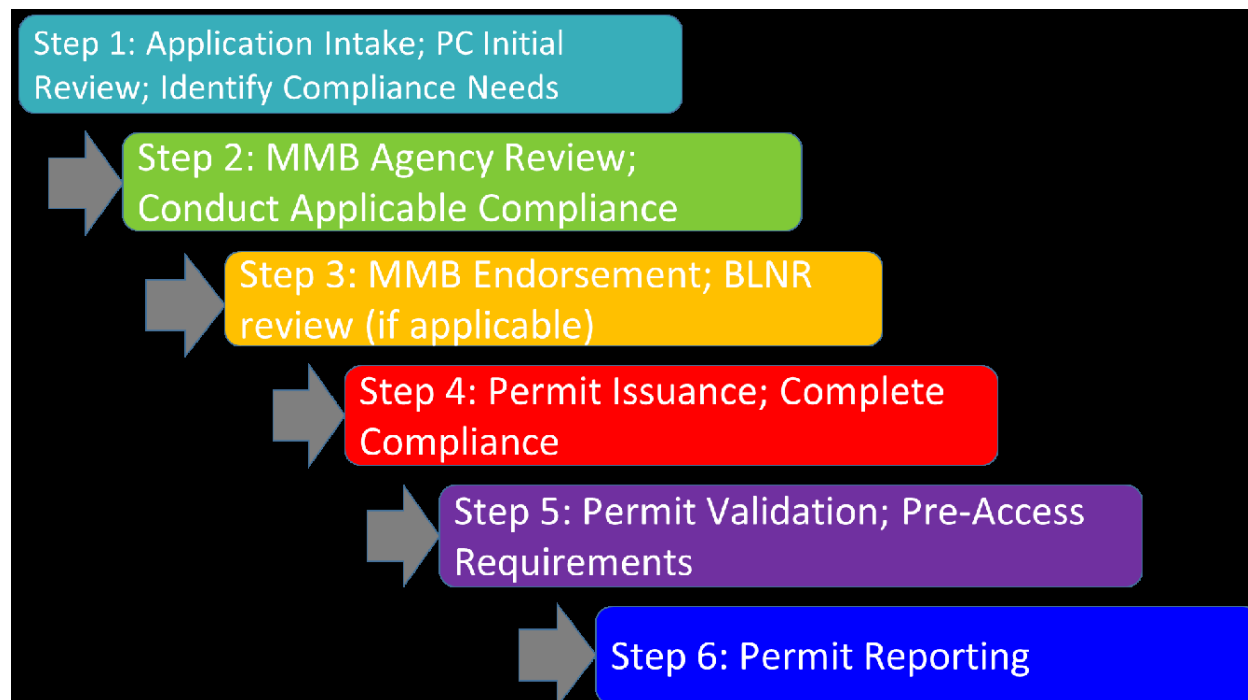


Figure 4.3. Simplified Monument permit process. Image: NOAA

4.2.6 Permitted Activities Summary

Activities permitted over the past 17 years were guided by the 2008 MMP. Monument management activities fall under 22 action areas that are described in detail in the MMP, for which an Environmental Assessment was completed. Ongoing and newly proposed activities that meet the MMP's goals are expected to continue at a similar level of effort.

Monitoring of activities in the Monument is primarily linked to permit requirements. At the discretion of the MMB, as part of the application process, permittees may be required to accommodate a Resource Monitor. These resource monitors are trained in universal and project-specific Best Management Practices developed by the Monument managers. Monitoring would continue for all sanctuary designation alternatives. All those named on a permit application undergo a pre-activity cultural briefing in which they are educated in proper protocols for entering and exiting the Monument as well as manner of conduct while in the Monument to ensure appropriate respect for the sacredness of the place is maintained.

Co-managers track the total number of people in the Monument over the course of the year as well as the number of people at each atoll to monitor the intensity of the permitted activities. This allows managers to proactively monitor for and mitigate cumulative impacts. Most locations average fewer than 1 person any given day on a specific island habitat, although the maximum on a single day can exceed 20 individuals.

With regards to human activity, Kuaihelani is unique within the Monument. On average, 60 people are within Monument boundaries on any given day. Of these, approximately 50 individuals are necessary to manage the Refuge, operate facilities, and conduct environmental management and restoration. Most of this activity is land-based and would not be subject to sanctuary designation analysis. Kuaihelani is also the only location with a working runway, accepting between 22 and 41 flights each year, on average. Hōlanikū sees the next most activity, with a permanent six-person field team stationed at the atoll year-round (PMNM, 2017).

From 2007–2021, a total of 442 Monument permits were issued (NOAA ONMS, 2022). Most (a little over 50%) of these permits have been for research activities, followed by conservation and management actions (21%), special ocean uses (15%), Native Hawaiian practices (7%), education (6%), and recreation (1%) (Table 4.2). Since 2016, eight permits included activities in the MEA.

Table 4.2. Monument Permits Issued 2007–2021

Year	Research	Conservation and Management	Education	Native Hawaiian Practices	Recreation	Special Ocean Use	Total
2007	37	5	2	1	1	5	51
2008	30	10	3	1	2	3	49
2009	28	6	2	4	1	10	51
2010	27	7	6	1	1	8	50
2011	19	6	4	3	0	5	37
2012	18	5	1	1	0	16	41
2013	6	5	0	2	0	5	18
2014	11	7	0	2	0	1	21
2015	9	8	0	4	0	0	21
2016	8	8	1	1	0	4	22
2017	6	8	1	3	0	0	18
2018	7	3	4	4	0	3	21
2019	7	6	0	2	0	1	16
2020	1	5	0	0	0	2	8
2021	8	2	1	4	0	3	18
TOTAL	222	91	25	33	5	66	442

While the purpose of each permitted activity is specific, the methodologies and instruments employed are similar. Most efforts are based on or supported by research vessels. Exploration of deep habitats is conducted using various sonar techniques, remotely-operated and autonomous vehicles, and the placement of instruments on the seafloor. Shallow water activities are often supported through small-boat operations, often with people in the water. Specimens may be collected and animals tagged, along with a variety of non-invasive data collection. Some management efforts, specifically marine debris and invasive species removal, impart a higher intensity of contact with the benthic resources, as well as potential disturbance to mobile marine

life. Permit applications are required to describe where and for how long the activities will be conducted, including an analysis of the potential short- and long-term impacts of these activities.

4.2.7 Management of Threats

The [*2020 State of Papahānaumokuākea Marine National Monument: Status and Trends 2008–2019*](#) (NOAA ONMS, 2020) describes threats to resources and the measures taken to address those threats under current Monument management. The following provides an overview of these threats. Threats specific to Monument resources (e.g., monk seal entanglement in derelict fishing gear) are discussed under those specific resources.

Climate Change

Climate change contributes to the increased erosion of reef habitat from large wave events, the loss of habitat due to sea level rise, and the inability to form reefs due to ocean acidification. The MMB and partners developed a Climate Change Vulnerability Assessment to understand likely effects of climate change on Papahānaumokuākea’s natural and cultural resources to provide guidance for Monument managers (Wagner & Polhemus, 2016). Climate change-specific monitoring efforts conducted by management agencies include assessments of fundamental changes in species composition and distribution for climate-sensitive species such as corals, as well as direct monitoring of calcification rates and calcification minerals in the ocean. Multi-year monitoring has been conducted to evaluate the impacts on corals and the ecosystem from a 2014 coral bleaching event. Using cutting-edge technology, such as 3-D photogrammetry, NOAA scientists assess the impacts of climate change on coral reef ecology and habitats. However, there are still research gaps related to other aspects of climate change under current management.

Invasive Species

A species may be considered invasive when it becomes established and causes negative impacts to the ecosystem, outcompeting native species, and altering habitat and trophic structure. Life history traits commonly demonstrated by invasive species include rapid growth and spread, invasion of new habitats, and displacement of native organisms. Since it is difficult, if not impossible, to determine whether a species will become invasive in a given environment, the majority of efforts are focused on preventing non-indigenous species from entering the Monument. Current Monument operational protocols continue to be developed and refined to minimize the potential for non-indigenous species to be introduced. Regulations (50 CFR § 404.6(c)) and Presidential Proclamation 9478 prohibit introducing or otherwise releasing a non-indigenous species from within or into PMNM and the MEA, respectively. Further, co-managers, led by ONMS research scientists, are actively monitoring habitats where invasive species have or may adversely alter the ecosystem.

Non-indigenous species may arrive on vessels or debris of any kind from ports around the world. Ballast water and biofouling associated with global shipping are considered the most significant cause of human caused oceanic dispersal of invasive species, although biofilms (e.g., bacteria, microalgae, and fungi), encrusting (e.g., barnacles, bryozoans, hydroids) and mobile organisms (e.g., arthropods, mollusks, cnidarians) are commonly found on rafting marine debris

(NOAA Marine Debris Program, 2017), which is a significant concern in the Monument. Discharge from vessels operating in or transiting the Monument can introduce pathogens that contribute to coral disease and threaten marine mammal populations.

The Monument managers maintain an inventory of marine non-indigenous species identified and the location(s) each species was observed. Sixty-eight non-indigenous marine invertebrate, fish, and algal species have been recorded in the proposed sanctuary, including ta'ape (bluestripe snapper, *Lutjanus kasmira*) and roi (peacock grouper, *Cephalopholis argus*) (Tsuda et al., 2015; Godwin et al., 2020). Of these, 42 are established and 21 are designated as cryptogenic (hidden, and undetermined whether established). Two species were determined to not be established, and three species are included with questionable data. Fifty-seven of these species occur at Kuaihelani, while 48 of those were observed only at Kuaihelani (Godwin et al., 2005). Appendix D includes all identified non-indigenous species and where they have been observed in the proposed sanctuary.

To prevent the introduction of non-indigenous marine species, ONMS staff perform a complete risk assessment coupled with the visual inspection of hulls for permitted vessels that transit into the Monument. Vessels fouled with marine organisms must be thoroughly cleaned. Vessels are also required to have a professional rodent inspection, and be certified rodent-free, before transiting to the Monument (Monument BMPs 001 and 018). BMPs to prevent the spread of non-indigenous species and disease are often included as permit conditions for those operating in the Monument.

Monitoring of established non-indigenous species is conducted in conjunction with interagency coordination, education, and outreach activities. In 2019, the MMB designated an interagency technical Invasive Algal Working Group comprised of scientists and biosecurity specialists to: 1) identify data gaps; and 2) develop BMPs for biosecurity regarding a previously unrecorded species of invasive red algae (*Chondria tumulosa*) spreading across Manawai in 2019 (Sherwood et al., 2020), to Kuaihelani in 2021 (Kosaki, pers. comm.), and to Hōlanikū in 2023. This species smothered entire sections of coral reef and other vital organisms at Manawai. The Working Group's BMPs were adopted in early 2020 as part of the standard biosecurity conditions for all persons operating at Manawai. Spiny seaweed (*Acanthophora spicifera*), the most common invasive marine alga of subtidal and intertidal habitats in the Main Hawaiian Islands (Smith et al., 2002), was observed at Kuaihelani in July 2022 (Rankin et al., 2022). Strategies are being considered to control these two algae (USFWS, 2022).

Monument co-managers are also working to prevent introductions of known, aggressively invasive species like the recently documented soft coral *Unomia stolonifera* in Pearl Harbor (Hauk, pers. comm). This species has devastated the marine habitat of Venezuela in a few years, and scientists are working to understand and prevent its spread across the Hawaiian Islands (Ruiz-Allais et al., 2021).

Marine Debris

Marine debris consists of 80% plastic (International Union for Conservation of Nature, 2021). Because plastic is lighter than sea water, it floats on or near the surface of the ocean, allowing marine debris from across the Pacific, driven by wind and currents, to accumulate in the shallow waters of Papahānaumokuākea. This influx entangles marine species, damages reef habitat, is a

potential vector for invasive species, and is mistaken for food by seabirds and sea turtles. Hazardous marine debris and microplastics contaminated with chemical additives and pollutants potentially create vectors for toxic exposure (do Sul & Costa, 2014).

The Marine Debris Program, established in 2005 under NOAA’s Office of Response and Restoration, was authorized in 2006 by the Marine Debris Research, Prevention, and Reduction Act. Since 1996, this program and its partners have removed 923 metric tons (more than two million pounds) of primarily derelict fishing gear and plastics from Papahānaumokuākea. Most recently in 2023, two 30-day missions conducted by the non-profit Papahānaumokuākea Marine Debris Project successfully removed over 96 metric tons of marine debris from shallow coral reef and shoreline environments. NOAA will continue to prioritize removal of existing debris, detection and prevention of incoming debris, and education to prevent the generation of more debris to reduce overall impacts. NOAA and its partners will continue to disentangle animals from derelict fishing gear and abandoned military structures (e.g., crumbling seawall at Tern Island), directly preventing their mortality.

4.3 Physical Environment

The physical resources within the study area would generally not be affected by the proposed action, but aspects of the physical environment are linked to potential impacts. For instance, sea surface temperature is not affected by the action, but its connection to coral bleaching is a factor to the impacts to biological resources. Similarly, human-introduced noise (e.g., vessel motors) directly affects the soundscape, but the concern generally relates to the effect it has on marine mammals and other mobile species. Of the physical resources of the Monument, only water quality and benthic habitat could be directly impacted by human activities, although the proposed action does not directly increase or decrease human uses within the action area.

4.3.1 Overview of Physical Environment

The most important physical feature of the action area is its remote location in the middle of the Pacific Ocean. This affects the quality of most of the marine resources described in this chapter, as emphasized in the *2020 State of the Monument Report*. “Due to Papahānaumokuākea’s isolation, past management efforts, and current regulations controlling access, impacts from local human uses have been relatively few, and thus its reefs and other resources are considered to be in nearly pristine condition across most of the region (NOAA ONMS, 2020).” While direct human impact to resources is minimal, regional and global threats continue to impact Monument resources. The influx of marine debris into Monument waters from across the North Pacific entangles marine species, damages reef habitat, is a potential vector for invasive species, and is mistaken for food. Sea level rise, increased frequency and power of storms, and increased regional sea surface temperature due to climate change contribute to the erosion of submerged abiotic habitats and contribute to coral bleaching and proliferation of diseases (Wagner and Polhemus, 2016).

The action area is also an enormous size, encompassing 582,578 mi² of the Pacific Ocean—an area larger than all U.S. national parks combined. Within this expanse, 1,424 mi² (3,687 km²) of shallow water reef habitat (<30 m depth, Miller et al., 2004; 2006; Maragos et al., 2009)

support a complex and highly productive marine ecosystem. Beyond the shallow reef, scattered in the vast pelagic ocean, are more than 100 submerged banks and seamounts.

Oceanic conditions, including currents, wave events, temperature, nutrients, and productivity, are described in the *2020 State of the Monument Report*. Currents transport larvae and marine debris, with the mean average flow of surface water moving east to west in response to the prevailing northeast trade winds (Firing & Brainard, 2006). Significant wave events (33-foot or 10-meter waves) from large winter storms and hurricanes also influence reef structure and distribution of marine life (Dollar, 1982; Dollar & Grigg, 2004; Friedlander et al., 2005) and cause erosion of the low islets in the Monument. Wave energy is highest between November and March and lowest between May and September. Global sea level rise has been documented since 1900, and may be accelerating, although the increase has been variable in Papahānaumokuākea over the past decade (Chen et al., 2017).

On average, four or five tropical typhoons or hurricanes are observed annually in the Central Pacific. Until 2018, the strongest hurricane recorded in the Monument area was Patsy in 1959, which passed between Kuaihelani and Hōlanikū with wind speeds greater than 115 mph (100 knots) (Friedlander et al., 2005). In October 2018, Hurricane Walaka passed through Lalo, with maximum winds of 127 mph (110 knots), causing extensive damage to Rapture Reef at 80 feet depth and almost eliminating East Island (Pascoe et al., 2021).

Sea surface temperature is an important physical factor influencing coral reefs and other marine ecosystems. NOAA's long-running National Coral Reef Monitoring Program collects in situ temperature data and correlates these data to response factors, including bleaching events. The northernmost atolls range from 19°C in the winter to 26°C in the summer, an extremely large fluctuation compared to most reef ecosystems. Across Papahānaumokuākea, sea surface temperatures have been on average 0.6°C higher between 2009–2018 than those recorded from 1984–2008 (NOAA ONMS, 2020). Between July and September 2002, sea surface temperatures across the Hawaiian Archipelago were anomalously warm, resulting in widespread coral bleaching, particularly in three northern atolls. A global coral bleaching event in 2014–2017 also affected corals in the Monument, particularly a shallow reef to the east of Kapou (Couch et al., 2017).

Most of the waters of the action area are low in nutrients, and thus low in primary productivity. A subtropical front that lies primarily north of the Monument migrates southward to the northernmost atolls, bringing high nutrient waters (Seki et al., 2002). This front and its productive waters attract larger species, including sea turtles, squid, and pelagic fish.

Water quality, including excessive nutrients or microbiological contamination, has not been a major issue in nearshore areas of the Monument. Overall, adverse water quality conditions throughout most of the Monument's oceanic waters are not expected, except near legacy pollutant sources from military activities at Kuaihelani, Hōlanikū, and Tern Island at Lalo (NOAA ONMS, 2020). While these sites are on land and outside of the proposed sanctuary, contaminants could easily migrate through the shallow sandy soil into marine waters. Legacy contamination still is present at Kuaihelani (Ge et al., 2013), including petroleum in the groundwater and nearshore waters, pesticides (e.g., DDT) in the soil, PCBs in soil, groundwater, and nearshore sediments and biota, metals such as lead and arsenic in soil and nearshore

waters, and unlined, uncharacterized landfills. While some of the worst areas of contamination were remediated, several areas, including unlined, eroding landfills, warrant continuous monitoring for potential releases (USFWS, 2019). The largest part of these contaminants do not degrade easily and tend to persist in the environment. As a result, any small changes to those areas (on land) could have an impact on the concentration of contaminants in adjacent areas (air, soils, and water). This includes the transport of contamination through stormwater runoff and groundwater infiltration to adjacent areas (Ge et al., 2013). Contamination sites are also present at Kamole and Manawai (NOAA ONMS, 2020). These historical contaminants remain despite remediation, and hazardous marine debris could potentially be sources of contamination, as every emergent and submerged location in the Monument is not regularly monitored for hazardous marine debris. Microplastic debris (<5 mm) accumulates in the water column and in sediments. Because these tiny plastic particles can be contaminated with chemical additives and pollutants absorbed from the surrounding environment, their ingestion potentially creates a new vector for toxic exposure (do Sul & Costa, 2014). Disease-causing microbiota in nearshore marine waters is not expected to be problematic or occur at levels that exceed water quality standards. Physical hazards within the Monument include marine debris and the deterioration of land-based military infrastructure, both which pose a threat to seals, seabirds, and turtles.

Near-shore benthic habitat is threatened from external events, including the influx of derelict fishing gear as well as oceanic scientific equipment. Discarded or lost fishing nets from distant fleets and plastic trash threaten and damage coral reefs, entangle and choke marine life, and aid in the transport of non-indigenous species and contaminants. An estimated 52 metric tons of derelict fishing gear from fisheries all over the Pacific drift into the Monument every year, influenced by large- and small-scale ocean circulation patterns and El Niño and La Niña events, ultimately accumulating in shallow reef habitat (Dameron et al., 2007).

In recent years, three National Weather Service buoys have broken free of their moorings and threatened Monument resources. Two groundings occurred at Kapou in 2015 and 2019. The third entered the MEA in 2022. The 2015 buoy was salvaged in May of 2016 and damage was surveyed using 3-D photogrammetry (Burns et al., 2018). The 2019 buoy's mooring system contacted benthic substrata, remaining stationary for multiple days at three different locations inside the Monument before reaching the shore of Kapou on February 7, 2019 (Fukunaga et al., 2021). A commercial salvage company removed the buoy in August/September of 2020 (Figure 4.4). Habitat recovery at these two sites is still being monitored. The third buoy was successfully recovered in June 2022 from the waters of the MEA. This proactive decision prevented an additional grounding and resulting damage caused by ground tackle and the buoy itself.

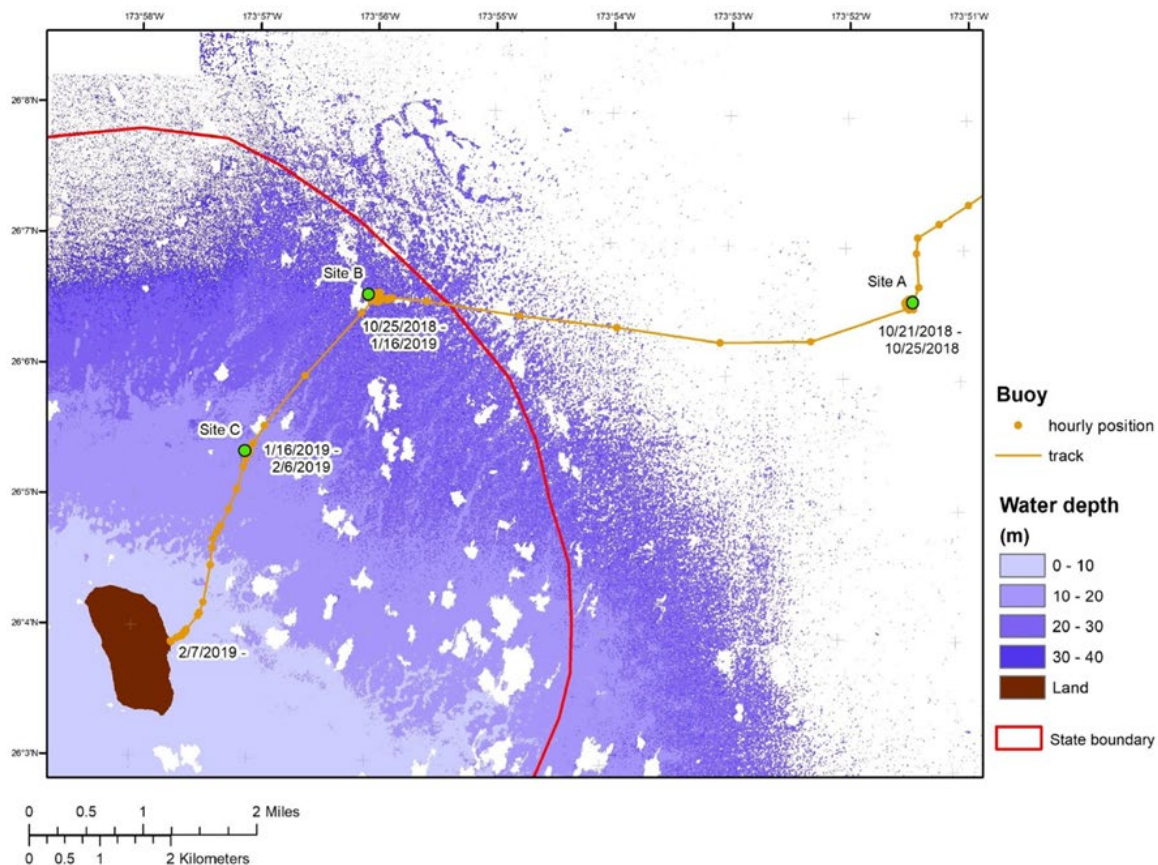


Figure 4.4. Satellite track of National Weather Service buoy, October 21, 2018 to February 7, 2019.
Source: Fukunaga et al., 2021

On July 2, 2005, the M/V *Casitas* ran aground at Manawai (NOAA Damage Assessment, Remediation, and Restoration Program, 2021). Intending to salvage the vessel, crews installed temporary patches before towing the M/V *Casitas* towards Honolulu. The vessel could not be salvaged and on August 4, 2005 was sunk in over 7,000 feet of water at an EPA-approved emergency site northwest of the atoll. The grounding sheared and scraped corals across a reef area measuring 42 meters long by 15 to 20 meters wide. Removal efforts required setting and moving cables to position a barge, damaging an additional 1,600 square meters of reef habitat, including 461 square meters of coral. In the Spring of 2011 a [Restoration Plan](#) was finalized to restore resources injured by the grounding and compensate the public for injuries from the time of the grounding until full recovery. The focus of the restoration has been the removal of marine debris and monitoring the introduction of non-native species from Papahānaumokuākea.

Designated Essential Fish Habitat

Essential fish habitat (EFH) is defined as those waters and substrate necessary for federally managed species to spawn, breed, feed, and/or grow to maturity. EFH is a tool authorized by MSA to protect, conserve, and enhance habitat for the benefit of fisheries. Table 4.3 provides an overview of EFH species and their ranges in the project area. Habitat Areas of Particular Concern (HAPC) within Essential Fish Habitat are described in Table 4.4. HAPCs are specific areas that are essential to the life cycle of important species. These tables have been updated

since the draft EIS, based on additional information provided through the EFH consultation process with NOAA Fisheries. Details on the EFH and HAPC of the project area can be found in the Fishery Ecosystem Plans for Pelagic Fisheries and the Hawaiian Archipelago of the Western Pacific (WPFMC, 2009; 2016; 2018).

Table 4.3. Essential Fish Habitat of the Project Area

Fishery	Stock or Stock Complex	Life Stage(s)	EFH Designation
Bottomfish	Shallow Stocks: <i>Aprion virescens</i>	Eggs	Pelagic zone of the water column in depths from the surface to 240 m, extending from the official U.S. baseline to a line on which each point is 50 miles from the baseline
		Post-hatch pelagic	Pelagic zone of the water column in depths from the surface to 240 m, extending from the official US baseline to the EEZ boundary
		Post-settlement	Benthic or benthopelagic zones, including all bottom habitats, in depths from the surface to 240 m bounded by
		Sub-adult/Adult	Benthopelagic zone, including all bottom habitats, in depths from the surface to 240 m bounded by the official U.S. baseline and 240 m isobath.
Bottomfish	Intermediate Stocks: <i>Aphareus rutilans</i> , <i>Pristipomoides filamentosus</i> , <i>Hyporthodus quernus</i>	Eggs	Pelagic zone of the water column in depths from the surface to 280 m (<i>A. rutilans</i> and <i>P. filamentosus</i>) or 320 m (<i>H. quernus</i>) extending from the official U.S. baseline to a line on which each point is 50 miles from the baseline
		Post-hatch pelagic	Pelagic zone of the water column in depths from the surface 280 m (<i>A. rutilans</i> and <i>P. filamentosus</i>) or 320 m (<i>H. quernus</i>), extending from the official U.S. baseline to the EEZ boundary
		Post-settlement	<i>A. rutilans</i> – benthic or benthopelagic zones, including all bottom habitats, in depths from 40 to 280 m bounded by the 40 m and 280 m isobaths. <i>H. quernus</i> – benthic zone, including all bottom habitats, in depths from 40 to 320 m bounded by the 40 m and 320 m isobaths. <i>P. filamentosus</i> – benthopelagic zone, including all bottom habitats, in depths from 40 to 100 m bounded by the 40 m and 100 m isobaths.

Fishery	Stock or Stock Complex	Life Stage(s)	EFH Designation
		Sub-adult/Adult	Benthic (<i>H. quernus</i>) or benthopelagic (<i>A. rutilans</i> and <i>P. filamentosus</i>) zones, including all bottom habitats, in depths from the surface to 280 m (<i>A. rutilans</i> and <i>P. filamentosus</i>) or 320 m (<i>H. quernus</i>) bounded by the 40 m isobath and 280 m (<i>A. rutilans</i> and <i>P. filamentosus</i>) or 320 m (<i>H. quernus</i>) isobaths
Bottomfish	Deep Stocks: <i>Etelis carbunculus</i> , <i>Etelis coruscans</i> , <i>Pristipomoides sieboldii</i> , <i>Pristipomoides zonatus</i>	Eggs	Pelagic zone of the water column in depths from the surface to 400 m, extending from the official U.S. baseline to a line on which each point is 50 miles from the baseline
		Post-hatch pelagic	Pelagic zone of the water column in depths from the surface to 400 m, extending from the official U.S. baseline to the EEZ boundary
		Post-settlement	Benthic zone, including all bottom habitats, in depths from 80 to 400 m bounded by the official U.S. baseline and 400 m isobath
		Sub-adult/Adult	Benthic (<i>E. carbunculus</i> and <i>P. zonatus</i>) or benthopelagic (<i>E. coruscans</i> and <i>P. sieboldii</i>) zones, including all bottom habitats, in depths from 80 to 400 m bounded by the official U.S. baseline and 400 m isobaths
Bottomfish	Seamount Groundfish: <i>Pentaceros wheeleri</i> , <i>Beryx splendens</i> , <i>Hyperglyphe japonica</i>	Eggs and post-hatch pelagic	Pelagic zone of the water column in depths from the surface to 600 m, bounded by the official U.S. baseline and 600 m isobath, in waters within the EEZ that are west of 180°W and north of 28°N
		Post-settlement	Benthic or benthopelagic zone in depths from 120 m to 600 m bounded by the 120 m and 600 m isobaths, in all waters and bottom habitat, within the EEZ that are west of 180°W and north of 28°N
		Sub-adult/adult	Benthopelagic zone in depths from 120 m to 600 m bounded by the 120 m and 600 m isobaths, in all waters and bottom habitat, within the EEZ that are west of 180°W and north of 28°N
Precious Coral	Deep Water: <i>Pleurocorallium secundum</i> , <i>Hemicorallium laauense</i> , <i>Kulamanamana haumea</i> , <i>Acanella</i> sp.	Benthic	Three precious coral beds are designated as EFH for deepwater species in the NWHI: Westpac bed, Brooks Bank, and 180 Fathom Bank.
	Shallow Water: <i>Antipathes griggsi</i> , <i>Antipathes grandis</i> , <i>Myriopathes ulex</i> .	Benthic	No coral beds are designated for shallow water precious corals in the NWHI.

Fishery	Stock or Stock Complex	Life Stage(s)	EFH Designation
Crustaceans	Kona crab, <i>Ranina ranina</i> ; deepwater shrimp, nylon shrimp, <i>Heterocarpus spp.</i>	Eggs and Larvae	The water column from the shoreline to the outer limit of the EEZ down to a depth of 150 m (75 fm)
		Juveniles / adults	All of the bottom habitat from the shoreline to a depth of 100 m (50 fm)
Pelagics	N/A	N/A	Water column down to 200 meters depth from shoreline out to EEZ boundary.
			Water column down to 1,000 meters depth from shoreline out to EEZ boundary.

Source: NOAA Fisheries

Table 4.4. Habitat Areas of particular concern (HAPC) for management units of the project area

Fishery	Stock or Complex	HAPC
Bottomfish	Shallow, intermediate, and deep stocks	No HAPC have been designated for shallow, intermediate, or deep bottomfish in the NWHI.
Bottomfish	Seamount groundfish	Congruent with EFH (see table 4.3)
Crustaceans	Kona crab	Kona crab: All banks in the NWHI with summits less than or equal to 30 m (15 fm) from the surface. HAPC has not been identified or designated for deepwater shrimp.
Precious Coral	Deep water	Westpac Bed and Brooks Bank Bed in the NWHI
	Shallow water	No HAPC has been designated in the NWHI.

4.4 Biological Environment

The proposed sanctuary is a large marine ecosystem exposed to a wide range of oceanographic conditions and environmental and anthropogenic stressors. The variety of physical habitats, including reef, slope, bank, submarine canyon, and abyssal plains, support more than 7,000 known shallow and deepwater marine species. Small islands and islets provide essential breeding grounds and nesting sites for endangered, threatened, and rare species, which forage on land and throughout the coral reef, deepwater, and pelagic ecosystems. Biological resources in the study area that may be affected by the proposed action and alternatives include reef organisms, bottomfish, pelagic species, turtles, birds, and marine mammals.

“Most living resources in the [M]onument appear to be in healthy condition, owing in part to years of layered protections by the co-managing agencies. Many populations of endangered and other vulnerable species appear vigorous, and endangered species status is largely attributed to factors inherent in isolated locations, such as limited distributions, small populations, and vulnerability to perturbations. Further, management actions such as translocations, non-

indigenous species removal, and habitat restoration have successfully contributed to improvements in habitat quality and species abundance and distribution” (NOAA ONMS, 2020).

4.4.1 Algae

The marine algal flora of the proposed sanctuary are diverse and abundant, with 335 known species of macroalgae and two seagrass species (Tsuda, 2014). The species composition of the macroalgae community is relatively similar throughout Papahānaumokuākea. *Chlorophyta*, *Rhodophyta*, *Ochrophyta*, branched coralline, crustose coralline, cyanobacteria, and turf algae occur in varying combinations, with green algae having the largest biomass and area coverage (Vroom & Page, 2006). The calcified algae in the genus *Halimeda* is widespread and contributes greatly to sand formation (Vroom & Page, 2006). Unlike the main Hawaiian Islands, where non-indigenous species and invasive algae have overgrown many coral reefs, reefs in Papahānaumokuākea are relatively free of non-indigenous algae, and the high natural herbivory results in a natural algal assemblage. However, two recently discovered species are known to act invasively. The mat-forming cryptogenic red algae *Chondria tumulosa* was discovered at Manawai in 2019 (Sherwood et al., 2020), Kuaihelani in 2021, and Hōlanikū in 2023. The spiny seaweed (*Acanthophora spicifera*) was discovered at Kuaihelani in 2022 (Rankin et al., 2022).

4.4.2 Corals

Fifty-seven species of stony corals are known in Papahānaumokuākea’s shallow subtropical waters (at depths of less than 100 feet [30 meters]), covering 3,687 square kilometers of marine habitat (Miller et al. 2004; 2006; Maragos et al., 2009). Endemism is high, with 17 species (30%) found only in the Hawaiian Archipelago. These endemics account for 37 to 53 percent of visible stony corals in all shallow reef areas surveyed (Friedlander et al., 2005). Deepwater corals are more diverse, with 137 gorgonian octocorals and 63 species of azooxanthellate scleractinians documented in Papahānaumokuākea (Parrish & Baco, 2007). Larval recruitment to deep-water ecosystems, as well as isolated to seamounts, is rare from other locations. Once established, self-recruitment within these habitats is the primary mechanism to sustain these ecosystems (Crochelet et al., 2020).

Live coral cover is highest in the reefs in the middle of Papahānaumokuākea, with 59 to 63 percent of available substrate at Kamokuokamohoali‘i and Kapou covered with living corals (Maragos et al., 2004), although there is minimal coverage at most other reef sites (Maragos et al., 2009). The same pattern is observed for species richness, with 41 coral species reported at Lalo and lower diversity at the archipelago’s northern end and off the exposed basalt islands to the southeast.

While Papahānaumokuākea’s coral reefs are relatively undisturbed by the direct impacts of fishing, tourism, land-based pollution and poor water quality, conditions have recently declined to “fair” in the *2020 State of the Monument Report*, likely due to bleaching events and storms (NOAA ONMS, 2020). Coral disease (tumors and lesions associated with parasites, ciliates, bacteria, and fungi) is lower in the NWHI than in the rest of the archipelago (Aeby, 2006). Derelict fishing gear, an ongoing issue in Papahānaumokuākea, degrades reef health by abrading, smothering, and dislodging corals, as well as by preventing recruitment on reef

surfaces (Donohue & Brainard, 2001). Current science suggests that the direct and indirect effects of climate change are likely to have profound effects on the corals in Papahānaumokuākea (PMNM, 2011), including: 1) ocean warming which can result in coral bleaching, 2) increases in frequency and severity of tropical storms which can affect reef structure and cause erosion, 3) sea level rise which exacerbates habitat loss, and 4) ocean acidification which impedes growth of coral skeletons, mollusk shells, and some plankton. The northern coral reefs, particularly Manawai, Kuaihelani, and Hōlanikū, experience the highest fluctuation in sea surface temperatures, and have experienced the most severe bleaching events in the proposed sanctuary, but are also sentinel sites for research into climate change impacts (NOAA ONMS, 2020).

4.4.3 Benthic Shallow Water Invertebrates

With the exception of coral and lobster species, marine invertebrates of the proposed sanctuary are poorly known. In 2000, the NWHI Reef Assessment and Monitoring Program reported 838 species from 12 orders, along with several new species endemic to the NWHI (DeFelice et al., 2002). In 2006, over 1,000 species of macroinvertebrates were identified at Lalo during the Census of Marine Life expedition (Maragos et al., 2009) and potentially as many as 2,300 unique morphospecies were identified from Lalo alone. Preliminary results from studies in 2010 and 2013 suggest that cryptic invertebrates are far more diverse than previously thought, and species richness is likely 8–10 fold greater than formerly documented values (Timmers 2019).

The black lipped pearl oyster (*Pinctada margaritifera*) was first discovered at Manawai in 1927. It was over harvested between 1928–1930 when approximately 150,000 oysters were taken for their pearls and shell. A 1930 expedition estimated 100,000 oysters remaining. Surveys in 1969, 1996, 2000, and 2003 found only a few oysters, indicating that the population had not recovered (Keenan et al., 2006). The slow recovery of this species demonstrates the fragility of some proposed sanctuary resources (Schultz et al., 2011).

4.4.4 Crustaceans

The NWHI lobster trap fishery, which commenced in the mid-1970s, primarily targeted two species of ula: Hawaiian spiny lobster (*Panulirus marginatus*) and slipper lobster (*Scyllarides squammosus*). Three other ula species, the green spiny lobster (*P. penicillatus*), ridgeback slipper lobster (*S. haanii*), and sculptured slipper lobster (*Parribacus antarcticus*), were caught in low abundance (DiNardo & Marshall, 2001). The fishery was closed in 2000 because of the uncertainty in the population models used to assess the stocks (DeMartini et al., 2003).

Status assessments of the ulastocks ended with the close of the commercial fishery. Fishery-independent tagging research conducted between 2002 and 2008 indicated that the stocks had not recovered. No data has been collected on ulapopulations since. Numerous hypotheses have been advanced to explain population fluctuations of ula in the NWHI, including environmental (Polovina & Mitchum, 1992), biotic (e.g., habitat and competition) (Parrish & Polovina, 1994), and anthropogenic (e.g., fishing) (Polovina et al., 1995; Schultz et al., 2011). Each hypothesis by itself offers a plausible, however simplistic, explanation of events that in fact result from several processes acting together. Population fluctuations of ulain the proposed sanctuary is more likely

a mix of the hypotheses presented, each describing a different set of mechanisms (DiNardo & Marshall, 2001).

4.4.5 Reef Fish

There are approximately 338 species of shallow (< 30 m) and mesophotic (30 to 150 m) fish in the proposed sanctuary. Isolation contributes to a lower fish species diversity relative to other sites (Mac et al., 1998). The long-term protection from fishing pressure has resulted in standing stocks of fish more than 260% greater than the main Hawaiian Islands. Reef fish structure in the proposed sanctuary is very different from the main Hawaiian Islands and most places in the world, with more than 54% of the total fish biomass consisting of reef predators. In contrast, fish biomass in the main Hawaiian Islands is dominated by herbivorous fish species (55%), with only 3% composed of reef predators (Friedlander & DeMartini, 2002). Reef predator biomass on forereef habitats is 1.3 metric tons per hectare, compared with less than 0.05 metric tons per hectare on forereef habitats in the main Hawaiian Islands. Large, predatory fish such as sharks, Ulua (giant trevally, *Caranx ignobilis*), and Hapu'upu'u (Hawaiian grouper, *Epinephelus quernus*) that are rarely seen and heavily overfished in populated areas are abundant in the proposed sanctuary.

Papahānaumokuākea is also characterized by a high degree of endemism in reef fish species, particularly at the northern end of the chain, with endemism rates well over 50%, making it one of the most unique fish faunas on earth (DeMartini & Friedlander, 2004). Extremely high endemism has also been reported among mesophotic fish at Hōlanikū (Kane et al., 2014; Kosaki et al., 2017). The decline in global marine biodiversity emphasizes how important endemic “hot spots” like Hawai'i are for global biodiversity conservation (Friedlander et al. 2005; DeMartini & Friedlander, 2004). Within the proposed sanctuary, endemism increases up the chain and is highest at Kapou, Manawai, Kuaihelani, and Hōlanikū (Fukunaga et al., 2017). Another feature of the shallow-water reef fish community noticed by divers is that some species found only at much greater depths in the main Hawaiian Islands inhabit shallower waters. This might be explained by water temperature preferences or by disturbance levels that vary between the two ends of the archipelago.

4.4.6 Bottomfish

Bottomfish species are in the taxonomic groups Lutjanidae (snappers), Serranidae (groupers), and Carangidae (jacks). Bottomfish stocks in the proposed sanctuary have not been determined to be overfished, and towards the end of the commercial fishing period, were reported as “healthy and lightly exploited” (Brodziak et al., 2009).

4.4.7 Pelagic Marine Life

Pelagic species, including billfish, tuna, mahimahi, and wahoo, are cosmopolitan, occurring in all oceans within the tropical and subtropical zones, although individual species and stocks may have very specific water temperature preferences (Longhurst & Pauly, 1987). Yellowfin tuna prefer water no cooler than 18 to 21°C, which coincides with the proposed sanctuary's northern boundary. All species undertake seasonal and age-related migrations, traveling between spawning grounds and feeding grounds appropriate for their sizes. They prey on medium-sized

pelagic fish, crustaceans, and cephalopods. Tagging studies of yellowfin tuna and bigeye tuna have demonstrated that, while these species have enormous capacity to travel long distances, they show very specific attraction to fish aggregating devices, island reef ledges, seamounts, and other elements of structure (Itano & Holland, 2000). Lowe et al. (2006) similarly found that while two species of manō, tiger sharks (*Galeocerdo cuvier*) and Galapagos sharks (*Carcharhinus galapagensis*), are capable of long-distance travel, they showed more site fidelity than expected throughout the year, with 70% of tiger sharks exhibiting year-round residence at Lalo. Some of the study subjects did make long-distance movements, with sharks marked at Lalo traveling to both ends of the island chain (Kuaihelani and Hawai'i Island). The tremendous economic value of these fishes has resulted in declines of most populations because of industrialized fishing. While Myers and Worm (2003) calculated that large predatory fish biomass today is only about 10% of pre-industrial levels worldwide, large predatory fish populations remain healthy and robust in the proposed sanctuary (Friedlander et al., 2005). Based on the *2022 Stock Assessment and Fishery Evaluation Report* (WPRFMC, 2023), only two stocks of fish are overfished in the Western Pacific region: Pacific bluefin tuna (*Thunnus orientalis*) and North Pacific striped marlin (*Tetrapturus audax*).

4.4.8 Reptiles

The five species of sea turtles that occur in the proposed sanctuary are the honu (green, *Chelonia mydas*), the loggerhead (*Caretta caretta*), the olive ridley (*Lepidochelys olivacea*), the leatherback (*Dermochelys coriacea*), and the honu'ea (hawksbill, *Eretmochelys imbricata*). All of these species are protected by the ESA and HRS 195D. Of these species, only the honu comes ashore to bask and breed. Lalo is the site of the principal rookery for the entire honu (Hawaiian green turtle) stock, with more than 90% of the population nesting there (Balazs & Chaloupka, 2004). As adults, most of these turtles travel to foraging grounds in the main Hawaiian Islands or in Kuaihelani or Kalama (Johnston Atoll), where they graze on benthic macroalgae. They periodically swim back to the nesting grounds at Lalo or, in smaller numbers, to Kapou and Manawai to lay eggs. Breeding adults remain extremely faithful to the colony where they were hatched for their own reproductive activities (Bowen et al., 1992). Hatchling turtles may spend several years in pelagic habitats foraging in the neritic zone before switching to a benthic algae diet as adults.

The Hawaiian population of honu has been monitored for more than 50 years, following the cessation of harvesting in the 1970s, and has shown a steady recovery from its depleted state (Balazs & Chaloupka, 2004). The transition zone chlorophyll front, located north of the proposed sanctuary in most years, occasionally moves southward along with one of the species tightly associated with it, the loggerhead turtle. The North Pacific loggerhead population breeds in Japan but feeds on buoyant organisms concentrated at the convergent front in these high chlorophyll waters, which support a complex food web including cephalopods, fishes, and crustaceans, also fed upon by albacore tuna (*Thunnus alalunga*) and a variety of billfish (Polovina et al., 2001).

The near-pristine nature of the proposed sanctuary's marine ecosystems has contributed to the low level of diseases observed. Fibropapillomatosis, a disease that causes tumors in turtles, affected 40–60% of the honu in the 1990s, although this declined to 9.7% by 2007 (Chaloupka et

al., 2009) and has remained low. An estimated 52 metric tons of derelict fishing gear drifting into the Monument from across the Pacific is a significant entanglement threat to sea turtles.

4.4.9 Seabirds

The importance of seabirds in Papahānaumokuākea was recognized in 1909 with the establishment as the Hawaiian Islands Bird Reservation, which became the Hawaiian Islands NWR. Early protection and active management have resulted in large, diverse, and relatively intact seabird populations. These seabird colonies constitute one of the largest and most important assemblages of tropical seabirds in the world, with approximately 14 million birds (5.5 million breeding annually), representing 21 species (Naughton and Flint 2004). More than 98% of the world's mōlī (Laysan albatross, *Phoebastria immutabilis*) and ka'upu (black-footed albatross, *Phoebastria nigripes*) populations nest here, with the largest nesting colonies of both species in the world occurring at Kuaihelani. For several other species, such as Nunulu (Bonin petrel, *Pterodroma hypoleuca*), 'ao'ū (Christmas shearwater, *Puffinus nativitatis*) 'ākihike'ehi'ale (Tristram's storm petrel), and the pakalakala (gray-backed tern, *Sterna lunata*), Papahānaumokuākea supports colonies of global significance. The last complete inventory of breeding populations was done between 1979 and 1984 (Fefer et al., 1984). Population trends since then have been derived from more intensive monitoring at three islands, which indicate stable or increasing numbers for most species, but concern for a few, especially the albatrosses.

The conservation status of seabirds in Hawai'i was assessed as part of the North American Waterbird Conservation Plan (Kushlan et al., 2002). Eleven of the 21 species were classified as highly imperiled or of high conservation concern at the broad scale of the plan (eastern north Pacific, western north Atlantic, and Caribbean). At the regional scale (Pacific Islands), six species were included in these highest concern categories: mōlī, ka'upu, 'ao'ū, 'ākihike'ehi'ale, makalena, and Noio hinaoku. Distribution, population status and trends, ecology, and conservation concerns of each of these species are in the Regional Seabird Conservation Plan, Pacific Region (USFWS, 2005). The greatest threats to seabirds that reside in Papahānaumokuākea are both local and global. These threats include introduction of non-indigenous mammals and other invasive species, fishery interactions, contaminants, oil pollution, marine debris, and climate change. Active management in the NWRs and State Seabird Sanctuary has included the eradication of the black rat (*Rattus rattus*) at Kuaihelani, and the iole (Polynesian rat, *Rattus exulans*) at Hōlanikū; eradication or control of invasive plants; cleanup of contaminants and hazards at former military sites; and coordination with NOAA Fisheries and the regional fishery management councils, as well as industry and conservation organizations, to reduce fishing impacts.

Table 4.5. Seabirds of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	PMNM Status	BCC?	IUCN Status	ESA Status
Black-footed albatross	Ka'upu	<i>Phoebastria nigripes</i>	I	Y	NT	T
Laysan albatross	Mōlī	<i>Phoebastria immutabilis</i>	I	Y	NT	NL
Short-tailed albatross	Makalena	<i>Phoebastria albatrus</i>	I	Y	E	E
Bonin petrel	Nunulu	<i>Pterodroma hypoleuca</i>	I	Y	V	NL
Hawaiian petrel	'Ua'u	<i>Pterodroma sandwichensis</i>	M	Y	E	E
Bulwer's petrel	'Ou	<i>Bulweria bulwerii</i>	I	Y	LC	NL
Wedge-tailed shearwater	'Ua'u kani	<i>Puffinus pacificus</i>	I	N	LC	ENL
Christmas shearwater	'Ao'ū	<i>Puffinus nativitatus</i>	I	Y	V	E
Newell's shearwater	'A'o	<i>Puffinus newellii</i>	M	Y	E	E
Tristram's Storm-petrel	'Akihike'ehi'ale	<i>Oceanodroma tristrami</i>	I	Y	LC	NL
Band-rumped storm Petrel	'Ake'ake	<i>Hydrobates castro</i>	M	Y	LC	NL
Red-tailed tropicbird	Koa'e 'ula	<i>Phaethon rubricauda</i>	I	Y	LC	NL
White-tailed tropicbird	Koa'e kea	<i>Phaethon lepturus</i>	I	N	LC	NL
Masked booby	'Ā, Akeake	<i>Sula dactylatra</i>	I	N	LC	NL
Brown booby	'Ā	<i>Sula leucogaster</i>	I	N	LC	NL
Red footed booby	'Ā, Akeake	<i>Sula sula</i>	I	N	LC	NL
Nazca booby	'Ā, Akeake	<i>Sula granti</i>	M	N	LC	NL
Great frigatebird	'Iwa	<i>Fregata minor</i>	I	Y	LC	NL
White tern	Manu o Kū	<i>Gygis alba</i>	I	N	LC	NL

Common Name	Hawaiian Name	Scientific Name	PMNM Status	BCC?	IUCN Status	ESA Status
Grey-backed tern	Pakalakala	<i>Sterna lunata</i>	I	Y	LC	NL
Sooty tern	‘Ewa‘ewa	<i>Sterna fuscata</i>	I	N	LC	NL
Least tern	Unknown	<i>Sternula antillarum</i>	I	Y	LC	NL
Black noddy	Noio, lae hina	<i>Anous minutus</i>	I	Y	LC	NL
Brown noddy	Noio koha	<i>Anous stolidus</i>	I	N	LC	NL
Blue noddy	Noio hinaoku, manuohina	<i>Procelsterna cerulea</i>	I	Y	LC	NL

¹ E = endemic to PMNM; I = indigenous to PMNM; M = non-breeding in PMNM.

This table has been updated since the draft EIS, based on additional information provided through the ESA consultation process. Source: USFWS

4.4.10 Marine Mammals

Papahānaumokuākea ecosystems play an important role in supporting more than 20 species of marine mammals. The endemic ‘Īlioholoikauaua (Hawaiian monk seal), the most endangered pinniped in the United States, is a year-round resident, and is the only seal known to be dependent upon coral reefs for its existence. Some species of nai‘a (dolphins) are year-round residents, including spinner dolphins (*Stenella longirostris*) and bottlenose dolphins (*Tursiops truncatus*). Wide-ranging and migratory species such as spotted dolphins (*Stenella frontalis*), nu‘ao (false killer whales, *Pseudorca crassidens*), koholā (humpback whales, *Megaptera novaeangliae*) and numerous other cetaceans also occur within the proposed sanctuary.

‘Īlioholoikauaua (Hawaiian monk seal)

The marine and littoral ecosystems of the proposed sanctuary provide essential habitat for the ‘Īlioholoikauaua (Hawaiian monk seal, *Neomonachus schauinslandi*). The ‘Īlioholoikauaua was listed as an endangered species under the ESA in 1976 (41 FR 51611 [Nov. 23, 1976]) and is protected by the State under HRS 195D. The NWHI population reached a low point around 2013 and has been slowly growing since (Baker et al., 2016; Carretta et al., 2022). The total population of ‘Īlioholoikauaua is currently estimated to be around 1,465 individuals (Carretta et al., 2020). The majority of the population lives within the proposed sanctuary—nearly 1,200 seals (NOAA ONMS, 2020). Their range consists of the islands, banks, and corridors within Papahānaumokuākea, with most foraging concentrated in depths up to 200m (though some seals range to depths as deep as 500m) (Stewart et al., 2006).

In May 1988, NOAA Fisheries designated critical habitat under the ESA for the ‘Īlioholoikauaua from shore to 20 fathoms in 10 areas of the NWHI. Critical habitat for this species includes all beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 20 fathoms around the following: Manawai; Hōlanikū; Kuaihelani, except Sand Island and its harbor; Kapou; Kamole; Kamokuokamohoali‘i; ‘Ōnūnui & ‘Ōnūiki; Lalo; Mokumanamana; and Nihoa (50 CFR

§ 226.201). Critical habitat was designated to enhance the protection of habitat used by seals for pupping and nursing, areas where pups learn to swim and forage, and major haul out areas. The loss of terrestrial habitat is a priority issue of concern in the NWHI, primarily caused by environmental factors such as storms and sea level rise. Significant habitat loss at Lalo (e.g., the loss of Whaleskate and Trig Islands, and significant erosion of East Island) was followed by a dramatic drop in pup survival rate (Baker et al. 2020). Sea level rise over the long-term may threaten other islands in the chain, decreasing available haul out and pupping beaches over a large portion of this terrestrial habitat (Baker et al. 2006, Reynolds et al. 2012).

Foraging patterns include a range of 18,593 miles (48,156 square kilometers), or 14% of the proposed sanctuary, and traveling specific corridors associated with the submarine ridge between breeding and haul out sites, where they likely forage around subsurface features like reefs, banks, and seamount (Stewart 2004a, b, and c; Stewart & Yochem 2004a, b, and c). Several banks northwest of Hōlanikū represent the northern extent of the ʻĪlioholoikauaua foraging range (Stewart, 2004a).

Past and present impacts to the NWHI seal population include hunting in the 1880s; disturbance from military uses of the area; direct fishery interaction, both recreational fishing (Hōlanikū) and commercial fishing prior to the establishment of the 50 nmi Protected Species Zone around the NWHI in 1991 (NOAA Fisheries, 2007); predation by sharks (Ibid, 2007); entrapment in the degrading steel seawalls of Tern Island at Lalo (Baker et al., 2020); aggression by adult male seals; and reduction of habitat and prey due to environmental change (Antonelis et al., 2006).

The ecological impacts of marine debris are an ongoing problem in Papahānaumokuākea. Mortality as the result of entanglement in derelict fishing gear, primarily nets, is of particular concern (Henderson, 2001; 1990; 1984a; 1984b). Between 1982 and 2019, up to 404 ʻĪlioholoikauaua were observed entangled in derelict fishing gear in the proposed sanctuary.

Cetaceans

The waters of the proposed sanctuary are also home to more than 20 cetacean species, six of them federally recognized as endangered under the ESA and HRS 195D, and “depleted” under the Marine Mammal Protection Act, but comparatively little is known about the distributions and ecologies of these whales and dolphins (Barlow, 2006). The proposed sanctuary contains two-thirds of the koholā (humpback whale, *Megaptera novaeangliae*) wintering habitat in the Hawaiian Archipelago (Johnston et al., 2007), and is known to be used for breeding and calving activity, with an apparent high presence of whales at Lalo (Lammers et al., 2023). The most well-studied cetacean species in the proposed sanctuary is the Hawaiian spinner dolphin (*Stenella longirostris*). This geographically isolated subgroup of the spinner dolphin is genetically distinct from those of the eastern tropical Pacific (Galver, 2000). They occur off all of the main Hawaiian Islands and four islands in Papahānaumokuākea (Hōlanikū, Kuaihelani, Manawai, and Lalo) (Karczmarski et al., 2005). Andrews et al. (2010) found that animals at Kuaihelani and Hōlanikū were genetically differentiated from those at Manawai, and both are distinct from island-associated populations in the main Hawaiian Islands. These northern areas are recognized as Biologically Important Areas for spinner dolphins by the U.S. government (Baird et al., 2015; Kratofil et al., 2023). Genetic isolation, together with an apparent low genetic

diversity, suggests that spinner dolphins could be highly vulnerable to anthropogenic and environmental stressors (Andrews et al., 2004).

4.4.11 Summary of Threatened and Endangered Species and Critical Habitat

The species identified in the action area listed as threatened or endangered under the ESA and/or State endangered species list include five marine turtles, the ‘Īlioholoikauaua, six cetaceans, four seabirds, three fish, and one coral (Table 4.6). See Appendix D for full species lists, and Appendix C for the details of the ESA consultation process.

Table 4.6a. ESA and State-Listed Marine Reptile Species within the Project Area

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Central North Pacific Green Sea Turtle	Honu	<i>Chelonia mydas</i>	Resident	Threatened
Hawksbill Turtle	Honu‘ea	<i>Eretmochelys imbricata</i>	Resident to Main Hawaiian Islands	Endangered
North Pacific Loggerhead Turtle	None	<i>Caretta caretta</i>	Transient	Endangered
Olive Ridley Turtle	None	<i>Lepidochelys olivacea</i>	Transient	Threatened
Leatherback Turtle	None	<i>Dermochelys coriacea</i>	Transient	Endangered

Table 4.6b. ESA and State-Listed Marine Mammal Species within the Project Area

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Hawaiian Monk Seal	ʻĪlioholoikauaua	<i>Neomonachus schauinslandi</i>	Resident	Endangered
Sperm Whale	Palaoa	<i>Physeter macrocephalus</i>	Transient	Endangered
Blue Whale	Koholā	<i>Balaenoptera musculus</i>	Transient	Endangered
Sei Whale	Koholā	<i>B. borealis</i>	Transient	Endangered
Fin Whale	Koholā	<i>B. physalus</i>	Transient	Endangered
North Pacific Right Whale	Koholā	<i>Eubalaena japonica</i>	Transient	Endangered
False killer whale, Main Hawaiian Islands insular	Unknown	<i>Pseudorca crassidens</i>	Unknown	Endangered

This table has been updated since the draft EIS, based on additional information provided through the ESA consultation process.

Table 4.6c. ESA and State-Listed Marine Fish Species within the Project Area

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Giant Manta Ray	Hāhālua	<i>Manta birostris</i>	Unknown	Threatened
Oceanic Whitetip Shark	Manō	<i>Carcharhinus longimanus</i>	Unknown	Threatened
Shortfin mako shark	Manō	<i>Isurus oxyrinchus</i>	Unknown	Candidate
Scalloped hammerhead shark, Indo West Pacific	Unknown	<i>Sphyrni lewini</i>	Unknown	Threatened

This table has been updated since the draft EIS, based on additional information provided through the ESA consultation process.

Table 4.6d. ESA and State-Listed Coral Species within the Project Area

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
No common name	Unknown	<i>Acropora globiceps</i>	Resident	Threatened

Table 4.6e. ESA and State-Listed Seabird Species within the Project Area

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Short-tailed Albatross	Mōlī	<i>Phoebastria albatruss</i>	Resident	Endangered
Band-Rumped Storm Petrel	‘Ake‘ake	<i>Hydrobates castro</i>	Transient	Endangered
Hawaiian Petrel	‘Ua‘u	<i>Pterodroma sandwichensis</i>	Transient	Endangered
Newell’s Shearwater	‘A’o	<i>Puffinus newellii</i>	Transient	Threatened

This table has been updated since the draft EIS, based on additional information provided through the ESA consultation process.

In 1988, NOAA Fisheries designated critical habitat for the ‘Īlioholoikauaua from shore to 20 fathoms around every island, atoll, and bank of the proposed sanctuary, except Sand Island at Midway Atoll. This habitat includes “all beach areas, sand spits and islets, inner reef waters, and ocean waters.”

Both NOAA Fisheries and USFWS have published proposed rules for the designation of critical habitat that includes areas within Papahānaumokuākea. On November 27, 2023, NOAA Fisheries published a proposal to designate 17 island units of critical habitat in the Pacific Islands Region for seven Indo-Pacific coral species listed under the ESA, including one in the proposed sanctuary at Lalo (88 FR 83644[Nov. 27, 2023]). The species *Acropora globiceps* is reported to occur at Lalo on hard substrate at depths of 0–10 meters. Proposed critical habitat includes all hard substrate from 0–10 meters at Lalo based on maps developed by National Centers for Coastal and Ocean Sciences (NCCOS, 2003). Public comments on this proposed action were accepted through February 28, 2024.

On July 19, 2023, USFWS published a proposal to designate critical habitat for the Central North Pacific Distinct Population Segment of the green sea turtle in the terrestrial environment at Kamole, Kapou, Manawai, Kuaihelani, and Hōlanikū (88 FR 46376[July 19, 2023]). Public hearings on the Central North Pacific Distinct Population Segment of the green sea turtle critical habitat were held in August 2023.

4.5 Cultural and Historical Resources

NOAA defines maritime heritage inclusively as “the wide variety of tangible and intangible elements (historic, cultural and archaeological resources) which represent our human connections to our Great Lakes and ocean areas” (NOAA ONMS, 2022). This includes cultural, archaeological, and historical resources, ranging from Traditional Cultural Properties (historic sites that are imbued with cultural importance by a particular group) to more recent historic sunken vessels and aircraft. Therefore, understanding the interconnectedness of maritime heritage resources and Kānaka ‘Ōiwi cultural resources is critical to the successful stewardship and preservation of all public heritage resources.

From its inception, Monument co-managers have recognized and valued the importance of human connection to place and the essential role that culture plays. Native Hawaiian culture weaves through all aspects of conservation and co-management of marine resources. In Hawaiian traditions, the NWHI are considered a sacred place, a region of primordial darkness from which life springs and spirits return after death (Kikiloi, 2006).

In recognition of the cultural importance and the original identity of the archipelago, Native Hawaiian cultural resources are addressed as a separate category (Section 4.5.1) and the supplemental document *E Ho‘i I Ke Au A Kanaloa* (Nohopapa Hawai‘i, 2023), distinguishes Native Hawaiian cultural resources from historical or maritime heritage resources (Section 4.5.2, focuses on post-1778 history of Papahānaumokuākea).

Descriptions of the Native Hawaiian relationships, knowledge systems, values, and practices are documented in oral traditions, and kūpuna (elder) interviews. As knowledge was transmitted through oral traditions, primary data sources of Native Hawaiian knowledge include the mele (songs), hula (dance), mo‘olelo (stories), memories, and narratives that serve as indigenous data repositories. Primary data sources for maritime heritage resources included State Historic Preservation Division and local libraries and archives, National Archives and Records Administration, Department of Defense shipwreck and aircraft databases, historical documents and newspaper archives, archaeological field data from submerged resource surveys 1998–2021, and NOAA’s Office of Coast Survey and other sources.

4.5.1 Native Hawaiian Cultural Resources

The ocean is a cultural seascape that is vital to Native Hawaiian self-identity, and well-being within a Hawaiian worldview (Lewis, 1972; Kyselka, 1987). It encompasses an ecological kinship within Native Hawaiian genealogies (Oliveira, 2014). It is also an essential component of Native Hawaiian physical and spiritual well-being and sustenance on a daily basis (Andrade, 2008; Olivera, 2014; Malo, 1903). Papahānaumokuākea is the only intact cultural voyaging seascape in the Hawaiian Islands (Kikiloi et al., 2017). This expansive ocean environment was the setting for ancient Hawaiian chiefs to voyage back and forth between the main Hawaiian Islands and the NWHI over the course of a 400–500 year period in traditional times. In addition, smaller communities from Ni‘ihau, Kaua‘i, and O‘ahu have been documented in the post contact period of continuing voyaging into this region well into the 20th century (Maly & Maly, 2003; Kikiloi, 2012). Continuing to access and acknowledge the biocultural seascapes of the NWHI ensures that these relationships continue to thrive in the broader aloha ‘āina (love for the land) movement and resurgence of Kānaka ‘Ōiwi identity and political advocacy to protect the lands, freshwater resources, and oceans that are inextricably linked to the health of Kānaka ‘Ōiwi communities (Goodyear-Ka‘ōpua et al., 2014). It embodies the tangible and intangible values of Native Hawaiian culture that have developed and evolved over countless generations (Kikiloi, 2010).

Uniquely positioned in Hawaiian cosmologies, genealogies, and practices, the NWHI are commonly referred to as the ‘Āina Akua (realm of the gods) or Kūpuna (ancestral or elder) Islands. This seascape represents a distinctly sacred realm that embodies the realms of Pō (darkness/realm of the ancestors) and Ao (realm of the light and living; Kikiloi, 2010). Hawaiian genealogical chants and oral narratives serve as a rich repository of traditional Hawaiian

practices that connect Kānaka ʻŌiwi to their origin and where ancestral spirits return. ʻŌiwi traditions in Papahānaumokuākea were rooted in a mastery of skill and expertise of na akua (elemental deities) with a specific purpose and intentions on spiritual, physical, emotional, and mental levels (Maly & Maly, 2003; State of Hawaiʻi DLNR, 2008; Kikiloi, 2010, 2019). Aliʻi (Native Hawaiian chiefs) would access this region as a rite of passage to commemorate the source of origins and mana (divine power/authority), and of authority as derived by the ancestral gods (Kikiloi, 2006, 2019).

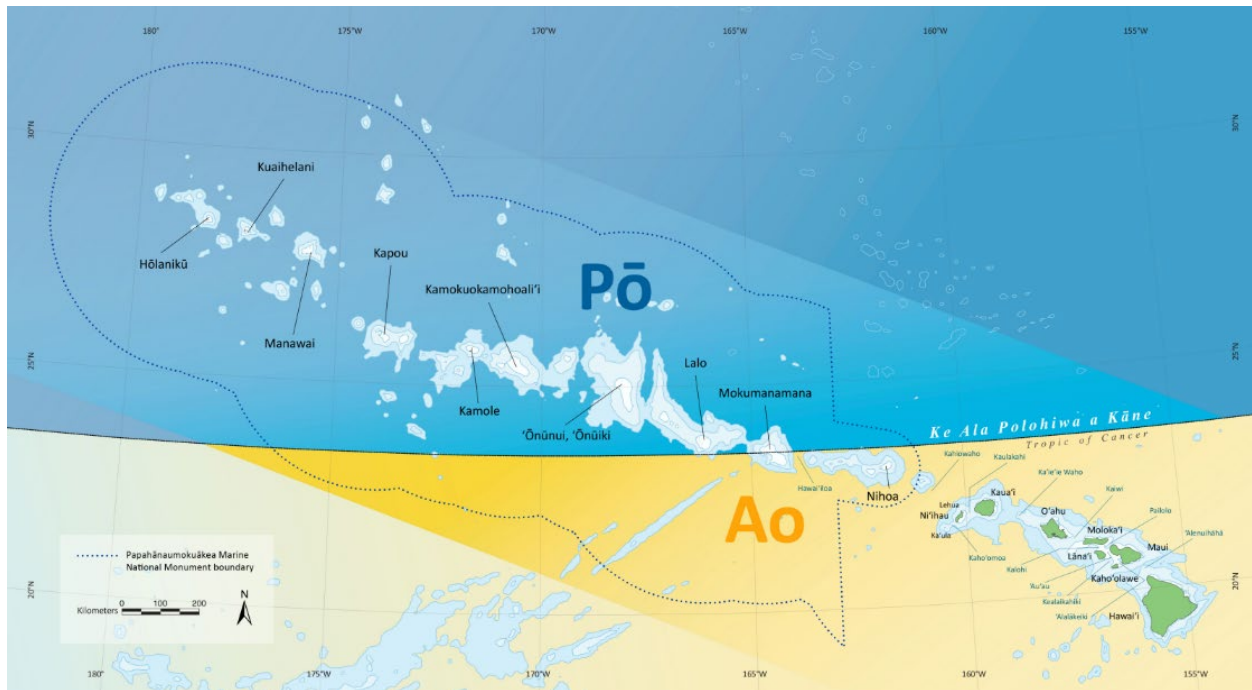


Figure 4.5. Map of the Hawaiian universe from the eastern edge to the northwestern extent of the Hawaiian Archipelago. Image: NOAA

Today, Kānaka ʻŌiwi continue to weave knowledge systems to perpetuate cultural practices in the NWHI, growing living relationships to this ancestral place. These relationships are embodied in the following ʻōlelo noʻeau (traditional Hawaiian proverb), “*I ka wā ma mua ka wā ma hope*” which represents a Kānaka ʻŌiwi worldview that one is always looking to the past to guide the future (Kameʻeleihiwa, 1992). Access to the NWHI allows Kānaka ʻŌiwi to weave diverse knowledge systems that solidify a strong collective pilina (relationship) and kuleana (privilege/responsibilities) to care for Papahānaumokuākea. These growing connections enable ʻŌiwi to perpetuate cultural practices across multiple generations and bring these experiences, enveloped in diverse relationships to this sacred place, into working with local communities back home (OHA, 2021).

Part of strengthening Kānaka ʻŌiwi relationships to the NWHI is reinforcing the perpetuation of traditions, values, and intentions associated with this biocultural seascape. The traditional art of wayfinding has always been an integral aspect of expertise needed to make the journey to the NWHI (Maly & Maly, 2003). Kānaka ʻŌiwi descend from a rich heritage of open-ocean voyaging connected to one of the most remarkable feats of open-ocean voyaging and settlement in all of human history, the movement of ancestral oceanic peoples across the largest ocean on the

planet, beginning as early as 1500 B.C. (Irwin, 2006). This legacy of ocean expertise is perpetuated by the descendants of the ancestral Polynesian navigators who voyaged thousands of kilometers weaving together similar genealogies, cosmologies, and oral traditions across the Pacific (Finney, 1977). The ocean waters of the proposed sanctuary were an ancient pathway for a voyaging sphere that occurred between this region and the main Hawaiian Islands for over 400–500 years (ca. AD 1300–1800). The ocean pathways and knowledge associated with the interconnected weather, marine, and terrestrial systems of the NWHI are part of this ancestral legacy, and are perpetuated by Kānaka ʻŌiwi traditional voyaging organizations such as the Polynesian Voyaging Society, to this day. Young navigators test their skills on voyages from Niʻihau to Nihoa to Mokumanamana that are significant milestones. Ceremonies and protocol associated with visits to these and other islands can only be performed off those shores, where appropriate respect can be paid to one’s ancestors, in their particular spiritual, natural, and geological manifestations (NOAA ONMS, 2020; OHA et al., 2021).

In addition to wayfinding, religious practices, and spiritual practices, Kānaka ʻŌiwi continue to perpetuate traditions, values, and intentions associated with Papahānaumokuākea through tangible cultural practices such as indigenous science, traditional gathering, fishing, and burial practices. Indigenous science supports stewardship of the proposed sanctuary and perpetuates the practice of mālama ʻāina associated with Kānaka ʻŌiwi culture and the Aloha ʻĀina movement. Gathering practices include feathers for feather-work, shells, shark teeth, albatross bones for traditional tattooing, and food for subsistence and sustenance. Fishing in the Monument is currently limited to subsistence and sustenance fishing. More details on these cultural practices can be found in *E Hoʻi I Ke Au A Kanaloa* (Nohopapa Hawaiʻi, 2023).

The occupation and use of these islands represent one of the earliest signs of Hawaiian religious activity. For over 400 years (ca. 1400–1815 A.D.) the islands were used as a ritual center of power supported by an extensive voyaging interaction sphere that supported long-term settlement of the islands (Kikiloi, 2012). Nihoa and Mokumanamana have more than 140 archaeological sites that include agricultural, habitation, and religious structures. Based on radiocarbon data, it has been estimated that Nihoa and Mokumanamana Islands could have been inhabited from 100 A.D. to 1700 A.D. (Kikiloi, 2012; PMNM, 2008). The island of Mokumanamana is a potent portal that presides at the boundary between Pō and Ao. This boundary is the northern limit of the sun’s journey on the horizon, the Tropic of Cancer, reverently referred to as Ke Alanui Polohiwa a Kāne, the dark glistening path of Kāne, whose kinolau (physical forms) is Kānehoalani, or the sun, and its movements on the horizon. Similar to the sun and the islands themselves, the life path of Kānaka ʻŌiwi begins in the east in the realm of Ao and continues westward, eventually returning to Pō.

Kānaka ʻŌiwi believe that when people pass away, their spirits travel to portals, called leina, located on each inhabited island of the archipelago. This was a place where many kaʻao (oral histories), mele, and moʻolelo document the epic journeys of akua who traveled there and back (Kikiloi, 2010; Kanahale & Nuʻuhiwa, 2015). The Edith Kanakaʻole Foundation continues to conduct research tracking the path of the sun during Ke Ala Polohiwa a Kāne (summer solstice) and Kanaloa (winter solstice) and Ka Piko o Wākea (spring equinox) using celestial expertise and heiau recorded in oral traditions (Kanahale & Nuuhiwa, 2015).

As described above, the cultural value of the area to Kānaka ‘Ōiwi is not only measured in the tangible cultural resources of archaeological sites on the islands of Nihoa and Mokumanamana, but also includes intangible cultural resources. The area is integral to Hawaiian spirituality, factoring in the creation myth as well as its position as a portal between the world of the living and the afterlife. Further, natural resources are cultural resources, and the health of the ecosystem directly relates to the vitality of Kānaka ‘Ōiwi culture. **This region and the resources with it correspond to the Kānaka ‘Ōiwi origin and genealogy to Hawai‘i, weaving knowledge, values, and practices from the past to inform the present and future work to care for pilina to Papahānaumokuākea.**

This recognition drives many aspects of current management in order to support, maintain, and propagate the area’s critical role in the living Hawaiian culture and spirituality. Guiding principles for considering Kānaka ‘Ōiwi cultural resources in the management of the Monument inform cultural practitioners and others who conduct activities in the proposed sanctuary on their responsibilities to the place, to their preparation for the activity conducted, and how to utilize the knowledge attained. The creation and management of PMNM and the MEA has been shaped by over 20 years of weaving a biocultural approach to protect this area as one of the world’s largest marine protected areas, where the natural and cultural realms share an intertwined story and a common origin (Kikiloi et al., 2017). Papahānaumokuākea was inscribed as a UNESCO World Heritage site in 2010 for its outstanding natural and cultural significance to the heritage of mankind (UNESCO, 2010). Kānaka ‘Ōiwi leadership, engagement, and knowledge has shaped management through various policy and management actions such as developing a rigorous permitting process, culturally-appropriate standards and procedures, and opportunities for scientists and Kānaka ‘Ōiwi to collaborate in an equitable and ethical way (Kikiloi et al., 2017; OHA et al., 2021).

The CWG is a group of Kānaka ‘Ōiwi kūpuna, researchers, cultural practitioners, educators, and community members that have deep connections and historical ties to Papahānaumokuākea through a living pilina bound by genealogy, cultural protocols, and values, building contemporary multidisciplinary research and practice. Since 2001, the CWG has represented a Native Hawaiian community voice for the NWHI, giving advice, first to NOAA through the RAC, and more recently through OHA as a Monument co-trustee. In 2016, through many discussions among Native Hawaiian leadership uplifting the vision of kūpuna leaders to protect and care for this special place in perpetuity, OHA became a co-trustee of the Monument to, in part, elevate the CWG collective voice and guidance to the MMB. Through the support of OHA and NOAA, the CWG consulted with ‘Ōiwi communities for more than a decade which led to the creation of a historic management guidance document called Mai Ka Pō Mai. This document lays the foundational framework to guide the weaving of Kānaka ‘Ōiwi knowledge systems, values, and practices into all aspects of management of Papahānaumokuākea (OHA et al., 2021). Cultural protocol is another facet of the CWG’s many major contributions to the protection of the NWHI in collaboration with OHA to emphasize a living Kānaka ‘Ōiwi culture that relies on mo‘olelo, oli, mele, and connection to place to perpetuate ancestral knowledge and cultural connections (Kikiloi, 2010). The CWG members have continued to re-learn ancestral names for the islands and atolls and create new names for places among the islands (Pihana & Lorenzo-Elarco, 2022). New mele and oli have been created for Papahānaumokuākea (OHA et al., 2021).

The co-managers of the Monument have emphasized Indigenous Knowledge in management, with a mission to ensure ecological integrity and achieve strong, long-term protection and perpetuation of NWHI ecosystems, Kānaka ‘Ōiwi culture, and heritage resources for current and future generations. The basis for building a firm foundation to apply Indigenous Knowledge to management has been the development of strategies for the involvement of cultural practitioners in policy, management, education, and research (Kikiloi et al., 2017). The long-term planning needed to effectively apply Indigenous Knowledge to management hinges on **increasing meaningful and long-lasting engagement with** Indigenous peoples within research, management, and policy who are well-positioned to work collaboratively with Kānaka ‘Ōiwi communities. These positions tap into community networks and enhance the longevity of management and meaningful relationships to Kānaka ‘Ōiwi communities and back to the resource managers.

Papahānaumokuākea is part of Moananuiākea, commonly known today as the Pacific Ocean. The 110 seamounts, open waters, and all life in the proposed sanctuary boundaries are considered biocultural resources and linked to the Kānaka ‘Ōiwi through environmental kinship. This connection is further strengthened by ‘Ōiwi communities bringing these experiences and knowledge to their communities to support ‘āina momona. These islands symbolize a generational legacy of growing and tending to the pilina to Papahānaumokuākea that continues to guide and shape management activities inclusive of Kānaka ‘Ōiwi worldview, knowledge, and values. These relationships solidify the foundations of ancestral memories within Kānaka ‘Ōiwi knowledge systems encompassing cultural conduct and protocols, research, and practices into growing respectful and reciprocal relationships to Papahānaumokuākea as a sacred biocultural oceanscape.

4.5.2 Maritime Heritage Resources

Maritime heritage resources in the proposed sanctuary reflect special elements of Hawaiian history, such as the distinctive Hawaiian fishing sampans, a local hybrid of Japanese traditional watercraft historically associated with Hawaii’s commercial tuna fishery (Schug, 2001). Some heritage resources, notably the collection of historic whaling shipwrecks that are distinctive on a global scale, reflect both Western and Kānaka ‘Ōiwi heritage. The 19th century whaling industry was the mainstay of the Hawaiian economy for decades. In 1846, the Kingdom’s Minister of the Interior reported that “perhaps 15,000 (approximately 20%) of the Hawaiian men between the ages of 15 and 30 years were employed at sea or in foreign lands” (Lebo, 2013). The shipwrecks and submerged aircraft of the pivotal Battle of Midway in 1942 stand out as nationally and internationally recognized heritage associated with a critical turning point in World War II. Two of the four Japanese aircraft carriers sunk during the battle have only recently been discovered. Such archaeological and historical properties reflect the events, individuals, and technologies that have shaped our past in important ways at the local, regional, national, and international levels.

There are more than 60 reported vessel losses in the historic record, and hundreds of sunken naval aircraft lost within the proposed sanctuary’s boundaries. Thirty-five of these sites have been located and assessed. Appendix G presents NOAA’s identification of historic properties

within the area of potential effects for the proposed undertaking, pursuant to NOAA's consultation responsibilities under Section 106 of the NHPA.

Many sites are related to the sea Battle of Midway that occurred in the vast northwestern area of the proposed sanctuary, hundreds of miles from the atoll, and their existence and location are based only on military records. Archaeological surveys of submerged resources in the NWHI were initiated by the University of Hawai'i Marine Option Program in 1998 and 2002. From 2003–2021, NOAA archaeologists continued on an opportunistic basis to research, locate, and assess maritime heritage sites, supported by the Monument and NOAA's Maritime Heritage Program. USS *Yorktown* was discovered in 1998. IJN *Kaga* and *Akagi* were discovered in 2019. In 2023, a collaborative joint-agency expedition returned to the area and conducted a non-invasive survey of the aircraft carriers. The Maritime Heritage Program provides guidance on the assessment and preservation of maritime heritage resources and maintains the database on maritime heritage properties within the Monument. Collaboration is an important part of preservation.

Four military vessels, and five military aircraft listed in Appendix G were found within the waters of the Midway Atoll National Wildlife Refuge/Special Management Area (SMA, 12 nmi surrounding the atoll). Archival research indicates that 22 American and nine Japanese aircraft were lost within five miles of Midway Atoll during the Japanese Air Raid on Midway, June 4, 1942 (Linville, 2010). While the Midway Atoll NWR/SMA encompasses an area of intensive maritime and aviation activities through the pre-WWII, WWII, Vietnam, Korean War, and Cold War periods, there has nevertheless been a limited number of remote sensing surveys conducted to date in these waters. As such, maritime heritage experts anticipate a high likelihood of historically significant heritage resources yet to be discovered within the NWR/SMA and surrounding waters.

Preservation laws including NMSA, NHPA, the Sunken Military Craft Act (SMCA), and other mandates define federal management of the heritage resource (Varmer, 2014). Best Management Practices endorsed by the Presidential Advisory Council for Historic Preservation emphasize in-situ preservation and maintenance of undisturbed conditions at heritage sites, to maximize our knowledge and benefit of the public resource (PMNM, 2011a). Threats to the maritime heritage resource include illegal salvage/looting, anchoring damage, and other intentional or inadvertent human impacts. The natural forces of biochemical deterioration, and mechanical storm and surge erosion will, over time, deteriorate many heritage resource sites, diminishing their significance. Climate changes exacerbate these impacts (Roth, 2021).

4.6 Socioeconomic Resources, Human Uses, and Environmental Justice

4.6.1 Socioeconomic Resources Overview

This section describes recent socioeconomic and demographic conditions in the proposed sanctuary community, which includes the Hawaiian Islands five counties of Hawai'i, Honolulu, Kalawao, Kaua'i, and Maui. These socioeconomic characteristics include population density, income and employment, and economic value to determine the baseline to be used in the impact

analysis. This section describes sources of income and the status of the labor as indicators of the health of the local economy and opportunities for employment. An overview of what is currently known about the uses of natural and cultural resources includes fishing, recreation, and tourism. NOAA prepared a detailed socioeconomic profile to characterize recent demographic and economic conditions and to determine the baseline statistics to be used in the impact analysis of the alternatives (Samonte et al., 2024).

Population

Population Growth and Density

From 2010 to 2022, the sanctuary community's population grew 8.8%, with a population growth rate between 7.8% and 12.3% across counties. The county with the greatest population density in 2022 was Honolulu, with 1,681 people per square mile, followed by Maui and Kalawao (aggregated) at 1 140 people per square mile. Hawai'i and Kaua'i had population densities of 50 and 118 people per square mile, respectively.

Per Capita Income

In 2010, the real per capita income for the sanctuary community was \$54,621 (in 2022 U.S.\$) and in 2022 it increased to \$61,779. In 2022, Hawai'i County had the lowest per capita income at \$49,476, and Honolulu County had the greatest at \$64,936.

Poverty Rates

In 2022, the poverty rate in the sanctuary community was 9.6%, with the lowest rate of 8.3% in Kaua'i County and the highest rate of 14.9% in Kalawao County. The U.S. poverty threshold in 2022 was \$14,880 for an individual and \$23,280 for a family size of three (U.S. Census Bureau, 2022).

Unemployment Rates

In 2022, the unemployment rate in the sanctuary community was 5.1%, with the lowest unemployment rate in Kaua'i County at 4.1% and the highest in Hawai'i County at 6.5%. Unemployment rates decreased for the sanctuary community between 2010 and 2022.

Demographics

Gender

From 2010 to 2022, the percentage of female residents in the sanctuary community held consistent between 49.5% and 49.9%.

Racial Composition

In 2022, 37.2% of the population identified as Asian, 25.5% identified as two or more races, and 23.0% identified as White.

Ethnicity

This community is much more racially diverse than the U.S. which is comprised of a 65.9% White demographic. In 2022, the sanctuary community recorded a percentage of Hispanic respondents at 11.0%, compared to 18.7% of the U.S. population.

Age Distribution

The largest percentage of people were between 25 to 34 years of age.

Education Level

Twenty-two percent of the sanctuary community population has a minimum of a bachelor's degree (2022), increasing from 19.7% in 2010. About 26.7% of the sanctuary population has a highest education level of a high school diploma or equivalent in 2022. The proportion of the sanctuary community who attained a high school diploma/equivalent or greater increased between 2010 and 2019.

Labor and Employment

Labor Force

In 2022, the sanctuary community labor force was over 760,000 people, an increase of over 46,000 people since 2010.

Employment

In 2022, over 675,000 people were employed in the sanctuary community, a 6.1% net growth from 2010.

Household Income

In 2022, average household income was similar between the sanctuary community and the U.S. at \$100,000 to \$149,999.

Employment by Industry

In 2022, the five highest percentages of total employment by industry in the sanctuary community were government and government enterprises (19.1% of total employment), accommodation and food services (11.8%), health care and social assistance (9.5%), retail trade (9.3%), and real estate (5.9%).

Proprietors' Income and Employment

In 2022, proprietors employed over 216,000 people in the sanctuary community, making up 24.0% of total employment in the sanctuary community. This is an increase from the 19.8% of total employment in 2010. Proprietors in the sanctuary community collectively earned \$6,521,000,000 in 2022, which comprised 10.6% of total income earned by place of work in the sanctuary community that year.

Tourism

In 2019, a total of 10.4 million visitors came to the State by either air service or cruise ship (primarily air service), spending an average of \$196 per person per day (Hawai'i Tourism Authority, 2020a). The busiest month for tourists was July for 2019 (286,419 visitors per day). The eastern U.S. and Japanese markets contributed 2.3 and 1.6 million tourists in 2019 respectively, participating in sightseeing activities such as self-guided driving, visiting communities, and visiting natural landmarks (Hawai'i Tourism Authority, 2020b).

Fishery Resources

Detailed socioeconomic data describing commercial fisheries is often warranted for analysis of impacts from sanctuary designation. Because commercial fishing is prohibited within the Monument, lost opportunities, transfer of effort, and lost jobs and revenue, among other typical concerns, would not vary by alternatives and therefore are not relevant for this action. Further, NOAA and WPRFMC are preparing the impact analysis for regulations governing fishing in the MEA under the authority of the MSA.

4.6.2 Human Uses of the Monument

Access to the Monument, and therefore the areas of the proposed sanctuary is regulated through the permitting system described in Section 4.2.5. Permit criteria requires that there is no practicable alternative to conducting the activity within the Monument and the end value of the activity outweighs its adverse impacts on Monument resources, qualities, and ecological integrity. Other criteria and permit-specific conditions (e.g., BMPs, listed in Appendix B) strive to ensure that the activity is conducted in such a way as to reduce adverse impacts to Monument resources. As such, human uses are restricted by the permit types and specific criteria detailed in 50 CFR § 404. 11 and Section 4.2.5.

Permitted Activities in the Monument

Permitted activities constitute the majority of the human use in the Monument, with many activities directly related to addressing threats described in Section 4.2.7, including marine debris removal, invasive species monitoring, and research to understand how climate change is impacting the environment.

From 2007–2021, a total of 442 Monument permits have been issued (NOAA ONMS, 2022). This includes a diverse range of activities conducted by co-managers, filmmakers, cultural practitioners, community members, and researchers within the area of the proposed sanctuary. Activities occur across the entire chain of the NWHI. In 2021, 19 permits were issued, with 16 for activities solely within PMNM, two for activities across the Monument, and one for activities solely within the MEA.

Research

Roughly 50% of PMNM permits have been for research-related activities. Research permits are for activities that enhance the understanding of the proposed sanctuary's resources and improve resource management decision-making. The types of activities that may be conducted under research permits include biological inventories, ecosystem-based research, habitat characterization, and archaeological research, including the two-week expedition for sunken aircraft and vessels commemorating the 75th Anniversary of the Battle of Midway.

During the Section 106 consultation process for this proposed designation, a concern was raised that certain research could be harmful, both to the ecosystem and to the sacredness of the place to Kānaka 'Ōiwi. The concern referred to activities conducted prior to Monument designation, and was related to scientific research conducted to further an outside research program and not research to improve conservation and management based on identified needs (NHPA Section 106 Meeting Notes, August 23, 2022).

Education

Education permits are for activities that further the educational value of Papahānaumokuākea. These activities may help a broader audience understand the ecosystems within the Monument, share lessons learned in resource management with outside partners, promote Kānaka ʻŌiwi knowledge and values, or aid in outreach with schools and community groups. Permits are considered for activities that have clear educational or public outreach benefits and that aim to “bring the place to the people,” rather than the people to the place. Examples of education projects include teacher-at-sea programs, distance learning projects and university field classes. Approximately 6% of the permits were issued for educational activities.

Kaʻena Point on the North Shore of Oʻahu shares similar ecosystem, plant, and animal features as those of Papahānaumokuākea. It is often used as an interpretive site to teach students and other groups about Papahānaumokuākea as they gain an understanding of the unique cultural, ecological, and geographic features of Kaʻena Point while highlighting the similarities with Papahānaumokuākea.

In addition to permitted activities occurring in the Monument, the educational initiatives for the Monument include welcoming school groups to the Mokupāpapa Discovery Center, conducting and attending community events, producing educational materials for the public, and fostering an educational component for many of the activities occurring in the Monument.

Conservation and Management

Conservation and management permits are for activities that enable the general management of PMNM. These activities may include field station operations, marine debris removal, development and maintenance of infrastructure, and long-term resource monitoring programs such as monitoring of endangered species, seabird populations, and terrestrial native plant communities. Conservation and management permits also provide a mechanism for response and follow-up to urgent events in the Monument that may not have been anticipated, such as vessel groundings, coral bleaching episodes and invasive species outbreaks. Twenty-one percent of the permits were issued for conservation and management. Kuaihelani requires the highest number of permanent staff to assist with conservation and management, with an average of 50 people at the atoll at any given time. Hōlanikū sees the next most activity, with a permanent six-person team stationed at the atoll year-round.

Native Hawaiian Practices

Native Hawaiian Practices means cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment, and strengthening cultural and spiritual connections to the NWHI that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of marine resources for direct personal consumption while in the Monument. **Permit conditions and guidelines are developed by the MMB, and in many cases with input from the CWG through OHA.** Native Hawaiian practices consisted of 7% of the issued permits.

Since 2007, there have been 34 Native Hawaiian practices permits submitted, marking a consistent interest in Hawaiian cultural practices, with at least eight ongoing cultural initiatives occurring on 27 separate expeditions. These activities contribute towards active management

and are closely aligned to the Monument’s goals (OHA et al., 2021). Identifying appropriate biocultural management strategies within the NWHI requires inclusion of Native Hawaiian cultural knowledge in all aspects of management, research, and policy. The following examples illustrate a mosaic of Native Hawaiian activities weaving diverse knowledge systems and multi-disciplinary teams to grow their understanding of Papahānaumokuākea and the relationships that bind ‘Ōiwi to this biocultural seascape.

Native Hawaiian access strengthens pilina to Papahānaumokuākea as an extension of the work of the communities of people and places in the main Hawaiian Islands (OHA et al., 2021). Their work includes:

- Traditional voyaging navigator apprenticeship and training.
- Archaeological and cultural resource research that helped to document, assess, and protect Hawaiian cultural sites (Kikiloi, 2012; Kanahale & Nuuhiwa, 2015; Monahan et al., 2019).
- Integrated cultural and scientific ecosystem monitoring (Andrade, 2022b).
- Cultural observations of natural cycles and seasonal changes to document traditional ecological knowledge (Andrade, 2022a).
- Resource gathering including bird feathers/bones (Cody et al., 2022) and subsistence harvesting of fish, algae, and invertebrates.
- Utilization of the place as a living classroom for university courses on language and cultural studies (OHA et al., 2021).

In general, Native Hawaiian subsistence gathering and harvesting activities are dependent on the keen observations of kilo, an ‘Ōiwi observational methodology (Andrade, 2022a, 2022b), that determine appropriate conduct. This is an essential element of Native Hawaiian knowledge, values, and practices fundamental to cultivating healthy reciprocal relationships to the ocean (Kikiloi et al., 2017). Traditionally, Native Hawaiian subsistence gathering and harvesting practices do not equate to harvesting the maximum allowable amount. The maximum allowable harvest is never nearly approached because harvest depends on what is available and if it is culturally appropriate.

Papahānaumokuākea is highly significant as a source of cultural resources. A few local communities have requested permits to use resources from the area to produce symbolic and spiritually significant items to perpetuate traditional practices. Permits have also been issued for non-extractive Native Hawaiian practices including hula, mele, oli, paintings, drawings, prints, clothing, and films. Examples of these permits include:

- Moananuiākea Voyage (2021)- a 42-month, 41,000-mile circumnavigation of the Pacific. The goal of this voyage was to develop 10 million new crew members, navigators, and leaders focused on the vital importance of oceans, nature, and indigenous knowledge.
- Intertidal Monitoring Cruise (2011-2018)- a diverse research group composed of Native Hawaiian community members, fishers, scientists, and managers that combined their work under research and Native Hawaiian practices permits to better understand the holistic health of intertidal ecosystems and ‘opihi (limpet) populations through kilo.

- Kānaka ʻŌiwi scientists conducted sea level rise research and intertidal surveys at Lalo and Nihoa, weaving traditional knowledge systems of the natural habitat and cycles with climate change science (2021).

Management activities in the Monument are bridging a historical divide between Indigenous Knowledge and western scientific research approaches that has persisted in Hawaiʻi for over a century. As a co-trustee, OHA supports Kānaka ʻŌiwi access to Papahānaumokuākea which represents a vital component of successful co-management of this mixed (natural and cultural) UNESCO World Heritage site. Creating accessible and diverse opportunities to increase Kānaka ʻŌiwi participation in diverse roles as a multi-disciplinary team is crucial to supporting the management of this biocultural seascape through inclusivity of ʻŌiwi worldviews (OHA et al., 2021). One of these partnerships with the co-managers has been building the capacity of Kānaka ʻŌiwi from the CWG to complete the resource monitor training facilitated through the MMB. This has the potential to continue uplifting the success of diverse knowledge systems through increasing participation of Kānaka ʻŌiwi in all aspects of management, research, and field camp opportunities.

Special Ocean Use

Special ocean use permits are for activities or uses of the PMNM engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, which do not destroy, cause the loss of, or injure PMNM resources. This includes ocean-based ecotourism and other activities such as educational and research activities that are engaged in to generate revenue. Since the designation of the Monument, 15% of the permits have been issued for special ocean use.

Access for general visitation purposes was previously allowed at Midway Atoll National Wildlife Refuge. However, due to recent reductions in refuge staff and operational capacity, historical and eco-tour access is currently not offered. Internet users can virtually visit the remote islands and atolls using Google Street View, the Kaʻena Point mobile app, and other interactive material created by USFWS and NOAA. Through these resources, visitors can stroll among millions of seabirds and various historic sites on Kuaihelani, or encounter monk seals and green sea turtles basking along the shores of Kapou and Kamole.

Recreation

Recreation permits are for activities conducted for personal enjoyment and are limited to the Midway Atoll Special Management Area. Recreation activities must not result in the extraction of Monument resources or be involved in a fee-for-service transaction. Examples of activities that may be permitted include snorkeling, wildlife viewing, and kayaking. Restrictions may be placed on recreation permits in accordance with the Midway Atoll NWR Visitor Services Plan. Only 1% of the permits issued were for recreation.

Recreational activities have historically been extremely limited. Kuaihelani served as a base for an ecotourism operation from 1996 until its closure in 2012. Prior to the closure, visitors participated in historic preservation service projects, guided tours, diving and snorkeling trips, and fishing operations (extractive and non-extractive). In addition, Kuaihelani was a destination for a limited number of cruise ships. Since 2006, only one recreation permit, in 2010, has been

issued. This was for USFWS to administer their Visitor Services Program. **USFWS has the authority to charge fees for services including public visitation (50 CFR Part 25 Subpart E).**

Sustenance Fishing

Sustenance fishing is defined in 50 CFR § 404.3 as “means fishing for bottomfish or pelagic species in which all catch is consumed within the Monument, and that is incidental to an activity permitted under this part.” This activity is regulated through the permitting process for PMNM, which limits gear types and requires data reporting. Native Hawaiian subsistence fishing (State waters) and sustenance fishing (federal waters) occurs at low levels in PMNM.

The regulations at 50 CFR part 404 allow for the authorization of individuals listed on a permit to perform sustenance fishing within PMNM. Between 2007 and 2021, 33 Native Hawaiian practices permits were awarded (Table 4.2), with 26 including the provision to fish. Permittees report the type of gear used and the number and type of fish caught. Permittees reported catching 35 fish, including 17 ‘ahi (yellowfin tuna), 12 uku (gray snapper), three ono (wahoo), and two mahimahi (dolphinfish). Some permit recipients elected not to fish despite their permit authorization (NOAA ONMS 2022).

Because of the higher human presence on Kuaihelani, the Midway-specific compatibility determination provides explicit conditions for sustenance fishing. This includes catch limits (maximum take of 300 fish per year), BMPs, and reporting requirements (PMNM, 2012).

Fishing in the Monument Expansion Area

In 2016, Presidential Proclamation 9478 created a prohibition on commercial fishing within the MEA. This area had been occasionally used by the Hawai‘i longline fleet, although longlining had been prohibited since 1991 in the waters that became PMNM, after the creation of the Protected Species Zone (50 CFR § 665.806). The federally managed commercial bottom fishery and Pelagic trolling fishery were almost exclusively conducted within the waters that became PMNM until they were phased out in 2011 by Presidential Proclamation 8031. Prior to the establishment of the Monument, recreational fishing had taken place at Kuaihelani and near Nihoa, although catch and effort data are unavailable for those activities.

The NOAA Office of Law Enforcement and USCG monitor fishing vessel activity 24 hours a day through a variety of electronic systems, including NOAA’s domestic fishing vessel monitoring system, international regional fisheries management organizations’ vessel monitoring systems, and automatic identification system reporting. Additionally, opportunistic and directed aerial and surface law enforcement patrols are conducted by the USCG in coordination with NOAA’s Office of Law Enforcement. Between 2009–2019, these efforts identified a number of illegal commercial fishing incidents within PMNM, including four domestic cases involving Hawai‘i-based longline vessels that resulted in initial assessments totaling over \$154,000 (NOAA Office of General Counsel, 2020).

Military and Homeland Security Activities

Activities and exercises of the Armed Forces, including those of the USCG, law enforcement and activities necessary to respond to emergencies are exempt from the prohibitions provided in the Presidential Proclamations. U.S. Navy vessels sometimes support missile defense tests,

occasionally operating in the proposed sanctuary for those operations or other training exercises. Communication between the military and Monument co-managers generally occurs shortly before operations begin, to ensure a particular area is free of permitted activities and vessels conducting passage without interruption. A complete description of the U.S. Navy's activities that occur within and around the Monument (a relatively small percentage of their area of operations) and an analysis of their impacts can be found at Hawaii-Southern California Training and Testing Final Environmental Impact Statement/Overseas Environmental Impact Statement (U.S. Department of the Navy, 2018). The Navy is in the process of preparing a follow-on NEPA analysis to support renewal of current federal regulatory permits and authorizations that expire in December, 2025.

USCG maintains Aids to Navigation buoys around Kuaihelani and periodically enters the Monument to maintain those assets and/or to support other homeland security, law enforcement, or search and rescue activities. The size, remote location, and hazardous navigational conditions present significant enforcement challenges. USCG has long been the primary enforcement agency conducting surface and aerial patrols. However, with their broad mandates and large enforcement area, USCG has limited resources to allocate to Monument patrols. USCG operations in this region cover a broad range, including search and rescue, servicing aids to navigation, response to oil and hazardous chemical spills, inspecting commercial vessels for safety and environmental regulations compliance, interdiction of illegal narcotics and migrants, and enforcement of fisheries management laws (Mathers, 2005). NOAA, USFWS, and the State of Hawai'i also have authority to enforce regulations within PMNM and are expected to share resources to fulfill the purpose, scope, and guiding principles discussed in the 2017 co-trustee Memorandum of Agreement to promote coordinated management of the Monument (Memorandum of Agreement, 2017).

Overview of Vessel and Air Traffic in the Monument

Vessel Traffic

With the exception of a few small boats at Lalo, Kuaihelani and Hōlanikū, no vessels have home ports in the NWHI. Therefore, almost all marine traffic consists of transiting merchant vessels, research ships, and fishing vessels. Cruise ships, USCG and U.S. Navy vessels, and recreational vessels visit the Monument infrequently. Prior to mandatory ship reporting for certain vessels with the designation of the PSSA (Section 4.2.1), a voluntary reporting system identified 545 vessels inside what became the PMNM boundary between 1994–2004. These vessels were mostly freighters and tankers (>65%) over 600 feet in length. Data from the reporting system collected from 2007–2023 provided a yearly average of approximately 200 vessels transiting through PMNM. The majority of these vessels are container ships, tankers, and military vessels.

Ship traffic within the Monument is cyclical, peaking from November through February, when the NWHI experiences high-energy large wave events from the northwest. Vessels deviate from their regular great circle routes to take advantage of more favorable sea conditions in the lee of the NWHI. During this period, 77% of transiting vessels pass between Manawai and Kapou. This is one of three routes through PMNM that provides uninterrupted and safe north-south passage through the proposed sanctuary. The other two routes, between Kamokuokamoali'i and

‘Ōnūnui/‘Ōnuiki and between Mokumanamana and Nihoa, are used much less frequently. Remaining areas between the islets and atolls are designated as Areas To Be Avoided.

Monument co-managers purchased a one-year dataset of the IMO’s Automatic Identification System (AIS), a satellite-based reporting system required of all vessels 300 or more tons and all passenger ships regardless of size (SOLAS regulation V/19). The AIS provides an accurate picture of overall ship traffic and an estimate of how many ships comply with voluntary reporting and guidance. The AIS could also be used to identify vessels that transit the more ecologically sensitive areas of the proposed sanctuary. Based on a comparison of the AIS dataset and the reports sent to the Monument, the ship reporting system may be underreporting vessel activity by as much as 50%. This dataset also showed 17 vessels transiting through the Areas To Be Avoided without interruption, including 12 cargo vessels, three tankers, a research vessel, and a tug.

In 2021, there were 16 permitted vessel entries into the Monument done by nine vessels. Vessels supporting permitted activities include large research vessels, supply/cargo ships, fishing vessels used for conservation and management and research, USCG cutters, U.S. Department of Defense vessels, and voyaging canoes. Research vessels permitted since 2017 include NOAA’s *Oscar Elton Sette*, *Hi ‘ialakai*, *Rainier*, and *Reuben Lasker*. Seven additional university or privately-owned research vessels also operated in the Monument during this period. Two supply/cargo ships, *Imua* and *Kahana II*, were employed for resupplying field camps and Kuaihelani operations, as well as used as chartered research platforms. Three fishing vessels were used for field camp deployment, bird relocations, and sailfish tagging research. Barges and tugboats operated within the area inconsistently on an as-need basis to support conservation and management activities. Finally, three voyaging canoes, *Hōkūle ‘a*, *Hikianalia*, and *Makali ‘i*, have operated within the area.

NOAA maintains a small boat program, which includes its own priorities and action plans. NOAA establishes policies and procedures that promote the safe operation of small boats. The program provides operator training, staffing guidance, and engineering assistance to support NOAA’s program needs. While NOAA’s small boats are owned, maintained, and operated by individual line offices, the Small Boat Program Office provides administrative oversight and is the point of contact for support regarding engineering, inspections, and policy. All NOAA small boats are transported on larger research vessels that operate in the proposed sanctuary.

Vessels allow access, making activities possible in this vast and remote area. Vessels, however, introduce specific hazards to the marine environment, including groundings and fuel, chemical, and oil spills. Vessel activities can also have biological impacts, including the introduction of non-indigenous species through hull fouling or ballast water discharge, and from interactions with protected marine species. Other environmental threats from vessels include waste, effluent, bilge water discharge, light and noise pollution, and anchor damage. Managers address these threats through applying the prohibitions, permit conditions, and the application of BMPs, though mechanical failure and human error continue to present dangers. Vessel groundings and cargo spills occur infrequently within the Monument, and response to such emergencies has required exceptional collaborative interagency effort and resources to minimize effects on the fragile reef ecosystems. Responses to vessel hazards and groundings within the Monument

include prevention, research, removal, and salvage. Strategies for prevention include developing protocols and practices for safe vessel operations; informing users about hazards, regulations, permit requirements, and compliance regarding vessel operations; investigating domestic and international shipping designations; working with NOAA and USCG to update nautical charts and notices to mariners; and risk assessment. Monument management agencies respond to groundings to the extent possible.

Global trade utilizes large container ships to move cargo between Asia and North America. Thousands of shipping containers were lost in the vicinity of the proposed sanctuary in 2020 and 2021. Efforts were made to locate these containers utilizing satellite imagery and oceanographic modeling. Staff at Hōlanikū began reporting suspicious marine debris on February 18, 2021, and staff on Kuaihelani reported similar items starting on February 26, 2021. Items included: brand new Crocs with plastic display hangers, brand new WILSON volleyballs, children’s sippy cups in new packaging, packages of toy “slime,” latch-seal mason jars, medical respirator masks, drinking straws, bicycle helmets and unopened groceries. These events came less than three months after the *Maersk Eindhoven*, the *MSC Aries*, the *Maersk Essen*, and the *ONE Apus* lost 260, 41, 732, and 1,816 containers respectively near the proposed sanctuary. Monument staff found additional debris matching these descriptions as far south as Lalo in 2021 (Freightwaves, 2021).

Air Traffic

Kuaihelani has the only operational airstrip in Papahānaumokuākea, a 1.5-mile-long runway originally constructed for the former naval airbase. The airfield is now a FAA-certified, ETOPS (Extended-range Twin-engine Operations Performance Standards) emergency landing strip for aircraft crossing the Pacific. The USFWS and FAA support regular biweekly chartered flights carrying agency personnel, equipment, and supplies to and from Henderson Airfield. USFWS, in partnership with FAA, is responsible for the operation and maintenance of the airfield (USFWS, 2022). In 2021 there were 31 permitted flights to and from Kuahelani.

Chapter 5: Environmental Consequences

This chapter analyzes the potential environmental impacts of the action and alternatives on the human environment. It evaluates changes in existing laws and management, the anticipated environmental impacts on physical and biological resources, and the anticipated environmental impacts to cultural and historical resources, human uses, and socioeconomic resources. A discussion of cumulative projects and impacts is presented in Section 5.6.

5.1 Approach to Impact Analysis

Selecting No Action would maintain the current management regime, with relevant factors presented in sections 3.2 and 4.2. This analysis assumes that existing activities would continue at current levels under all alternatives. The following analysis of the environmental consequences of the alternatives is based on review of existing literature and studies, information provided by experts, including NHPA Section 106 Consulting Parties, and the best professional judgment of NOAA staff.

Impact analysis for No Action (Section 5.2) describes the impacts of the status quo to provide a baseline for beneficial and adverse impact determinations of the alternatives. NOAA anticipates that implementation of the No Action Alternative would not result in any change to existing or expected future management or uses of the area, and therefore no new beneficial or adverse impacts would occur from the No Action Alternative. Impacts, both adverse and beneficial, presently occurring would continue.

Impact analysis for the action alternatives (sections 5.3, 5.4, and 5.5) is developed through consideration of the beneficial and adverse impacts on specific resources affected by the set of actions, based on the location of the resources and whether these resources occur within or outside each alternative's proposed sanctuary boundary. Impacts to human uses, including the regulatory and management burden of the alternatives, are evaluated based on the level of activity that occurs inside or outside of the boundary, and not necessarily specific locations within the proposed sanctuary. The proposed regulations are consistent for all of the alternatives and alternatives only vary in geographic extent. Alternative 1 is the largest, Alternative 2 excludes the MEA (50–200 nmi), and Alternative 3 includes the MEA but excludes the Midway Atoll and Hawaiian Islands NWRs waters. Alternatives 2 and 3 would have the same effects as Alternative 1 on those resources that occur within their respective proposed sanctuary boundary, because the proposed regulations would not change between these alternatives. Where alternatives exclude specific areas, regulation in the excluded areas would have predominantly the same effect as No Action. In addition, the impact of regulatory complexity associated with these boundary alternatives and their effect on human uses will be discussed. Otherwise, the discussion of impacts under alternatives 2 and 3 will refer to the relevant analyses of No Action and Alternative 1.

5.1.1 Scope of Impact Analysis

Most sanctuary designations require extensive analysis of the proposed action, since the benefits of resource protection identified in the purpose and need must be adequately weighed against potential adverse socio-economic impacts from regulatory measures that may restrict access or use, creating lost opportunities. This includes restricted fishing and recreational access, as well as higher costs due to stricter regulations while operating within a sanctuary, such as insurance requirements, discharge restrictions, and permit conditions, to name a few. Because of the existing management measures and protections enacted over the years, presented in sections 3.2 and 4.2, the proposed sanctuary designation primarily supplements existing protections and imparts only a few new restrictions and requirements on users. Sanctuary designation would not change the area's status as a marine national monument. Sanctuary designation would not remove existing regulations, and would not diminish any other existing authorities, including the USFWS' authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act. Rather, it would give NOAA the authority to supplement existing protections.

Due to the remote location and the low level of activity across the proposed sanctuary, available data on human impacts are sparse. When there is incomplete or unavailable information during the evaluation of impacts, the agency may make evaluations based upon reasonably foreseeable causations and impacts (42 U.S.C. 4332(2)(C), 40 CFR 1502.21). As the occurrence of illegal activity, permit violations, and loss or injury to sanctuary resources in the future cannot be predicted, impacts of enhanced enforcement and authority to respond to and hold financially liable any person who destroys, causes the loss of, or injures any sanctuary resource are described qualitatively rather than quantitatively.

Resources within the Monument boundaries have received protection through previous actions, as described in sections 1.2.2, 3.2, and 4.2. Public access and activities are managed currently under No Action. The scope of the impact analysis focuses on minor changes proposed to improve consistency of regulations across the area of the proposed sanctuary and additional protections imparted by a sanctuary designation.

The sanctuary management plan describes strategies to meet the proposed sanctuary's goals and objectives and not specific activities. Any future permitted activities conducted in the proposed sanctuary would require individual environmental analysis as part of the permit review process. As the scope, nature, location, and timing of any specific future projects are currently unknown and will receive individual NEPA review before they are undertaken, they are not analyzed here.

This analysis also addresses the triggers, where applicable, for environmental review under Chapter 343, HRS (HEPA):

- Propose any use of state or county lands or the use of state or county funds.
- Propose any use within any land classified as a conservation district.
- Propose any use within any historic site as designated in the National Register or Hawai'i Register.

5.1.2 Determining Significance and Quality of Impacts

NOAA's analysis of the environmental consequences of the alternatives is based on review of existing literature and studies, information provided by experts, and the best professional judgment of NOAA staff.

NEPA requires agencies to analyze the reasonably foreseeable environmental effects of the proposed agency action (42 U.S.C. 4332(2)(C)). CEQ defines "effects" or "impacts" to mean "changes to the human environment from the proposed action or alternatives that are reasonably foreseeable" and include direct, indirect, and cumulative effects.

Type of Impact. To facilitate meaningful analysis and to provide clarity to the public about the nature of the potential effects to the human environment that are reasonably foreseeable, CEQ directs agencies to divide the potential effects of the proposed action and alternatives into three categories: direct, indirect, and cumulative. NOAA applies the following meaning to these terms, consistent with historical practice and case law:

- Direct effects: A known or potential impact caused by the proposed action or project that occurs at the time and place of the action.
- Indirect effects: A known or potential impact caused or induced by the proposed action or project that occurs later than the action or is removed in distance from it but is still reasonably expected to occur.
- Cumulative effects: A known or potential impact resulting from the incremental effect of the proposed action added to other past, present, or reasonably foreseeable future actions.

Duration of Impact. NOAA describes the duration of potential impacts as either short-term, long-term, or permanent. This indicates the period of time during which the resource would be impacted. Duration considers the permanence of an impact and is defined as:

- Short-term: A known or potential impact of limited duration, relative to the proposed action and the environmental resource. For the purpose of this analysis, short-term impacts may be instantaneous or may last minutes, hours, days, or up to five years.
- Long-term: A known or potential impact of extended duration, relative to the proposed action and the environmental resource. For the purpose of this analysis, long-term impacts would last longer than five years.
- Permanent Impact: A known or potential impact that is likely to remain unchanged indefinitely.

Significance of Impact. The various levels of impact used in this analysis are:

- No Impact: No effect would occur on the resource.
- Negligible: Impacts on a resource can barely be detected and are therefore discountable. Negligible impacts are not qualified as beneficial or adverse.
- Minor: Impacts on a resource that might be perceptible but are typically not measurable. Impacts would generally be localized and temporary and would not alter the overall condition of the resource from the status quo. For organisms, individuals may be affected but population-level impacts would not occur.

- **Moderate:** Impacts on a resource that are more perceptible and, typically, more amenable to quantification or measurement. They can be localized or widespread and could alter the overall, fundamental condition of the resource from the status quo. Impacts would not rise to the level of significance as defined below.
- **Significant:** Impacts resulting in a substantial structural or functional alteration of the state of a resource. Long-term or permanent impacts or impacts with a high intensity or frequency of alteration to a resource, whether beneficial or adverse, would be considered significant. For organisms, a significant impact may mean that population-level impacts would occur. The significance threshold is evaluated on a case-by-case basis, taking into consideration the potentially affected environment and degree of the impact(s).

Quality of Impact. Potential impacts are described as either beneficial or adverse as follows:

- **Beneficial impact:** Impacts that promote favorable conditions for the resource.
- **Adverse impact:** Impacts that are likely to be damaging, harmful, or unfavorable to one or more of the resources.

5.1.3 Guiding Questions and Assumptions for Impact Analysis

The limited changes to management, permitting, and regulations that are entailed in the alternatives confines the analysis to a few specific issues. For each resource, the following questions were considered, and where relevant, directed NOAA's analysis:

- What threats are facing the resource and how do the proposed regulations address those threats by providing protection?
- How does the spatial extent of the proposed sanctuary affect the resources, natural environment, cultural heritage, and human uses in and around the proposed sanctuary?
- What new administrative and operational burdens associated with access are anticipated?
- How do the proposed changes in the management structure affect public access, user opportunities, conservation measures, and enforcement?

Based on the remoteness of the proposed sanctuary (nearly 300 miles at its closest point from the main Hawaiian Islands), the proposed action is not expected to increase the level of human activity, including permitted activity, in the area of the proposed sanctuary.

5.1.4 Identify Routes of Effect or Impact Producing Factors

The nature of existing conditions in Papahānaumokuākea is based upon available literature and the direct knowledge of the Monument staff and scientists who assisted in the preparation of this final EIS. Where location-specific information is available, these data are utilized, and when lacking, general conditions of the ecosystem are utilized with appropriate qualifications. For regulatory and management measures proposed within the proposed sanctuary, the methodology used to determine whether effects on the physical and biological environment and human environment would occur is described in the subsequent sections.

Laws and Management

The analysis of the alternatives' impact on the Monument management system includes the key changes, the rationale for these changes, the effect these changes have on the management of proposed sanctuary resources, and how that management is affected by the various boundary alternatives. The steps taken to evaluate how each alternative would impact laws and management is as follows:

- Analyze the impacts on resources and resource uses under existing federal and State authorities (No Action) and under existing federal and State authorities plus the NMSA (action alternatives).
- Analyze the impact of the minor regulatory changes to management.
- Analyze how the personnel and administrative support may change.
- Analyze how law enforcement may change.
- Analyze the impact of the sanctuary management plan on management.

Physical Resources: Water Quality and Habitat

Physical resources within the proposed sanctuary with the potential for impact include habitat and water quality. Habitat consists of both abiotic and biotic components. Abiotic components include sand, rocks, fossil reef, and coral skeleton. Biotic components are principally living coral, the foundation of the coral reef community. Analyses pay specific attention to the carbonate reef structure and other nearshore benthic habitat. In many cases, threats to habitat and living coral are the same and potential impacts from the alternative are often identical. Potential impacts to habitat can result from both poor water quality (e.g., sedimentation, pathogens) and physical damage (e.g., vessel groundings, marine debris). Impacts to water quality from vessel discharge and other marine-based human activities in Papahānaumokuākea are analyzed. The steps taken to evaluate how each alternative would impact water quality and habitats are as follows:

- Evaluate activities and threats described in Chapter 4 to identify the potential effect on marine water quality, emphasizing nearshore waters and benthic habitats.
- Review available literature on the anthropogenic causes of nearshore habitat degradation, assess the level at which these are occurring under No Action, and evaluate if each alternative affects the anthropogenic causes.

Biological Resources

Biological resources within the proposed sanctuary include marine plants, corals, benthic invertebrates, fish, mobile invertebrates, sea turtles, marine mammals, and seabirds. Potential impacts to biological resources can result from natural and anthropogenic causes, both of which are critical to monitor and address. This includes degradation of the coral reef from storms and marine debris, impacts from passive (e.g., drifting within marine debris) and accidental introduction of invasive species, ship groundings, and other anthropogenic activities occurring on land and in the waters of the proposed sanctuary. The steps taken to evaluate how each alternative would impact these resources are as follows:

- Review and evaluate activities and threats to identify the action’s potential impact on biological resources.
- Evaluate each alternative, identifying its potential to affect the ecosystem and individual biological resources within the proposed sanctuary, including damage to the coral reef and associated habitats, excessive disturbance of marine life, presence of introduced species, and depletion of species from directed harvest.
- Assess the compliance of each alternative with applicable federal, State, or local regulations and laws, including the Hawai‘i Department of Land and Natural Resources (DLNR) regulations, ESA, and Marine Mammal Protection Act (appendices C and E).

Maritime Heritage and Cultural Resources

Maritime Heritage constitutes a wide variety of tangible properties on the seafloor, inclusive of the historic battlefield associated with the Battle of Midway. As described in Section 4.5.1, cultural resources consist of the place—sea, land, sky, and the natural resources therein. Native Hawaiian culture in Papahānaumokuākea is living—past, present, and future. It is with these differing lenses that maritime heritage and cultural resources are analyzed. The **steps taken** to determine how a sanctuary alternative would impact these resources are:

- Review the National Register of Historic Places, archaeological survey data, and relevant inventories of historic places for pre-contact and historic resources.
- Review cultural resources reports, permit reports, and discussions with subject matter experts to assess how the action’s potential impact determines appropriate (pono¹⁰) future activities and conduct of permittees.
- Identify activities that could affect those resources, and determine how the alternative affects the type and magnitude of potential direct and indirect impacts.
- Consider how access issues and proposed regulations affect future Native Hawaiian and Maritime Heritage activities.
- Identify the risks and benefits of the study of these resources to enhance protection and appreciation.
- Review protections granted under the NHPA and other legislation (see Appendices C and E).

NOAA has made a Finding of No Historic Properties Affected (Finding) for the undertaking of designating a national marine sanctuary within the existing Monument, pursuant to 36 CFR § 800.4(d)(1). NOAA has prepared this documentation following the standards outlined in 36 CFR § 800.11(d). The consulting parties have been notified of the Finding and the Finding was provided to the Hawai‘i State Historic Preservation Division for concurrence. The finding is being made available to the public through publication in this EIS, see Appendix C.

In addition, NOAA engaged with the State of Hawai‘i DLNR as they conducted their Cultural Impact Assessment (CIA). The State of Hawai‘i CIA is triggered by requirements of the HEPA, Hawaii Revised Statutes (HRS) §343, and was conducted parallel to the NHPA Section 106

¹⁰ 50 CFR § 404.3 “Pono” means appropriate, correct, and deemed necessary by traditional standards in the Hawaiian culture.

process and NEPA review conducted by NOAA. The program is codified under HRS Chapter 6E recognizing the State's constitutional duty to conserve and develop the historic and cultural property in the State. The State Historic Preservation Division (SHPD) review includes identification and inventory of historic properties, evaluation of significance of the properties, determination of effects to significant properties, and mitigation. Pursuant to HRS § 6E-8 and HAR § 13-275-3, DLNR submitted a written request to SHPD for an agency determination letter. On June 7, 2024, SHPD concurred with DLNR's determination of no historic properties affected.

A legal analysis was also conducted to support the State's constitutional duties to protect Native Hawaiian traditional and customary practices. Nohopapa Hawai'i, LLC created the document *Ho'i I Ke Au A Kanaloa* (Nohopapa Hawai'i, 2023) containing the CIA and a legal analysis relating to Native Hawaiian rights and cultural resources.

The CIA presents a detailed genealogy of Papahānaumokuākea, its connection to Native Hawaiian history and the main Hawaiian Islands, and the cultural resources, practices, beliefs, and spirituality associated with this biocultural seascape that are fundamental to Native Hawaiians. Following extensive outreach to identify individuals and groups interested in participating, Nohopapa Hawai'i, LLC interviewed 25 people with connections to Papahānaumokuākea. These interviewees identified their cultural practices and connection to Papahānaumokuākea, potential impacts to these practices and cultural resources, recommendations, and other considerations. The CIA outlines several Native Hawaiian customs such as voyaging, kilo (Indigenous observational science), feather gathering, and fishing. Based on analysis in the CIA, these traditions and customs are not significantly impacted by sanctuary designation but may actually be subject to greater protection with sanctuary designation.

Potential effects on historic properties, including to properties of cultural importance, were identified through the NHPA Section 106 process and through the State's CIA process. Consultees identified various potential impacts to cultural resources by the proposed sanctuary designation. The potential impacts identified included both adverse and beneficial impacts as well as potential impacts by actions external to sanctuary designation. Consultees also provided recommendations regarding mitigation of adverse impacts to cultural resources that could be carried out both within and outside of the proposed sanctuary designation. This final EIS analysis focuses on potential impacts to cultural resources by sanctuary designation, including impacts relating to access for cultural practices, culturally sensitive management and research, protection of resources, and perpetuation of Native Hawaiian culture. The analysis also addresses feasible recommendations regarding mitigation of adverse impacts to cultural resources by sanctuary designation, such as fostering access for Native Hawaiian cultural practices and stewardship, improving protection of resources, enhancing outreach to Native Hawaiian communities, and elevating Indigenous science.

Socioeconomics, Human Uses, and Environmental Justice

For activities proposed within the sanctuary or intended to improve management of the sanctuary, the methodology used to determine how an alternative would impact socioeconomic resources and environmental justice is as follows:

- Review and evaluate ongoing and past activities, including non-commercial fisheries, tourism, education, and outreach efforts within and outside the action area, to identify the action's potential to affect socioeconomic within the Hawaiian Islands.
- Review and evaluate additional permitting and operational burdens for activities within the proposed sanctuary, identifying their potential to affect access and opportunities for human use of the area and resources within Papahānaumokuākea.
- Review and evaluate the potential disproportionate effects on low-income or minority populations and the potential for increased adverse health risks to children.

The criteria to determine the environmental consequences associated with socioeconomic, demographic, and environmental justice are based on federal, State, and local standards and regulations. Environmental justice involves disproportionate impacts on low income or minority populations. Impacts are considered to be significant if the action alternatives were to result in:

- Substantial changes in unemployment rate.
- Substantial changes in total income.
- Substantial changes in business volume.
- A conflict or inconsistency with established land use plans (e.g., county plans).
- A substantial change in existing land uses.
- An interference with the public's right of access to the sea.
- A long-term preemption of a recreational use or substantial temporary preemption during a peak use season.
- Substantial changes to the status of low-income and minority populations, as well as to the health and well-being of children.

The method of analysis applied to the socioeconomic and environmental justice issue areas is primarily qualitative since there is very little quantitative information to assess the proposed action and alternatives.

5.2 Impacts of the No Action Alternative

Under the No Action Alternative, NOAA would not designate a national marine sanctuary, and the existing operations and management within the Monument would continue. Regulations and permitting are expected to continue to exist for PMNM; however, there are no implementing regulations for the provisions of Presidential Proclamation 9478 for the MEA. Continuation under No Action would not result in any change in the existing uses of the Monument. The lack of implementing regulations to permit activities in the MEA could lead to future impacts from unregulated activities. No Action would forgo the beneficial and adverse impacts of implementing Alternative 1 (Section 5.3), Alternative 2 (Section 5.4), and Alternative 3 (Section 5.5) on the resources and human activities in the Monument.

5.2.1 Impacts on Laws and Existing Management

Under No Action, the regulations and management described in sections 3.2 and 4.2 would remain in effect. Threats to Monument resources would continue to be the focus of management, research, and conservation actions. Actions taken to address these threats would still be permitted and undergo comprehensive environmental reviews.

The management authorities described in Chapter 3 and listed in Table 3.1, including the NWRSA and HAR 13-60.5, provide a variety of management and regulatory tools to manage and provide protections for certain areas and resources within the Monument, and issue penalties within their respective jurisdictions.

Activities authorized by the Monument co-trustees would continue to operate under the regulations at 50 CFR part 404, including access restrictions and permitting requirements as described in sections 3.2 and 4.2.5. While activities occurring within the MEA must remain consistent with the requirements of Presidential Proclamation 9478, there are no codified regulations, including permit requirements or access restrictions provided by Presidential Proclamation 9478. Activities not listed as prohibited could be conducted without NOAA permits or other management conditions. Further, NOAA would not have regulations to issue civil penalties related to violations of Presidential Proclamation 9478 in the MEA, and the co-trustees have only limited authority to issue criminal penalties across the rest of the Monument. NOAA has not documented direct negative impacts to Monument resources based on the lack of penalty authorities. However, based on NOAA's extensive experience in enforcing federal statutes in the marine environment, NOAA concludes that there is a higher potential for user violations that adversely affect marine resources in areas where NOAA lacks these supplemental authorities.

Monument management, including the various working groups that provide the foundation of cooperative management, would continue to address emerging and ongoing management and natural resource issues, analyzed in the following resource sections. Defined roles among the co-trustees and MMB would remain, providing continuity of management. All existing authorities described in Section 3.2 would remain in effect under No Action, as well as all action alternatives.

5.2.2 Impacts on Physical Resources

The study area would remain the same as the status quo and would not be subject to the proposed regulations and sanctuary management plan described in Chapter 3. NOAA anticipates that the No Action Alternative would result in the continuation of existing impacts, including ongoing impacts from the threats described in Section 4.3. These threats, and potential impacts to physical resources associated with human activities in the Monument, would continue to be addressed to a certain degree through existing Monument management and existing federal and State authorities and programs.

Under the No Action Alternative, discharge regulations for PMNM, which restrict the release of harmful pollutants and protect water quality, would continue to exist. However, Presidential Proclamation 9478 for the MEA does not address discharge. This represents a gap in effective management of threats to Monument physical resources, including in the area of the proposed sanctuary that overlaps with the MEA.

As stated above, NOAA does not have regulations to issue permits or civil penalties for the MEA. NOAA has not documented direct negative impacts to MEA resources based on the lack of regulations or penalties. However, based on NOAA's extensive experience in enforcing federal statutes in the marine environment, NOAA concludes that there is a higher potential for user

violations that adversely affect marine resources in areas where NOAA lacks these supplemental authorities.

The No Action Alternative forgoes specific resource protection measures provided with sanctuary designation, including the NMSA's damage assessment authority; penalty authorities; required interagency consultations for federal agency actions likely to destroy, cause the loss of, or injure any sanctuary resource; and the ability to implement emergency regulations. These impacts are characterized as benefits in sections 5.3.2 and 5.3.3.

5.2.3 Impacts on Biological Resources

The study area would remain the same as the status quo and would not be subject to the proposed regulations and draft management plan described in Chapter 3. NOAA anticipates that the No Action Alternative would result in the continuation of existing impacts, including ongoing impacts from the threats described in Section 4.3. These threats, and potential impacts to biological resources associated with human activities in the Monument, would continue to be addressed to a certain degree through existing Monument management and existing federal and State authorities and programs. Ongoing impacts include climate change, marine debris, derelict fishing gear, and deteriorated seawalls, which primarily impact corals, sea turtles, and the Ūlioholoikauaua. The ongoing threats to habitat and water quality summarized in Section 5.2.2 have similar consequences for corals and other benthic biological resources.

Management under the No Action Alternative addresses many long-standing, predominantly external, threats. For example, invasive species present one of the greatest threats to the Monument ecosystems, with potential devastating effects to the marine environment. Current management includes measures to stop invasive species from entering and taking hold in the Monument, including vessel inspection requirements and the ongoing Invasive Algal Working Group. As described in the State of the Monument Report (2020), Monument managers continue to address these issues through research efforts, conservation programs, and education, as well as through permit requirements and enforcement of existing regulations in the PMNM.

As stated above, NOAA does not have regulations to issue permits or civil penalties for the MEA. NOAA has not documented direct negative impacts to MEA resources based on the lack of permitting regulations. However, based on NOAA's extensive experience in enforcing federal statutes in the marine environment, NOAA concludes that there is a higher potential for user violations that adversely affect marine resources in areas where NOAA lacks these supplemental authorities.

The No Action Alternative forgoes specific resource protection measures provided with sanctuary designation, including the NMSA's damage assessment authority; penalty authorities; required interagency consultations for federal agency actions likely to destroy, cause the loss of, or injure any sanctuary resource; and the ability to implement emergency regulations. These impacts are characterized as benefits in sections 5.3.2 and 5.3.3.

5.2.4 Impacts on Cultural and Historical Resources

The study area would remain the same as the status quo and would not be subject to the proposed regulations and draft management plan described in Chapter 3. As biological resources are also considered cultural resources to many Native Hawaiians, the ongoing and future potential impacts to biological resources described above affect the cultural significance as well.

Threats to the maritime heritage resources would continue, including illegal salvage/looting, anchoring damage, and other intentional or inadvertent human impacts, as well as degradation over time, potentially exacerbated by impacts from climate change. NOAA anticipates that the No Action Alternative would result in the continuation of existing impacts and potential future impacts as described in Section 4.5.

Cultural heritage has been an important aspect of management since the designation of the Reserve in 2000. The integration, promotion, and awareness of Native Hawaiian culture, history, traditional knowledge systems, religion, mythology, and spirituality, as well as Papahānaumokuākea's connection to the greater Pacific Ocean and associated cultures, has been a fundamental principle of Monument management since its designation. The CIA addresses the potential for impacts to cultural practices and resources as well as the importance of facilitating Native Hawaiian cultural access for voyaging, kilo (Native Hawaiian scientific study), feather collecting, and sustenance fishing. Some interviewees shared concerns for "western" research and non-commercial fishing as not culturally appropriate in the Monument. Under current management, these issues are addressed. Every Monument permit application is reviewed by the CWG, who provide recommendations to OHA to ensure adherence to this principle. The RAC, the CWG, Mai Ka Pō Mai guidance document, cultural training for permittees, employment of biocultural resource monitors, and numerous other initiatives will continue to guide Monument management under the No Action Alternative. These procedures, particularly for accessing sensitive areas such as marine areas around Nihoa and Mokumanamana, reduce the potential of adverse impacts.

Historic resources within PMNM, specifically maritime heritage military and nonmilitary wrecks, are protected through access restrictions, permit requirements, and codified regulations, which supplement protections for U.S. military resources provided through the Sunken Military Craft Act. Presidential Proclamation 9478, the guiding document for the MEA, does not explicitly restrict access to the MEA, nor does it include exploration for sunken artifacts as one of the activities subject to permitting. In the MEA, sunken military craft are managed and protected through the Sunken Military Craft Act. While NOAA has not documented direct negative impacts to MEA resources that are not under the authority of the Sunken Military Craft Act based on the lack of permitting authorities for exploration of maritime heritage resources, it is reasonable to conclude that resources not under the authority of the Sunken Military Craft Act may be adversely impacted by unregulated activity.

5.2.5 Impacts on Socioeconomic Resources, Human Uses, and Environmental Justice

The study area would remain the same as the status quo and would not be subject to the proposed regulations and draft management plan described in Chapter 3. Under the No Action Alternative, the impacts from the proposed sanctuary designation would not be realized. For example, the No Action Alternative would prevent NOAA from implementing additional resource protections and access and permitting requirements that would impact human uses.

Under No Action, the Monument provides a number of social and economic benefits, through the promotion of cultural initiatives and Native Hawaiian access, maritime heritage, resource protection, scientific research, and education and outreach. National and international recognition of the area began in 1909, continuing through the designation of the Reserve followed by the Monument and UNESCO World Heritage recognition. Management of the Monument generates jobs, research funding, grant programs, and other direct economic benefits to the State. Access is permitted in PMNM for individuals and groups whose proposed activities meet the criteria of one of the six permit types. In addition, a main objective of the Monument co-trustees is to bring this culturally, ecologically, and historically significant place to the people through interactive media and community events.

While activities occurring within the MEA must remain consistent with the requirements of Presidential Proclamation 9478, there are no codified regulations, including permit requirements or access restrictions provided by Presidential Proclamation 9478.

5.3 Impacts of Alternative 1

This section describes the beneficial and adverse impacts from implementing Alternative 1, which includes the following components, described in detail in Chapter 3:

- 1) Sanctuary boundary.
- 2) Regulations and permitting process.
- 3) Sanctuary management plan and program support.

For the purposes of the analysis, the primary focus is on the impacts caused by the differences between Alternative 1 compared to existing management under the No Action Alternative.

5.3.1 Impacts on Laws and Existing Management

As stated in the purpose and need for the proposed action, alternatives must supplement and complement, rather than supplant, the existing Monument management structure. As such, the proposed regulations, permitting process, and sanctuary management plan have been developed to minimize impacts to the laws and existing management. Rationale for changes to these impacts are discussed below.

Beneficial Impacts on Laws and Existing Management

Under Alternative 1, regulations promulgated under the NMSA would largely be consistent with existing Monument regulations. Minor changes in the proposed regulations would remove discrepancies and gaps in prohibitions, regulated activities, and permitting across the PMNM

and MEA (see Section 3.4.2). Vessels conducting passage without interruption would be required to comply with new discharge restrictions in the area of the proposed sanctuary that overlaps with the MEA. Vessels wishing to conduct regulated activities within the area of the proposed sanctuary that overlaps with the MEA would be required to obtain a permit and adhere to all regulations and permit conditions, including installing VMS that remains on and working when in sanctuary waters. Extending the VMS requirement to the MEA **supports monitoring and enforcement**, and provides NOAA with a tool to track vessel activity to ensure permit compliance, provide information for USCG or other entities to know the location of an incapacitated vessel and react quickly, and manage sanctuary resources through spatial analysis of activities.

The scope and goal of management actions under Alternatives 1 would be similar to No Action. Both are guided by the same goals and objectives and permit criteria. The research, education and outreach, maritime heritage, and cultural resources programs are supported by the same staff and would operate consistently under all action alternatives. Ongoing maritime heritage and cultural resources programs would continue to add to the knowledge gained over the past two decades and continue to strive to uphold the sacred nature of Papahānaumokuākea. Current efforts to address the threats of climate change, invasive species, and marine debris would continue. The proposed sanctuary designation is not expected to increase the number of annual permits issued, or the level of vessel traffic or person-hours within the action area.

Possibly the most significant difference between No Action and Alternative 1 is the enactment of National Marine Sanctuary Program regulations (15 CFR part 922), allowing ONMS to supplement existing authorities through: 1) emergency regulations; 2) penalties; and 3) authorities to respond to and hold financially liable those responsible for destruction or loss of, or injury to sanctuary resources. Emergency regulations give ONMS the authority to implement immediate temporary regulations where necessary to prevent or minimize the loss or injury to a sanctuary resource. A penalty schedule provides law enforcement with a new tool for violations of sanctuary regulations, potentially improving compliance. The response cost and damage regulation make any person (or vessel) who destroys, causes the loss of, or injures any sanctuary resource liable for response costs and damages resulting from such destruction, loss, or injury. **The enactment of National Marine Sanctuary Program regulations at 15 CFR part 922** may have been effective for past events in PMNM, such as the vessel groundings described in Section 4.3.1 and the lost cargo containers in Section 4.6.2. In addition, funds collected from penalties and response costs and damages are available to conduct restoration for damaged resources and comparable resources within the sanctuary. **In addition, establishment of a national marine sanctuary would not diminish USFWS' authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act. Where the sanctuary overlays Midway Atoll NWR and Hawaiian Islands NWR, NOAA will implement the NMSA to provide supplemental authority to protect resources.**

These additional authorities provide ONMS with new tools to improve management and compliance, and address impacts to resources, providing a direct, long-term, moderate beneficial impact to laws and existing management, based on NOAA's experience with implementing these authorities.

Adverse Impacts on Laws and Existing Management

While NOAA is a member of the MMB and current management would remain largely unchanged, for activities in the MEA, Alternative 1 imparts a new management authority in addition to the authorities described in sections 3.2 and 4.2.2. **Co-trustees of the Monument may update the existing memorandum of agreement to reflect the addition of the proposed sanctuary.** These changes are anticipated to have negligible impacts on laws and management in the action area.

Under all of the action alternatives, NMSA Section 304(d) would require consultation for any federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource. This requirement applies to all federal agencies. Based on NOAA's experience administering NMSA Section 304(d), this requirement to engage in consultation is not likely to cause an adverse impact.

Summary of Impacts on Laws and Existing Management

NOAA has determined that implementing Alternative 1 would have **direct, long-term, moderate beneficial impacts** on laws and existing management.

5.3.2 Impacts on Physical Resources

Given the nature of the proposed action, most physical resources, including noise, air quality, geology, and view planes, will not be affected and are not analyzed. Potential impacts to water quality was analyzed, as it relates to vessel discharge, a proposed regulated activity. Habitat, which can be impacted by both natural events and human activity, has also been analyzed.

As noted in Section 5.1, the low level of activity and available data on impacts to physical resources requires a theoretical approach to potential but reasonably foreseeable impacts from future threats.

Beneficial Impacts on Physical Resources

Implementing Alternative 1 would benefit physical resources in the action area, addressing the threat of user violations by creating a stronger deterrent to permit and regulatory violations through the supplemental penalty authority specific to the proposed regulations, as well as providing a mechanism to conduct damage assessments and hold the permittee or vessel liable for response costs and damages resulting from such destruction, loss, or injury. Passage without interruption is known to be conducted by large container ships (Section 4.6.2) crossing through Areas To Be Avoided, with voluntary reporting. This partially documented activity poses a rare but significant risk to physical resources within the Monument, with minimal ability to hold vessels that accidentally or negligently run aground accountable. **Implementation of a penalty schedule, the ability to implement emergency regulations, and ONMS' damage assessment authority is expected to provide a direct, long-term, moderate beneficial impact to the physical resources of the proposed sanctuary, based on NOAA's experience with implementing these authorities.**

Under Alternative 1, NOAA would implement regulations and expand the existing permitting system to protect resources in the MEA. While the area of the proposed sanctuary that overlaps

with the MEA consists primarily of pelagic water overlying deep abyssal plains, numerous banks and seamounts occur throughout. These seamounts act as important habitats in primarily pelagic waters, attracting fish and other large predators that are supported by the increased productivity. In addition, recruitment of pelagic larval organisms, including corals, to isolated seamounts is often a rare event (Crochelet et al., 2020), which results in slower recovery of damaged habitat than nearshore habitats. Anchoring and the dragging of anchor chains, deployment of tethered equipment, and unregulated fishing, among other activities, can result in damage to habitat, scarring and reducing the complexity necessary to support biodiversity. In depths at which these seamounts occur, an anchor and other tethered equipment could drag across a huge area. Regulations, including the prohibition to alter the seabed by modification or placement of materials, except for scientific instruments in the area of the proposed sanctuary that overlap with the MEA, provide new protections for these limited and sensitive habitats. Under Alternative 1, access through permitting would allow for managers to review methodologies and monitor permittees, protecting these banks and seamounts. These measures would also protect alteration of the deep seabed of the MEA. While minimal user contact with the seafloor occurs or is anticipated in the area of the proposed sanctuary that overlaps with the MEA, these resources are rare and extremely vulnerable to disturbance. As such, implementing these new regulations in the Alternative 1 boundary area provides direct, long-term, minor benefit to physical resources of the MEA.

Under Alternative 1, discharge would be regulated for vessels conducting passage without interruption throughout the proposed sanctuary, extending the existing regulation from PMNM to the area of the proposed sanctuary that overlaps with the MEA. The regulation of vessel discharge would benefit water quality in the MEA, although given the pelagic nature of this vast area and low vessel presence, this benefit would be negligible related to most vessel activity. For example, container ships with only a few crew members generate minimal sewage and graywater. Conversely, cruise ships could impart a moderate adverse impact to sanctuary resources. A cruise ship with 3,000 people on board generates 150,000 gallons of sewage and greywater per day as well as hazardous wastes such as oily bilge water and bio-waste containing viruses (Ahmed, 2022). These vessels would now be prohibited from discharging anything other than approved marine sanitation device effluent, cooling water, and engine exhaust throughout the Alternative 1 boundary area. Discharge would continue to be regulated through permitting as is done under No Action, allowing for flexibility in managing discharge. For example, permit conditions for discharge would likely differ between a large research vessel and a Hawaiian sailing canoe, while still protecting sanctuary resources. This proposed regulation provides a direct, long-term, moderate benefit to water quality throughout the Alternative 1 boundary area.

Adverse Impacts on Physical Resources

Implementing Alternative 1 would produce no potential adverse impacts on physical resources because the proposed management measures are protective in nature, primarily providing regulations (e.g., discharge limitations) and enforcement deterrents (e.g., civil penalties for infractions) to limit impacts to the physical environment. In addition, existing regulations and the remote nature of the site effectively limit an increase in human and vessel presence.

Summary of Impacts on Physical Resources

Overall, NOAA determined that implementing Alternative 1 would have **direct, long-term, moderate beneficial impacts** on physical resources.

5.3.3 Impacts on Biological Resources

Biological resources include a diversity of shallow-water coral reef species, deep-water fish and invertebrates, and pelagic fish, as well as protected species of sea turtles, dolphins, whales, and the ʻiliihoholoikauaua. The co-trustees and partner agencies conduct active management for many of these species, with potential impacts from specific projects assessed through the Monument permitting system. The following analysis addresses how proposed management measures impact external threats, accidents, and permit and regulatory violations.

As noted in Section 5.1, the low level of activity and available data on impacts to biological resources requires a theoretical approach to potential but predictable impacts from future threats.

Beneficial Impacts on Biological Resources

Implementing Alternative 1 would benefit biological resources in the action area. Under Alternative 1, the proposed sanctuary boundary includes all marine waters starting at the shoreline of the Northwestern Hawaiian Islands and extending to the boundary of the U.S. EEZ. This is notable, as the potential for impact to biological resources is greater in the shallow areas of the proposed sanctuary. Further, threats and potential impacts are also higher where human presence is greatest. For example, the introduction and spread of non-indigenous species, accidental groundings, and general disturbance of the biological resources increase with increased human presence (Halpern et al., 2008). Kuaihelani and Hōlanikū experience the highest annual average of human presence, constituting 83% and 11% of the total presence in the proposed sanctuary, respectively (NOAA ONMS, 2020). While safeguards to protect biological resources exist under No Action, sanctuary designation offers additional benefits for the marine waters around Kuaihelani and Hōlanikū as well as around other islands and atolls. Based on NOAA's extensive experience in enforcing federal statutes in the marine environment, NOAA concludes that NMSA regulations may better inform users and dissuade user violations by creating a stronger deterrent to permit and regulatory violations through the supplemental penalty authority specific to the proposed regulations. Sanctuary designation would also provide a mechanism to impose liability for destruction, loss of, or injury to sanctuary resources. **Under Alternative 1, implementation of a penalty schedule, the ability to implement emergency regulations, and ONMS' damage assessment authority provides a direct, long-term, moderate beneficial impact to the biological resources of the Alternative 1 boundary area based on NOAA's experience with implementing these authorities.**

Illegal fishing incidents within PMNM, described in Chapter 4, resulted in significant fines (NOAA Office of General Counsel, 2020). Given the current lack of codified regulations, enforcement of domestic illegal fishing in the MEA does not carry the same penalties and may result only in a warning to violators. Under Alternative 1, law enforcement would be strengthened in the MEA, including the option to impose civil penalties throughout the

Alternative 1 boundary area, providing a direct, long-term, moderate beneficial impact to biological resources.

There are known and potential maritime heritage resources in the waters of the MEA. These underwater resources are often the only hard substrate in the MEA for dozens or hundreds of miles, and ecosystems and biological resources often build up around them. Disturbing these maritime heritage resources also disturbs these habitats and biological resources, which may not be protected from searching for, potentially damaging, or claiming recovery rights to wrecks or artifacts. Under Alternative 1, access restrictions would require these users to obtain a sanctuary permit, abide by permit conditions including accommodating a resource monitor, and provide reports on their activities. Under Alternative 1, these requirements would reduce the rare threat of user violations and accidents at these sites. As such, implementing these new regulations in the Alternative 1 boundary area provides direct, long-term, minor benefit to biological resources at these deep-water isolated sites of the MEA.

While no threats to species protected under the ESA, MMPA, or the MBTA from past permitted activities have been identified (NOAA ONMS, 2020), Presidential Proclamation 9478 explicitly notes the importance of the MEA for the protection of endangered species. NMSA regulations would provide additional statutory authority to ensure future activities in the MEA are consistent with these statutes to achieve this goal of the Proclamation. The additional protection measures provided under Alternative 1 provide negligible impacts for protected species.

Adverse Impacts on Biological Resources

While all permitted activities cause disturbance to wildlife, through vessel noise, placement of equipment and instruments, and general human presence, the number of permitted activities and people operating in the Alternative 1 boundary area has been falling over the past 17 years (NOAA ONMS, 2020). As the Monument is already globally-renowned, sanctuary designation is unlikely to increase research and other permitted activities. While any increase in permitted activity would be speculative, the potential impact on biological resources would likely be short-term and negligible.

Summary of Impacts on Biological Resources

Overall, NOAA determined that implementing Alternative 1 would have **direct, long-term, moderate beneficial impacts** on biological resources.

5.3.4 Impacts on Cultural and Historical Resources

Kānaka ʻŌiwi view Papahānaumokuākea as a biocultural seascape, where the sea, land, and other components within are integral to their cultural heritage (Kikiloi, 2010). As such, direct impacts described for physical and biological resources are relevant to the cultural resources analysis but will not be repeated. As described in the analysis of the No Action Alternative, cultural heritage is an important focus of Monument management, ensuring use of appropriate protocols, employing biocultural resource monitors on permitted activities, and numerous other measures to protect tangible and intangible cultural resources. These efforts, described below, would continue throughout sanctuary waters under Alternative 1.

Numerous maritime heritage resources (including World War II American and Japanese military vessels and aircraft) occur in unknown locations across the deep northwestern waters of the Monument. Effects of Alternative 1 on maritime resources are described below.

Beneficial Impacts on Cultural and Historical Resources

Cultural Resources

As described in Section 4.5.1, access to and interaction with Papahānaumokuākea directly affects the living Native Hawaiian culture and its people. This includes spiritual well-being, survival of religious and cultural practices, and preservation of sites of historical importance. This cultural and historic heritage was further emphasized in 2010 by UNESCO World Heritage designation, and is integrated into Monument management, ensuring that permitted activities respect, acknowledge, and care for all biocultural resources and the perpetuation of Native Hawaiian culture. Sanctuary designation under Alternative 1 ensures that this perspective continues to be achieved in the MEA through regulations, a permitting system, and guidance of cultural practitioners. The CWG would continue to review all permit applications, ensuring that activities proposed in the area of the proposed sanctuary that overlaps with the MEA would be subject to cultural goals and objectives, promote Native Hawaiian knowledge, expand community involvement, and encourage proper cultural respect by all. Under Alternative 1, the assurance of the perpetuation of Native Hawaiian culture throughout the Alternative 1 boundary area would have a minor beneficial impact on cultural resources in the MEA.

The care for Native Hawaiian cultural resources and responsibility for historic properties merge in the heritage management of Papahānaumokuākea. NOAA's Maritime Heritage Program would assist, where appropriate and mutually beneficial, with protection of cultural resources in the proposed sanctuary's marine environment as part of preservation efforts defined by NHPA for all heritage resources under ONMS management. The Maritime Heritage Program would maintain an inventory of historic properties as defined and required by NHPA. This collaborative approach addresses the comprehensive preservation of all public heritage (cultural, archaeological, and historical) resources managed by ONMS in a manner consistent with NHPA and with the values of sanctuary management:

- Kuleana: respect for Hawaiian cultural foundations throughout all resource preservation initiatives.
- Mālama: stewardship of the broad range of tangible and intangible heritage resources.
- Pono: comprehensive inventory and preservation efforts for all (inclusive of Hawaiian and western).
- ʻImi ʻike: the braiding of traditional and western knowledge in the protection of heritage resources.¹¹

Permit criteria, cultural awareness training, and implementation of BMPs included under No Action would be maintained under Alternative 1, addressing concerns raised during the NHPA

¹¹ The English translations and interpretations of these Hawaiian words do not completely describe or define the unique meanings of the Hawaiian language or the qualities and demonstrated actions of the Hawaiian cultural value system.

Section 106 consultation process and in *E Ho'i I Ke Au A Kanaloa*, and resulting in no difference in the protection of cultural resources, including potential adverse effects of research and other activities on the integrated cultural, spiritual, and ecological health of Papahānaumokuākea (Nohopapa Hawai'i 2023). Under Alternative 1, the continuation of integrating cultural heritage into management, currently being practiced by Monument co-trustees, would continue to provide a minor beneficial impact.

Maritime Heritage Resources

The proposed sanctuary designation and the proposed regulations provide protection for maritime heritage resources, specifically the military vessels and aircraft from the Battle of Midway. The NMSA provides supplemental protection with substantial penalties for harm to maritime heritage resources. Historic properties with both known and unknown locations within the MEA may not be protected from private ventures searching for, potentially damaging, or claiming recovery rights to wrecks or artifacts. Alternative 1 would supplement management and protection of maritime heritage resources by: 1) providing long-term federal protection of heritage properties under NMSA; 2) addressing current management and protection ambiguities for heritage properties within both PMNM and the MEA (e.g., Japanese sunken military aircraft carriers, cruisers, and aircraft located beyond the 24-mile contiguous zone); and 3) ensuring projects exploring for, characterizing, and documenting sanctuary resources are permitted and include appropriate oversight, enforceable conditions, and reporting requirements. These additional protective measures within the Alternative 1 boundary area provide a direct, long-term, moderate beneficial impact for maritime heritage resources, primarily for those within the MEA.

Under Alternative 1, NOAA would protect underwater maritime heritage resources in the proposed sanctuary from injury and disturbances through regulations and implementation of a long-term, comprehensive sanctuary management plan for both PMNM and the MEA. Sanctuary regulations in the area that overlaps with the MEA would provide protections through restricted access and prohibitions on alteration of the seafloor, anchoring, and the removal of any sanctuary resource. Future proposed projects would only be authorized if they meet the goals and objectives of the sanctuary and would be subject to permit criteria and requirements of any equipment used in operations. NOAA's proposed regulations would complement existing federal and State regulations to increase preservation and provide uniform protection for all underwater maritime resources throughout the sanctuary. These regulations would be complemented by management principles that emphasize an in-situ management approach for the long-term protection of site information and integrity, as well as other preservation methods and activities outlined in the ONMS policy guidance document *Monitoring and Management of Tangible Maritime Heritage Resources* (NOAA ONMS, 2021). Under Alternative 1, management and resource expertise brought through designation and new regulations in the area of the MEA provide a direct, long-term, moderate beneficial impact for maritime heritage resources.

Adverse Impacts on Cultural and Historical Resources

Cultural Resources

Certain activities could adversely affect the cultural and spiritual value of Papahānaumokuākea. During NHPA Section 106 consultation meetings, as well as through the State’s CIA process, constituents raised concerns regarding the potential adverse effects from scientific research and non-commercial fishing on the sacredness of Papahānaumokuākea. While an activity may not generate significant impacts to natural resources and may meet the established permit criteria and goals and objectives of the sanctuary, the activity may still be regarded as inappropriate, damaging, and disrespectful to some members of the Native Hawaiian community. Natural resources are cultural resources, and the entire area encompasses a connection to the genealogy, history, and spirituality of the Hawaiian people (Kikiloī 2012). Many of those consulted for the CIA believe a broader cultural viewpoint is necessary during the permit approval process (Nohopapa Hawai’i, 2023). Under both Alternative 1 and the No Action Alternative, the MMB and relevant working groups work to address specific concerns as part of the permitting process. These procedures include but are not limited to 1) required cultural briefings for permitted individuals, and 2) permit BMPs for accessing sensitive areas such as marine areas around Nihoa and Mokumanamana, ultimately reducing the potential of adverse impacts. As cultural resource management is effectively unchanged from No Action, this ongoing concern would be no different from No Action.

Maritime Heritage Resources

Maritime heritage activities, including those conducted or permitted by ONMS, are generally non-invasive in nature (i.e., they do not disturb the seafloor, alter wrecks, or have other lasting impacts) and do not pose a risk of damaging these resources. PMNM BMP #017 (Appendix B) would be extended to the area of the MEA for future maritime heritage projects. Field work consists of 1) locating maritime heritage resources within the sanctuary; 2) identifying these historic properties; 3) assessing their condition and stability; and 4) providing protective measures. ONMS practices in situ management, identified by the Advisory Council on Historic Preservation as a protective measure (NOAA ONMS, 2021). As such, implementing Alternative 1 would produce no potential adverse impacts on maritime heritage resources.

Summary of Impacts on Cultural and Historical Resources

Overall, NOAA determined that implementing Alternative 1 would have a **minor beneficial impact** on cultural resources and **direct, long-term, moderate beneficial impacts** on maritime heritage resources.

5.3.5 Impacts on Socioeconomic Resources, Human Uses and Environmental Justice

This section evaluates the impacts of implementing Alternative 1 related to socioeconomics, environmental justice, access, and uses. In evaluating this alternative against the criteria above, the following determinations were made:

- Alternative 1 would not change the population of the sanctuary community. Sanctuary designation is unlikely to increase the amount of visitation, research, or other activities

within the boundary of the proposed sanctuary. While the Monument is already internationally recognized, Alternative 1 would result in a sanctuary designation that may increase the amount of visitation to interpretive centers, exhibits, and other educational opportunities outside of the area of the proposed sanctuary. These opportunities would result in negligible changes for socioeconomic resources across Hawai‘i.

- Alternative 1 would not lead to any negative impacts on underserved and underrepresented communities. In fact, the establishment of a sanctuary in this region is likely to positively impact underserved and underrepresented communities, as a result of actions proposed in the sanctuary management plan. Examples include: working with Native Hawaiian groups to increase their participation and engagement; and working with local and regional organizations to promote biological, cultural, and historical value of the sanctuary through education and outreach activities and events.
- Alternative 1 is expected to result in long-term beneficial impacts on Hawai‘i residents (including low-income and minority populations), as well as on the health and well-being of children. The protection of, and access to, the area are considered to be of major importance for mental well-being and health of the Native Hawaiian community (Kikiloi, 2006, Kikiloi, 2010, Kikiloi et al., 2017).
- Alternative 1 would not conflict with federal, State or local plans, policies, or regulations, including county land use plans. The proposed sanctuary is intended to offer additional resource protection, consistent with existing federal and State policy.
- Under Alternative 1, there would be no anticipated change over No Action in the number of permits issued, positions for staff of the co-trustee agencies, or total operational budget, because permits are required under current management and an increase in permitted activity is not anticipated under sanctuary designation.

The above five determinations are the same for alternatives 2 and 3 and will not be repeated in those sections.

Beneficial Impacts on Socioeconomic Resources and Human Uses

Understanding the ecological, cultural and historic significance of this fragile area, the Monument co-trustees have always worked to bring the place to the people. Designation as a national marine sanctuary and implementing the strategies outlined in the sanctuary management plan would draw visitors and tourists to the learning centers associated with Papahānaumokuākea, enhancing their experiences in the Hawaiian Islands through their enjoyment from outreach and interpretive services. Alternative 1 also would continue to provide benefits to those permittees who experience the sanctuary through perpetuation of Native Hawaiian practices and who depend on a functioning, healthy, and resilient ecosystem for cultural practices and livelihoods.

Proposed discharge regulations would help reduce potentially harmful pollutants such as oil, sewage, and other hazardous materials from injuring sanctuary resources. Enhancing management through the expanded permit system and measures to address damages to sanctuary resources would increase protection. Under Alternative 1, the increased protection of

resources is expected to result in indirect, long-term, negligible impacts on tourism, and direct, long-term, minor beneficial impacts for permitted uses of the sanctuary.

While the scientific and conservation value of Papahānaumokuākea has been apparent to researchers, conservationists, and educators for decades, sanctuary designation may impart a minor beneficial impact on research and education, in addition to minor positive socioeconomic impacts, if designation spurs novel research and education projects. Designation may enhance support for educational activities inside and outside Papahānaumokuākea, including teacher and student training and outreach through interpretive centers, exhibits, and multiple types of media.

Sanctuary designation can provide alternative sources of funding to support education initiatives and programs in Hawai‘i (outside the waters of the proposed sanctuary), including from friends groups, the National Marine Sanctuary Foundation, and other non-profit organizations, including the Ocean Exploration Trust, a close collaborator of the Monument. Friends groups are typically charitable, non-profit organizations whose mission is geared to support a specific marine protected area. The National Marine Sanctuary Foundation, who is currently partnering with the Monument at the Mokuāpapa Discovery Center, is the chief national charitable partner supporting the work and mission of the National Marine Sanctuary System. The National Marine Sanctuary Foundation is authorized under the NMSA and has generated more than \$12 million for programs and initiatives across the system in research, conservation, education, citizen science, outreach, and community engagement. The National Marine Sanctuary Foundation also advocates for policymakers to strengthen the protection of the sanctuary system. These additional funding sources provide opportunities to develop new connections and strengthen the public’s appreciation of this area, providing an indirect, long-term, minor beneficial impact to socioeconomic resources.

Adverse Impacts on Socioeconomic Resources and Human Uses

Alternative 1 would regulate activities in the area of the proposed sanctuary that overlaps with the MEA. Activities with no nexus to the proposed permit categories, or activities that do not meet the permit findings criteria, such as tourism and aquaculture, would likely not be approved under Alternative 1. While it is speculative to anticipate future opportunities in the area of the proposed sanctuary that overlaps with the MEA, designation of the Alternative 1 boundary area represents a potential indirect, long-term, minor adverse impact on socioeconomic resources.

The permit process under No Action, required for activities within PMNM, would be expanded to the area of the MEA under Alternative 1. While eight permits through Letters of Authorization have been issued in the MEA since 2016, all but one permittee has conducted activities in both PMNM and the MEA. As such, seven of these eight permittees experienced no additional burden in cost or labor to apply for and meet permit requirements. For any additional permits issued in the area of the proposed sanctuary that overlaps with the MEA, the annual wage burden of the information collection for permits to a user has been estimated to be \$549.30 and five hours of labor for a general permit, and \$1,224.90 and 10 hours of labor for a special ocean use permit. Therefore, expansion of a permitting process to the area of the proposed sanctuary that overlaps with the MEA would impose only minor administrative costs and project delays, but would not result in significant effect on the operations of permit users. This administrative burden already

exists for activities in PMNM under No Action, and presents a direct, long-term, negligible impact on human uses in the MEA.

Under the existing Monument management framework, as a condition of a permit, permittees are required to have a NOAA OLE type-approved VMS on board when operating within the PMNM. The proposed rule includes this requirement throughout the proposed sanctuary, meaning it would be a new requirement in areas that overlap with the MEA. The cost of a VMS unit is \$3,150. Annualized over 3 years, the life of the unit, the cost per year is \$1050.00 per year with an additional \$100 in annual maintenance costs, and \$192 in VMS report transmission costs (\$1.28 daily cost based on a vessel averaging 150 days per year in the Monument). Many government and large research institutions have vessels already equipped with a VMS unit. The proposed rule is not expected to result in an increase in the number of permit requests, and the majority of users operate in both the area of the proposed sanctuary that overlaps with PMNM and the MEA. This administrative burden already exists for activities in PMNM under No Action, and presents a direct, long-term, negligible impact on human uses in the MEA.

The establishment of new discharge regulations in the area of the proposed sanctuary that overlaps with the MEA would provide an overall beneficial impact by limiting pollutants and the potential introduction of invasive species (see Section 5.3.1), but may represent a burden to vessels operating within the sanctuary. Vessels without a USCG-approved marine sanitation device are currently required by permit condition to transit outside PMNM (up to 100 nmi round trip) to discharge their effluent. Under Alternative 1, these vessels may be required to transit beyond the boundary of the sanctuary (up to 400 nmi round trip) to discharge their effluent. Conversely, vessels could be retrofitted with an approved marine sanitation device to avoid this permit condition. The cost to retrofit a vessel with either a holding tank or a marine sanitation device varies depending on the vessel, with installing a holding tank in a recreational vessel estimated at \$4,000, and the cost to retrofit a large commercial vessel with a Type III marine sanitation device estimated at \$150,000 (WA Department of Ecology, 2016). This is an unlikely cost for most large vessels that are originally built with these systems, while discharge permit conditions could be tailored by sanctuary managers for users with small vessels and small crews to avoid this expense while still protecting water quality in the sanctuary. As noted above, most past permittees have either worked solely within the PMNM or in both the PMNM and the MEA, requiring compliance with the existing regulation. Only a single large research vessel has requested a Letter of Authorization to operate solely in the MEA, and this vessel was already equipped with an approved marine sanitation device. Due to the low number of potential permittees affected, and the ability for flexible permit conditions for permittees with small vessels and crew, this represents a direct, long-term, minor adverse impact to human uses in the Alternative 1 boundary area.

Under Alternative 1, sustenance fishing in PMNM would continue to be allowed as a term or condition of a permit and would be newly managed by permit in the MEA. Sustenance fishing allowed as a condition of a permit has been a minor activity over the past 15 years, with a total of 35 fish reported caught and consumed (NOAA ONMS, 2020). In order to sustenance fish in the area of the proposed sanctuary that overlaps with the MEA, permittees would need to request the ability to sustenance fish when applying for a general or special use permit, and abide by permit-specific requirements, including reporting number of people who fish, number and

species of fish caught, and gear used. Under Alternative 1, this management measure presents a direct, negligible impact to sanctuary users, specifically for permittees operating in the portion of the proposed sanctuary that overlaps with the MEA.

Summary of Impacts on Socioeconomic Resources and Human Uses

Overall, NOAA determined that implementing Alternative 1 would have **indirect, minor adverse impacts** on socioeconomics and human uses.

5.3.6 Summary of Impacts on All Resources for Alternative 1

Overall, NOAA determined that implementing Alternative 1 would have **direct, long-term, moderate beneficial impacts** for laws and management, physical, biological, and maritime heritage resources, **direct, long-term, minor beneficial impacts** for cultural resources, and **indirect, long-term, minor adverse impacts** for socioeconomic resources and human uses for the largest proposed sanctuary area of the three alternatives.

5.4 Impacts of Alternative 2

Alternative 2 would designate a sanctuary in the marine environment from the shoreline of the islands and atolls to 50 nmi, while the MEA would continue to be managed as in No Action. No expansion of the permit system and no new sanctuary regulations in the MEA would be promulgated. Under Alternative 2, Presidential Proclamation 9478 would continue to guide management in the MEA. Alternative 2 would implement the sanctuary management plan, while management of non-commercial fishing in the expansion area would remain under the purview of NOAA Fisheries. The impacts to the area designated as a sanctuary (0–50 nmi, PMNM) would be the same as under Alternative 1, while the impacts to the area not designated as a sanctuary (50–200 nmi, MEA) would be the same as No Action. NOAA would not have permitting regulations in the MEA. Specific details are provided in the analyses for those alternatives, with only summaries for each of the resources below.

5.4.1 Impacts to Laws and Existing Management

Beneficial Impacts on Laws and Existing Management

Under Alternative 2, the laws and management would closely resemble that of No Action. Regulations would only be slightly altered from what currently exists for PMNM, as described in Chapter 3. As described in Alternative 1, management would be largely consistent with the existing management framework for the Monument. Relative to No Action, Alternative 2 only provides the benefits of Alternative 1 for PMNM. The National Marine Sanctuary Program regulations (emergency regulations, penalties, and damage assessment authority) would be valid for PMNM, where most of the permitted activities occur, providing enhanced enforcement capabilities and authority to impose liability for destruction, loss of, or injury to sanctuary resources. These additional authorities provide a direct, long-term, minor beneficial impact on laws and existing management for the Alternative 2 boundary area.

Permittees would see little to no difference in application requirements, permit review, or permit conditions compared to No Action. NOAA would not have **permit regulations** for the area of the MEA. Because the MEA is excluded, neither this benefit nor any other benefits described

in Alternative 1 would carry over to the pelagic realm of the MEA. This limits the benefit of sanctuary designation in Alternative 2 relative to Alternative 1.

Adverse Impacts on Laws and Existing Management

As described under Alternative 2, current management would remain largely unchanged. However, the addition of NMSA could require the co-trustees of the Monument to develop a new memorandum of agreement to address this added management authority. Under Alternative 2, there is a negligible adverse impact on laws and existing management.

Summary of Impacts on Laws and Existing Management

Given the exclusion of the MEA from the Alternative 2 boundary area, NOAA determined that implementing Alternative 2 would have only **direct, long-term, minor beneficial impacts** on laws and existing management.

5.4.2 Impacts on Physical Resources

Beneficial Impacts on Physical Resources

The resource protection measures provided with sanctuary designation, including the ability to impose liability for destruction, loss of, or injury to sanctuary resources and providing natural resource damage assessment authorities for destruction, loss of, or injury to any sanctuary resource; emergency regulations; and law enforcement's capacity to implement a penalty schedule and impose penalties for permit and regulatory violations provide the beneficial impacts described in Alternative 1. These authorities provided by NMSA are most valuable in PMNM, particularly for the shallow reef habitat where natural resources are highest and threats described in the No Action analysis have the greatest potential for impact. These additional protections provide the direct, long-term, moderate beneficial impacts on physical resources described in Alternative 1 for the Alternative 2 boundary area, based on NOAA's experience with implementing these authorities.

The exclusion of the MEA from the Alternative 2 boundary area reduces the beneficial impact of protection for physical resources (e.g., water quality and seamount habitat resources) compared to Alternative 1. Similarly, the NMSA authorities (e.g., penalty schedule and damage assessment) would not apply to physical resources of the MEA, providing less protection than Alternative 1. However, as human use and ecological threats to physical resources are much lower in the MEA than in the shallow waters of PMNM, sanctuary designation still imparts a moderate benefit to physical resources within the Alternative 2 boundary area.

Adverse Impacts on Physical Resources

Two factors limit the adverse impact to physical resources. First, threats to physical resources beyond the Alternative 2 boundary area within the MEA are limited because the area is almost exclusively deep-water habitat, as described in Section 4. Second, the low activity level lessens the potential for human impacts, as indicated by the issuance of a single permit (via letter of authorization from USFWS) since 2016 for a project operating solely within the MEA.

Implementing the proposed management measures within the Alternative 2 boundary area would produce no potential adverse impacts on physical resources as they are protective in

nature, primarily providing regulations (e.g., discharge limitations) and enforcement deterrents (e.g., penalties for infractions). In addition, existing regulations and the remote nature of the proposed sanctuary effectively limit an increase in human/vessel presence.

Summary of Impacts on Physical Resources

Overall, NOAA determined that implementing Alternative 2 would have **direct, long-term, moderate beneficial impacts** on physical resources.

5.4.3 Impacts on Biological Resources

Beneficial Impacts on Biological Resources

The resource protection measures provided with sanctuary designation, including the ability to impose liability for destruction, loss of, or injury to sanctuary resources; provide natural resource damage assessment authorities for destruction, loss of, or injury to any sanctuary resource; and law enforcement's capacity to implement a penalty schedule and impose penalties for permit and regulatory violations, provide the beneficial impacts for biological resources described in Alternative 1. These authorities provided by NMSA are most valuable in the shallow reef habitat of PMNM, where natural resources are highest and identified threats, particularly vessel groundings, marine debris, and other natural and human disturbance have the greatest potential for impact to corals and other benthic organisms. The penalty schedule provides law enforcement with a new and effective tool, which could deter violations of regulations designed to protect the sanctuary's biological resources. These impacts, detailed in Alternative 1, would provide direct, long-term, moderate benefits for the more vulnerable nearshore biological resources within the Alternative 2 boundary area, but would not benefit the waters of the MEA, based on NOAA's experience with implementing these authorities.

Under Alternative 2, biological resources of the MEA would receive the same protections as No Action, including the Monument management framework and prohibitions and regulations described in Presidential Proclamation 9478. As noted above, this limits the overall effectiveness of the sanctuary designation as compared to Alternative 1. However, permitted activity levels in the MEA has been less than in PMNM and biological resources are subject to fewer and less intense threats. Therefore, Alternative 2 maintains much of the beneficial impacts on biological resources, which still imparts a moderate beneficial impact.

Adverse Impacts on Biological Resources

As described in Alternative 1, the proposed action primarily provides additional protections, which impart no adverse impacts to biological resources. Under Alternative 2, any increase in permitted activity due to the increased visibility from a sanctuary designation would be speculative, and any impacts would likely be short-term and negligible.

Summary of Impacts on Biological Resources

Overall, NOAA determined that implementing Alternative 2 would have **direct, long-term, moderate beneficial impacts** on biological resources.

5.4.4 Impacts on Cultural and Historical Resources

Beneficial Impacts on Cultural and Historical Resources

As noted in both the No Action and Alternative 1 analysis, the integration of cultural heritage and awareness will likely remain a high management priority under No Action and the alternatives, building on the efforts made over the past two decades. Most of the beneficial impacts described for maritime heritage resources were for resources found in the MEA, and these would not carry over under Alternative 2, as the MEA is excluded under this boundary alternative. As such, Alternative 2 would provide no beneficial impacts for cultural resources and negligible impacts for historical resources within the Alternative 2 boundary area.

Adverse Impacts on Cultural and Historical Resources

There are no adverse impacts on cultural and historical resources compared to No Action.

Summary of Impacts on Cultural and Historical Resources

Overall, NOAA determined that implementing Alternative 2 would have **no impact** on cultural resources and **direct, long-term, negligible impacts** on maritime heritage resources.

5.4.5 Impacts on Socioeconomic Resources, Human Uses, and Environmental Justice

In general, impacts to socioeconomic resources do not change due to boundary configurations. Sanctuary designation provides administrative and budget stability and public exposure that may attract tourists and resource users, irrespective of the three boundary alternatives. The impacts on human uses are altered based on the additional regulatory aspects, which are fully described under No Action and Alternative 1. Impacts related to environmental justice are the same as those described for Alternative 1. Relevant impacts are mentioned below.

Beneficial Impacts on Socioeconomic Resources and Human Uses

Alternative 2 would provide the same socioeconomic benefits as described in Alternative 1, including potential increases in education and outreach efforts, potential economic gains from sanctuary friends groups, and training and development of a workforce in conservation, protection, and restoration. This would provide an indirect, long-term, minor beneficial impact on socioeconomic resources.

Adverse Impacts on Socioeconomic Resources and Human Uses

The minor adverse impacts described in Alternative 1 would not apply to Alternative 2, as they are related to new operational requirements (i.e. VMS requirements and discharge restrictions) of the MEA, and exist under No Action for the Alternative 2 boundary area. As such, Alternative 2 imparts no adverse effects on socioeconomic resources and human uses.

Summary of Impacts on Socioeconomic Resources and Human Uses

Overall, NOAA determined that implementing Alternative 2 would have an **indirect, long-term, minor beneficial impact** on socioeconomic resources and human uses.

5.4.6 Summary of Impacts for Alternative 2

Overall, for the areas of the proposed sanctuary that overlaps PMNM, NOAA determined that implementing Alternative 2 would have **direct, long-term, minor beneficial impacts** on laws and management, **direct, long-term, moderate beneficial impacts** on physical and biological resources, **no impact** on cultural resources, **negligible impacts** on maritime heritage resources, and **direct, long-term, minor beneficial impacts** on socioeconomic resources and human uses. The beneficial impact is reduced compared to Alternative 1.

5.5 Impacts of Alternative 3

Alternative 3 would designate a sanctuary in the marine environment from the shoreline of the islands and atolls seaward to 200 nmi, excluding the marine environment within the Midway Atoll NWR and Hawaiian Islands NWR. The seaward boundary of this alternative is the same as that of Alternative 1. The inner boundary of this alternative is the seaward boundary of all NWR waters of Papahānaumokuākea. NWR waters would be managed as in No Action, with remaining proposed sanctuary waters managed as in Alternative 1. Relative to No Action, Alternative 3 imparts the same beneficial and adverse impacts of Alternative 1, except within NWR waters, where no benefits of sanctuary designation will be realized. The impacts analysis provided in Alternative 1 for the areas seaward of the NWR boundary will not be repeated.

5.5.1 Impacts on Laws and Existing Management

The exclusion of refuge waters in Alternative 3 creates a boundary division across a continuous ecosystem where various activities occur on both sides of this boundary, including conservation and management, research, and Native Hawaiian practices. These permitted activities occur and would continue to be conducted within and outside of NWR waters. The impacts to laws and management relate to the ambiguity that would result from activities occurring across this boundary. As noted above, the impacts seaward of the NWR boundaries are identical to those described in Alternative 1.

Beneficial Impacts on Laws and Existing Management

Under Alternative 3, laws and management would closely resemble No Action. Regulations would only be slightly altered from what currently exists for PMNM, as described in Chapter 3. As described in the analysis for Alternative 1, management would be largely consistent with the existing management framework for the Monument. Regulations and permits for the area of the proposed sanctuary that overlaps with the MEA would benefit laws and management over No Action. NOAA determined that Alternative 3 would impart minor beneficial impacts on laws and existing management.

Adverse Impacts on Laws and Existing Management

Hawaiian Islands NWR waters overlap but do not fully encompass the Special Preservation Areas of the Monument and the Areas To Be Avoided of the PSSA. The Special Preservation Areas are discrete, biologically important areas that were designated to reduce concentrations of uses that could result in declines in species populations or habitat, to reduce conflicts between uses, and to protect areas that are critical for sustaining important marine species or habitats.

The authorities to impose liability for destruction, loss of, or injury to sanctuary resources and provide natural resource damage assessment for destruction, loss of, or injury to any sanctuary resource provided through sanctuary designation could be complicated under Alternative 3 due to the ambiguity of the Hawaiian Islands NWR boundary. As discussed in Section 2.3.3, ongoing communication and collaboration between the State and USFWS have not yet resulted in an agreed-upon seaward boundary for the Hawaiian Islands NWR. This is particularly relevant in these shallow waters where anchor damage, vessel groundings, and damages from identifiable marine debris are most likely to happen. Further, the penalty schedule provided by the NMSA is a strong deterrent against illegal activities, and implementation of this deterrent would be similarly complicated for actions occurring across the Hawaiian Islands NWR boundary, which is not agreed upon by the managing agencies, which would also be the landward boundary for the proposed sanctuary. Under Alternative 3, potential ambiguity of where NMSA regulations can be enforced, specifically within and adjacent to the Hawaiian Islands NWR, presents a direct, long-term, moderate adverse impact on laws and existing management.

Under Alternative 3, National Marine Sanctuary Program regulations (emergency regulations, penalties, response costs, and damages) would not be applicable in Midway Atoll NWR. As the Midway Atoll NWR has an unambiguous boundary that encompasses a cohesive ecosystem, including all near shore and adjacent deeper reefs of the atoll, individually-permitted activities are more likely to occur within the NWR boundary and regulations would be consistent. As such, exclusion of Midway Atoll NWR from sanctuary designation does not impart an adverse impact on the laws and management within the Alternative 3 boundary area.

Summary of Impacts on Laws and Existing Management

NOAA determined that implementing Alternative 3, specifically by excluding the Hawaiian Islands NWR and to a lesser extent the Midway Atoll NWR, would have **direct, long-term, minor adverse impacts** on laws and existing management.

5.5.2 Impacts on Physical Resources

The impacts to the area designated as a sanctuary would be the same as under Alternative 1, while the impacts to the areas not designated as a sanctuary would be the same as No Action, for both Midway Atoll NWR and Hawaiian Islands NWR.

Beneficial Impacts on Physical Resources

Alternative 3 provides the same beneficial impacts for physical resources of the area of the sanctuary that overlaps with the MEA (e.g., water quality and seamount habitat resources) as described for physical resources of Alternative 1. Similarly, the NMSA authorities (i.e., the ability to impose liability for destruction, loss of, or injury to sanctuary resources and providing natural resource damage assessment authorities for destruction, loss of, or injury to any sanctuary resource; **emergency regulations**; and law enforcement's capacity to impose penalties for permit and regulatory violations) would apply to physical resources of the MEA and much of the waters on PMNM. However, the Alternative 3 boundary area excludes the shallow reef habitat of the NWRs, where natural resources are highest and threats described in the No Action analysis have the greatest potential for impact. Because human use and ecological threats to physical resources are much higher in the shallow waters of PMNM and the NWRs, and this alternative

would limit NOAA's ability to respond to these threats in shallow waters, the sanctuary designation imparts only a minor benefit on physical resources within the Alternative 3 boundary area.

Adverse Impacts on Physical Resources

Implementing Alternative 3 would produce no potential adverse impacts on physical resources because the proposed management measures are protective in nature, primarily providing regulations (e.g., discharge limitations) and enforcement deterrents (e.g., penalties for infractions) to limit impacts to the physical environment. In addition, existing regulations and the remote nature of the site effectively limit an increase in human and vessel presence.

Summary of Impacts on Physical Resources

As physical resources in the shallow-waters of the NWRs would be afforded the same protections as No Action, while resources seaward of these waters would benefit from additional protections, NOAA determined that implementing Alternative 3 would have **direct, long-term, minor beneficial impacts** on physical resources.

5.5.3 Impacts on Biological Resources

The impacts on biological resources for the area designated as a sanctuary would be the same as under Alternative 1.

Beneficial Impacts on Biological Resources

The resource protection measures provided with sanctuary designation, including damage assessment authority, emergency regulations, and law enforcement's capacity to impose penalties for permit and regulatory violations are most valuable in shallow reef habitat, where natural resources are highest and identified threats, particularly vessel groundings, marine debris, and other natural and human disturbance have the greatest potential for impact to corals and other marine life. The enhanced enforcement capability to issue penalties for regulatory and permit condition infractions under the NMSA, an important deterrent for violators, would be unavailable for activities within NWR waters under Alternative 3. Because NWR waters are excluded in this alternative, neither these benefits nor any other benefits described in Alternative 1 would carry over to these excluded areas. Due to these limitations, Alternative 3 would only provide direct, long-term, minor beneficial impacts on biological resources within the Alternative 3 boundary area.

Adverse Impacts on Biological Resources

Implementing Alternative 3 would produce no potential adverse impacts on biological resources because the proposed management measures are protective in nature, primarily providing regulations and enforcement deterrents to limit impacts to biological resources.

Summary of Impacts on Biological Resources

NOAA determined that implementing Alternative 3 would have **direct, long-term, minor beneficial impacts** on biological resources of the proposed sanctuary.

5.5.4 Impacts on Cultural and Historical Resources

Direct impacts described for physical and biological resources are relevant to the cultural resources analysis but are not repeated. As described in the No Action analysis, cultural heritage is an important focus of Monument management, ensuring use of appropriate protocols, employing resource monitors on permitted activities, and numerous other measures to protect tangible and intangible cultural resources. These efforts would be maintained within and outside sanctuary waters under Alternative 3.

Regulatory protection of maritime heritage resources within the NWRs is the same as No Action, while protection of maritime resources in sanctuary waters would be the same as described under Alternative 1. Effects of Alternative 3 on maritime resources are described below.

Beneficial Impacts on Cultural and Historical Resources

As cultural protocols would extend to the MEA as described in Alternative 1, Alternative 3 imparts a minor beneficial impact on cultural resources.

As described in Alternative 1, the NMSA provides supplemental protection to maritime heritage resources by requiring sanctuary permits for projects exploring these resources. These impacts, detailed in Alternative 1, would benefit the area of the MEA, but would not benefit the waters of the Midway Atoll and Hawaiian Islands NWRs. Under Alternative 3, maritime heritage resources in the NWRs would receive the same level of protection as No Action. Specifically, maritime heritage resources are well protected by existing statutory and regulatory protections, including the Sunken Military Craft Act as well as a Monument permit system.

Adverse Impacts on Cultural and Historical Resources

There are no adverse impacts on cultural and historical resources compared to No Action.

Summary of Impacts on Cultural and Historical Resources

Alternative 3 would have a **minor beneficial impact on cultural resources**, and a **direct, long-term, moderate beneficial impact on maritime heritage resources**.

5.5.5 Impacts on Socioeconomic Resources, Human Uses, and Environmental Justice

In general, most impacts to socioeconomic resources do not change due to boundary configurations. Sanctuary designation provides administrative and budget stability and public exposure that may attract tourists and resource users, irrespective of the three boundary alternatives. The impacts on human uses are altered based on the additional regulatory aspects, which are fully described under No Action and Alternative 1. Impacts related to environmental justice are the same as those described for Alternative 1. Relevant impacts are mentioned below.

Beneficial Impacts on Socioeconomic Resources and Human Uses

Alternative 3 would provide the same socioeconomic benefits as described in Alternative 1, including potential increases in education and outreach efforts, potential economic gains from sanctuary friends groups, and training and development of a workforce in conservation,

protection, and restoration. This would provide an indirect, long-term, minor beneficial impact on socioeconomic resources.

Adverse Impacts on Socioeconomic Resources and Human Uses

The socioeconomic and human use impacts from new regulatory requirements in the MEA, including access restrictions, discharge regulations, and permittee requirements are the same as described for Alternative 1. These would be direct, long-term, and minor adverse impacts based on the minimal additional administrative and regulatory burden, coupled with the low overall activity within the MEA.

Summary of Impacts on Socioeconomic Resources and Human Uses

Overall, NOAA determined that implementing Alternative 3 would have **indirect, long-term, minor adverse** impacts on socioeconomics and human uses.

5.5.6 Summary of Impacts for Alternative 3

While beneficial impacts described in Alternative 1, including penalties for violations and authorities to respond to and hold financially liable those responsible for destruction or loss of, or injury to sanctuary resources, would not be available to protect resources and manage permittees within Midway Atoll and Hawaiian Islands NWRs, this impact is the same as No Action, reflecting a lesser beneficial impact compared to Alternative 1, but imparting no adverse impacts. Under Alternative 3, the waters with the greatest need for comprehensive protection would not be included within the boundary area, and therefore would obtain fewer beneficial impacts than waters of the surrounding ecosystem within the boundary area.

There are three specific adverse impacts from the exclusion of Hawaiian Island NWRs waters under Alternative 3:

- The lack of an agreed-upon boundary of the Hawaiian Islands NWR may create permitting conflicts and enforcement ambiguities, and limit the effectiveness of damage assessment authorities, as described in adverse impacts on laws and existing management.
- NMSA protections would not be consistently applied where permittees operate in contiguous areas that straddle the Hawaiian Islands NWR seaward boundary.
- Exclusion of Hawaiian Islands NWR waters excludes approximately 327 square miles of State waters within Papahānaumokuākea, which is not consistent with the recommendation of the State of Hawai‘i to include State waters in this action.

NOAA determined that implementing Alternative 3 would have direct, long-term, **minor** adverse impacts on laws and management, direct, long-term, minor beneficial impacts on physical resources, direct, long-term, minor beneficial impacts on biological resources, indirect, minor beneficial impact on cultural resources, direct, long-term, moderate beneficial impacts on maritime heritage resources, and indirect, long-term, minor adverse impacts on socioeconomic resources and human uses. This determination equally represents the independent impacts to both the Midway Atoll NWR and the Hawaiian Islands NWR.

5.6 Cumulative Impact Analysis

As explained in Section 5.1.2, NOAA divided the reasonably foreseeable effects of the proposed action and alternatives into three categories—direct impacts, indirect impacts, and cumulative impacts—to facilitate the most meaningful analysis and to provide clarity to the public about the nature of those effects. Cumulative effects are defined as “effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably foreseeable actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.” 40 CFR § 1508.1(g).

This section presents the methods used to evaluate cumulative impacts, lists projects that may have cumulative effects when combined with the impacts from the proposed action or alternatives discussed in this final EIS, and evaluates potential cumulative impacts.

5.6.1 Cumulative Impact Assessment Methods

CEQ’s cumulative effects guidance identifies several different methods for assessment of cumulative impacts, such as checklists, modeling, forecasting, and economic impact assessment (CEQ, 1997). In general, past, present, and future foreseeable projects are assessed by topic area. Cumulative effects may arise from single or multiple actions and may result in additive or interactive effects. Interactive effects may be countervailing, where the adverse cumulative effect is less than the sum of the individual effects, or synergistic, where the net adverse effect is greater than the sum of the individual effects (CEQ, 1997). For the purposes of this analysis, NOAA considered cumulative effects to be significant if they exceed the capacity of a resource to sustain itself and remain productive. The geographic scope of the cumulative effects analysis is the boundaries of the proposed sanctuary under each action alternative, and the marine boundaries immediately adjacent to the proposed sanctuary boundaries. The temporal scope of the cumulative analysis is from five years prior to the publication of the draft EIS to 10 years after designation.

The project area is isolated from almost all human activity, with an average of 60 people working under permit-controlled conditions within the Monument on any given day. Virtually all commercial activities are prohibited under No Action, with additional prohibitions proposed under alternatives 1 and 3 that would further restrict activities within the area of the proposed sanctuary that overlaps with the MEA. The number and types of projects listed in Table 5.1, all of which are currently occurring or are anticipated to occur in the reasonably foreseeable future (10 years) within the study area, were analyzed, along with the proposed action. These projects are limited to the extent of the potential impact as well as NOAA’s cumulative impact analysis, which considers the effects of these actions in combination with the impacts of the proposed action to determine the overall cumulative impact on the human environment.

5.6.2 Past, Present, and Reasonably Foreseeable Future Projects

Table 5.1 lists the other federal and non-federal actions in the study area that could contribute to cumulative impacts. This list was compiled based on input from cooperating and partnering agencies, along with NOAA staff knowledge, of other existing or planned activities occurring in

and around the proposed sanctuary. Many of these other federal and non-federal actions relate to management and research of shoreline habitat and resources. The projects expected to contribute to cumulative impacts would likely affect similar resources to those that are affected by the proposed action or are large enough to have far-reaching effects on a resource.

As the proposed action for the designation of Papahānaumokuākea National Marine Sanctuary is a regulatory and management action rather than an implementation level action, the cumulative effects are related primarily to local and regional management of marine resources in the study area. For the purposes of this cumulative effects analysis, NOAA assumed that any of the actions in Table 5.1 that have not already been implemented would be approved and implemented within the time period for this analysis.

As described in detail in the subsections below, NOAA found that the combination of implementation of the alternatives with the actions in Table 5.1 would result in minor indirect cumulative beneficial impacts to legal, management, enforcement; physical and biological resources; cultural and historical resources; and socioeconomic and human resources along with environmental justice in the study area.

Table 5.1. Actions with potential to contribute to cumulative impacts

Project Title	Location	Project Lead	Project description	Estimated Completion Timeline
Endangered Species Conservation	U.S. federal waters	NOAA Fisheries, and USFWS	NOAA Fisheries and USFWS developing and implementing recovery plans and conducting five-year status reviews for ESA-listed species. Consulting on federal actions that may affect a listed species or its designated critical habitat. Issuing permits that authorize scientific research on listed species.	Ongoing
Fisheries Management Actions	U.S. federal waters	NOAA Fisheries, Western Pacific Regional Fishery Management Council	Implementing and amending fishery management plans and associated fishing regulations, issuing exempted fishing permits, modifications to EFH and Habitat Areas of Particular Concern, enforcing fisheries regulations.	Ongoing
Military activities	Monument-Wide	U.S. Department of Defense, USCG	Military readiness, training, inspections, missile defense tests, servicing aids to navigation buoys, and law enforcement	Ongoing

Project Title	Location	Project Lead	Project description	Estimated Completion Timeline
Commercial Shipping Traffic	Commercial shipping lanes within Monument	International Maritime Organization	Transit of the proposed sanctuary	Ongoing
Seawall removal at French Frigate Shoals	Lalo (French Frigate Shoals)	Co-managers, U.S. Army Corps of Engineers, U.S. Environmental Protection Agency	Planning options include complete removal, partial removal and repair to minimize entrapment of wildlife, including seals, turtles and seabirds.	Unknown
Implementation of Midway Atoll Comprehensive Master Plan	Kuaihelani (Midway Atoll)	USFWS	Habitat Restoration; Inner Harbor improvements; South seawall repairs; Wastewater treatment system improvements	10 years

5.6.3 Description of Cumulative Impacts on Laws and Existing Management

Of the actions listed in Table 5.1, two (endangered species conservation by NOAA Fisheries and USFWS, and fisheries management actions by NOAA Fisheries) have the potential to affect the laws and management structure of Papahānaumokuākea. These actions are intended to designate critical habitat for corals and manage non-commercial fisheries in the MEA and would create new requirements and restrictions for users in the Monument.

Legal protection as a national marine sanctuary, pursuant to NMSA, would complement and supplement these regulatory authorities to provide needed protections for otherwise vulnerable ocean resources. A purpose and policy of the NMSA is to provide authority for comprehensive and coordinated conservation and management of marine areas, and activities affecting them, in a manner which complements existing regulatory authorities (16 U.S.C. § 1431(b)(2)).

- See Section 3.3.1 for an overview of proposed sanctuary regulations and appendices C and E for a comprehensive list of existing federal and State authorities that NMSA would complement and supplement.
- See Section 4.4 for further discussion of protected species and habitats.
- See Section 4.5 for discussion of cultural and historic resources in the proposed sanctuary.
- See sections 5.3.1, 5.4.1, and 5.5.1 for summaries of the impact to laws and existing management.

When the expected impacts of the proposed action on the regulatory environment are combined with the impacts of endangered species conservation and fisheries management actions, NOAA does not anticipate any significant cumulative impacts, as the proposed rule would supplement and complement the existing laws and management of the Monument. The presidential proclamations that designated the Monument and the area's existing regulations served as benchmarks for the proposed sanctuary. The proposed sanctuary would only add to and not diminish Monument management measures and protections. NOAA has adopted the management measures from these benchmarks, and in a few places, added onto those measures to allow for consistency in regulation and management across the proposed sanctuary. The proposed rule unifies management of the area by removing discrepancies and gaps in prohibitions, regulated activities, and permit criteria.

Due to the complementary nature of the regulatory and management actions by NOAA Fisheries and USFWS and the low level of activity within the proposed sanctuary in which users would be subjected to the regulations of the proposed action and alternatives, the cumulative impact to laws and management from the proposed action and alternatives in combination with potential impacts from these other actions would be less than significant.

5.6.4 Cumulative Impacts on Physical Resources

The proposed action and alternatives would not have adverse impacts on physical resources, including water quality and habitat, as described in Section 4.3. NOAA's implementation of the proposed action and alternatives are expected to result in no increases in public use within the boundaries of the sanctuary, and minimal to no increase in management activities occurring within the boundaries.

Of the actions listed in Table 5.1, four (commercial shipping, military activities by the U.S. Department of Defense and USCG, seawall removal by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency, and implementation of Midway Atoll Comprehensive Master Plan by USFWS) have the potential to affect the physical resources within the boundary alternatives.

The seawall removal and Midway Atoll Comprehensive Master Plan could have short term adverse impacts on physical resources, but would have long term beneficial impacts on physical resources, as the overall purpose of these actions are for conservation, species protection, and habitat restoration, complementing the beneficial impacts of the proposed action. While unlikely, commercial shipping may cause adverse impacts, such as from minimal levels of pollution generated and low risks from invasive species introduction, to physical resources.

As described in Section 4.6.2, the U.S. Navy conducts a few of their testing and training exercises within the southeastern portion of the Monument, with potential impacts and mitigation measures provided in the associated EIS (U.S. Department of Navy, 2018). According to the EIS, "it is possible that Navy stressors would combine with non-Navy stressors, particularly in nearshore areas and bays" but the "impacts may temporarily intermingle with other inputs in areas with degraded existing conditions, most of the Navy impacts on water quality and turbidity are expected to be negligible, isolated, and short term, with disturbed sediments and particulate matter quickly dispersing within the water column or settling to the

seafloor and turbidity conditions returning to background levels.” As a result, “the relatively minute concentrations of Navy stressors are not likely to combine with other past, present, or reasonably foreseeable activities in a way that would cumulatively threaten the water and sediment quality within the Study Area” (U.S. Department of the Navy, 2018).

The proposed action and alternatives would not make a substantial contribution to these adverse impacts. Rather, the beneficial impacts on physical resources from the proposed action and alternatives could offset some of the potential adverse impacts caused by the anticipated activities described above. The resource protections provided by sanctuary designation would result in beneficial impacts on physical resources, primarily due to the proposed sanctuary’s regulatory protections prohibiting seafloor disturbance and discharges, thereby preventing degradation of physical resources.

Due to the limited extent of activities undertaken by the U.S. Department of Defense, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and USFWS, and the commercial shipping industry, the remote location of the proposed sanctuary, and the overall benefits of the proposed action on the physical environment, the cumulative impact to physical resources from the proposed action and alternatives in combination with potential impacts from these other actions would be less than significant.

5.6.5 Cumulative Impacts on Biological Resources

The proposed action and alternatives would not significantly contribute to any adverse impacts on biological resources, as described in Section 4.4. NOAA’s implementation of the proposed action and alternatives are expected to result in no increases in public use and management activities occurring within the proposed boundaries.

All six of the actions listed in Table 5.1 (endangered species conservation by NOAA Fisheries and USFWS, fisheries management actions by NOAA Fisheries, military activities by U.S. Department of Defense and USCG, commercial shipping, seawall removal at French Frigate Shoals by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency, and the implementation of Midway Atoll Comprehensive Master Plan by USFWS) have the potential to affect the biological resources within the boundaries of the proposed sanctuary. Any activity requiring the use of vessels and/or a human presence in the proposed sanctuary may cause short-term, minor local adverse effects on biological resources. However, these negligible impacts would be mitigated by NOAA’s implementation of BMPs and other regulatory and management activities that would protect the sanctuary from any potential biological disturbances.

The endangered species conservation and fisheries management actions proposed critical habitat designation for corals; and non-commercial fisheries regulations in the MEA, respectively, may benefit these resources in the future through improved management and by potentially creating new conservation requirements and restrictions for users. While unlikely, commercial shipping may cause adverse impacts to biological resources, such as from minimal levels of pollution generated and low risks from invasive species introduction. The seawall removal and Midway Atoll Comprehensive Master Plan could have short-term adverse effects on

biological resources but would have long-term beneficial impacts through habitat restoration which would minimize entrapment of wildlife.

The Navy conducts limited testing and training exercises within the southeastern portion of the Monument, including readiness, training, and operations. (U.S. Department of Navy, 2018). These activities are considered short term in duration, and are not expected to have significant adverse impacts. The Navy's EIS acknowledges that these activities "contribute incremental effects on the ocean ecosystem" but are "not anticipated to meaningfully contribute to the decline of these (marine mammals and sea turtles) populations or affect the stabilization and recovery thereof" (U.S. Department of the Navy, 2018).

The proposed action and alternatives would not make a substantial contribution to these adverse cumulative impacts. Rather, the beneficial impacts on biological resources from the proposed action and alternatives could offset some of the potential adverse impacts caused by the anticipated activities described above. The resource protections provided by sanctuary designation would result in beneficial impacts on biological resources, primarily due to the proposed sanctuary's regulations, which include a prohibition on removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging any sanctuary resource. In addition, research, resource protection, education, and management activities are expected to be coordinated with the activities of other agencies and jurisdictions. Several other organizations, including federal, State, and local government entities, are involved in the protection of biological resources in the designation area.

Due to the limited extent of activities described above (including those beneficial to biological resources), the remote location of the proposed sanctuary, and the overall benefits of the proposed action on the environment, the cumulative impact to biological resources from the proposed action and alternatives in combination with potential impacts from these other actions would be less than significant.

5.6.6 Cumulative Impacts on Cultural and Historic Resources

The proposed action and alternatives would not significantly contribute to any adverse impacts on cultural and historic resources, as described in Section 4.5. NOAA's implementation of the proposed action and alternatives are expected to result in no increases in public use and management activities occurring within the proposed boundaries.

Of the actions listed in Table 5.1, three (military activities by the U.S. Department of Defense and USCG, seawall removal at French Frigate Shoals by the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency, and implementation of Midway Atoll Comprehensive Master Plan by USFWS) have the potential to affect the cultural and historic resources within the boundaries of the proposed sanctuary.

The seawall removal and Midway Atoll Comprehensive Master Plan would likely have no adverse effects on cultural and maritime heritage resources, and would have long term beneficial impacts through the protection of any cultural and historic resources on land, as well as the protection of marine life as a cultural resource.

Military readiness activities may adversely impact cultural resources within the boundary alternatives. With regards to maritime heritage resources, the Navy’s EIS notes that “stressors, including explosive and physical disturbance and strike stressors, associated with the” Navy Hawaii-Southern California Training and Testing action “would not affect submerged prehistoric sites and submerged historic resources in accordance with Section 106 of the National Historic Preservation Act because mitigation measures have been implemented to protect and avoid these resources” (U.S. Department of the Navy, 2018).

The proposed action and alternatives provide beneficial impacts for cultural and maritime heritage resources, which could offset some of the potential adverse impacts caused by the anticipated activities described above. The resource protections provided by sanctuary designation would result in beneficial impacts on cultural and maritime heritage resources, primarily due to regulations that provide uniform protection for all underwater maritime resources, management principles that emphasize an in situ management approach for the long-term protection of site information and integrity, as well as other preservation methods and activities outlined in the ONMS policy guidance document *Monitoring and Management of Tangible Maritime Heritage Resources* (NOAA ONMS, 2021). NOAA would mitigate any potential impacts to underwater cultural and historic resources from potential human activities through compliance with the proposed sanctuary regulations, collaboration with State officials, and compliance with the NHPA for any potential impacts to historic properties within the sanctuary.

Due to the limited extent of activities undertaken by the U.S. Department of Defense, the remote location, and the overall benefits of the proposed action and other actions described above, the cumulative impacts to cultural and maritime heritage resources from the proposed action and alternatives in combination with potential impacts from these other actions would be less than significant.

5.6.7 Cumulative Impacts on Socioeconomic Resources, Human Uses, and Environmental Justice

The proposed action and alternatives would have long-term minor adverse (alternatives 1 and 3) to minor beneficial (Alternative 2) impacts to socioeconomic resources, human uses, and environmental justice, as described in Section 4.6. NOAA’s implementation of the proposed action and alternatives are expected to result in no increases in public use within the boundaries of the sanctuary, and minimal increase in management activities within the boundaries.

Of the actions listed in Table 5.1, only fisheries management actions by NOAA Fisheries have the potential to affect socioeconomic resources, human uses, and environmental justice. As commercial fishing is already prohibited throughout all proposed boundary alternatives, only fishery management actions on forms of non-commercial fishing in the MEA may impact socioeconomic resources and human uses. There are currently no anticipated activities within the proposed sanctuary that could have adverse effects on socioeconomic resources, human uses, and environmental justice as the area is extremely remote, nearly 300 miles at its closest point from the main Hawaiian Islands, and very few entities operate there.

The cumulative impact of this action with fishery management actions in the MEA is only relevant to alternatives 1 and 3, as the action occurs beyond the proposed sanctuary boundary of Alternative 2. Given the remote nature of this area, few users are anticipated to conduct non-commercial fishing activities within the proposed sanctuary. Impacts to these users would primarily relate to the effort required to obtain a permit and ensure they meet the proposed vessel and reporting requirements.

As permitted non-commercial fishing could not be conducted simultaneously with any permitted sanctuary activity, and permitted non-commercial fishers would be exempt from **some** sanctuary regulations, the cumulative impact to socioeconomic resources, human uses, and environmental justice from the proposed action and alternatives in combination with potential impacts from the regulatory requirements for non-commercial fishing would be less than significant.

Chapter 6: Conclusions

6.1 Comparison of Impacts of the Alternatives

As noted throughout this final EIS, the proposed designation of Papahānaumokuākea National Marine Sanctuary is principally an administrative action, with the same protective measures to all resources within each alternative's boundary. All identified beneficial and adverse impacts have been categorized as negligible, minor, moderate, or significant.

Table 6.1. Comparison of the Aggregate Average Impacts for Each Alternative

Resource/Action	Alternative 1 (Preferred)	Alternative 2	Alternative 3
Laws and Existing Management	++ Long term <u>Direct Moderate Benefits</u>	+ Long term <u>Direct Minor Benefits</u>	x Long term <u>Direct Minor Adverse Impact</u>
Physical Resources	++ Long term <u>Direct Moderate Benefits</u>	++ Long term <u>Direct Moderate Benefits</u>	+ Long term <u>Direct Minor Benefits</u>
Biological Resources	++ Both short and long term <u>Direct Moderate Benefits</u>	++ Long term <u>Direct Moderate Benefits</u>	+ Long term <u>Direct Minor Benefits</u>
Cultural Resources	+ <u>Direct Minor Benefits</u>	O <u>No Impact</u>	+ <u>Direct Minor Benefits</u>
Maritime Heritage Resources	++ Long term <u>Direct Moderate Benefits</u>	O Long term <u>Direct Negligible Benefits</u>	++ Long term <u>Direct Moderate Benefits</u>
Socioeconomics, Human Uses, and Environmental Justice	x <u>Indirect Minor Adverse Impacts</u>	+ Long term <u>Indirect Minor Benefits</u>	x Long term <u>Indirect Minor Adverse Impacts</u>

Key to Symbols:

xxx (or greater)	Significant Adverse Impact
xx	Moderate Adverse Impact
x	Minor Adverse Impact
O	No Impact or Negligible Impact
+	Minor Beneficial Impact
++	Moderate Beneficial Impact
+++ (or greater)	Significant Beneficial Impact

6.2 Unavoidable Adverse Impacts

Pursuant to NEPA, an EIS must describe any adverse environmental effects which cannot be avoided should the proposed action be implemented (42 U.S.C. § 4332(C)(ii)). The environmental impacts of each alternative are fully described in Chapter 5. The potential impacts from the sanctuary designation include numerous beneficial impacts, as well as adverse impacts that range from negligible to minor. These adverse impacts are expected to result even when the activities are carried out responsibly and while observing all practicable mitigation measures, and therefore represent unavoidable adverse impacts. NOAA's analysis found that implementing the action alternatives would not result in any unavoidable significant adverse impacts.

6.3 Relationship of Short-Term Use and Long-Term Productivity

NEPA requires that federal agencies consider the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity (42 U.S.C. § 4332(C)(iv)).

The short-term uses of the environment relating to each of the action alternatives would be limited to the on-site management activities that are not currently taking place or planned under the No Action Alternative. These management activities would not harm, degrade, or otherwise adversely affect the long-term productivity of the environment. Conversely, they are designed to preserve and enhance this long-term productivity, either directly (such as through invasive species management) or indirectly (such as through education).

6.4 Irreversible and Irretrievable Commitment to Resources

NEPA requires discussion of commitments of nonrenewable resources that would be irreversible or irretrievable if the proposed action is implemented (42 U.S.C. § 4332(C)(v)). The mission of a national marine sanctuary is to conserve resources for future users, but implementing routine management activities and protective regulations may require some irreversible and irretrievable commitments of resources.

Irreversible commitments of natural resources include the consumption or destruction of nonrenewable resources or degradation of renewable resources over long periods of time. The proposed action would result in the following irreversible commitments of natural resources:

- Nonrenewable resources that would be consumed during management and research activities include fuel, water, power, and other resources necessary to maintain and operate the vessels used for sanctuary management and permitted activities, as well as potential future sanctuary offices.
- Ongoing operation of facilities operated by NOAA would continue to consume power, an irreversible use of resources, if derived from a nonrenewable electrical power source (e.g., natural gas or nuclear energy).

Irretrievable commitments of resources include opportunities foregone, expenditure of funds, loss of production, and restrictions on resource use. The proposed action and alternatives could result in the following irretrievable commitments of natural resources:

- Monetary funds would be expended to support management activities in the purchase of fuels, electricity, water, and other nonrenewable supplies, for wages and rents and for potential construction of facilities.
- Natural resources may be used in construction of sanctuary facilities and structures, such as buildings and signs.

The irreversible and irretrievable commitment of resources would be minimized and mitigated by best management practices and staff training.

6.5 Environmentally Preferable Alternative

As the regulatory regime is the same across the three alternatives, the key difference is where new protections would be applicable. NOAA has determined Alternative 1 as the Agency-Preferred Alternative for the following reasons:

- Meets all goals and objectives, including designating a national marine sanctuary that would complement and supplement existing federal and State resource protection laws to manage nationally significant resources.
- Includes State waters as requested by the State (the co-action agency).
- Provides implementing regulations to protect resources in the MEA (in contrast to Alternative 2, where the MEA is excluded from the proposed sanctuary).
- Provides new protections for the shallow habitats, where threats are highest (in contrast to Alternative 3, where the NWRs are excluded from the proposed sanctuary).

Glossary

‘Āina Akua – Realm of the gods

‘Āina Momona – Healthy and thriving communities of people and place

Ali‘i – Native Hawaiian chiefs

Aloha ‘āina – A Hawaiian philosophy of love for land and all that which feeds us, representing a most basic and fundamental expression of the Hawaiian experience. A Hawaiian expression of the rights and responsibilities to care for ‘āina as kin.

Ao – Realm of the light and living

Biocultural – A dynamic, integrative approach to understanding the links between nature and culture and the interrelationships between humans and the environment (Maffi & Woodley, 2012).

Hula – Traditional Native Hawaiian dance

Ka‘ao – Histories, stories, and legends. They are often thought of as similar to mo‘olelo, however can be much more fanciful and embellished for storytelling purposes.

Kānaka ‘Ōiwi, Kānaka Maoli – Terms that refer to Native Hawaiians; an individual who is a descendant of the aboriginal peoples who, prior to 1778, occupied and exercised sovereignty in the Hawaiian Islands, the area that now constitutes the State of Hawai‘i.

Ke Alanui Polohiwa a Kāne – Traditional Native Hawaiian term referring to the Tropic of Cancer

Ke Ala Polohiwa a Kanaloa – Winter solstice

Ke Ala Polohiwa a Kāne – Summer solstice

Kilo – Native Hawaiian observational methodologies of the environment

Kinolau – A myriad of physical forms manifested in spiritual deities of nature

Kuleana – A Hawaiian value that originates from the traditional practice of stewarding particular areas of land, known as kuleana, that are associated with familial lineages. It requires lineal and/or personal responsibility, rights, and privileges based on relationships to place and people.

Kūpuna – Elder(s), ancestor(s)

Kūpuna Islands – Ancestral or elder islands

Leina – Spiritual portal where the spirits of people who have passed return to

Mai Ka Pō Mai –2021 Native Hawaiian guidance document for the management of Papahānaumokuākea Marine National Monument

Mana – Supernatural/divine power, authority

Mele – Song(s)

Moananuiākea – Pacific Ocean

Mo‘olelo – Stories and narratives

‘Ōiwi – A term referring to Native Hawaiians

‘Ōlelo Hawai‘i – Native Hawaiian language

‘Ōlelo no‘eau – Native Hawaiian proverb or wise saying

Oli – Traditional Hawaiian chant

Papahānaumokuākea – Papahānaumoku is considered a motherly figure personified by the earth and all things that “give birth,” including plants, animals, humans, and even one’s consciousness. Wākea is a father figure personified as an expanse, or a greater space, such as the sky; the two are honored and highly recognized as ancestors of Native Hawaiian people. Their union is also referenced as the creation, or birthing, of the entire Hawaiian archipelago. The name Papahānaumokuākea was chosen for the Marine National Monument as a combination of these two entities and to emphasize their relationship and importance to Hawaiian culture.

Pilina – Relationship(s)

Pō – Darkness/realm of the ancestors

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NATIONAL MARINE
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AMERICA'S UNDERWATER TREASURES



Papahānaumokuākea National Marine Sanctuary

Final Environmental Impact Statement: Volume II



U.S. Department of Commerce
Gina Raimondo, Secretary

National Oceanic and Atmospheric Administration
Richard W. Spinrad, Ph.D., Under Secretary of Commerce for Oceans and Atmosphere and
NOAA Administrator

National Ocean Service
Nicole LeBoeuf, Assistant Administrator

Office of National Marine Sanctuaries
John Armor, Director



**NATIONAL
MARINE
SANCTUARIES**

Cover photos: NOAA diver investigates whaling shipwreck; native fish swim on a coral reef; Hawaiian voyaging canoe sails in Papahānaumokuākea; Hawaiian monk seal and ulua swim over the seafloor. Photos: NOAA

About This Document

This document is the second volume of the Papahānaumokuākea National Marine Sanctuary Final Environmental Impact Statement, and contains the appendices.

The National Oceanic and Atmospheric Administration (NOAA) is proposing to designate the Papahānaumokuākea National Marine Sanctuary to recognize the national significance of the area's biological, cultural, and historical resources and to continue to manage this special place as part of the National Marine Sanctuary System. This final environmental impact statement (EIS) provides detailed information and analysis of a range of reasonable alternatives for the designation of marine portions of Papahānaumokuākea Marine National Monument and the Monument Expansion Area (collectively called the Monument) as a national marine sanctuary. The State of Hawai'i (State) and NOAA prepared this final EIS in accordance with the Hawai'i Environmental Policy Act (HEPA, Chapter 343 HRS, HAR Chapter 11-200.1); the National Environmental Policy Act, as amended (NEPA, 42 U.S.C. 4321 *et seq.*); NOAA Administrative Order 216-6A, which describes NOAA requirements, policies, and procedures for implementing NEPA; and the National Marine Sanctuaries Act (NMSA, 16 U.S.C. 1431 *et seq.*), which requires preparation of an environmental impact statement for all sanctuary designations. Because this NEPA process began after September 14, 2020, this EIS relies on the Council on Environmental Quality's (CEQ) 2020 NEPA regulations (40 CFR 1500 *et seq.*). See 40 CFR § 1506.13. The EIS is accompanied by a sanctuary management plan that describes the proposed goals, objectives, strategies, and actions for managing the sanctuary.

NOAA is the lead agency for this proposed action. NOAA's Office of National Marine Sanctuaries (ONMS) is the implementing office for this proposed action. Cooperating agencies include U.S. Fish and Wildlife Service, the State of Hawai'i, the Department of the Navy, and the Office of Hawaiian Affairs.

A note on terminology: The term Papahānaumokuākea, when used alone, refers to the place, also historically known as the Northwestern Hawaiian Islands, including the land and all waters to 200 nmi from shore. Papahānaumokuākea Marine National Monument or PMNM refers to the area designated as a monument via Presidential Proclamations 8031 and 8112, extending 50 nmi from all islands and emergent lands of the Northwestern Hawaiian Islands. The Papahānaumokuākea Marine National Monument Expansion Area or MEA refers to waters from 50 to 200 nmi designated as a monument in 2016 by Presidential Proclamation 9478. PMNM and the MEA are referred to collectively as the "Monument." When describing the action alternatives, the term "Outer Sanctuary Zone" is used to describe the area of the sanctuary that is coextensive with the MEA. A glossary of Hawaiian terms and place names is found after Chapter 6.

Most of the islets, atolls, and reefs have both Hawaiian and English names. Names used in this document are (from Southeast to Northwest): Nihoa, Mokumanamana (Necker), Lalo (French Frigate Shoals), 'Ōnūnui and 'Ōnuiki (Gardner Pinnacles), Kamokuokamohoali'i (Maro Reef), Kamole (Laysan Island), Kapou (Lisianski Island), Manawai (Pearl and Hermes Atoll), Kuaihelani (Midway Atoll), and Hōlanikū (Kure Atoll). Other banks, shoals, and seamounts within Papahānaumokuākea may also have Hawaiian and English names.



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Acknowledgements

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Terms, Abbreviations, and Acronyms

BMP	Best Management Practice
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CIA	Cultural Impact Assessment
Co-trustees	Term used in this document to refer to the State of Hawai‘i, the U.S. Department of Commerce, the U.S. Department of the Interior, and the Office of Hawaiian Affairs
CWG	Papahānaumokuākea Native Hawaiian Cultural Working Group
CZMA	Coastal Zone Management
DLNR	Hawai‘i Department of Land and Natural Resources
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
ERP	State of Hawai‘i Environmental Review Program
ESA	Endangered Species Act
HAR	Hawaii Administrative Rules
HEPA	Hawaii Environmental Policy Act
HRS	Hawaii Revised Statutes
IMO	International Maritime Organization
MEA	Papahānaumokuākea Marine National Monument Expansion Area
MMB	Monument Management Board
Monument	Term used in this document to refer to the PMNM and MEA collectively
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NCCOS	National Centers for Coastal and Ocean Sciences
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
nmi	nautical miles
NMSA	National Marine Sanctuary Act
NOAA	National Oceanic and Atmospheric Administration
NWHI	Northwestern Hawaiian Islands



NWR	National Wildlife Refuge
NWRSAA	National Wildlife Refuge System Administration Act
OHA	Office of Hawaiian Affairs
OLE	Office of Law Enforcement
ONMS	Office of National Marine Sanctuaries
PMNM	Papahānaumokuākea Marine National Monument (Original Area)
PSSA	Particularly Sensitive Sea Area
RAC	Reserve Advisory Council
Reserve	Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve
SHPD	State of Hawai'i Historic Preservation Division
SMCA	Sunken Military Craft Act
State	State of Hawai'i
USFWS	U.S. Fish and Wildlife Service
USCG	U.S. Coast Guard
VMS	Vessel Monitoring System
WPRFMC	Western Pacific Regional Fishery Management Council

Appendix A: Papahānaumokuākea National Marine Sanctuary Final Management Plan



A Hawaiian voyaging canoe travels through Papahānaumokuākea. Photo: NOAA

Section 1: Foundations

Foundational Statement

Hanohano Nā ‘Āina Kūpuna: Honoring Papahānaumokuākea Kūpuna (Ancestral) Islands



Figure 1. Kānaka ‘Ōiwi have deep historical connections to all the islands, atolls, shoals, coral reefs, and submerged seamounts, as well as the ocean waters that surround them in Papahānaumokuākea. While the islands themselves were focal points for travel, the ocean and open waters were equally important and carry a multitude of values. Image: Brad Ka’aleleo Wong

E Kanaloa Haunawela
 Kanaloa ke ala ma’awe ‘ula a ka lā
 Kāne ke ala ‘ula a ka lā
 Kanaloa noho i ka moana nui
 Moana iki, moana o’o
 I ka i’a nui, i ka i’a iki
 I ka manō, i ka niuhi
 I ke koholā, a hohonu
 ‘O ke kai hohonu a he’e
 ‘O ke kai uli a palaoa
 ‘O ke kai kea a honu
 ‘O ka hou ka’i lōloa
 Ola ke kino walewale o Haunawela
 ‘O nā ‘au walu a Kanaloa
 I pa’a i ka maka
 I ka maka walu a Kanaloa, Ola!
 Lana i ke kai, lana i ka honua
 Lana i ka houpo a Kanaloa
 I ka Mokupāpapa
 Ka papa kaha kua kea o Lono
 ‘O Lono ka pao
 Ola i ke au a Kanaloa

Kanaloa of the depths of intensity
 Kanaloa of the west sky, the rising sun
 Kāne of the east sky, the rising sun
 Kanaloa residing in the great sea
 Small sea, mottled sea
 In the big fish, in the small fish
 In the shark, in the tiger shark
 In the whale, of the depths
 The depths and transcending
 The dark depths of the sperm whale
 White sea of turtles
 The wrasse parade in a long line
 The spawning cycle of the ocean is prolific
 The eight currents of Kanaloa
 The source is stable
 The numerous consciousness of Kanaloa, lives!
 It floats in the sea, it drifts upon the land
 It intermingles in the energy force of Kanaloa
 Out to the low laying islands
 The low laying coral islands of Lono
 Lono is the bridge
 Life to the realm of Kanaloa
 (Kanaka’ole et al., 2017)

Mai ka puka ‘ana o ka lā i Ha‘eha‘e a hiki loa i ka welo ‘ana o ka lā i Hōlanikū, kāhiko ho‘owewehi ‘ia kākou a pau i ka lei aloha o ka pae moku o Kanaloa. Hanohano nō ‘o Papahānaumokuākea, he ‘āina akua nō ho‘i ia o ko Hawai‘i Pae ‘Āina. ‘O Wākea ke kāne, a ‘o Papahānaumoku ka wahine. Noho pū lāua a hānau ‘ia maīa ia mau ‘āina kūpuna mai loko a‘e o ka moana nui kūlipolipo i puka a‘e ai, a e hiki mai ana nō i kekahi wā e ho‘i hou ana ia mau moku lē‘ia i loko o ka ‘ōpū moana kai hohonu. Mau loa nō ka pilina pa‘a o nā Kānaka ‘Ōiwi i loko o ke ka‘ā o ka mo‘okū‘auhau i ke au o Kanaloa, nā mokupuni, nā moku ‘āina, me nā moku pāpapa, a me nā akua me nā ‘aumākua ma nā ‘ano kino mea ola like ‘ole i Moananuiākea. Kahu a mālama kākou o ke au nei i ia pilina ko‘iko‘i ma luna ho‘i o ka ‘ike kūpuna ma o ka hana kūpono ‘ana, ke mele ‘ana, ke a‘o ‘ana, ka noi‘i ‘ana, a me ka ho‘ōla ‘ana i ia mau moku kūpuna. Mai iō kikilo mai nō, hā‘ena‘ena ka lamakū o ka ‘ike kūli‘u o ka po‘e hulu kūpuna i ahi koli ai iā kākou, he ahi pio ‘ole ia e ‘ā no‘ao wenawena loa nei. Alu like nō ho‘i kākou ma lalo o ia ahi pio ‘ole, a na ia po‘e kūpuna nō e ho‘okele alaka‘i mau nei iā kākou a pau i ke alahula o ka ‘imi na‘auao i kēia ao mālamalama. I ka wā ma mua, ka wā ma hope. I ko kākou mālama ‘ana i nā moku kūpuna o ka pō, mālama pū ‘ia nō nā mokupuni o ke ao, pēlā nō e ola mau ai ‘o Papahānaumokuākea a ma ka pae moku holo‘oko‘a i nā makamaka ola o ko mua me ko hope, a mau loa aku nō.

From the rising of the sun at Ha‘eha‘e on Hawai‘i Island to the setting of the sun at Hōlanikū (Kure Atoll) at the northwestern extent of Hawai‘i, the love of the land is abundant, greetings to you all. Papahānaumokuākea is honored as a sacred realm of the gods to Kānaka ‘Ōiwi (Native Hawaiians). Papahānaumoku birthed these ancestral islands from the ocean through a union with Wākea. Papahānaumokuākea represents deep cosmological and spiritual relationships connected to pō (primordial darkness), a realm where ancestral spirits return to islands that were once birthed from the deep ocean. There are living genealogies and relationships between Kānaka ‘Ōiwi and the realm of Kanaloa (ocean deity), the many islands of Papahānaumokuākea, and the akua (ancestral gods) and ‘aumākua (ancestral guardians) represented by the diverse forms of life residing within this vast ocean area, Moananuiākea. These relationships are tended to and perpetuated in a variety of ways as part of a collective journey to care for these kūpuna (ancestral) islands. Since the beginning, the torch of expansive ancestral knowledge and connection has been passed down over generations by hulu kūpuna (esteemed elders) and it continues to burn intensely, lighting the path forward. The kūpuna will continue to lead and navigate the path well-traveled, continuing to seek knowledge as an ancestral practice. The past will guide the future. The undying flame guides us on the path towards the ancestral islands in pō as an extension of the way we mālama (take care of) the places in ao (realm of the living).

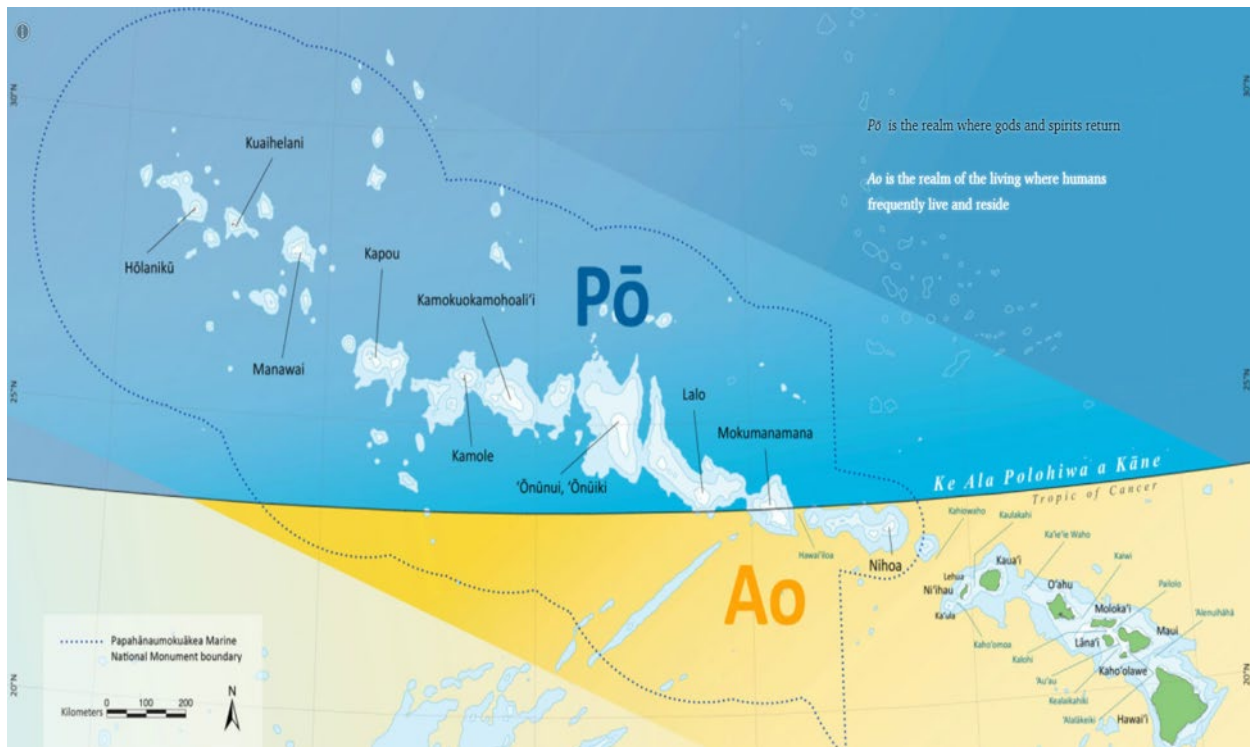


Figure 2. Map of the Hawaiian universe from the eastern edge to the northwestern extent of the Hawaiian Archipelago. Image: NOAA

Hulu kūpuna have strongly advocated for the long-term lasting protection of Papahānaumokuākea, and navigated us towards a shared vision and a collective journey of caring for this sacred place: “I ka wā ma mua, ka wā ma hope,” meaning looking to the past to guide the future (Kame‘eleihiwa, 1992). In moving forward with a proposed sanctuary designation, we seek to honor their legacy and build upon their foundation, so that Papahānaumokuākea will continue to thrive in perpetuity for many more generations to come. The proposed sanctuary designation aims to provide additional protection to this ‘Āina Akua (realm of the gods/ancestors), without diminishing any existing protections.

Core Values

Core values reflect shared foundational beliefs that influence the proposed sanctuary’s work. We have identified the following as our most important values:

Kuleana/Responsibility

- Strive for excellence as public stewards
- Be proactive and anticipate program needs to ensure the success and support of team members
- Act with aloha to sustain healthy working relationships

Mālama/Stewardship

- Protect Papahānaumokuākea for future generations and honor kūpuna

- Bring the place to the people in ways that spark curiosity and cultivate a sense of purpose that will, in turn, compel them to care for the places that sustain them and inspire them to deepen their cultural, scientific, and/or resource management expertise
- Build connections and collaborate with diverse partnerships to encourage stewardship of global ocean resources

Pono/Integrity

- Be accountable, honest, and transparent in all our work
- Communicate effectively and articulate expectations
- Enable and empower each other to do excellent work
- Be inclusive
- Respect difference and diversity

‘Imi ‘ike/Exploration

- Collaborate and utilize multiple knowledge systems and innovative technologies to pursue research, discovery, and exploration
- Ensure research has integrity and informs management needs
- Communicate a sense of wonder through the stories we tell about Papahānaumokuākea

About This Document

Management plans are specific planning and management documents required for all national marine sanctuaries. They identify immediate, mid-range, and long-range opportunities, and outline future activities. A management plan describes resource protection, research, education, and outreach programs that guide sanctuary operations; defines how a sanctuary should best protect its resources, including through innovative management strategies, enforcement, and surveillance activities; and describes sanctuary regulations if appropriate.

This plan would chart the course for the sanctuary over the next five to seven years. The plan reflects an integrated approach to management, both from a nature-culture integration perspective, also known as a biocultural perspective, and from a co-management perspective. Papahānaumokuākea Marine National Monument (PMNM) refers to the area designated as a monument via Presidential Proclamations 8031 and 8112. The Papahānaumokuākea Marine National Monument Expansion Area (MEA) refers to waters from 50 to 200 nmi designated as a monument in 2016 by Presidential Proclamation 9478. Both PMNM and the MEA are managed together by four co-trustees: the Department of Commerce through NOAA, the Department of Interior through the U.S. Fish and Wildlife Service (USFWS), the State of Hawai‘i through the Department of Land and Natural Resources, and the Office of Hawaiian Affairs. These organizations are collectively committed to realizing the mission of Papahānaumokuākea. Advantages of cooperative management, as delineated in the 2006 and 2017 co-trustee memorandum of agreements, include a joint management plan and a joint permitting system. The 2017 memorandum of agreement also recognizes the potential designation of a future national marine sanctuary in the marine portions of the Monument, and the co-managers agreement that a sanctuary designation would not terminate or otherwise amend the way the Monument is currently co-managed. Other advantages of cooperative management include

resource sharing for capacity-building, formal and informal research partnerships, and structured opportunities for involvement such as in outreach and education.

Sanctuary management would supplement and complement, rather than supplant, the existing co-management regime of Papahānaumokuākea. Cooperative projects will be pursued with co-managing agencies that allow for ease in sharing resources and in-kind assistance and support, as appropriate. There is currently a comprehensive monument management plan for PMNM (Papahānaumokuākea Marine National Monument, 2008), which will be updated in the future to include the MEA that was established in 2016 separately under a different presidential proclamation. The core elements (vision, mission, guiding principles, and goals) for the monument plan update were developed in 2022 through a coordinated process among the monument's co-managing agencies.

As described below in Section 3, this plan was designed to integrate with the existing monument co-management. To ensure consistency of protections between the sanctuary and the overarching monument, the monument management plan components were utilized for this sanctuary management plan. In other words, the core elements of the sanctuary management plan and the future monument management plan update are one and the same. Additionally, while the sanctuary management plan functions as a primary guidance document for NOAA's Office of National Marine Sanctuaries (ONMS), the strategies in this plan also will be incorporated into the future Monument Management Plan update, along with strategies and other plan requirements of the other Papahānaumokuākea co-trustees. This sanctuary management plan is focused on the range of actions that would be undertaken by ONMS, building upon the strategies already being implemented by ONMS for the monument.

In writing this sanctuary management plan, the kua, or backbone, to the approach was to start with a focus on the Hawaiian concept of aloha 'āina. The Mai Ka Pō Mai Native Hawaiian guidance document was instrumental in developing the pōhaku niho, or foundational stones, for the plan. Content from other key documents, such as the *2008 Papahānaumokuākea Marine National Monument Management Plan* and *2020 State of Papahānaumokuākea Marine National Monument Report*, also substantially influenced this plan.

Aloha ‘Āina: A Hawaiian Environmental Ethic

“Hawaiian well-being is tied first and foremost to a strong sense of cultural identity that links people to their homeland. At the core of this profound connection is the deep and enduring sentiment of aloha ‘āina, or love for the land. Aloha ‘āina represents our most basic and fundamental expression of the Hawaiian experience. The ‘āina sustains our identity, continuity, and well-being as a people. It embodies the tangible and intangible values of our culture that have developed and evolved over generations of experiences of our ancestors.” (Kikiloi, 2010)

“He Ali‘i Ka ‘Āina, He Kauwā Ke Kanaka—Land is a Chief, Man is a Servant.” (Pukui and Varez, 1983) This ‘ōlelo no‘eau (wise proverb) depicts the relationship that Kānaka Maoli have with land, emphasizing that land is not viewed as a commodity, but rather a chief, or one who protects and provides for its people. For the land to provide sustenance and shelter to the people, it needs to be tended to and cared for properly, a responsibility that Kānaka recognize and reciprocate. This ‘ōlelo no‘eau emphasizes the foundational Hawaiian worldview of aloha ‘āina and further defines this ideology beyond a love for the land, but rather a reciprocal relationship in which ‘āina and kānaka depend on one another to live—and ultimately to thrive.

Section 2: Purpose of the Management Plan

Strategic Guidance for Sanctuary Management

Primarily under the auspices of NOAA's Office of National Marine Sanctuaries, the purpose of the plan is to provide strategic guidance for the sanctuary's work. The plan conveys the goals and priorities of the sanctuary and describes the strategic actions the sanctuary plans to conduct during the next five to seven years to accomplish them.

Program Guidance

The focal areas of our work are represented under five kūkulu, or pillars of management: resource protection and conservation; research and monitoring; governance and operations; partnerships and constituent engagement; and education, interpretation, and mentoring. Strategies in this plan articulate how the goal for each kūkulu will be achieved, providing guidance for day-to-day management.

Address Climate Change and Other Threats

Although this is not, strictly speaking, a threat-based plan, many of the strategies encompassed in this document indirectly or directly address threats to the sanctuary. As described in the [2020 State of the Papahānaumokuākea Marine National Monument Report](#), we recognize Papahānaumokuākea as an indicator for ecosystem health for the region, and seek to identify, monitor, and address major threats that include invasive marine species and the many effects global climate change will have on physical, biological, cultural, and historical resources and values. Climate change, in particular, is a prominent theme suffusing our work in research, education, outreach, and constituent engagement. The Papahānaumokuākea climate change science, education, and adaptation priorities identified in the *2020 State of the Papahānaumokuākea Marine National Monument Report*, the *Pacific Islands Region Research Strategy* (unpublished 2021), and the *Papahānaumokuākea Marine National Monument Education Strategy* (unpublished 2019) were reviewed and have influenced this plan.

Operationalize an Integrated Approach to Management

The sanctuary management plan serves as an important mechanism for weaving together knowledge systems in the service of management. This integration is a priority identified in the sanctuary's vision, mission, and guiding principles, which are consistent with the vision, mission, and guiding principles of the Monument.

Cooperative and Coordinated Management

The sanctuary's vision, mission, and guiding principles mirror those of the Monument. Strategies in this sanctuary plan aim to support and maintain existing co-management functions vis-a-vis the Papahānaumokuākea Monument Management Board, to promote unified governance in the spirit of seamless integrated stewardship.

Section 301 of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1431 calls for the development and implementation of coordinated plans for the protection and management of

nationally significant marine areas with appropriate federal agencies, state and local governments, Native American Tribes and organizations, international organizations, and others; for the creation of models of, and incentives for, ways to conserve and manage these areas, including the application of innovative management techniques; and for cooperation with global programs encouraging conservation of marine resources. Further, Section 311 16 U.S.C. § 1443 allows for the Secretary of Commerce to enter into cooperative agreements, contracts or other agreements with, or make grants to, states, local governments, regional agencies, and others.

Advantages of cooperative management include a joint management plan and a joint permitting system. Other advantages of cooperative management include resource sharing for capacity-building, formal and informal research partnerships, and structured opportunities for involvement such as in outreach and education.

In accordance with NMSA, NOAA and the State of Hawai‘i would co-manage the sanctuary. NOAA may develop a memorandum of agreement with the State to provide greater details of co-management. NOAA and the State may develop additional agreements as necessary that would provide details on execution of sanctuary management, such as activities, programs, and permitting processes. Co-management of the proposed sanctuary with the State of Hawai‘i would not supplant the existing co-management structure of the Monument. NOAA will also manage the sanctuary in partnership with the U.S. Fish and Wildlife Service and the Office of Hawaiian Affairs. NOAA will update the Memorandum of Agreement for Promoting Coordinated Management of Papahānaumokuākea Marine National Monument with the State of Hawai‘i, Department of the Interior/USFWS, and Office of Hawaiian Affairs that reflects the addition of the proposed sanctuary, and specifically addresses how the addition of a sanctuary will supplement and complement, and not supplant, the existing Monument management framework.

Objectives of Sanctuary Designation

The sanctuary designation objectives are reflected in the management plan elements. These objectives reflect NOAA priorities within the process of sanctuary designation, and the broader need for a sanctuary within the National Marine Sanctuary System. The sanctuary objectives guide the formulation of the overall sanctuary designation package, including the sanctuary regulations and management plan.

Sanctuary Designation Objectives

1. Provide long-term lasting protection of Papahānaumokuākea consistent with and reinforcing the provisions outlined in Executive Order 13178, Presidential Proclamations 8031, 8112, 9478, and the regulations at 50 CFR § 404 through the designation of a national marine sanctuary.
2. Augment and strengthen existing protections for Papahānaumokuākea ecosystems, living resources, and cultural and maritime heritage resources through the addition of National Marine Sanctuaries Act regulations.
3. Support and maintain existing co-management functions within the Papahānaumokuākea Monument Management Board to ensure unified governance in the spirit of seamless integrated stewardship.
4. Provide a pu'uhonua to protect key habitats, vulnerable, endangered and threatened species, and highly mobile marine species that regularly move across the boundaries of Papahānaumokuākea Marine National Monument.
5. Manage the sanctuary as a sacred site consistent with Native Hawaiian traditional knowledge, management concepts, and principles articulated within Mai Ka Pō Mai.
6. Enhance community engagement and involvement, including engagement of the Indigenous Hawaiian community in the development and execution of management of the sanctuary.
7. Enhance resource protection, increase regulatory compliance, ensure enforceability, and provide for consultation through National Marine Sanctuaries Act authorities and regulations.
8. Conduct, support, and promote research, characterization, and long-term monitoring of marine ecosystems and species and cultural and maritime heritage resources

Section 3: Sanctuary Management Plan

Strategic Plan Design

The National Marine Sanctuaries Act requires the preparation of a sanctuary management plan for a proposed national marine sanctuary. This sanctuary management plan responds to the requirements of the NMSA, and in particular, Section 304(a)(2)(C). The plan creates a road map for future actions based on past experience and outcomes. A sanctuary management plan is designed to identify the best and most practical strategies to achieve common goals, while getting the most out of public investment.

As previously noted, this sanctuary management plan's content was generally informed by several existing documents, notably the Mai Ka Pō Mai guidance document that inspired our goals and sought to integrate nature and culture seamlessly and the foundational *2008 Papahānaumokuākea Marine National Monument Management Plan*, along with the *Papahānaumokuākea Climate Change Vulnerability Assessment*, the *2020 State of Papahānaumokuākea Marine National Monument Report*, the *Papahānaumokuākea Natural Resources Science Plan 2011-2015*, and other management documents.

The core elements and framework for the sanctuary management plan were designed in coordination with the monument's co-trustees, in order to ensure concurrence of plans between the sanctuary and the overarching monument. The core elements of this sanctuary management plan—vision, mission, principles, and goals—are the same as those that have been developed by the co-trustees for the future monument management plan update.

The sanctuary management plan's framework is based upon Mai Ka Pō Mai and the goals of the future updated monument management plan. It consists of five jointly developed kūkulu (pillars of management) that are equivalent to action plan categories. These kūkulu are resource protection and conservation; research and monitoring; governance and operations; partnerships and constituent engagement; and education, interpretation, and mentoring. Additionally, the sanctuary management plan and the future monument management plan both will have a strategic scope and focus, incorporating high level strategies to be undertaken by the co-trustees. Many of the strategies found in this sanctuary management plan are already being implemented by ONMS for the monument, and they will be merged with and, if needed, further refined within the updated monument management plan when completed.

Vision, Mission, Guiding Principles, and Goals

The vision, mission, principles, and goals for the sanctuary management plan were developed through a collaborative process with the monument’s co-managing agencies in a series of monument management plan workshops held in 2020–2021.

Vision: ‘Āina Momona – Place of Abundance

Our vision for Papahānaumokuākea is a birthplace of rich ocean diversity where a living story of creation, exploration, and valor is remembered and shared throughout Hawai‘i and the world. People value the monument as a place of regeneration and renewal—a place of hope where an abundance of species thrive to nourish our minds and bodies and stir our ancient need for wild places where man is just one part of a whole. Papahānaumokuākea awakens a truth that most have forgotten—that we need a healthy ocean for our well-being. It reminds everyone that nature and culture are one and the traditional and conventional, spiritual, and scientific have learned to coexist. Papahānaumokuākea inspires us to care passionately for all nature and to learn to mālama—to care for each other.

Mission

Carry out seamless integrated management to ensure ecological integrity and achieve strong, long-term protection and perpetuation of Northwestern Hawaiian Islands ecosystems, Native Hawaiian culture, and heritage resources for current and future generations.

Guiding Principles for the Management Plan

The following set of principles was developed by the Papahānaumokuākea Marine National Monument co-trustees to guide management interactions. They refer to the way in which the co-management works.

1. **Cultivate Connection:** We encourage the development of meaningful, long-term relationships between people and place, in order to cultivate Aloha ‘āina (see definition).
2. **Knowledge:** Expand our knowledge of Papahānaumokuākea through both Hawaiian and other methods, understandings, and perspectives to holistically care for this place.
3. **Governance:** Management of Papahānaumokuākea resources is accomplished by PMNM co-trustees working together, demonstrating how collaborative partnerships can create synergy and increase management success.
4. **Education:** Education and outreach that inspires understanding of the nature, culture, and history of Papahānaumokuākea is essential to connect people and communities to place.
5. **Carefulness:** We practice adaptive management to protect and conserve Papahānaumokuākea and err on the side of doing no harm when there is uncertainty about the impacts of an activity.
6. **Partnership:** We foster collaborative partnerships to empower communities and encourage ownership among stakeholders in the stewardship of Papahānaumokuākea.

Goals for the Management Plan

Goals were developed for each kūkulu, or pillar of management, for the sanctuary management plan. These goals were also developed by the PMNM co-trustees.

Management Plan Goals

Goal 1. Resource Protection and Conservation

Ensure the long-term viability and resilience of Papahānaumokuākea by protecting, preserving, enhancing, and restoring its cultural, maritime heritage, and natural resources, with a focus on ocean and island health and human well-being.

Goal 2. Research and Monitoring

Support, promote, conduct, and coordinate research and monitoring, incorporating multiple forms of knowledge to increase understanding of Papahānaumokuākea cultural, maritime heritage, and natural resources, and to improve management decisions.

Goal 3. Governance and Operations

Provide the necessary policy, programs, structure, and processes to ensure effective, integrated management and fulfill the kuleana of shared stewardship for Papahānaumokuākea.

Goal 4. Partnerships and Constituent Engagement

Pursue, build, and maintain partnerships that generate active and meaningful involvement, with a commitment to incorporate traditional values and stewardship ethics, to strengthen world class conservation, community engagement, constituent support, and connection of people to place.

Goal 5. Education, Mentoring, and Interpretation

Inspire current and future generations to mālama Papahānaumokuākea cultural, maritime heritage, and biological resources through excellence in education and mentorship.

Sanctuary Management Kūkulu

Each of the following five kūkulu (pillars of management) sections begins with an overarching goal and a brief description, followed by a set of strategies which collectively address management needs for the sanctuary for the next five to seven years. The strategies were developed by the Office of National Marine Sanctuaries staff through a process that entailed a comprehensive review of planning documents (previous monument management plans and condition/status reports; NOAA plans; and the Mai Ka Pō Mai guidance document), followed by a synthesis and update of relevant content. Many of the strategies in this sanctuary plan are currently being implemented.

Kūkulu 1. Resource Protection and Conservation

Goal

Ensure the long-term viability and resilience of Papahānaumokuākea by protecting, preserving, enhancing, and restoring its cultural, maritime heritage, and natural resources, with a focus on ocean and island health and human well-being.

Description

HO‘OMANA. This kūkulu honors Papahānaumokuākea through resource protection actions that preserve, strengthen, and restore living pilina, or relationships, and weaving Kānaka ‘Ōiwi (Native Hawaiian) knowledge systems, values, and practices together with other knowledge systems and approaches in caring for this sacred biocultural seascape. Actions entail processes and protocols that acknowledge, safeguard, and promote the biocultural health of Papahānaumokuākea, and by extension, promote the health of the entire Hawai‘i Pae ‘Āina (Hawaiian Archipelago). This integrative approach weaves together our co-management guiding principles and cooperative conservation initiatives. To support biocultural conservation and restoration work, we strive to grow a collective kuleana, affirming respect and reciprocity for the place and our partners. The Mai Ka Pō Mai guidance document defines kuleana as a “...fundamental lineal and/or personal responsibility, which, in turn, conveys rights and privileges based on relationships to place and practices.” We also seek to, wherever possible, incorporate training opportunities for Kānaka ‘Ōiwi and others, to build diverse expertise in areas such as ecological/ecosystem monitoring, invasive species control, and maritime skills.

Strategies

Strategy 1.1. Resource Protection Framework: Actively work and advocate inside the ecosystem protection framework established for the monument, to minimize risks and damages to sanctuary resources.

Strategy 1.2. Resource Protection Tools and Technologies: Safeguard sanctuary resources by seeking out and developing new tools and technologies to protect resources from both anthropogenic and natural threats, including invasive species.

Strategy 1.3. Resource Protection Coordination: Coordinate with, and provide guidance for, permittees to increase awareness and implementation of resource protection, including a respectful and appropriate code of conduct, in all activities.

Strategy 1.4. Permitting Program: Monitor permit activity in the sanctuary **in coordination with the monument permitting system**, to mālama ‘āina and to mitigate potential cumulative effects.

Strategy 1.5. Native Hawaiian Resource Protection and Conservation: Develop and implement biocultural resource protection mechanisms and programs that weave in Native Hawaiian culture as a system of knowledge, values, and practices.

Strategy 1.6. Maritime Heritage Resource Threat Assessment: Assess threats to the wide range of maritime heritage resources, including climate impacts, and address appropriate conservation activities.

Strategy 1.7. Maritime Heritage Resource Coordination: Coordinate intra- and interagency efforts to protect and conserve the wide range of maritime heritage resources.

Strategy 1.8. Emergency Response: Coordinate, plan, assist, and lead, where applicable, interagency emergency response activities in order to respond to, mitigate, evaluate, and/or restore impacts of natural, cultural, and maritime heritage resource damages and/or events.

Strategy 1.9. Enforcement: Work with the existing interagency Law Enforcement Coordination Team to enhance communication and coordination among enforcement personnel in order to facilitate responses to incidents, uphold sanctuary regulations and policies, **and enforce compliance with regulations, laws, and permit requirements through surveillance, vessel monitoring system tracking, and relevant technology.**

Kūkulu 2. Research and Monitoring

Goal

Support, promote, conduct, and coordinate research and monitoring, incorporating multiple forms of knowledge to increase understanding of Papahānaumokuākea cultural, maritime heritage, and natural resources, and to improve management decisions.

Description

HŌ‘IKE. “‘A‘ohe pau ka ‘ike i ka hālau ho‘okahi. Not all knowledge is learned from one school.” (Pukui & Varez, 1983).

Hō‘ike focuses on weaving knowledge systems through research and monitoring activities that expand our collective knowledge base and inform Papahānaumokuākea management actions. ‘Ike means knowledge, but it also refers to sensing, experiencing, and understanding. Hō‘ike is about applying knowledge systems and demonstrating knowledge and expertise in a given area. Papahānaumokuākea continues to be an abundant source of knowledge where multiple traditions of Indigenous inquiry and environmental expertise are perpetuated and integrated with Western knowledge systems, inquiry, and approaches. References to these traditional processes, including different ways of observing the living world, can be found in countless oli, mo‘olelo, ka‘ao, and genealogies passed down from generation to generation.

It is important to honor the unique contributions of Kānaka ‘Ōiwi knowledge systems through meaningful inclusivity and engagement of Kānaka ‘Ōiwi practitioners, researchers, and community members in multi-disciplinary research partnerships. By weaving together multiple knowledge systems and employing multiple research approaches and multi-disciplinary methods, we more holistically analyze and understand the linkages and connectivity within the biocultural seascape of Papahānaumokuākea.

Strategies

Strategy 2.1. Marine Ecosystem Characterization: Map, inventory, and characterize marine ecosystems and key habitats.

Strategy 2.2. Marine Ecosystem Monitoring: Coordinate and engage in surveillance to monitor existing resources and potential threats affecting them, in order to understand ecosystem function and facilitate proactive management.

Strategy 2.3. Marine Ecosystem Monitoring Technologies: Incorporate new technologies to address the limitation of access and facilitate monitoring activities in the extensive marine areas surrounding each island and atoll.

Strategy 2.4. Marine Ecosystem Research: Conduct and coordinate research of marine ecosystems and habitats.

Strategy 2.5. Marine Ecosystem Community Research: Develop community monitoring and citizen science research, and associated educational and mentorship opportunities that can be applied across the pae ‘āina.

Strategy 2.6. Native Hawaiian/Cultural Research Program: Support, facilitate, and conduct Kānaka ʻŌiwi (Native Hawaiian) access and research.

Strategy 2.7. Native Hawaiian/Cultural Integration: Weave together multiple knowledge systems, values, and practices, and employ multi-disciplinary methods, in science and research.

Strategy 2.8. Native Hawaiian/Cultural Capacity Building: Develop and support research initiatives that focus on next-generation capacity building for leadership succession of Kānaka ʻŌiwi (Native Hawaiian) and Pacific Islanders.

Strategy 2.9. Maritime Heritage Research and Monitoring: Compile documentation relevant to the maritime cultural landscape, inventory and characterize heritage sites, and monitor the wide range of maritime heritage resources

Strategy 2.10. Socioeconomic Research and Monitoring: Conduct and support socio-economic research and monitoring in the sanctuary.

Kūkulu 3. Governance and Operations

Goal

Provide the necessary policy, programs, structure, and processes to ensure effective, integrated management and fulfill the kuleana of shared stewardship for the sanctuary.

Description

HO‘OKU‘I. Ho‘oku‘i describes a joining or stitching together of various parts to create a larger whole. For voyagers, certain stars that pass directly over specific islands were considered their ho‘oku‘i, their guiding star, such as the star Hōkūle‘a for Hawai‘i. This definition describes the role that ONMS plays as a uniting, connecting, and integrating force for certain activities within Papahānaumokuākea. Operations are carried out by multiple programs and structures that all come together to administer the site’s finances, policy, permitting, exploration, resource protection, research and monitoring, education, outreach, and partnership-building. Many initiatives involve cross-program collaboration. Guided by the principles and examples of pono practices from Mai Ka Pō Mai, the Office of National Marine Sanctuaries’ governance and operations will contribute toward the broader co-management of Papahānaumokuākea.

Strategies

Strategy 3.1. Cooperative Management: Conduct cooperative, coordinated management with the Papahānaumokuākea Marine National Monument co-trustees for the proposed national marine sanctuary.

Strategy 3.2. Culturally Integrated Management Approach: Continue to conduct and improve programs and initiatives to increase internal cultural capacity and proficiency.

Strategy 3.3. Central Operations Planning: Conduct and coordinate annual site operations planning, budgeting, and implementation.

Strategy 3.4. Central Operations Capacity: Assess and enhance human resources and organizational capacity.

Strategy 3.5. Central Operations Assets: Conduct and coordinate the management of field equipment, vessels, vehicles, accountable property, and other assets.

Strategy 3.6. Integrated and Inclusive Management: Integrate diversity, equity, inclusion, and accessibility into our business practices and organizational culture to increase the diversity of our workforce and create a more inclusive work environment where everyone feels valued, is treated fairly, and experiences a true sense of belonging.

Strategy 3.7. Permitting Administration: Promote and facilitate permitted activities consistent with regulated actions that benefit Papahānaumokuākea.

Strategy 3.8. Vessel and Dive Operations: Maintain vessel operational capacity and dive operational capacity to safely and effectively support sanctuary protection, research, and management.

Strategy 3.9. Field Operations: Plan, coordinate, conduct, and support field, scientific, and resource protection projects and missions that integrate management, ensure ecological

integrity, and promote strong, long-term protection and perpetuation of ecosystems, Native Hawaiian culture, and maritime heritage resources.

Strategy 3.10. Communications and Web Administration: Conduct effective communications and web administration to increase awareness of the sanctuary and foster and promote community relations.

Strategy 3.11. Data and Information Management: Effectively manage data to support sanctuary central operations, permitting, research, outreach, and constituent and cultural engagement.

Strategy 3.12. Evaluation to Support Adaptive Management: Conduct and coordinate a targeted tracking and evaluation program for sanctuary management.

Strategy 3.13. Emergency Response Coordination: Conduct, coordinate, and support emergency response for staff and facilities to ensure safety of workplace and workforce.

Kūkulu 4. Partnerships and Constituent Engagement

Goal

Pursue, build, and maintain partnerships that generate active and meaningful involvement, with a commitment to incorporate traditional values and stewardship ethics, to strengthen world class conservation, community engagement, constituent support, and connection of people to place.

Description

HO‘OULU. The word ho‘oulu, which includes the root word ulu (to grow, increase, spread), implies an active engagement and intention to inspire and promote growth. The Hawaiian word for community is kaiāulu. Communities are places of dynamic interactions and relationships that can cultivate abundance, innovation, and ingenuity. Kūkulu Ho‘oulu is grounded in these values of growth and inspiration, with strategies to engage and support diverse communities who care for Papahānaumokuākea.

Strategic partnership-building and constituent engagement are essential to maintain the holistic, multi-faceted relationships to Papahānaumokuākea and perpetuate the legacy of those who have shaped its management. New and existing partnerships serve to expand the collective wealth of skills and knowledge among key entities, including local communities, organizations, and other stakeholders. They create pathways for innovative approaches inclusive of Kānaka ‘Ōiwi perspectives, knowledge systems, values, and practices in our work, including research, management, and education. Partnerships also are instrumental in combining resources to increase training and mentorship opportunities for developing future generations of managers, scholars, and practitioners with a deep understanding of the historical context and holistic understanding of protecting biocultural seascapes and maritime cultural landscapes.

The range of constituent groups and partners is broad and expanding. Indigenous and underserved communities are two important areas where ONMS is currently expanding partnerships and engagement. Several new community partnerships which support marine research and marine resource stewardship are underway.

Strategies

Strategy 4.1. Sanctuary Advisory Council. To ensure consistent advice, transition the existing Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC) to serve as the Sanctuary Advisory Council. Develop and maintain a Sanctuary Advisory Council and engage working groups, friends groups, and others to support sanctuary programs and initiatives; and continue other initiatives that allow sanctuary constituencies to be more involved in the sanctuary and enhance opportunities for long-term engagement.

Strategy 4.2. Constituency-Building and Engagement: Recruit, engage, and support volunteers, including non-traditional workers and participants in skills-development organizations.

Strategy 4.3. Academic Partnerships: Develop, promote, and maintain partnerships with academic institutions to build upon the opportunities for collaborative research, curriculum development, and mentoring.

Strategy 4.4. Native Hawaiian Partnerships: Grow internal and external processes to create diverse, inclusive, and equitable partnerships that enhance our ability to serve Native Hawaiian, underserved, and underrepresented communities.

Strategy 4.5. Economic Partnerships: Develop and maintain partnerships with tourism associations and the business community to raise awareness about Papahānaumokuākea and ocean resource stewardship.

Partnership Synergies

Among the co-managing partners of Papahānaumokuākea, there are affiliated organizations that directly support or otherwise strengthen NOAA's Office of National Marine Sanctuaries' (ONMS) management. These include the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council that advises ONMS; the Friends of Midway National Wildlife Refuge (NWR) and Friends of the Hawaiian Islands NWR groups that support the U.S. Fish and Wildlife Service; the Papahānaumokuākea Native Hawaiian Cultural Working Group that advises and is supported by the Office of Hawaiian Affairs; and the Kure Atoll Conservatory, which supports the State of Hawai'i Department of Land and Natural Resources. In addition to these, there are numerous other organizations and groups that indirectly support the management of Papahānaumokuākea Marine National Monument. Each brings a special set of skills, view points, values, and support functions to the work that is done by the co-trustees. While the actions in this sanctuary management plan focus exclusively on those groups that advise and support ONMS, there is synergy and cooperation between many of these entities, which will be further delineated in the next Papahānaumokuākea Marine National Monument Management Plan update.

Kūkulu 5. Education, Interpretation, and Mentoring

Goal

Inspire current and future generations to mālama Papahānaumokuākea cultural, maritime heritage, and biological resources through excellence in education and mentorship.

Description

HO‘OLAHA. The word ho‘olaha means to spread out or share. ONMS conducts education and outreach activities to build understanding of the environmental and cultural significance of this special place, and to share information about the important work that is being done in the region. Cultural values and perspectives, along with traditional history and accounts, can help to provide a more complete understanding of Papahānaumokuākea and the importance of protecting its ecosystems and other cultural resources, while also helping to establish a personal relationship to place. Developing culturally-grounded content can make information more accessible and engaging as we strive to increase awareness of Papahānaumokuākea and its traditions. In the end, what is most important is to bring the place to the people in ways that spark curiosity and cultivate a deeper sense of purpose.

ONMS’ premiere interpretive facility, Mokupāpapa Discovery Center, provides vital gathering space to bring Papahānaumokuākea to all audiences, as well as serve as a vibrant community center. In addition, a broad complement of education partnerships and collaborations with other interpretive centers, monument co-trustees, educational institutions, organizations, and businesses has, over time, expanded into a diverse network serving both kama‘āina (locals) and malihini (visitors/tourists) alike. Education and outreach efforts are amplified through collaborations with Kānaka ‘Ōiwi educators and organizations to weave in Kānaka ‘Ōiwi values, knowledge, and place-based connections, providing a holistic understanding of how nature and culture are interwoven. For malihini, this is an important example to increase awareness that Kānaka ‘Ōiwi were the first stewards, and that nature and culture are one and the same. For all audiences, understanding of the cultural context is foundational to cultivating a strong sense of kuleana for each person to actively engage in stewarding the places that care for them.

Strategies

Strategy 5.1. Awareness and Information in Multiple Languages: Conduct programs; develop and disseminate materials in ‘ōlelo Hawai‘i (Hawaiian language), English, and other languages for agencies, kama‘āina (locals), malihini (visitors), and wider audiences; and improve and update tools for understanding the physical, biological, cultural, and historical setting of Papahānaumokuākea.

Strategy 5.2. General Public Outreach: Actively engage in and support the development of National Marine Sanctuary System outreach initiatives, locally, regionally, and globally.

Strategy 5.3. Ocean, Land, Climate, and Conservation Literacy: Conduct and support programs and events in Hawai‘i to teach ocean, land, climate, and conservation literacy through a biocultural lens; and participate in the ocean literacy network.

Strategy 5.4. Native Hawaiian Culture and Heritage Education: Develop and provide educational programs and initiatives that are based on Hawaiian cultural values, concepts, and traditional resource management stewardship.

Strategy 5.5. Native Hawaiian Culture and Heritage Outreach: Provide cultural outreach opportunities to serve the Native Hawaiian community and others over the life of the plan.

Strategy 5.6. Interpretive Centers Partnerships: Actively utilize, and partner with discovery centers, aquariums, and museums to enhance our presence, programs, and partnerships. Conduct events and activities to engage broad audiences, and inspire ocean stewardship.

Strategy 5.7. Mokupāpapa Interpretive Center: Maintain Mokupāpapa Discovery Center as a premiere interpretive center and annually revisit and update strategic priorities and plans for interpretive facilities and partnerships.

Strategy 5.8. Navigating Change – Action-Oriented Conservation and Stewardship Outreach: Highlight Papahānaumokuākea as a model for teaching about conservation and stewardship/mālama, with emphasis on educating to change behavior and build stewardship in communities across the pae‘āina.

Strategy 5.9. Mentoring and Career Pathways: Conduct mentorship programs and events, and build partnerships to engage, inspire, and guide the next generation of conservation professionals.

Strategy 5.10. Global Perspective and World Heritage: Showcase the site to regional and international audiences, and actively participate in regional and international educational partnerships and programs.

Section 4: Success Indicators and Measures

The success of this management plan will be evaluated through a set of representative performance indicators and measures for each of the five kūkulu (pillars of management). These indicators and measures provide a means to track implementation of the management plan. They will also provide supporting data for future sanctuary management plan reviews, as well as sanctuary and monument condition reports of biological, ecological, and maritime and cultural heritage resources.

Table 1. Performance Indicators and Measures

Kūkulu	Indicator	Measures
1. Resource Protection and Conservation	<p>1.a. Effective monitoring and management response is being conducted at sites where likely or actual threats to resources exist, e.g., invasive species, marine debris, trophic shifts, and climate-related impacts.</p> <p>Trend: - = +</p>	<ul style="list-style-type: none"> • Threat monitoring programs continued or developed; mitigation programs continued or developed; plans developed. • Vessel traffic monitored. • Non-native and nuisance species of concern monitored. • Number of annual expeditions, surveys, and monitoring efforts tracked. • Database of known non-native and/or marine nuisance species is maintained and periodically updated. • ONMS participation in regional response planning efforts. • Staff maintain required response training.
1. Resource Protection and Conservation	<p>1.b. The condition of habitats and biocultural resources in the sanctuary is assessed, and measures are developed to maintain or improve them.</p> <p>Trend: - = +</p>	<ul style="list-style-type: none"> • Annual Permitted Activities Summary reports completed and disseminated. • Annual Best Management Practices reviewed. • Annual permit database/records reviewed. • Periodically evaluate if the condition of sanctuary resources has been maintained or improved, as assessed through a condition report, state of the monument report, or other means.
2. Research and Monitoring	<p>2.a. Area of the sanctuary seafloor where efforts to survey, map, ground truth, characterize, or analyze habitats have been completed.</p> <p>Trend: - = +</p>	<ul style="list-style-type: none"> • Amount of area surveyed, mapped, ground truthed, characterized, and/or analyzed. • Number of sites surveyed or monitored. • Coordination measures implemented.

Kūkulu	Indicator	Measures
2. Research and Monitoring	<p>2.b. Support collaborative and coordinated management through timely sharing of data.</p> <p>Trend: - = +</p>	<ul style="list-style-type: none"> • Annual Accomplishments Report developed and disseminated. • Annual Permitted Activities Report developed and disseminated. • For each research/monitoring effort or data set: 1) date(s) data were collected; 2) efforts/time taken to analyze the data; 3) efforts/time to disseminate the data; 4) data sharing methods; and 5) products generated (e.g., journal publication or other anticipated end products).
3. Governance and Operations	<p>3.a. Resources and organizational capacity are sufficient to implement core operations and priority programs.</p> <p>Trend: - = +</p>	<ul style="list-style-type: none"> • Estimated percent of annual program/project implementation or milestones funded. • FTE allocations. • Staff feedback regarding capacity, program, and project implementation timeliness and impact.
4. Partnerships and Constituent Engagement	<p>4.a. Involve communities and volunteers in sanctuary management issues and ocean conservation.</p> <p>Trend: - = +</p>	<ul style="list-style-type: none"> • Attendance at events, public meetings, and events (e.g., open houses, advisory council meetings, Mokupāpapa Discovery Center community events). • Volunteer hours in sanctuary-led education, place-based stewardship, and research efforts (e.g., marine monitoring, beach cleanups, cultural monitoring, navigating change). • Number of community-focused initiatives. • Participation in regional efforts related to diversity, equity, and inclusion. • Number of Indigenous engagement strategies and events.
5. Education, Interpretation, and Mentoring	<p>5.a. Effectively interpret and communicate the importance of the sanctuary and its unique resources, and the unique role of NOAA and the sanctuary as a marine resource manager, using Mokupāpapa Discovery Center and a wide variety of media and methods to reach a broad range of audiences.</p> <p>Trend: - = +</p>	<ul style="list-style-type: none"> • Social media metrics. • Web items generated or updated. • Number of classes, students, teachers (by grades, location, etc.). • Number of outreach and community events. • Number of attendees at events, lectures, webinars, etc. • Number of Mokupāpapa Discovery Center visitors. • Interpretive exhibits and signage developed or updated. • Exhibits properly maintained and delivering content. • Newsletter developed and disseminated.

Kūkulu	Indicator	Measures
5. Education, Interpretation, and Mentoring	5.b. Develop and provide inclusive and effective cultural, ocean literacy, and stewardship programs and related education initiatives whose audiences include students, teachers, volunteers, partner organizations, visitors, and tourists. Trend: - = +	<ul style="list-style-type: none"> • Percentage or number of programs or events that involve Indigenous and underserved groups or audiences. • Number of annual mentorship and internship opportunities for Papahānaumokuākea stewardship. • Feedback from teachers and students. • Visitor feedback and survey data on visitor satisfaction. • Staff feedback and information about program improvement.

Section 5: Funding

The National Marine Sanctuaries Act requires NOAA to include an “estimate of the annual cost to the federal government of the proposed designation, including costs of personnel, equipment and facilities, enforcement, research, and public education” (16 U.S.C. § 1434(a)(2)(C)(v)). NOAA estimates the current annual costs for management of Papahānaumokuākea to be between \$3,250,000 and \$4,820,000 depending on the availability of funding. NOAA anticipates a need for similar levels of funding (adjusted to account for inflation) with sanctuary designation.

Management plan implementation is inextricably linked to resources. Management of the proposed sanctuary is envisioned to be funded by a mix of federal appropriations, external funding from collaborations with other agencies and organizations, and in-kind/volunteer support and supplies. The federal budget for the proposed sanctuary will be contingent on several factors, including the federal appropriations process, overall operational and construction budgets for ONMS as determined by Congress, and spending priorities determined by ONMS and NOAA. In general, NOAA anticipates the budget to grow over time to meet the needs of sanctuary management. Collaboration with partners, including non-profit organizations, is also anticipated to help implement key programs and activities.

If the proposed sanctuary designation takes effect, NOAA will maintain the essential, existing resources and actions for management, such as maintaining an administrative office and a sanctuary superintendent and supporting the operation of a Sanctuary Advisory Council. NOAA would continue to provide staff support to programmatic priorities, which include all resource protection, research, and education programs as identified above in specific action plans. Another priority reflected in the kūkulu is to maintain a Native Hawaiian cultural program to work closely with Kānaka ʻŌiwi organizations. NOAA would also work to maintain the sanctuary’s presence through the Mokupāpapa Discovery Center and other site-based interpretive partnerships.

With sanctuary designation, NOAA would be able to enhance or fill gaps in critical programmatic priorities through the NMSA. NOAA would implement the maritime heritage program with mapping, characterization, archaeological documentation, and other activities described in the Papahānaumokuākea Maritime Heritage Research, Education, and Management Plan. Sanctuary status would also allow NOAA to advance joint collaborative projects with Kānaka ʻŌiwi organizations and others to enhance understanding and conservation of cultural values to advance sanctuary management. Another priority would be to initiate the design, build, and operation of a dedicated research vessel. Once operational, NOAA (and partners) would begin implementing site-specific research and monitoring activities with this vessel.

Glossary and Acronyms

Glossary

‘Āina momona – Healthy, productive, thriving communities of people and place based on reciprocal pilina (relationships). ‘Āina momona exemplifies a place of abundance, or a place that produces lots of food and is inclusive of the kuleana that people have to a specific place to ensure its health in order to bountifully produce for all.

‘Āina – Land, ocean, communities; a source of sustenance that feeds one’s physical, mental, emotional, and spiritual well-being.

Ahupua‘a – A division of land, often oriented vertically extending from the uplands and usually includes portions of the sea, that is part of a larger traditional resource management system established by ancient Hawaiians to sustainably utilize the resources throughout the islands.

Aloha ‘āina – A Hawaiian philosophy of love for land and all that which feeds us, representing a most basic and fundamental expression of the Hawaiian experience. A Hawaiian expression of the rights and responsibilities to care for ‘āina as kin.

Biocultural – A dynamic, integrative approach to understanding the links between nature and culture and the interrelationships between humans and the environment (Maffi & Woodley, 2012). Biocultural heritage encompasses Indigenous and local community knowledge innovations and practices that developed within their social-ecological context (Davidson-Hunt et al., 2012). These approaches recognize the existence of multiple worldviews as the foundation for different ways of seeing and different ways of knowing (Chang et al., 2019).

Hawai‘i Pae ‘Āina – Hawaiian Archipelago.

Hō‘ike – To show, to reveal.

Ho‘olaha – To spread out, to share.

Ho‘oku‘i – Zenith; the position directly overhead where the heavens join together.

Ho‘omana – To strengthen cultural and spiritual mana (power).

Ho‘oulu – To inspire, to grow.

Kānaka ‘Ōiwi – Native Hawaiians; an individual who is a descendant of the aboriginal peoples who, prior to 1778, occupied and exercised sovereignty in the Hawaiian Islands, the area that now constitutes the State of Hawai‘i.

Ka‘ao – Histories, stories, and legends. They are often thought of as similar to mo‘olelo, however can be much more fanciful and embellished for storytelling purposes.

Kauhale – Group of houses comprising a Hawaiian home, formerly consisting of men's eating house, women's eating house, sleeping house, cook-house, canoe house, etc.

Kūkulu – Supporting pillars of heaven, here used to describe essential focal areas of management.

Kūpuna – Elder(s), ancestor(s).

Kuleana – A Hawaiian value that originates from the traditional practice of stewarding particular areas of land, known as kuleana, that are associated with familial lineages. It requires

lineal and/or personal responsibility, rights, and privileges based on relationships to place and people.

Mai Ka Pō Mai – The 2021 Native Hawaiian guidance document for the management of Papahānaumokuākea Marine National Monument.

Mālama – To care for, to tend to.

Mo‘olelo – Story, history, tradition.

Native Hawaiian Cultural Landscape – Any place in which a relationship, past or present, exists between a spatial area, resource, and an associated group of Indigenous people whose cultural practices, beliefs, and/or identity connects them to that place. A Native Hawaiian cultural landscape is determined by and known to a culturally related group of Indigenous people with relationships to that place (Van Tilburg et al., 2017).

‘Ōlelo Hawai‘i – Native Hawaiian language.

Oli – Traditional Hawaiian chant.

Piko – An umbilical cord, summit, or top of a hill or mountain; crest; crown of the head; crown of the hat made on a frame (pāpale pahu); tip of the ear; end of a rope; border of a land; center, as of a fishpond wall or kōnane board; or place where a stem is attached to the leaf, as of taro.

Pono – Appropriate, moral, righteous, having integrity, ethical, correct, and deemed necessary by traditional standards in Hawaiian.

Ulu – To grow, to multiply.

Wahi Pana – A culturally significant site. Legendary, celebrated places where mo‘olelo, mele, hula connect the history of the place and its multi-layered relationships to the communities and families who are deeply connected to these places.

Acronyms

MEA – Papahānaumokuākea Marine National Monument Expansion Area

NMSA – National Marine Sanctuaries Act

NOAA – National Oceanic and Atmospheric Administration.

ONMS – Office of National Marine Sanctuaries (NOAA)

PMNM – Papahānaumokuākea Marine National Monument

Acknowledgements

The sanctuary designation process was conducted in cooperation with the Papahānaumokuākea Marine National Monument co-trustees: the National Oceanic and Atmospheric Administration, the U.S. Fish and Wildlife Service, State of Hawai‘i, and the Office of Hawaiian Affairs.

In the early stages of the scoping phase, the sanctuary management plan development process was combined with a broader Monument management plan update process. The initial intent was to merge the plans and accompanying NEPA-HEPA processes in order to create an integrated document and process. Eventually the two processes were decoupled. During scoping, the Monument Management Board convened regularly to discuss the management plan development and initial sanctuary proposal. Then through weekly meetings and a series of day-long workshops, the Monument Management Board’s Core Planning Team developed foundational elements (vision, mission, principles, goals) and a framework (5 kūkulu) to provide the basis for both the sanctuary and the monument management plans.

This designation builds upon existing management and programming in the marine portions of Papahānaumokuākea Marine National Monument, by adding the conservation benefits of a national marine sanctuary. Although ONMS has many fundamental responsibilities for managing the sanctuary, many sanctuary activities will be implemented in partnership or consultation with Monument co-trustees and other organizations. ONMS is committed to working closely with the Monument Management Board, Indigenous communities, and the Sanctuary Advisory Council to prioritize the activities in the management plans and create partnerships to help implement them.

The Papahānaumokuākea Marine National Monument Management Board and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council were essential in the development of this management plan. NOAA acknowledges and thanks its co-managing partners and advisory council members for their individual and collective contributions to this process.

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Appendix A1: Terms of Designation and Proposed Regulations

The Terms of Designation can be found in the Proposed Rule. Refer to the [Papahānaumokuākea sanctuary webpage](#) for a link to the Federal Register Notice to view the proposed Terms of Designation and Proposed Regulations. **Should the sanctuary designation be finalized, the final Terms of Designation and a link to the regulations will be added to the sanctuary management plan.**

Appendix B: Field Activities Table and Best Management Practices

As noted in Chapter 3, implementation of the sanctuary management plan would involve conducting the categories of field activities summarized in the table below. Although the exact number, location, and timing of future field activities is not known at this time, Table B.1 provides a rough estimate of the magnitude of possible field activities, based on NOAA's experience with the research and management needs of Papahānaumokuākea.

Table B.1 Summary of estimated field activities in the sanctuary to implement draft management plan

Category of Activity	Estimated Activity Level
Vessel use and maintenance (number of vessels; days at sea/year)	Up to 5 small vessels ; up to 40 feet in length. Up to 90 total vessel days at sea/year for research, monitoring, emergency response, alien species management, and education/outreach.
Scuba diving (dives/year)	Up to 3,000 dives/year between May and October for documentation, collection and monitoring of: species, habitats, and heritage resources; installation/recovery of scientific equipment; and support for sanctuary activities.
Deploying research and monitoring equipment or buoys (deployments/year)	Up to 5 buoy deployments/year for maritime heritage management Up to 20 deployments/year for passive acoustic monitoring Up to 16 deployments/year of small research and monitoring equipment (i.e., weighted markers, moorings for temperature, oxygen, CO ₂ sensors). Deployments range from 3 to 12 months.
Sampling organisms (deployments/year)	Up to 50 deployments/year of sampling equipment (e.g., small beam trawl) for collecting organisms (e.g., algae plankton, fish).
Collecting artifacts for time-sensitive maritime heritage resource protection needs (collections/year)	Up to 1 collection every five years for time-sensitive emergency situations to protect cultural, historical, or archaeological resources from loss, destruction, or injury.
Removing materials (removals/yr)	Up to 4 removals/year of materials (e.g., marine debris and nets, miscellaneous detritus)
Deploying uncrewed aerial systems (UAS)	Up to 20 UAS deployments/year for invasive species, climate change, damage assessments and other research

NOAA would implement the following self-imposed best management practices and standing orders as part of conducting field activities:

Vessel Use and Maintenance

- [BMP001](#) Marine Alien Species Inspection Standards for Maritime Vessels
- [BMP004](#) Best Management Practices (BMPs) for Boat Operations and Diving Activities
- [BMP011](#) Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment
- [BMO020](#) Best Management Practices (BMPs) to Minimize the Spread of Nuisance Algae

Scuba Diving

- [BMP004](#) Best Management Practices (BMPs) for Boat Operations and Diving Activities
- [BMP011](#) Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment
- [BMO020](#) Best Management Practices (BMPs) to Minimize the Spread of Nuisance Algae

Deploying Research and Monitoring Equipment or Buoys

- [BMP011](#) Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment
- [BMO020](#) Best Management Practices (BMPs) to Minimize the Spread of Nuisance Algae

Sampling Organisms

- [BMP006](#) General Storage and Transport Protocols for Collected Samples
- [BMP011](#) Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment
- [BMO020](#) Best Management Practices (BMPs) to Minimize the Spread of Nuisance Algae

Collecting Artifacts for Time-Sensitive Maritime Heritage Resource Protection Needs

- [BMP017](#) Best Management Practices (BMPs) for Maritime Heritage Sites

Removal of Materials (e.g., marine debris and nets)

- [BMP020](#) Best Management Practices (BMPs) to Minimize the Spread of Nuisance Algae. *Requires a separate biosecurity plan and review for the removal of marine debris from areas with known nuisance algae distributions.*

Deploying uncrewed aerial systems (UAS) for research

- The Monument's Resource Protection Working Group is working on a generalized SOP/BMP for UAS operations.

Appendix C:

Compliance with Additional Regulatory Requirements

This section presents the existing additional statutory and regulatory environment of the proposed action and describes the consultation requirements and compliance completed for the proposed action. This section also includes the agencies or persons consulted regarding these requirements.

Between draft and final EIS, Appendix C was updated with consultation information that occurred between March 1, 2024 and the publication of this final EIS. This includes outcomes for the following: National Historic Preservation Act (NHPA) Section 106 consultation; federal consistency review under the Coastal Zone Management Act; compliance with the Marine Mammal Protection Act for field activities, and Endangered Species Act and Essential Fish Habitat consultations. Appendix C1 includes correspondence for all consultations in this appendix. Documentation of the NHPA Section 106 determination process, including consultations, is found in Appendix C. Supplemental information also was added to the section on the Sunken Military Craft Act.

Federal Statutory Consultations

Consultations under the National Marine Sanctuaries Act

Under section 303(b)(2) of the National Marine Sanctuaries Act (NMSA), NOAA is required to conduct a series of consultations with Congress, federal and State agencies, and other interested agencies. Per this requirement, upon publication of this draft EIS, NOAA will send consultation letters with a copy of the draft EIS to the following parties:

- U.S. House of Representatives Natural Resources Committee
- U.S. Senate Committee on Commerce, Science, and Transportation
- Department of Defense
- Department of State
- Department of Transportation
- Department of the Interior

NOAA will also send copies of this draft EIS to the following agencies and organizations, consistent with NEPA requirements for inviting comments (42 U.S.C. 4332; 40 CFR 1503.1):

- Office of Hawaiian Affairs
- State of Hawai'i
- U.S. Environmental Protection Agency
- U.S. Army Corps of Engineers
- U.S. Fish and Wildlife Service
- Western Pacific Regional Fishery Management Council
- U.S. Coast Guard
- U.S. Department of the Navy

NOAA also consulted with the Western Pacific Regional Fishery Management Council (WPRFMC) as required in accordance with NMSA Section 304(a)(5). Through this consultation, NOAA provided the Council with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA initiated the consultation on [November 19, 2021](#). On [March 22, 2022](#), the WPRFMC agreed to develop fishing regulations for the proposed sanctuary. NOAA participated in six public meetings hosted by the WPRFMC on November 1st, 3rd, 4th, 5th, 8th, and 10th of 2022, which were focused on the development of fishing regulations for the area of the proposed sanctuary that overlaps with the MEA. At its 193rd meeting in December of 2022, the WPRFMC provided a final [recommendation](#). NOAA found that the final recommendation, in part, did not fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed designation ([February 22, 2023](#)). The WPRFMC amended their recommendation during their 194th meeting in March of 2023, and submitted a revised final recommendation to NOAA on [April 14, 2023](#).

In May of 2023, NOAA accepted the majority of the WPRFMC's recommendation as it fulfilled the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, the WPRFMC's recommendation for the disposition of Native Hawaiian Subsistence Practices Fishing catch, providing permit applicants the ability to request limited cost recovery by selling their catch in the permit application process through a statement of need for cost recovery along with expected costs, failed to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation, and was rejected by NOAA via a decision letter dated [May 31, 2023](#). As NOAA explained in the letter, any recommendation for the allowance of "sale" is inconsistent with the proposed sanctuary's goals and objectives. NOAA Fisheries is preparing proposed regulations under the Magnuson-Stevens Fishery Conservation and Management Act to reflect the outcome of the NMSA Section 304(a)(5) process.

National Historic Preservation Act of 1966 (54 U.S.C. §§ 300101 et seq.) – Section 106 Consultation

Section 106 of the National Historic Preservation Act (NHPA, 54 U.S.C. 306108) requires federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) the opportunity to comment with regard to the undertaking. Pursuant to 36 CFR 800.16(l)(1), the term "historic property" means "any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior."

NOAA has determined that designation of a national marine sanctuary and related rulemaking for sanctuary-specific regulations meet the definition of an undertaking as defined at 36 CFR 800.16(y). In fulfilling its responsibilities under Section 106 of the NHPA, NOAA initiated consultation with the Hawai'i State Historic Preservation Division through the Hawai'i Cultural Resource Information System on November 21, 2021. ONMS also invited the Advisory Council on Historic Preservation (ACHP) to participate on November 21, 2022. NOAA further initiated an effort to identify consulting parties to participate in the Section 106 process through distribution of over 500 letters to individuals, organizations, and families. This included outreach to families with lineal and cultural connections to Papahānaumokuākea, cultural

practitioners, Native Hawaiian Organizations, the fishing community (including subsistence, recreational, and commercial fishers), maritime heritage organizations, government agencies, and others. These letters solicited input regarding the identification of, and potential effects on, historic properties from the proposed sanctuary designation for the purpose of obtaining input for the Section 106 review and to additionally determine their interest in participating as a consulting party. Through this process NOAA identified 31 consulting parties.

NOAA subsequently hosted ten Section 106 consultation meetings with the consulting parties, summarized in Table C.1. Through these consultation meetings NOAA further sought to invite consulting party and public input regarding the identification of, and potential effects on, historic properties from the proposed sanctuary designation. Subsequently, pursuant to 36 CFR 800.4(d)(1) NOAA documented a Finding of No Historic Properties Affected for this undertaking (see Appendix C). The consulting parties have been notified of the finding and the finding was provided to the Hawai'i State Historic Preservation Division for concurrence on October 25, 2024. The finding is further being made available to the public through publication in this final EIS.

Table C.1. Summary of NHPA Section 106 consultation meetings.

Meeting	Date	Format	Description
1	8/23/2022	Virtual	Orientation meeting for recognized consulting parties
2	10/25/2022	Virtual	Consulting parties meeting with Native Hawaiian Organizations with a focus on cultural resources
3	10/27/2022	In-person	Individual consultation with two lineal descendants of Papahānaumokuākea
4	10/28/2022	Virtual	Consultation with maritime heritage consulting parties
5	10/31/2022	Virtual	Individual consultation with maritime heritage consulting parties
6	1/24/2023	Virtual	Group consultation with Native Hawaiian Organizations and maritime heritage consulting parties
7	3/19/2024	Virtual	Additional consultation made available to all consulting parties following the release of the draft environmental impact statement
8	March 25, 2024	Virtual	Additional consultation made available to all consulting parties following the release of the draft environmental impact statement
9	March 26, 2024	Virtual	Additional consultation made available to all consulting parties following the release of the draft environmental impact statement
10	April 16, 2024	Virtual	Individual consultation with Office of Hawaiian Affairs Chief Advocate and Policy Team

In addition to the consultation activities described above, the State of Hawai'i Department of Land and Natural Resources (DLNR) conducted a Cultural Impact Assessment (CIA). The State of Hawai'i CIA is triggered by requirements of the Hawai'i Environmental Policy Act (HEPA), Hawai'i Revised Statutes (HRS) §343, and was conducted parallel to the Section 106 process and NEPA review conducted by NOAA. The program is codified under HRS Chapter 6E recognizing the State's constitutional duty to conserve and develop the historic and cultural property in the State. State Historic Preservation Division (SHPD) review includes identification and inventory of historic properties, evaluation of significance of the properties, determination

of effects to significant properties, and mitigation. Pursuant to HRS § 6E-8 and HAR § 13-275-3, DLNR Department of Aquatic Resources (DAR) submitted a written request to SHPD for an agency determination letter. On June 7, 2024, SHPD concurred with DLNR's determination of no historic properties affected.

A legal analysis was also conducted to support the State's constitutional duties to protect Native Hawaiian traditional and customary practices. Nohopapa Hawai'i created the document *E Ho'i I Ke Au A Kanaloa* (Nohopapa Hawai'i, 2023) containing the CIA and a legal analysis relating to Native Hawaiian rights and cultural resources.

Sunken Military Craft Act of 2004 (amended 2022)

The Sunken Military Craft Act of 2004 (SMCA; Pub. L. 108-375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note) preserves and protects from unauthorized disturbance all sunken military craft that are owned by the United States government, as well as foreign sunken military craft that lie within United States waters, as defined in the SMCA. Thousands of U.S. sunken military craft lie in waters around the world, many accessible to looters, treasure hunters, and others who may cause damage to them. These craft, and their associated contents, represent a collection of non-renewable and significant historical resources that often serve as war graves, carry unexploded ordnance, and contain oil and other hazardous materials. By protecting sunken military craft, the SMCA helps reduce the potential for irreversible harm to these nationally important historical and cultural resources.

Sunken military craft are administered by the respective Secretary concerned pursuant to the SMCA. The Secretary concerned is solely responsible for authorizing disturbance of sunken military craft under the SMCA, specifically for archaeological, historical, or educational purposes, and would consult with NOAA when considering permitting such activities. The Secretary concerned is also responsible for determinations of sunken military craft status and ownership, publicly disclosing the location of sunken military craft, and for determining eligibility and nominating sunken military craft as historic properties to the National Register of Historic Places. Any agreements with foreign sovereigns regarding sunken military craft in U.S. waters are negotiated by the Secretary of Defense, the Secretary of State, and the Secretary of the Navy, according to authorities vested in each by the SMCA. The Secretary concerned, or his or her designee, and NOAA will ensure coordination and foster collaboration on any research, monitoring, and educational activities pertaining to sunken military craft located within the sanctuary system.

The 1942 naval aviation Battle of Midway occurred both at Midway Atoll, as well as at sea some 100–150 nautical miles north of the atoll in the northwestern portion of Papahānaumokuākea. Aircraft carriers from the historic conflict have also been located in the deep ocean, and multiple aircraft and sunken military vessels have been surveyed within the Midway Atoll Special Management Area, as well. Yet, hundreds of aircraft, and several other aircraft carriers and destroyers from the battle, remain to be discovered in Papahānaumokuākea.

Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.) – Federal Consistency

In 1972, Congress enacted the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) to encourage coastal states, Great Lake states, and U.S. territories and commonwealths to preserve, protect, develop, and, where possible, to restore or enhance the resources of the nation's coastal zone. Section 307 of the CZMA is known as the “federal consistency” provision. The federal consistency provision requires federal actions (inside or outside a state's coastal zone) that affect any land or water use or natural resource of a state's coastal zone, to be consistent to the maximum extent practicable with the enforceable policies of the State coastal management program.

Section 307 of the CZMA requires federal agencies to consult with a state's coastal management program on potential federal agency activities that affect any land or water use or natural resource of the coastal zone. To comply with this law, NOAA submitted a copy of the proposed rule and supporting documents, including the draft EIS, to the State of Hawai'i Office of Planning and Sustainable Development for evaluation of federal consistency under the CZMA. The EIS provided the backbone of the analysis necessary for that determination. The federal consistency regulations can be reviewed at 15 CFR part 930.

On March 21, 2024, NOAA submitted its federal consistency determination to the Hawai'i Coastal Zone Management Program of the Office of Planning and Sustainable Development. NOAA's analysis found the proposed action would be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the Hawai'i Coastal Zone Management Program. NOAA's federal consistency determination, and the State of Hawai'i May 17, 2024 concurrence letter, are included in Appendix C1.

Endangered Species Act (16 U.S.C. §§ 1531 et seq.) – Section 7 Consultation

The Endangered Species Act (ESA) of 1973, as amended, provides for the conservation of species that are endangered or threatened throughout all or a significant portion of their range, and the conservation of the ecosystems on which they depend. The ESA directs all federal agencies to work to conserve endangered and threatened species and to use their authorities to further the purposes of the act. NOAA Fisheries works with USFWS to manage ESA listed species. Generally, NOAA Fisheries manages marine species, while USFWS manages land and freshwater species.

The ESA requires federal agencies to consult or confer with the USFWS and/or NOAA Fisheries when there is discretionary federal involvement or control over the action. When a federal agency determines that their action “may affect” an ESA-listed species, that agency is required to consult formally with NOAA Fisheries or USFWS, as appropriate (50 CFR § 402.14 (a)). Federal agencies are exempt from this general requirement if they have concluded that an action “may affect, but is not likely to adversely affect” endangered species, threatened species, or designated critical habitat and NOAA Fisheries or the USFWS concurs with that conclusion (50 CFR § 402.14 (b)). This is commonly referred to as “informal consultation.” This finding can be made

only if all of the reasonably expected effects of the proposed action will be beneficial, insignificant, or discountable. If NOAA Fisheries or USFWS agrees that the action's effects on ESA-listed species will be beneficial, insignificant, or discountable, they provide a letter of concurrence, which completes informal consultation. When an action agency determines that the action has no effect, no Section 7 consultation is required. Action agencies should document the "no effect" determination in their records with an explanation on why Section 7 consultation is not necessary. The action agency is not required to notify USFWS/NOAA Fisheries or seek their concurrence with a no effect determination; and USFWS/NOAA Fisheries are not obligated to review it, concur with it, or otherwise provide comments on a no effect determination submitted by an action agency.

On March 8, 2024, ONMS determined that the sanctuary designation may affect, but is not likely to adversely affect, ESA-listed species under NOAA Fisheries' jurisdiction, and initiated informal consultation under Section 7(a)(2) of the ESA for the designation with NOAA Fisheries. On April 29, 2024, NOAA Fisheries concurred that designation of the Papahānaumokuākea National Marine Sanctuary may affect, but is not likely to adversely affect ESA listed species and habitats that could be present in the action area.

Those designated and proposed critical habitat and ESA listed species are under NOAA Fisheries jurisdiction are: Hawaiian monk seals (*Neomonachus schauinslandi*), Hawaiian green sea turtles (*Chelonia mydas*), hawksbill sea turtles (*Eretmochelys imbricata*), North Pacific loggerhead sea turtles (*Caretta caretta*), olive ridley sea turtles (*Lepidochelys olivacea*), leatherback sea turtles (*Dermochelys coriacea*), Main Hawaiian Islands false killer whale (*Pseudorca crassidens*), sperm whales (*Physeter macrocephalus*), fin whales (*Balaenoptera physalus*), blue whales (*Balaenoptera musculus*), sei whales (*Balaenoptera borealis*), North Pacific right whales (*Eubalaena japonica*), false killer whale (*Pseudorca crassidens*), oceanic whitetip shark (*Carcharhinus longimanus*), scalloped hammerhead sharks (*Sphyrna lewini*), giant manta rays (*Manta birostris*), the coral species *Acropora globiceps*; and critical habitat for the Hawaiian monk seal, Main Hawaiian Islands insular false killer whale, and proposed critical habitat for *Acropora globiceps*. ONMS' determination memo and NOAA Fisheries' response are included in Appendix C1, below.

On April 30, 2024, ONMS determined that the sanctuary designation would have no effect on ESA-listed species or critical habitats under USFWS jurisdiction. ONMS used the USFWS's Environmental Conservation Online System Information for Planning and Conservation tool to identify species or critical habitat that may be present in the action area. This search identified 15 endangered or threatened species under USFWS jurisdiction and critical habitat for 6 species present in the vicinity of the action area. The ESA listed species include Band-rumped Storm-petrel (*Hydrobates castro*), Hawaiian Petrel, (*Pterodroma sandwichensis*), Newell's Shearwater, (*Puffinus newelli*), Short-tailed Albatross, (*Phoebastria albatrus*), Laysan Duck (*Anas laysanensis*), Laysan Finch (*Telespiza cantans*), Nihoa Finch (*Telespiza ultima*), Nihoa Millerbird (*Acrocephalus familiaris kingi*), Green Sea Turtle (*Chelonia mydas*), *Amaranthus brownii*, *Cyperus pennatiformis*, Ihi (*Portulaca villosa*), Loulu (*Pritchardia remota*), Popolo (*Solanum nelsonii*), and *Schiedea verticillata*.

Note that three of the identified seabirds (the Band-rumped Storm-petrel, Hawaiian Petrel, and the Newell's Shearwater) were not listed in the draft EIS. Following additional discussions with the USFWS, this final EIS was amended to include the three species not listed in the draft EIS.

NOAA evaluated the species' habitat requirements, habitat availability within the action area, and the components of the proposed action, and determined the proposed action will have no effect on ESA-listed species or critical habitats under USFWS jurisdiction. These conclusions were based on the following:

- Ten of the species identified are land-based and not found within the action area (six flowering plants and four landbirds).
- The green sea turtle (which was analyzed as part of the ESA consultation with NOAA Fisheries) is under USFWS jurisdiction only when the animal is located on land, outside the proposed sanctuary.
- The remaining four seabirds may occur in portions of the action area; however, no beneficial or adverse impacts were specifically identified for seabirds. Generally, the implementation of a penalty schedule, the ability to implement emergency regulations, and ONMS' damage assessment authority would provide a direct, long-term, moderate beneficial impact to the biological resources based on NOAA's experience with implementing these authorities. However, the proposed sanctuary regulations promulgated under the NMSA would largely be consistent with existing Monument regulations. Only minor changes in the proposed regulations are proposed, to remove discrepancies and gaps in prohibitions, regulated activities, and permitting across PMNM and MEA. The proposed sanctuary designation is not expected to increase the number of annual permits issued, or the level of vessel traffic or person-hours within the action area. The Monument co-trustees already conduct active management for many of these protected species, with potential impacts from specific projects assessed through the Monument permitting system.

A record of the no effect determination was shared with USFWS on April 30, 2024, and USFWS acknowledged receipt of the no effects determination. ONMS' determination memo is included in Appendix C1.

Sanctuary activities that may occur at a later time, within the proposed sanctuary, including issuing permits for specific future activities, are not within the scope of this EIS or the ESA Section 7 determinations made for sanctuary designation. In the event that the sanctuary is designated, through the permit process, ONMS would review these future management activities to ensure that those actions are addressed under ESA, NEPA, and other applicable environmental laws.

Notably, the National Ocean Service (NOS), of which the Office of National Marine Sanctuaries is a part, has completed programmatic Section 7 ESA consultations with NOAA Fisheries and USFWS for NOS's surveying operations, which includes common sanctuary management and permitting actions. These consultations were completed as part of the NOS Surveying Programmatic Environmental Impact Statement (PEIS), which assesses the environmental impacts from many at-sea activities, including vessel operation, autonomous vehicle operation, instrument deployment, and the use of sonars (including multibeam, single beam, sub-bottom

profiler sonars). The NOS Surveying PEIS covers a period of five years, 2023 through 2027. For ESA-listed species that could be located in or near the proposed sanctuary, both NOAA Fisheries and USFWS concurred with the NOS determinations that field activities are “not likely to adversely affect” these species and designated critical habitats.

Should ONMS conduct, permit, or authorize activities that are not addressed in the NOS Surveying PEIS, NOAA would evaluate the impacts on ESA-listed species and habitats from such activities and determine the appropriate means of ESA compliance on a case-by-case basis. In all cases, ONMS would comply with all conservation mitigation measures required under the ESA or other applicable laws.

Marine Mammal Protection Act of 1972 (16 U.S.C. §§ 1361 *et seq.*)

The Marine Mammal Protection Act (MMPA), as amended, prohibits, with certain exceptions, the “take” of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. The MMPA defines “take” as: “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal” (16 U.S.C. § 1362(13)). Harassment means any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment) (16 U.S.C. § 1362).

Section 101(a)(5)(A–D) of the MMPA gives NOAA and USFWS the authority to authorize, upon request, the “incidental,” but not intentional, taking, of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing or directed research on marine mammals) within a specified geographic region. The NOAA Fisheries Office of Protected Resources processes applications for incidental takes of small numbers of marine mammals that it is responsible to protect, which are whales, dolphins, porpoises, seals, and sea lions. The USFWS does the same for walrus, manatees, sea otters, and polar bears. Authorization for incidental takes may be granted if NOAA Fisheries or USFWS finds that the taking would be of small numbers, have no more than a “negligible impact” on those marine mammal species or stocks, and not have an “unmitigable adverse impact” on the availability of the species or stock for “subsistence” uses.

Effect Determination for Marine Mammals for the Proposed Action

As indicated in Section 5.3.3 of the EIS, the proposed action would have beneficial impacts on marine mammals under NOAA Fisheries’ jurisdiction. The proposed action would not affect marine mammals under USFWS jurisdiction. Section 4.4.10 describes the marine mammals potentially occurring in the study area, with analyses of potential impacts of the proposed action in Chapter 5. While vessel operations create the possibility for collision with a marine mammal or for temporary disturbance of a marine mammal, no collisions have been reported in the 17 years of Monument management. NOAA requires all permitted vessels to use Best Management Practices described in Appendix B of the EIS, including maintaining awareness, managing vessel speed, and work stoppage protocols.

The contribution of noise to the sanctuary soundscape from conducting sanctuary management and research activities would be minor and temporary, due to the low level of expected future management and research activities in the region. Any acoustics effects on marine mammals from engine noise, movement of equipment through the water, and other underwater sound generated from propulsion machinery or depth sounders would be minor and temporary. Potential impacts from sonar use during sanctuary management actions **are anticipated to be limited to temporary behavioral disturbances of marine mammals within the mid- and higher-frequency hearing range (e.g., dolphins, monk seals).**

In 2022, NOS prepared a Request for Marine Mammal Protection Act Letter of Authorization for species under NOAA Fisheries jurisdiction related to NOS survey activities. In a response dated August 19, 2024, NOAA Fisheries determined that NOS survey activities were not likely to result in the incidental take of marine mammals under NMFS' jurisdiction (i.e., cetaceans and pinnipeds other than walrus) because they do not have the potential to injure and are not likely to present the potential to disturb marine mammals by causing disruption of behavioral patterns.

Should ONMS conduct, permit, or authorize any future field activities that are not within the NMFS August 2024 "no take" determination, NOAA would evaluate the impacts on marine mammals from such activities on a case-by-case basis and would seek necessary authorizations from NOAA Fisheries prior to conducting the proposed activity.

Migratory Bird Treaty Act (16 U.S.C. §§ 703 et seq.)

The Migratory Bird Treaty Act of 1918 (MBTA) implements the U.S.' commitment to bilateral treaties, or conventions, with Great Britain, Canada, Japan, Russia, and Mexico for the protection of shared migratory bird resources. The MBTA establishes that it is unlawful to pursue, hunt, take, capture, kill, or sell migratory birds unless authorized by a permit issued by USFWS. Take is defined in regulations as: "pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect" (50 CFR § 10.12). The statute does not discriminate between live or dead birds, and gives full protection to any bird parts including feathers, eggs and nests. The MBTA protects over 800 species of birds that occur in the U.S., and the list of migratory bird species protected by the MBTA is set forth in 50 CFR § 10.13. Of these migratory bird species protected under the MBTA, 21 species of seabirds nest on the islets within the proposed sanctuary, while an additional 47 species of shorebirds may be found transiting, resting, or foraging within the study area. USFWS issues permits for scientific collecting, banding and marking, falconry, raptor propagation, depredation, import, export, taxidermy, waterfowl sale and disposal, and special purposes. USFWS has also developed, and continues to develop, voluntary guidance that helps project proponents reduce incidental take of migratory birds.

MBTA Effects Determination for the Proposed Action

NOAA/ONMS determined that the proposed action would not cause the take of any migratory bird species protected under the MBTA. Section 4.4.9 of the final EIS describes the most common migratory seabird species that may be found transiting, resting, or foraging within the study area, with potential impacts of the proposed action analyzed in Chapter 5. The proposed

action is anticipated to have a minor beneficial impact on migratory birds, through the limitation of fishing activities, while impacts from vessel traffic or other activities in support of the sanctuary management, such as research or educational activities, would be no different than under No Action. Any disturbances that did occur would be negligible and would not rise to the level of take under the MBTA. Should NOAA/ONMS conduct, permit, or authorize any future activities that would cause the take of any species protected under the MBTA, NOAA/ONMS would evaluate the environmental impacts from such activities on a case-by-case basis.

Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 *et seq.*) – Essential Fish Habitat Consultation

In 1976, Congress passed the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The MSA fosters long-term biological and economic sustainability of the nation’s marine fisheries out to 200 nautical miles from shore. Key objectives of the MSA are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable supply of seafood. The MSA promotes domestic commercial and recreational fishing under sound conservation and management principles and provides for the preparation and implementation, in accordance with national standards, of fishery management plans (FMPs).

The MSA provides its Fishery Management Councils and NOAA Fisheries with authority to identify and designate in the FMP essential fish habitat (EFH) and Habitat Areas of Potential Concern (HAPCs). The MSA defines EFH as “those waters and substrate necessary for fish for spawning, breeding, feeding, or growth to maturity” (MSA § 3(10)). HAPCs are subsets of EFH that exhibit one or more of the following traits: (i) provide important ecological function; (ii) are sensitive to human-induced environmental degradation; (iii) are stressed by development; or (iv) are rare (50 CFR § 600.815(a)(8)).

The consultation requirements of Section 305(b) of the MSA provide that:

- Federal agencies must consult with the Secretary of Commerce on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect EFH;
- The Secretary shall provide recommendations (which may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH) to conserve EFH to federal or state agencies for activities that would adversely affect EFH; and
- The federal action agency must provide a detailed response in writing to NOAA Fisheries and to any regional fishery management council commenting under Section 305(b)(3) of the MSA within 30 days after receiving an EFH conservation recommendation.

“Adverse effect” is defined in the regulations as: “any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH

or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions” (50 CFR § 600.910).

The trigger for EFH consultation is a federal action agency’s determination that an action or proposed action, funded, authorized, or undertaken by that agency may adversely affect EFH. If a federal agency makes such a determination, then EFH consultation is required. If a federal action agency determines that an action does not meet the “may adversely affect EFH” test (i.e., the action will not adversely affect EFH), no consultation is required.

The Department of Commerce’s guidelines for implementing the EFH coordination and consultation provisions of the MSA are at 50 CFR §§ 600.905–930. These guidelines provide definitions and procedures for satisfying the EFH consultation requirements, which include the use of existing environmental review processes, general concurrences, programmatic consultations, or individual EFH consultations (i.e., abbreviated, expanded) when an existing process is not available. The EFH guidelines also address coordination with the councils, NOAA Fisheries EFH conservation recommendations to federal and State agencies, and council comments and recommendations to federal and State agencies.

The proposed sanctuary action area is located within EFH for various federally managed fish species within the Fishery Ecosystem Plans for the Hawaiian Archipelago and the Pelagic Fisheries of the Western Pacific. While EFH regulations encourage regional Fishery Management Councils to designate HAPCs within areas identified as EFH to focus conservation priorities on specific habitat areas that play a particularly important role in life cycles of federally managed fish species, no HAPCs are designated in the project area. This may be due to the prohibition of commercial fisheries within the action area. Section 4.3 of this EIS identifies EFH that overlaps with the action area following procedures established by the MSA.

Upon publication of the draft EIS, NOAA/ONMS began consultation with NOAA Fisheries to make an effects determination with regard to the proposed action’s effects on EFH. The EFH consultation was completed March 21, 2024 with the following noted by NOAA Fisheries in its letter of concurrence:

NOAA Fisheries agrees with ONMS that the act of designating the PNMS will not adversely affect EFH; however, as we mention above, future management actions (including issuing permits) may result in impacts to EFH, so ONMS should continue to engage our office for technical assistance or to initiate consultations when necessary.

Should ONMS undertake field activities that may affect EFH, NOAA would evaluate these impacts and determine the appropriate means of MSA-EFH compliance on a case-by-case basis.

Executive Order 12898: Federal Actions to Address Environmental Justice in Minority and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

E.O. 12898 and E.O. 14096 direct federal agencies to identify and address disproportionately high and adverse effects of their actions on human health and the environment of communities

with environmental justice concerns. Additionally, federal agencies are directed to better protect overburdened communities from pollution and environmental harms; strengthen engagement with communities and mobilize federal agencies to confront existing and legacy barriers and injustices; promote the latest science, data, and research, including on cumulative impacts; increase accountability and transparency in federal environmental justice policy; and honor and build on the foundation of ongoing environmental justice work. The designation of national marine sanctuaries by NOAA helps to ensure the enhancement of environmental quality for all populations in the United States. The sanctuary designation would not result in disproportionate negative impacts on any communities with environmental justice concerns. In addition, many of the potential impacts from designating the sanctuary would result in long term or permanent beneficial impacts by protecting sanctuary resources, which may have a positive impact on communities by providing employment and educational opportunities, and potentially result in improved ecosystem services. In compliance with E.O. 12898 and E.O. 14096, Section 4.6 of the EIS addresses environmental justice issues. The analysis of environmental justice issues associated with the proposed action are presented in Chapter 5.

Paperwork Reduction Act (44 U.S.C. §§ 3501 et seq.)

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., unless that collection of information displays a currently valid OMB control number. NOAA proposes to use an existing collection, Papahānaumokuākea Marine National Monument Permit Applications and Reports for Permits, currently approved under OMB Control Number 0648–0548 in association with this final rule. This information collection is currently used to determine whether to approve or deny a permit application for the Papahānaumokuākea Marine National Monument. Information collected includes such items as the professional qualifications and financial ability of the applicant (as related to the requested activity); the duration of the activity and its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; and the extent to which the conduct of the activity may diminish or enhance the qualities for which the Monument was designated. Some of the information collected may also be used to inform management actions or decision making after a final decision has been made. Additional information regarding this collection of information – including all background materials -- can be found at <https://www.reginfo.gov/public/do/PRAMain> by using the search function to enter either the title of the collection or the OMB Control Number.

NOAA believes designating a national marine sanctuary in the marine portions of the Monument would not result in a significant change to the burden, reporting, recordkeeping, and other compliance requirements. To the extent compliance with sanctuary regulations would impose a burden on persons, including small businesses, NOAA believes this burden would be minimal. NOAA did not receive any comments in response to this determination at the proposed rule stage. Following sanctuary designation, NOAA may elect to re-visit the current collection to determine if additional changes are needed. Should NOAA, in consultation with the Department of Interior, the State of Hawaii, and the Office of Hawaiian Affairs, believe additional changes are needed to better facilitate implementation of sanctuary permitting and

reporting, NOAA would publish a 60-day notice announcing potential revisions for public comment before submitting materials to OMB.

Regulatory Flexibility Act (5 U.S.C. §§ 601 *et seq.*)

The Regulatory Flexibility Act (RFA), as amended and codified at 5 U.S.C. 601 *et seq.*, requires federal agencies to prepare a regulatory flexibility analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking, unless the agency can certify, pursuant to 5 U.S.C. 605, that the action will not have significant economic impact on a substantial number of small entities.

The RFA requires agencies to consider, but not necessarily minimize, the effects of proposed rules on small entities. There are no decision criteria in the RFA. Instead, the goal of the RFA is to inform the agency and public of expected economic effects of the proposed rule and to ensure the agency considers alternatives that minimize the expected economic effects on small entities while meeting applicable goals and objectives. The proposed rule quantifies the potential effects of a national marine sanctuary designation.

The analysis detailed in the proposed rule serves as the factual basis for and supports NOAA's decision to certify that the rule will not have a significant economic impact on a substantial number of small entities. Therefore, no further analysis is needed under the RFA (5 U.S.C. 605(b)).

Executive Order 12866 – Regulatory Impact, 13563 Improving Regulation and Regulatory Review, and 14094: Modernizing Regulatory Review

The Office of Management and Budget (OMB) has determined this rule to be significant under Executive Order 12866, "Regulatory Planning and Review," 58 FR 190 (Oct 4, 1993), as supplemented by Executive Order 14094, "Modernizing Regulatory Review," 88 FR 21879 (April 6, 2023). NOAA prepared an analysis of the potential costs and benefits associated with this action.

State of Hawai'i Statutory Consultations

Hawai'i Historic Preservation Program

The State of Hawai'i Department of Land and Natural Resources, Historic Preservation Division (SHPD) is responsible for the State Historic Preservation Program. The program is codified under HRS Chapter 6E recognizing the State's constitutional duty to conserve and develop the historic and cultural property in the State. SHPD review includes identification and inventory of historic properties, evaluation of significance of the properties, determination of effects to significant properties, and mitigation. Pursuant to HRS § 6E-8 and HAR § 13-275-3, DLNR-Division of Aquatic Resources submitted a written request to SHPD for an agency determination letter of concurrence that no historic properties are affected. On June 7, 2024, SHPD concurred with DAR's determination of no historic properties affected.

As noted above, the State of Hawai‘i Cultural Impact Assessment (CIA) and Legal Analysis are triggered by requirements of the Hawai‘i Environmental Policy Act (HEPA), Hawaii Revised Statutes (HRS) §343, and are conducted parallel to the NHPA Section 106 process. **The CIA and Legal Analysis are published at the [State’s website](#).**

Appendix C1: List of Correspondence Related to Consultations for Sanctuary Designation

NMSA 304(a)(5)

- 304(a)(5) Initial letter from NOAA to the Western Pacific Regional Fishery Management Council (11.19.21)
- Western Pacific Regional Fishery Management Council NMSA 304(a)(5) Response Letter (03.22.22)
- 304(a)(5) Response letter from NOAA to the Western Pacific Regional Fishery Management Council (05.26.22)
- Western Pacific Regional Fishery Management Council – 193 Council Meeting NWHI fishing regulations recommendations (12.08.2022)
- 304(a)(5) Response letter from NOAA to the Western Pacific Regional Fishery Management Council (02.22.23)
- Western Pacific Regional Fishery Management Council Final Action (04.14.23)
- NOAA Response letter to Final Action (05.31.23)

Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq.*)

- Notification from the State of Hawai‘i Office of Planning and Sustainable Development to NOAA (12.01.21)
- NOAA CZMA Consistency Determination Application submitted to the State of Hawai‘i, Office of Planning and Sustainable Development (03.21.24)
- Letter of concurrence from the State of Hawai‘i, Office of Planning and Sustainable Development (05.17.24)

Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*) – Section 7 Consultation and Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 *et seq.*) – Essential Fish Habitat Consultation

- Memo record of determination to NOAA Fisheries (03.08.24)
- ESA consultation response from NOAA Fisheries (04.29.24)
- EFH consultation response from NOAA Fisheries (03.21.24)
- Memo record of determination to USFWS (04.30.24)

National Historic Preservation Act of 1966 (54 U.S.C. §§ 300101 *et seq.*)

- NOAA’s Finding of No Historic Properties Affected for the Proposed Papahānaumokuākea National Marine Sanctuary

NMSA 304(a)(5)



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries
1305 East-West Highway
Silver Spring, Maryland 20910

November 19, 2021

ATTN: Taotasi Archie Soliai
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

Dear Chairperson Soliai:

On November 19, 2021, National Oceanic and Atmospheric Administration (NOAA), Office of National Marine Sanctuaries published a notice of intent in the Federal Register to initiate the process to consider designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary (86 FR 64904). This letter provides the Western Pacific Regional Fishery Management Council (Council) with the opportunity under section 304(a)(5) of the National Marine Sanctuaries Act (NMSA, 16 U.S.C. § 1434(a)(5)) to prepare draft fishing regulations for the proposed sanctuary within Papahānaumokuākea Marine National Monument. While the national standards set forth in section 301(a) of the Magnuson-Stevens Fishery Conservation and Management Act shall serve as guidance to the Council, the goals and objectives of the sanctuary designation (see enclosed), together with the purposes and policies of the National Marine Sanctuaries Act, as well as the existing Presidential Proclamations 8031, 8112, and 9478 specific to Papahānaumokuākea Marine National Monument, are the benchmarks against which the Council's action shall ultimately be measured.

The Council may choose one of three available actions:

1. recommend draft fishing regulations for the proposed sanctuary;
2. recommend that fishing regulations are not necessary; or
3. choose not to act (at all or in a timely manner).

Draft regulations prepared by the Council shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of the National Marine Sanctuaries Act and the goals and objectives of the proposed sanctuary designation. The Secretary shall prepare the fishing regulations if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Consistent with the National Marine Sanctuaries Act regulations and to provide adequate time for council meetings, NOAA is providing 120 days to conduct the 304(a)(5) consultation and requests that the Council make its recommendations, and if appropriate, prepare draft fishery regulations no later than **March 31, 2022**.

The Office of National Marine Sanctuaries has completed an initial review of Proclamations 8031, 8112 and 9478, the current fishing regulations under 50 CFR Part 404, and the goals and objectives for the proposed sanctuary. NOAA believes the Magnuson-Stevens Fishery



Conservation and Management Act is the appropriate statute for managing fishing within the proposed sanctuary.

For the area designated by Proclamation 8031, NOAA believes the current Magnuson-Stevens Fishery Conservation and Management Act regulations under 50 CFR 404 are consistent with both the relevant provisions of Proclamations 8031 and 8112 and the goals and objectives for the proposed sanctuary. However, in order to rely on Magnuson-Stevens Fishery Conservation and Management Act authority for sanctuary purposes within the Monument Expansion Area designated by Proclamation 9478, NOAA recommends the Council propose regulations for the Monument Expansion Area that are consistent with both the fishing provisions of Proclamation 9478, and the goals and objectives of the proposed sanctuary.

In order to provide both long term protection under a proposed national marine sanctuary and primary management under the Magnuson-Stevens Fishery Conservation and Management Act, NOAA may adopt a joint regulatory approach. Under this approach, National Marine Sanctuaries Act and Magnuson-Stevens Fishery Conservation and Management Act regulations would be identical, and as long as the Magnuson-Stevens Fishery Conservation and Management Act regulations remain in effect, the National Marine Sanctuaries Act regulations would not be activated.

NOAA believes this approach would allow the Magnuson-Stevens Fishery Conservation and Management Act to provide the predominant management function for fishing while assuring that NOAA continues to meet its independent obligation under the NMSA to protect sanctuary resources. However, to provide the predominant management function, the Magnuson-Stevens Fishery Conservation and Management Act regulations would have to be in place prior to the national marine sanctuary designation and be accepted by NOAA as consistent with the relevant fishing provisions of Proclamation 9478 and with the goals and objectives of the proposed sanctuary.

In summary, we appreciate the time and effort of the Council on this matter and look forward to receiving periodic updates, and ultimately your response. Please feel free to contact Athline Clark at 808-725-5800 or Athline.Clark@noaa.gov if you have any questions or require more information.

Sincerely,

John Armor
Director

Cc: Kitty Simonds, Executive Director, WPRFMC
Michael Tosatto, Regional Administrator, NMFS-PIRO
Kristina Kekuewa, Regional Director, ONMS-PIR
Athline Clark, Superintendent, PMNM

Enclosures: (1) NMSA 304(a)(5) Regulations
(2) Sanctuary Goals and Objectives

Enclosure (1)

National Marine Sanctuaries Act
Title 16, Chapter 32, Sections 1431 et seq. USC, as amended by Public Law 106-513,
November 2000

PROCEDURES FOR DESIGNATION AND IMPLEMENTATION SEC 304(a)(5) FISHING
REGULATIONS

The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 302(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

Enclosure (2)

Sanctuary Goals

Goal 1. Resource Protection & Conservation

Ensure the long-term viability and resilience of Papahānaumokuākea by protecting, preserving, enhancing and restoring its cultural and natural resources, with a focus on ocean and island health and human well-being.

Goal 2. Research & Monitoring

Support, promote, conduct, and coordinate research and monitoring, incorporating multiple forms of knowledge to increase understanding of Papahānaumokuākea's cultural and natural resources, and to improve management decisions.

Goal 3. Governance & Operations

Provide the necessary policy, programs, structure, and processes to ensure effective, integrated management and fulfill the kuleana of shared stewardship for Papahānaumokuākea.

Goal 4. Partnerships & Constituent Engagement

Pursue, build, and maintain partnerships that generate active and meaningful involvement, with a commitment to incorporate traditional values and stewardship ethics, to strengthen world class conservation, community engagement, constituent support, and connection of people to place.

Goal 5. Education, Mentoring & Interpretation

Inspire current and future generations to mālama Papahānaumokuākea's cultural and biological resources through excellence in education and mentorship.

Sanctuary Objectives

Objective 1.

Provide long term lasting protection of Papahānaumokuākea consistent with and reinforcing the provisions outlined in Executive Order (EO) 13178, Presidential Proclamations 8031, 8112, 9478, and the regulations at 50 CFR § 404 through the designation of a national marine sanctuary.

Objective 2.

Augment and strengthen existing protections for Papahānaumokuākea ecosystems, living resources, and cultural and maritime heritage resources through the addition of National Marine Sanctuaries Act regulations.

Objective 3.

Support and maintain existing co-management functions within the Papahānaumokuākea Monument Management Board to ensure unified governance in the spirit of seamless integrated stewardship.

Objective 4.

Provide a pu'uhonua to protect key habitats, vulnerable, endangered and threatened species and highly mobile marine species that regularly move across the boundaries of Papahānaumokuākea.

Objective 5.

Manage the sanctuary as a sacred site consistent with Native Hawaiian traditional knowledge, management concepts, and principles articulated within Mai Ka Pō Mai.

Objective 6.

Enhance community engagement and involvement, including engagement of the Indigenous Hawaiian community in the development and execution of management of the sanctuary.

Objective 7.

Enhance resource protection, increase regulatory compliance, ensure enforceability and provide for consultation through National Marine Sanctuaries Act authorities and regulations.

Objective 8.

Conduct, support and promote research, characterization and long-term monitoring of marine ecosystems and species and cultural and maritime heritage resources.



**Western
Pacific
Regional
Fishery
Management
Council**

March 22, 2022

John Armor
Director
Office of National Marine Sanctuaries
National Ocean Service
1305 East-West Highway
Silver Spring, MD 20910

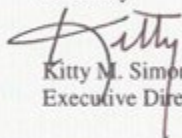
Dear John,

Thank you for your November 19, 2021 letter transmitting the National Marine Sanctuaries Act (NMSA) 304(a)(5) package and request for fishing regulations in the proposed national marine sanctuary for the Northwestern Hawaiian Islands. The Western Pacific Regional Fishery Management Council met virtually on March 22-24, 2022 and discussed the Council's options for developing fishing regulations in the proposed sanctuary. After discussion and comments, **the Council agreed to develop fishing regulations for the proposed NWHI sanctuary and directed staff to respond to the Office of National Marine Sanctuaries 304(a)(5) package request with preliminarily preferred options for permitting and reporting requirements for commercial (outside current monument boundaries), non-commercial, Native Hawaiian practices, and research fishing in the sanctuary boundaries.**

The Council was concerned that the boundaries for the sanctuary are unknown at this time and that sanctuary fishing regulations could extend beyond the current Papahānaumokuākea and Monument Expansion Area boundaries. This is reflected in the Council's proposed fishing regulations that include commercial fishing permits for areas outside of the current monument boundaries but within the proposed sanctuary. Also included are opportunities for non-commercial fishing, fishing for research, and native Hawaiian fishing practices. Please see the summary of fishing recommendations and preliminary draft fishing regulations enclosed.

The Council will also be working in parallel to develop fishing alternatives for the NWHI area in the Exclusive Economic Zone through an amendment to the Hawaii Archipelago Fishery Ecosystem Plan in accordance with Presidential Proclamation 9478 as well as the NMSA 304(a)(5) request. We hope that these efforts to develop sanctuary regulations and Magnuson-Stevens Act regulations will be seamless and provide minimal impact on the fishing community in Hawaii. If you have any questions or concerns, please contact me at the Council Office at (808) 522-8220.

Sincerely


Kitty M. Simonds
Executive Director

Encl: (1) Summary of fishing regulations
(2) Preliminary draft fishing regulations

cc: Kristina Kekuewa, Regional Director-Pacific Islands Region



Summary of Recommendations for Fishing Regulations in the Proposed NWHI National Marine Sanctuary

March 25, 2022

Council Decision

Under the National Marine Sanctuaries Act, Section 304(a)(5) provides an opportunity for regional fishery management councils to develop fishing regulations for a proposed national marine sanctuary. The request for fishing regulations for a proposed NWHI National Marine Sanctuary was provided on November 19, 2021 in a letter from the Office of National Marine Sanctuaries (ONMS) to the Western Pacific Regional Fishery Management Council (Council). The following fishing regulations were agreed to by the Council at its 190th Meeting held on March 22-25, 2022.

These recommendations pertain to the proposed NWHI National Marine Sanctuary only. The Council will consider separate fishing regulations under the Hawaii Archipelago Fishery Ecosystem Plan at a later date and in concert with sanctuary designation activities.

Due to the unknown nature of the proposed sanctuary boundaries, the Council provided recommendations for potential areas within the proposed sanctuary. Should the proposed sanctuary remain within the boundaries of Papahānaumokuākea and the Monument Expansion Area, fishing regulations outside those boundaries would not be necessary.

Proposed Fishing Regulations

The following are recommendations for fishing regulations in the proposed NWHI national marine sanctuary:

Commercial Fishing

- Commercial Fishing is prohibited from 0-200 miles within the Papahānaumokuākea Marine National Monument and Monument Expansion Area.
- Commercial Fishing is allowed by Federal permits with logbook reporting requirements in areas OUTSIDE of Papahānaumokuākea Marine National Monument but within any sanctuary boundaries

Non-commercial Fishing

- Non-commercial fishing is defined as fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing (50 CFR 665.12).
- Non-commercial fishing is allowed by Federal permits with logbook reporting requirements in all areas of the NWHI national marine sanctuary.
- Research fishing is included in the definition of non-commercial fishing and shall be allowed in the sanctuary by federal permits with logbook reporting requirements.

Native Hawaiian Practices

- Fishing for Native Hawaiian practices is included in the definition of non-commercial fishing (as defined in 50 CFR 665.12) and shall be allowed by Federal permits with logbook reporting requirements in all areas of the NWHI national marine sanctuary.
- Customary Exchange, the non-market exchange of marine resources between fishermen and community residents for goods, and/or services for cultural, social, or religious reasons, shall be allowed by Federal permits with logbook reporting requirements in all areas of the NWHI national marine sanctuary. The inclusion of cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, fuel, or food, that may be necessary to participate in fisheries in the western Pacific should be discussed in public for its appropriateness within the proposed sanctuary.

Preliminary Draft Fishing Regulations

Note: These proposed regulations may create regulatory uncertainty with respect to the applicability of existing NWHI bottomfish and NWHI lobster and precious coral permits. Regulatory clarity would be needed during the Council process for amending the Hawaii FEP.

*Changes highlighted in yellow

1. The authority for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 665.12, add the definition of “Northwestern Hawaiian Islands Monument Expansion Area” in alphabetical order to read as follows:

§ 665.12 Definitions

Northwestern Hawaiian Islands Monument Expansion Area means area 50-200 nm of the EEZ around the Northwestern Hawaiian Islands

3. In § 665.13, revise paragraphs (f)(2) and add paragraph (f)(2)(xiv); to read as follows:

§ 665.13 Permits and fees

(f) Fees.

(2) PIRO will charge a non-refundable processing fee for each application (including transfer and renewal) for each permit listed in paragraphs (f)(2)(i) through (f)(2)(xiii) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs incurred in processing the permit. The fee may not exceed such costs. The appropriate fee is specified with each application form and must accompany each application. Failure to pay the fee will preclude the issuance, transfer, or renewal of any of the following permits:

(xiv) Northwestern Hawaiian Islands non-commercial permit

4. In § 665.14, revise paragraph (b)(1)(i) and (b)(2)(i) to read as follows:

§ 665.14 Reporting and recordkeeping

(b) Fishing record forms

(1) Applicability.

- (i) **Paper records.** The operator of a fishing vessel subject to the requirements of § 665.124, § 665.142, § 665.162, § 665.203(a)(2), § 665.242, § 665.262, § 665.404, § 665.424, § 665.442, § 665.462, § 665.603, § 665.624, § 665.642, § 665.662, § 665.801, § 665.905, § 665.935, ~~or~~ § 665.965 or § 665.XX or must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator, except as required in

paragraph (b)(1)(ii) of this section or as allowed in paragraph (b)(1)(iv) of this section.

* * *

- (iii) Recording. The vessel operator must record on paper or electronically all information specified by the Regional Administrator within 24 hours after the completion of each fishing day. The information recorded must be signed and dated, or otherwise authenticated, in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this section.

(2) Timeliness of submission.

(i) If fishing was authorized under a permit pursuant to § 665.142, § 665.162, § 665.242, § 665.262, § 665.404, § 665.442, § 665.462, 665.662, ~~or § 665.801, or § 665.XX~~, and if the logbook information was not submitted to NMFS electronically within 24 hours of the end of each fishing day while the vessel was at sea, the vessel operator must submit the original logbook information for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraph (b)(2)(iii) of this section.

5. In 50 CFR part 665, add subpart J to read as follows:

Subpart J – Northwestern Hawaiian Islands Monument Expansion Area

Sec.

665.970 Scope and purpose. The regulations in this subpart codify certain provisions of the Proclamation, and govern the administration of fishing in the Monument. Nothing in these regulations shall be deemed to diminish or enlarge the jurisdiction of the State of Hawaii.

665.971 Boundaries. The Monument Expansion Area includes the following:

(a) the waters and submerged lands of the area offshore of the Northwestern Hawaiian Islands. The shoreward boundary of the Monument Expansion Area is 50 nm. The seaward boundary of the Monument Expansion Area is 200 nm.

665.972 Definitions. The following definitions are used in this subpart:

Management unit species or MUS means the Hawaii Archipelago management unit species as defined in §665.201, 665.241, and 665.261, and the pelagic management unit species as defined in § 665.800.

Monument Expansion Area means the submerged lands and, where applicable, waters of the NWHI as defined in § 665.971.

Proclamation means Presidential Proclamation 9704 of September 13, 2016, "Monument Expansion Area."

665.973 Prohibitions. In addition to the general prohibitions specified in § 600.725 of this part, and § 665.15 and subpart D of this chapter, the following activities are prohibited in

the Monument Expansion Area and, thus, unlawful for a person to conduct or cause to be conducted.

- (a) Commercial fishing in violation of §665.974(a).
- (b) Non-commercial fishing, except as authorized under permit and pursuant to the procedures and criteria established in §665.975.
- (c) Transferring a permit in violation of § 665.975(d).
- (d) Commercial fishing outside of the Monument Expansion Area and non-commercial fishing within the Monument Expansion Area on the same trip in violation of § 665.974(c).

665.974. Regulated activities.

- (a) Commercial fishing is prohibited in the Monument Expansion Area
- (b) Non-commercial fishing is prohibited in the Monument Expansion Area, except as authorized under permit and pursuant to the procedures and criteria established in § 665.975.
- (c) Commercial fishing outside the Monument Expansion Area and non-commercial fishing within the Monument Expansion Area during the same trip is prohibited.

665.975 Fishing permit procedures and criteria.

- (a) Northwestern Hawaiian Islands non-commercial permit.
 - (1) Applicability. Both the owner and operator of a vessel used to non-commercially fish for, take, retain, or possess MUS in the Monument Expansion Area must have a permit issued under this section, and the permit must be registered for use with that vessel.
 - (2) Eligibility criteria. A permit issued under this section may be issued only to a community resident of Hawaii.
 - (3) Terms and conditions.
 - (i) Customary exchange of fish harvested within the Monument Expansion Area under a non-commercial permit is allowed, except that customary exchange by fishermen engaged in recreational fishing is prohibited. Customary exchange of fish harvested under a non-commercial fishing permit in the Monument Expansion Area may include family and friends of residents of Hawaii fishing communities.
 - (ii) Monetary reimbursement under customary exchange shall not exceed actual fishing trip expenses related to ice, bait, fuel, or food.

665.976 International law.

These regulations shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries
1305 East-West Highway
Silver Spring, Maryland 20910

May 26, 2022

Kitty Simonds
Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

Dear Ms. *Kitty* Simonds:

I would like to thank you for the Western Pacific Regional Fishery Management Council's response letter dated March 22, 2022, regarding the consideration for designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. As part of the National Marine Sanctuaries Act Section 304(a)(5) process, coordination with the Regional Fishery Management Council is a critical step in the proposed sanctuary designation and I am pleased that we continue to coordinate on how to best manage this naturally and culturally significant place.

I would also like to thank the Council for its decision to develop draft fishery regulations for the proposed sanctuary. As we prepare for the next phase of the sanctuary designation process, it is important that NOAA receives the Council's draft regulations in a timely manner. To best facilitate this timing, I have asked members of my staff to coordinate a meeting between Office of National Marine Sanctuaries (ONMS), National Marine Fisheries Service (NMFS), and Council staff to set a reasonable deadline for NOAA's receipt of draft fishery regulations and to help ONMS better understand the Council's process for amending the Hawaii Archipelago Fishery Ecosystem Plan.

As part of our commitment to transparency throughout the sanctuary designation process, I want to assure the Council that any draft regulations received by NOAA will be measured against the current requirements under Presidential Proclamations 8031, 8112, and 9478 specific to Papahānaumokuākea Marine National Monument (PMNM), as well as the goals and objectives of the proposed national marine sanctuary as detailed in our November 19, 2021 letter to Chairperson Soliai.

I appreciate the time and effort of the Council thus far and look forward to receiving your final draft regulations. Please feel free to contact Athline Clark at 808-725-5800 or Athline.Clark@noaa.gov if you have any questions or require more information.

Sincerely,

John Armor
Director

cc: Michael Tosatto, Regional Administrator, NMFS-PIRO
Gerry Davis, Assistant Regional Administrator NMFS-PIRO HCD
Kristina Kekuewa, Regional Director, ONMS-PIR
Athline Clark, Superintendent, PMNM





WESTERN
PACIFIC
REGIONAL
FISHERY
MANAGEMENT
COUNCIL

ACTION MEMORANDUM

193rd Council Meeting

December 5-8, 2022

Pagoda Hotel

Honolulu, Hawaii

AGENCY REPORTS

Regarding the NMFS Pacific Islands Regional Office (PIRO) Agency Report, the Council:

1. Requested NMFS to consider holding a future Leadership Council meeting in the U.S. Pacific Islands Territories of American Samoa, Guam, or CNMI.
2. Reiterated its request to U.S. Fish and Wildlife Service (USFWS) and NMFS to meet with the Territory Governments of American Samoa, CNMI and Guam to review the information at least 30 days in advance of publishing the green sea turtle critical habitat proposed rule.
3. Requested NMFS consider nominating a new vice-chair to the Northern Committee of the Western and Central Pacific Fisheries Commission (WCPFC).

Regarding the USFWS Report, the Council:

4. Requested USFWS and NOAA re-convene the Mariana Trench Monument Advisory Council (MTMAC) with expanded participation from Guam to expedite the completion of the Mariana Trench Marine National Monument (MTMNM) Management Plan.

Regarding the State Department, the Council:

5. Petitioned the U.S. State Department (DOS) to consider returning 1,200 square miles of U.S. Exclusive Economic Zone (EEZ) waters off Guam forfeited to the Federated States of Micronesia (FSM) to the patrimony of Guam.



WESTERN
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MANAGEMENT
COUNCIL

ACTION MEMORANDUM

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HAWAII ARCHIPELAGO AND PRIA

Regarding the Paper Inferring Spillover Benefits of the Papahānaumokuākea Marine National Monument (PMNM), the Council:

1. Requested NMFS staff to work with SSC members to evaluate the impacts of large static closed areas in the Pacific Islands Region (including the Marine National Monuments) on target and non-target species, address the SSC's concerns on a lack of reproducibility of findings by a recent paper published in *Science*, and also evaluate socioeconomic impacts.
2. Reiterated its previous recommendation from its 191st Meeting for NOAA to allocate funding support for external experts to evaluate the impacts that Marine National Monuments have on fisheries, working in collaboration with NOAA and the Council's advisory bodies.

Regarding NWHI fishing regulations for the Monument Expansion Area, the Council:

3. Recommended amending the Hawaii and Pelagic Fishery Ecosystem Plan (FEP) to prohibit commercial fishing and allow for sustainable non-commercial fishing and Native Hawaiian subsistence fishing practices in the Monument Expansion Area (MEA), including bringing back resources to the Main Hawaiian Islands (MHI). Fishing regulations would include:
 - **Commercial Fishing Prohibition:** Commercial fishing as defined in 50 CFR 665 – Western Pacific Fisheries would be prohibited in the MEA.
 - **Allowable Species:** Only Hawaii bottomfish management unit species (MUS) as defined at [50 CFR 665.201](#) and western Pacific pelagic MUS as defined at [50 CFR 665.800](#) would be allowed to be caught in the MEA. Fishing for all other Hawaii FEP MUS and Hawaii FEP ecosystem component species (ECS), as defined in [50 CFR 665 - Subpart C, Hawaii Fisheries](#) would be prohibited.
 - **Allowable Gear Types:** Only handline, hook and line, rod and reel and spear as authorized at [50 CFR 600.725 – General Prohibitions](#) would be allowed to be used to catch bottomfish MUS and pelagic MUS in the MEA. All other gear types, including longline, bottom set longline, trawl and poisons would be prohibited from use in the MEA.
 - **Catch Limits:** Establish a preliminary annual catch limit for bottomfish MUS at 350,000 lbs. and pelagic MUS at 180,000 lbs. for the MEA. NMFS and the

Council would monitor catches from within the original monument authorized by NOAA, and in the MEA authorized by NMFS towards this limit. As an accountability measure (AM), if NMFS forecasts the limit would be reached NMFS would prohibit all fishing in the MEA for the remainder of the fishing year.

- NMFS and the Council will annually report fishery performance (e.g., number of permits issued, catch and effort information, etc.) in the annual Hawaii FEP and Pelagics FEP Stock Assessment and Fisheries Evaluation (SAFE) Reports. NMFS and the Council will also evaluate fishery performance after an appropriate time not to exceed 5 years from the effective date of the fishery regulations and will continue to conduct evaluations as necessary in order to ensure the resources are managed sustainably. Such evaluations will take into consideration the best scientific information available and evaluate whether additional specific actions are necessary for the proper care and management of monument objects, including fishery resources, consistent with Proclamation 9478.
- Non-Commercial Fishing Permit and Reporting: Any person engaging in non-commercial fishing in the MEA must obtain a MEA non-commercial fishing permit and comply with reporting and record keeping requirements codified at [50 CFR 665.14 – Reporting and Recordkeeping](#), as required for all Magnuson-Stevens Act permits issued by NMFS.
- Disposition of Non-Commercial Catch: Bottomfish MUS and pelagic MUS legally caught by an individual holding a valid MEA non-commercial fishing permit may be brought back to the MHI for consumption, including community sharing. However, fish caught from within the MEA under this permit cannot enter commerce through sale, barter, or trade and may not recoup costs associated with the trip to the MEA.
- Native Hawaiian Subsistence Practices Fishing Permit and Reporting: Any person engaging in Native Hawaiian subsistence practices must obtain a Native Hawaiian Subsistence Practices Fishing Permit and comply with reporting and record keeping requirements codified at [50 CFR 665.14 – Reporting and Recordkeeping](#), as required for all Magnuson-Stevens Act permits issued by NMFS. In addition, under this alternative, there would be specific permit review and issuance processes for a Native Hawaiian Subsistence Practices Fishing Permit.
- An applicant for a Native Hawaiian Subsistence Practices Permit must complete and submit an application to NMFS that includes, but is not limited to a statement describing the objectives of the fishing activity for which a permit is needed, including a general description of the expected disposition of the resources harvested under the permit.
 - If an application contains all of the required information, NMFS will forward copies of the application to the Council, the U.S. Fish and Wildlife Service (USFWS), the Office of the National Marine Sanctuaries (ONMS), the Office of Hawaiian Affairs (OHA), and the Chair of the Hawaii Department of Land and Natural Resources (DLNR). The Council may consult with its advisory bodies to provide comments on the application.

- Following receipt of a complete application, NMFS will consult with the Council through its Executive Director, and the USFWS, ONMS, OHA, and the Chair of the Hawaii DLNR concerning the permit application and will receive their recommendations for approval or disapproval of the application.
- Disposition of Native Hawaiian Subsistence Practices Catch: Bottomfish MUS and Pelagic MUS legally caught by an individual holding a valid MEA Native Hawaiian Subsistence Practices fishing permit may bring catch back to the main Hawaiian Islands for consumption, including customary exchange. Additionally, permittees may sell, barter or trade catch to recoup costs associated with the trip to the MEA, not to exceed the actual direct costs associated with the trip, subject to the limit below. Direct costs include costs of supplies such as bait, fuel or ice needed for the trip, but do not include purchase, berthing, or maintenance of vessels or other costs external to the trip. This restriction ensures that the activity is not for commercial purposes.
- NMFS and the Council would limit the total value of catch traded, bartered or sold not to exceed the cost for fuel and ice, and other trip costs to make a trip from the main Hawaiian Islands to the MEA and in no case exceed \$15,000 per trip. A permittee would also be required to document and report to NMFS, the direct costs associated with each trip conducted to the MEA and the amount and value of any catch that is sold, bartered or traded.
- Trip Mixing: To ensure fish caught from inside the MEA for non-commercial and Native Hawaiian practices are not commingled with fish caught commercially seaward of the MEA, NMFS and the Council would prohibit any person from fishing both inside and outside the MEA on the same trip. Similarly, to ensure fish caught inside the original monument area for sustenance purposes are not commingled with fish caught in the MEA for non-commercial and Native Hawaiian practices and sharing in the MHI, NMFS and the Council would prohibit any person from engaging in both non-commercial fishing inside and outside the MEA as well as sustenance fishing in the original monument area on the same trip. However, sustenance fishing in the original monument and MEA on the same trip shall not be prohibited.
- Observer and VMS Requirements: All fishing vessels must carry an activated and functioning NOAA-provided VMS unit on board at all times whenever the vessel is in the Monument, and an observer if directed to do so by NMFS.
- Notification: Permit holders must notify NMFS prior to making any fishing trip to the MEA so NMFS may place a VMS unit and/or an observer on board as directed. Additionally, permit holders must contact NMFS at least 24 hours before landing any catch harvested under an MEA permit, and report the port and the approximate date and time at which the catch will be landed.
- Other Requirements: All fishing vessels must also comply with regulations codified at 50 CFR 665 – Western Pacific Fisheries applicable in the Exclusive Economic Zone (EEZ) comprising the MEA.

Further, the Council deemed that the regulations implementing the recommendations are necessary or appropriate in accordance with Section 303(c) of the Magnuson-Stevens

Fishery Conservation and Management Act (MSA). In doing so, the Council directs Council staff to work with NMFS to complete regulatory language to implement the Council's final action. Unless otherwise explicitly directed by the Council, the Council authorizes the Executive Director and the Chairman to review the draft regulations to verify that they are consistent with the Council action before submitting them, along with this determination, to the Secretary on behalf of the Council. The Executive Director and the Chairman are authorized to withhold submission of the Council action and/or proposed regulations and take the action back to the Council if, in their determination, the proposed regulations are not consistent with the Council action.

4. Directed staff to organize a meeting with Council advisors and Native Hawaiian groups to provide the Council with the details of Native Hawaiian practices and a review process for the Native Hawaiian subsistence fishing permit for its consideration at its next meeting.

Regarding Hawaii Fishery Issues, the Council:

5. Requested the State of Hawaii provide a presentation on the Holomua Marine 30x30 to the Council and its advisory groups in order to determine the impacts on fisheries managed by the Council.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Ocean Service
1305 East West Highway
Silver Spring, Maryland 20910

February 22, 2023

Kitty Simonds
Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

Dear Ms. Simonds:

This letter responds to the Western Pacific Regional Fishery Management Council's (Council) final action taken at the December 2022 Council meeting, recommending fishing regulations for the Papahānaumokuākea Monument Expansion Area (MEA). Coordination with the Council under section 304(a)(5) of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. § 1434(a)(5), for the proposal to designate marine portions of Papahānaumokuākea Marine National Monument (Monument) as a national marine sanctuary, which began in November 2021, has been a critical step in the proposed sanctuary designation process. I would like to thank the Council for its time and effort in this matter. This letter provides the Council with notice regarding the conclusion of its role in the NMSA 304(a)(5) process and notice that the final action taken at the December 2022 meeting, in part, does not fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed designation.

NOAA made this finding by evaluating the Council's action relative to Presidential Proclamations 8031, 8112, and 9478 specific to the Monument, as well as the purposes and policies of the NMSA and the goals and objectives of the proposed national marine sanctuary. At this time, and as required by the NMSA, NOAA will begin to develop its own regulations to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed designation. Should the Council choose to reconsider this matter at its March 2023 meeting and take action to revise its recommended fishing regulations as specified below, NOAA will consider such a revision as a part of the NMSA 304(a)(5) process **until Friday, April 14, 2023**. NOAA also welcomes input from the Council as a part of any future public comment process associated with the proposed designation. In either case, I offer the following input on key components of the December 2022 action that NOAA finds do not meet the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary.

Position on Council Final Action

NOAA finds that the majority of the Council's final action fulfills the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, the



inclusion of the ability to “sell” fish caught pursuant to the Native Hawaiian Subsistence Practices Fishing Permit fails to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation, as outlined below. While NOAA may authorize subsistence fishing in the MEA under a Native Hawaiian Practices Fishing Permit only where the fish may be traded, bartered, or exchanged *on a small scale within the family or community*, such activities must be sustainable and must not serve as a toehold for prohibited commercial fishing. As such, any Council regulations establishing a MEA permit system would need to include sufficient safeguards to ensure that the resources harvested do not enter commerce.

Specifically, the Council’s final action recommends that:

“Bottomfish [Management Unit Species (MUS)] and Pelagic MUS legally caught by an individual holding a valid MEA Native Hawaiian Subsistence Practices fishing permit may bring catch back to the main Hawaiian Islands for consumption, including customary exchange. Additionally, permittees may sell, barter or trade catch to recoup costs associated with the trip to the MEA, not to exceed the actual direct costs associated with the trip, subject to the limit below. Direct costs include costs of supplies such as bait, fuel or ice needed for the trip, but do not include purchase, berthing, or maintenance of vessels or other costs external to the trip. This restriction ensures that the activity is not for commercial purposes.”

Pursuant to the NMSA section 304(a)(5), NOAA finds that the allowance of “sale” is inconsistent with the following goals and objectives of the proposed sanctuary.

- Goal 4. Partnerships & Constituent Engagement: Pursue, build, and maintain partnerships that generate active and meaningful involvement, with a commitment to incorporate traditional values and stewardship ethics, to strengthen world class conservation, community engagement, constituent support, and connection of people to place.
- Objective 3: Support and maintain existing co-management functions within the Papahānaumokuākea Monument Management Board to ensure unified governance in the spirit of seamless integrated stewardship.
- Objective 5: Manage the sanctuary as a sacred site consistent with Native Hawaiian traditional knowledge, management concepts, and principles articulated within Mai Ka Pō Mai.
- Objective 6: Enhance community engagement and involvement, including engagement of the Indigenous Hawaiian community in the development and execution of management of the sanctuary.

NOAA makes this finding based on the following information. The State of Hawaii representative on the Council voted against the Council’s December 2022 final action on the basis that the inclusion of “sale” under a Native Hawaiian Subsistence Practices Fishing Permit is inconsistent with the state’s constitutional protection of Native Hawaiian traditional and customary rights. While the MEA does not include state waters, the state is a co-managing partner for the Monument and the proposed sanctuary, and accordingly, NOAA believes that the Council’s final action fails to fulfill Objectives 3 and 5 of proposed sanctuary. In addition, the Council has received comments from the Papahānaumokuākea Native Hawaiian Cultural Working Group (CWG), supported by the Office of Hawaiian Affairs, a co-trustee of the Monument, opposing any form of customary exchange (exchange, trade, barter, or sale) or regulations that would allow catch to be brought back to the Main Hawaiian Islands and

consumed outside of the Monument or the MEA. The opposition from members of the Papahānaumokuākea CWG, represents an inconsistency between the Council's final action and NOAA partner knowledge and expertise regarding Native Hawaiian cultural perspectives and practices. As such, NOAA finds that the Council's final action is not consistent with the sanctuary's goal of partnerships that "generate active and meaningful involvement, with a commitment to incorporating traditional values and stewardship ethics"; and the sanctuary's objectives to "ensure unified governance" of the Papahānaumokuākea Monument Management Board, "manage the sanctuary as a sacred site consistent with Native Hawaiian traditional knowledge, management concepts, and principles," and "engagement of the Indigenous Hawaiian community in the development and execution of management of the sanctuary" specific to the proposed sanctuary Goal 4 and Objectives 3, 5 and 6.

Should the Council wish to provide to NOAA a revised action **by no later than Friday, April 14, 2023**, the Council is advised to remove any provision that allows for the ability to "sell" fish caught under a Native Hawaiian Subsistence Fishing Practices Permit. The Council is further advised to retain the remaining provisions of the December 2022 action so as not to warrant additional NOAA review at this time. Any revisions the Council wishes to make beyond those associated with the provisions described in this letter may be raised as a part of future public comment processes associated with the sanctuary designation. I sincerely hope that this information is helpful to the Council in its deliberations.

I appreciate the active engagement of the Council throughout this process and look forward to continuing to work with the Council on the proposed sanctuary designation. Please contact Kristina Kekuewa at Kristina.Kekuewa@noaa.gov if you have any questions or require more information.

Sincerely,
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Date: 2023.02.22
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Nicole R. LeBocuf
Assistant Administrator
for Ocean Services and Coastal Zone
Management

cc: Janet Coit, Assistant Administrator, NOAA Fisheries (NMFS)
Sarah Malloy, Regional Administrator (Acting), NMFS, Pacific Islands Regional Office (PIRO)
Gerry Davis, Assistant Regional Administrator for Habitat Conservation, NMFS, PIRO
Jarad Makaiau, Assistant Regional Administrator for Sustainable Fisheries, NMFS, PIRO
John Armor, Director, Office of National Marine Sanctuaries (ONMS)
Kristina Kekuewa, Regional Director, ONMS Pacific Islands Region
Eric Roberts, Superintendent (Acting), Papahānaumokuākea Marine National Monument



**Western
Pacific
Regional
Fishery
Management
Council**

April 14, 2023

Nicole LeBoeuf
Assistant Administrator for Ocean Services and Coastal Zone Management
National Oceanic and Atmospheric Administration
1305 East West Highway
Silver Spring, MD 20910

Dear Ms. LeBoeuf,

The Western Pacific Regional Fishery Management Council (Council), at its 194th meeting held on March 27-28, 2023 in Saipan, CNMI and March 30-31, 2023 in Tumon, Guam, reconsidered fishing regulations for the Monument Expansion Area (MEA) of the Northwestern Hawaiian Islands (NWHI). The Council deliberated on your February 22, 2023 letter and the potential changes to its existing recommendations. After a thorough discussion that included multiple options and the opportunity to have questions answered by the Superintendent of Papahānaumokuākea Marine National Monument, the Council amended its previous recommendations made its 193rd meeting held in Honolulu, Hawaii on December 6-8, 2022, by (1) removing as a provision of the Native Hawaiian Subsistence Practices Fishing Permit cost recovery by sale while leaving barter and trade within the community, (2) removing the previous recommendation to allow cost recovery up to \$15,000 and instead providing applicants the ability to request for limited cost recovery by sale in the permit application process through a statement of need for cost recovery along with expected costs, and (3) providing that such application shall be subject to review and approval/disapproval following an interagency consultation and public review.

The Council stressed the importance of allowing limited cost recovery for Native Hawaiian subsistence fishing practices in the MEA in order for the community to participate in regulated fishing practices under Proclamation 9478. Native Hawaiians are at the top of several socio-economic indicators including the highest rates of poverty, unemployment, negative health conditions, lowest home ownership, etc., among identified ethnic groups in Hawaii. A decision to disallow cost recovery by sale will continue to disenfranchise the Native Hawaiian community. The distance from the main Hawaiian Islands to the MEA requires a large cost for fuel, bait, ice, food and other fishing needs, which would likely prohibit fishers from participating in Native Hawaiian subsistence and traditional fishing practices in the MEA.

Further, the Council believes that limited cost recovery may be conducted on a small scale within the community consistent with Proclamation 9478's prohibition on commercial fishing. We further believe that the Council's recommended prohibition on commercial gear and comprehensive process for applying and approving requests for Native Hawaiian subsistence practice permits will provide effective safeguards against commercial fishing. The Council's recommendation does not approve cost recovery by sale as described in the previous

A Council Authorized by the Magnuson-Stevens Fishery Conservation and Management Act of 1976
1164 BISHOP ST • SUITE 1400 • HONOLULU, HI 96813 USA • TEL (808) 522-8220 • FAX (808) 522-8226 • www.wpcouncil.org

recommendation from the 193rd Council meeting. Instead, it provides a framework for NMFS to consider the costs associated with each trip through the application process, so that a case-by-case decision may be made after consultation with other partners, including the Council, Office of National Marine Sanctuaries (ONMS), State of Hawaii, US Fish and Wildlife Service, and Office of Hawaiian Affairs. Accordingly, an application for cost recovery by sale would consider the circumstances and objectives of the particular trip, the costs incurred, and the availability of alternate sources of funding. Cost recovery also allows for the disadvantaged communities to participate in cultural and traditional fishing practices by promoting equity amongst fishers as directed by Executive Order 13985 in particular for Asian American, Native Hawaiian and Pacific Island communities as directed in Executive Order 14031.

The Council also acknowledges the comments of an independent cultural working group and their concerns regarding fishing in the NWHI, but the area under consideration is 50-200 nm from the islands that they are concerned about. Other Native Hawaiian groups have commented at the Council's recent public meetings with differing opinions and expressed the desire to fish in the MEA. However, they expressed these wishes in concert with the concern that a journey to the MEA would be financially unattainable given the cost. President Obama's proclamation intended to benefit Native Hawaiians who are not economically in the position to front those costs for a subsistence fishing trip to the MEA. Without some type of opportunity to recover costs, the intention of the Proclamation will not be met.

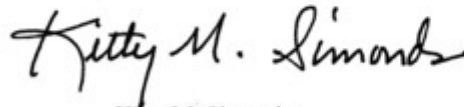
In order to provide equity for Native Hawaiian communities, the Council also recommended that funding be provided to the Western Pacific Community Demonstration Projects Program (CDPP) and Community Development Plans (CDP) under the authority of Section 305(i) of the Magnuson Stevens Act. Funding could then be used to solicit for applications to participate in Native Hawaiian fishing practices in the MEA and submitted in accordance with 67 FR 18512 (April 16, 2002). Because funds may be allocated only if available, cost recovery by sale provides an important additional safeguard. By placing the cost recovery by sale in the permit process itself, NMFS and its monument partner agencies, may consider the availability of CDP funds before determining if cost recovery will be allowed. The use of the CDP and CDPP for this purpose was supported by the State of Hawaii at this meeting.

Due to the Council's recommendation no longer explicitly allowing "sale" but providing a framework for NMFS to consider cost recovery, the Council believes that the recommendation is consistent with the goals and objectives of the proposed sanctuary. In particular, this framework provides for partnership and constituent engagement (Goal 4) through a consultation process and public review; Supports and maintains existing co-management functions to ensure seamless integrated stewardship (Objective 3) through the inclusion of management partners in the consultation process; Allows for input through the application process to provide Native Hawaiian management concepts and principles (Objective 5); and Enhances community involvement through providing a public review and commenting process and providing opportunities for economically disadvantaged communities to access cultural practices through cost recovery (Objective 6).

The attached document provides the final recommendations for fishing regulations in the Monument Expansion Area of the Northwestern Hawaiian Islands. The Council believes that in the development of the MEA President Obama's Proclamation 9478 intended to allow for sustainable fishing and that any attempt to reduce that opportunity clashes with that intent. If

you have any questions, or if you would like to discuss the Council recommendations further, please give me a call at the Council Office, (808) 522-8220.

Sincerely,

A handwritten signature in black ink that reads "Kitty M. Simonds". The signature is written in a cursive, flowing style.

Kitty M. Simonds
Executive Director

cc: Janet Coit, Assistant Administrator, NOAA Fisheries
John Armor, Director, Office of National Marine Sanctuaries
Kristina Kekuewa, Regional Director, ONMS Pacific Islands Region
Sarah Malloy, Acting Regional Administrator, NMFS PIRO
John Gourley, Council Chair

Attachment: WPRFMC recommendation on fishing regulations for the MEA



WPRFMC Recommendations for Fishing Regulations in the Monument Expansion Area

Regarding NWHI fishing regulations for the Monument Expansion Area, the Council recommended amending the Hawaii and Pelagic Fishery Ecosystem Plan (FEP) to prohibit commercial fishing and allow for sustainable non-commercial fishing and Native Hawaiian subsistence fishing practices in the Monument Expansion Area (MEA), including bringing back resources to the Main Hawaiian Islands (MHI). Fishing regulations would include:

- **Commercial Fishing Prohibition:** Commercial fishing as defined in 50 CFR 665 – Western Pacific Fisheries would be prohibited in the MEA.
- **Allowable Species:** Only Hawaii bottomfish management unit species (MUS) as defined at [50 CFR 665.201](#) and western Pacific pelagic MUS as defined at [50 CFR 665.800](#) would be allowed to be caught in the MEA. Fishing for all other Hawaii FEP MUS and Hawaii FEP ecosystem component species (ECS), as defined in [50 CFR 665 - Subpart C, Hawaii Fisheries](#) would be prohibited.
- **Allowable Gear Types:** Only handline, hook and line, rod and reel and spear as authorized at [50 CFR 600.725 – General Prohibitions](#) would be allowed to be used to catch bottomfish MUS and pelagic MUS in the MEA. All other gear types, including longline, bottom set longline, trawl and poisons would be prohibited from use in the MEA.
- **Catch Limits:** Establish a preliminary annual catch limit for bottomfish MUS at 350,000 lbs. and pelagic MUS at 180,000 lbs. for the MEA. NMFS and the Council would monitor catches from within the original monument authorized by NOAA, and in the MEA authorized by NMFS towards this limit. As an accountability measure (AM), if NMFS forecasts the limit would be reached NMFS would prohibit all fishing in the MEA for the remainder of the fishing year.
- NMFS and the Council will annually report fishery performance (e.g., number of permits issued, catch and effort information, etc.) in the annual Hawaii FEP and Pelagics FEP Stock Assessment and Fisheries Evaluation (SAFE) Reports. NMFS and the Council will also evaluate fishery performance after an appropriate time not to exceed 5 years from the effective date of the fishery regulations and will continue to conduct evaluations as necessary in order to ensure the resources are managed sustainably. Such evaluations will take into consideration the best scientific information available and evaluate whether additional specific actions are necessary for the proper care and management of monument objects, including fishery resources, consistent with Proclamation 9478.
- **Non-Commercial Fishing Permit and Reporting:** Any person engaging in non-commercial fishing in the MEA must obtain a MEA non-commercial fishing permit and comply with reporting and record keeping requirements codified at [50 CFR 665.14 – Reporting and Recordkeeping](#), as required for all Magnuson-Stevens Act permits issued by NMFS.
- **Disposition of Non-Commercial Catch:** Bottomfish MUS and pelagic MUS legally caught by an individual holding a valid MEA non-commercial fishing permit may be brought back to the MHI for consumption, including community sharing. However, fish caught from within the MEA under this permit cannot enter commerce through sale, barter, or trade and may not recoup costs associated with the trip to the MEA.
- **Native Hawaiian Subsistence Practices Fishing Permit Application Process:** An applicant for a Native Hawaiian Subsistence Practices Permit must complete and submit an application to NMFS that includes, but is not limited to a statement describing the objectives of the fishing

activity for which a permit is needed, including a general description of the expected disposition of the resources harvested under the permit. If cost recovery is requested through sale, the application must include estimated costs for fuel and ice, and other trip costs to make a trip from the main Hawaiian Islands to the MEA along with a statement explaining why cost recovery is necessary for the intended action.

- If an application contains all of the required information, NMFS will forward copies of the application to the Council, the USFWS, the ONMS, the Office of Hawaiian Affairs (OHA), and the Chair of the Hawaii Department of Land and Natural Resources. The Council may consult with any of its Federal Advisory Committee Act (5 U.S.C. App. 2) exempt advisory bodies established pursuant to Section 302(g) of the Magnuson-Stevens Act to provide comments on the application. NMFS will also make the permit application available for public review for no less than 30 days.
- Within 30 days following receipt of a complete application, NMFS will consult with the Council through its Executive Director, and the USFWS, NOAA Office of National Marine Sanctuaries (ONMS), Office of Hawaiian Affairs (OHA), and the Chair of the Hawaii Department of Land and Natural Resources (DLNR) concerning the permit application and will receive their recommendations for approval or disapproval of the application.
- **Disposition of Native Hawaiian Subsistence Practices Catch:** Bottomfish MUS and Pelagic MUS legally caught by an individual holding a valid MEA Native Hawaiian Subsistence Practices fishing permit may bring catch back to the main Hawaiian Islands for consumption, including community sharing, barter and trade. Additionally, permittees may request NMFS consider the ability to recover costs through sale of catch associated with the trip to the MEA.
- **Trip Mixing:** To ensure fish caught from inside the MEA for non-commercial and Native Hawaiian practices are not commingled with fish caught commercially seaward of the MEA, NMFS and the Council would prohibit any person from fishing both inside and outside the MEA on the same trip. Similarly, to ensure fish caught inside the original monument area for sustenance purposes are not commingled with fish caught in the MEA for non-commercial and Native Hawaiian practices and sharing in the MHI, NMFS and the Council would prohibit any person from engaging in both non-commercial fishing inside and outside the MEA as well as sustenance fishing in the original monument area on the same trip. However, sustenance fishing in the original monument and MEA on the same trip shall not be prohibited.
- **Observer and VMS Requirements:** All fishing vessels must carry an activated and functioning NOAA-provided VMS unit on board at all times whenever the vessel is in the Monument, and an observer if directed to do so by NMFS.
- **Notification:** Permit holders must notify NMFS prior to making any fishing trip to the MEA so NMFS may place a VMS unit and/or an observer on board as directed. Additionally, permit holders must contact NMFS at least 24 hours before landing any catch harvested under an MEA permit, and report the port and the approximate date and time at which the catch will be landed.
- **Other Requirements:** All fishing vessels must also comply with regulations codified at 50 CFR 665 – Western Pacific Fisheries applicable in the Exclusive Economic Zone (EEZ) comprising the MEA.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Ocean Service
1305 East West Highway
Silver Spring, Maryland 20910

May 31, 2023

Kitty Simonds
Executive Director
Western Pacific Regional Fishery Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813

Dear Ms. Simonds:

This letter responds to the Western Pacific Regional Fishery Management Council's (Council) final action taken at the 194th Council meeting as detailed in your April 14, 2023 letter to NOAA, amending the Council's prior December 2022 action for the Papahānaumokuākea Monument Expansion Area (MEA).

NOAA finds that, with the exception of the recommendation providing Native Hawaiian Subsistence Practices Fishing Permit applicants the ability to request limited cost recovery by selling their catch, the Council's amended recommendations fulfill the purposes and policies of the National Marine Sanctuaries Act (NMSA) and the goals and objectives of the proposed sanctuary. As detailed in NOAA's February 22, 2023 letter, any recommendation for the allowance of "sale" is inconsistent with the goals and objectives of the proposed sanctuary. Accordingly, NOAA rejects that portion of the Council's recommendation providing Native Hawaiian Subsistence Practices Fishing Permit applicants the ability to request limited cost recovery by selling their catch. This finding concludes the NMSA section 304(a)(5) process for the purpose of the proposed sanctuary designation within Papahānaumokuākea Marine National Monument.

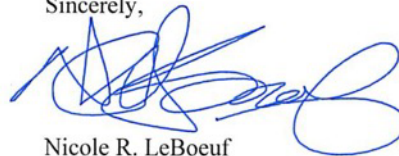
Per the NMSA section 304(a)(5), based on this finding, NOAA will begin to prepare regulations under the Magnuson–Stevens Fishery Conservation and Management Act, for those parts of the Council's recommendations that it has accepted.

Coordination with the Council under the NMSA section 304(a)(5) for the proposal to designate marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary has been a critical step in the proposed sanctuary designation process. On behalf of NOAA, I would like to thank the Council for its time and effort in this matter.



Please contact Kristina Kekuewa at Kristina.Kekuewa@noaa.gov if you have any questions or require more information.

Sincerely,



Nicole R. LeBoeuf
Assistant Administrator
for Ocean Services and Coastal Zone
Management

cc: Janet Coit, Assistant Administrator, NOAA Fisheries (NMFS)
Sarah Malloy, Regional Administrator (Acting), NMFS, Pacific Islands Regional Office (PIRO)
Gerry Davis, Assistant Regional Administrator for Habitat Conservation, NMFS, PIRO
Jarad Makaiau, Assistant Regional Administrator for Sustainable Fisheries, NMFS, PIRO
John Armor, Director, Office of National Marine Sanctuaries (ONMS)
Kristina Kekuewa, Regional Director, ONMS Pacific Islands Region
Eric Roberts, Superintendent, Papahānaumokuākea Marine National Monument

Coastal Zone Management Act (16 U.S.C. §§ 1451 et seq.)



STATE OF HAWAII OFFICE OF PLANNING & SUSTAINABLE DEVELOPMENT

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <https://planning.hawaii.gov/>

DAVID Y. IGE
GOVERNOR
MARY ALICE EVANS
DIRECTOR

DTS202111231309BA

Coastal Zone
Management
Program

December 1, 2021

Environmental
Review Program

Ms. Athline Clark
NOAA Superintendent
Papahānaumokuākea Marine National Monument
1845 Wasp Blvd., Bldg 176
Honolulu, Hawai'i 96818

Land Use
Commission

Land Use Division

Special Plans
Branch

Dear Ms. Clark:

State Transit-
Oriented
Development

Subject: Proposed Designation of a National Marine Sanctuary Within
Papahānaumokuākea Marine National Monument (PMNM).

Statewide
Geographic
Information System

Statewide
Sustainability
Program

According to Federal Register (86 FR 64904, November 19, 2021) the National Oceanic and Atmospheric Administration intends to seek consistency consultation under the Coastal Zone Management Act (CZMA) in accordance with 15 CFR Part 930, Subpart C. This letter acknowledges the intent to designate marine portions of PMNM as a national marine sanctuary and inform you that this activity may have reasonably foreseeable effects on coastal uses and resources.

We kindly invite you to consult with our office prior to the submittal of your CZMA consistency determination to facilitate the review process.

If you have any questions, please contact Keelan Barcina of our Hawai'i Coastal Zone Management Program at keelan.mk.barcina@hawaii.gov or (808) 587-2803.

Mahalo,

Mary Alice Evans
Director


UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL OCEAN SERVICE

Office of National Marine Sanctuaries

1305 East-West Highway

Silver Spring, Maryland 20910

Mary Alice Evans
 Director
 State of Hawai'i Office of
 Planning & Sustainable Development
 P.O. Box 2359
 Honolulu, HI 96804

Dear Director Evans:

On March 1, 2024, ONMS proposed to designate marine portions of Papahānaumokuākea Marine National Monument as a sanctuary, and released for public comment a draft management plan, notice of proposed rulemaking, and an accompanying draft environmental impact statement (DEIS). The documents are available for public comment until May 7, 2024 at <https://www.regulations.gov/>, docket number NOAA-NOS-2012-0114. As described in the enclosed Draft Environmental Impact Assessment, NOAA's preferred boundary alternative is Alternative 1, which includes all marine waters of the Papahānaumokuākea Marine National Monument and Monument Expansion Area from the shoreline of all islands and atolls to 200 nautical miles (see DEIS Section 3.4). NOAA is also proposing a set of proposed regulations, based on the existing Monument regulations (see DEIS Section 3.3 as well as the notice of proposed rulemaking for the full text of the proposed regulations).

The purpose of the attached application packet is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act for the proposed sanctuary designation. Pursuant to the requirements of 15 CFR Part 930, NOAA submits for your review this consistency determination.

Description of Proposed Action

NOAA proposes to designate marine portions of the Papahānaumokuākea Marine National Monument (Monument) as a national marine sanctuary to provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources. The proposed sanctuary boundary is coextensive with the marine portions of the Monument. The designation of the proposed sanctuary would not replace the area's current status as a marine national monument. Through sanctuary designation, NOAA is proposing to supplement and complement existing management of the Monument, and would manage the sanctuary in close collaboration with Monument co-trustees. The proposed rule would only add to, and would not diminish, Monument management measures and protections. NOAA published proposed regulations, a draft management plan, and draft environmental impact statement (EIS) in the Federal Register on March 1, 2024, and the State of Hawai'i, Department of Natural Resources published a Notice of Availability for the draft EIS in the State's The Environmental Notice on March 8, 2024. NOAA and the State of Hawai'i would co-manage the sanctuary. The proposed action will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the Hawai'i Coastal Zone Management Program.

The attached map and project description provide more details regarding the proposed action.

Consistency Determination

A summary of environmental analysis and evaluation of coastal effect is summarized in the attached Hawai'i State CZM consistency determination application. This completed application presents NOAA's evaluation of the relevant state CZM Program enforceable policies for the proposed action. As required by 15 CFR 930.39, this consistency determination is based on a review of the potential effects of the proposed action on Hawai'i coastal uses and resources and the Hawai'i coastal management program's enforceable policies. NOAA has evaluated the proposed action and determined that it is consistent to the maximum extent practicable with the Hawai'i coastal management program. NOAA has also reviewed the Hawai'i enforceable policies that were provided on February 26, 2024 and concludes that this proposed action is consistent with the applicable enforceable policies of the Hawai'i coastal management program. As such, NOAA requests your concurrence with our determination. Pursuant to 15 CFR 930.41, the State of Hawai'i has 60 days to complete its review of this consistency determination and to provide concurrence, subject to a right of extension up to 15 days upon notice to NOAA. If no response is received within this timeframe, state concurrence with this action will be conclusively presumed.

Mahalo for your cooperation in completing this process in a timely manner. If you have questions, or if we can provide other assistance, please contact Eric Roberts at Eric.Roberts@noaa.gov.

Sincerely,



Eric Roberts
Superintendent
Papahānaumokuākea Marine National Monument
and UNESCO World Heritage Site

cc: Ryan Okano, David Sakoda, Nick Sagum, Kelli Ann Kobayashi, Kristina Kekuewa



APPLICATION FOR CZM FEDERAL CONSISTENCY REVIEW

Project/Activity Title or Description: Proposed Papahānaumokuākea National Marine Sanctuary

Location: Northwestern Hawaiian Islands

Island: _____ **Tax Map Key:** n/a

Applicant or Agency

NOAA

Name of Applicant or Agency

Office of National Marine Sanctuaries

Mailing Address

1305 East-West Highway

City / State / Zip Code

Silver Spring, Maryland 20910

Phone

Eric.Roberts@noaa.gov

E-mail Address

Agent or Representative for Applicant

Eric Roberts, Superintendent for Papahānaumokuākea

Agent or Representative for Applicant

NOAA/ONMS/PMNM

Mailing Address

1845 Wasp Blvd., Bldg 176

City / State / Zip Code

Honolulu, Hawaii, 96818

Phone

Eric.Roberts@noaa.gov

E-mail Address

CZM Consistency Determination or Certification

✓ Check the applicable type of federal action below and sign.

Federal Agency Activity

CZM Consistency Determination: "The proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the Hawaii Coastal Zone Management Program."

Signature  Date 3/21/2024

Federal Permit or License

CZM Consistency Certification: "The proposed activity complies with the enforceable policies of Hawaii's approved management program and will be conducted in a manner consistent with such program."

Signature _____ Date _____

Federal Grants and Assistance

CZM Consistency Certification: "The proposed activity complies with the enforceable policies of Hawaii's approved management program and will be conducted in a manner consistent with such program."

Signature _____ Date _____

Submit Application By: Email - Debra.L.Mendes@hawaii.gov

USPS Mail - Office of Planning & Sustainable Development, P.O. Box 2359, Honolulu, Hawaii 96804

For Questions or Help Contact: Debra Mendes | Email: Debra.L.Mendes@hawaii.gov | Phone: (808) 587-2840



HAWAII CZM PROGRAM FEDERAL CONSISTENCY ASSESSMENT FORM

Federal regulations (15 CFR Part 930) require that an evaluation of consistency with the relevant enforceable policies of the Hawaii CZM Program be provided. This assessment form is organized according to the Hawaii CZM objectives and their supporting policies (Hawaii Revised Statutes § 205A-2) to help the Hawaii CZM Program evaluate the consistency of the proposed action. An independent evaluation would need to be submitted in lieu of using this form for a consistency review.

For Help Contact: Debra Mendes | Email: Debra.L.Mendes@hawaii.gov | Phone: (808) 587-2840

RECREATIONAL RESOURCES

Objective: Provide coastal recreational opportunities accessible to the public. Policies:

- 1) Improve coordination and funding of coastal recreational planning and management.
- 2) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
 - a) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas.
 - b) Requiring restoration of coastal resources that have significant recreational and ecosystem value, including but not limited to coral reefs, surfing sites, fishponds, sand beaches, and coastal dunes, when these resources will be unavoidably damaged by development; or requiring monetary compensation to the State for recreation when restoration is not feasible or desirable.
 - c) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value.
 - d) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation.
 - e) Ensuring public recreational uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources.
 - f) Adopting water quality standards and regulating point and non-point sources of pollution to protect, and where feasible, restore the recreational value of coastal waters.
 - g) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing.
 - h) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, and county authorities; and crediting that dedication against the requirements of Hawaii Revised Statutes, section 46-6.



RECREATIONAL RESOURCES (continued)

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

- | | <u>Yes</u> | <u>No</u> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|
| 1. Will the proposed action occur in or adjacent to a dedicated public right-of-way?
E.g., public beach access, inland or coastal hiking trail, shared-use path | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Will the proposed action affect public access to or along the shoreline? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Is the project parcel adjacent to the shoreline? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Is the project site on or adjacent to a sandy beach? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. Is the project site in or adjacent to a state or county park? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. Is the project site in or adjacent to a water body such as a stream, river, pond, lake, or ocean? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. Will the proposed action occur in or affect an ocean or coastal recreation area, swimming area, surf site, fishing or gathering area, or boating area? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

Section 4.6.2 (Human Uses of the Monument) of the DEIS (draft Environmental Impact Statement) provides a description of recreational activities and regulations under Monument management. As the action does not add to or subtract from regulations related to recreational activities, the DEIS does not analyze the impact of the action on these resources.

Public access to the proposed sanctuary follows the existing requirements of the Papahānaumokuākea Marine National Monument, where access is restricted. Users must obtain a sanctuary permit for one of the designated allowed activities, which includes recreation. Applications must meet specific criteria for approval.

We answered Yes to Questions 3, 4 and 6. While the proposed action is adjacent to a shoreline (#3), a sandy beach (#4), and encompasses the ocean (#6), these factors do not restrict public recreational activity over the current status for the following reasons:

-Access to the sanctuary would require users to apply for and be issued a sanctuary permit for the described recreational activity.

-Within the proposed sanctuary boundary, recreational activities would be limited to the Midway Atoll Special Management Area, which consists of the waters surrounding Midway Atoll to a distance of 12 nautical miles.

-No recreational activity within the sanctuary can be associated with a for-hire operation.

-No recreational activity within the sanctuary can involve any extractive use.



HISTORIC RESOURCES

Objective: Protect, preserve, and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

Policies:

- 1) Identify and analyze significant archaeological resources.
- 2) Maximize information retention through preservation of remains and artifacts or salvage operations.
- 3) Support state goals for protection, restoration, interpretation, and display of historic resources.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

- | | <u>Yes</u> | <u>No</u> |
|------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|
| 1. Is the project site within a designated historic or cultural district? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Is the project site listed on or nominated to the Hawaii or National Register of Historic Places? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. Has the project site been surveyed for historic or archaeological resources? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Has the State Historic Preservation Division been consulted? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. Does the project parcel include undeveloped land which has not been surveyed by an archaeologist? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. Is the project site within or adjacent to a Hawaiian fishpond or historic settlement area? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |



HISTORIC RESOURCES (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

Section 4.5.2 (Maritime Heritage Resources) of the DEIS provides a description of maritime heritage resources, the threats they are facing, and the laws protecting them. Appendix G provides detailed supplemental information on these resources. This includes the submerged wreck of the Two Brothers whaling ship, discovered at Lalo (French Frigate Shoals) in 2008, and now listed on the National Register of Historic Places. Impacts of the preferred action alternative and two other alternatives on maritime heritage resources are analyzed in Chapter 5, which concludes that the preferred action will have long term, direct moderate benefits on maritime heritage resources.

We answered Yes to Questions 2, 3, and 4.

Question 2: As noted above, the Two Brothers is listed on the National Register of Historic Places. There are no other sites on this list within the marine waters of the project area. Land-based sites at Mokumanamana (Necker Island), Nihoa, and Kuaihelani (Midway Atoll) are on the National Register, but are not impacted by the regulations or management of the proposed action.

Question 3: Maritime archaeology is an important research and management focus for the Monument, and many non-invasive surveys have occurred over the years, leading to new information and better protection.

Question 4: NOAA initiated consultation with the State Historic Preservation Division (SHPD) on November 22, 2021 as part of the National Historic Preservation Act (NHPA) Section 106 Review process. As the State of Hawai'i is a co-action agency for this proposed designation, on May 31, 2023 the DLNR submitted a letter to the SHPD in fulfillment of Title 1, Chapter 6E, Hawaii Revised Statutes - Historic Preservation. At this time, neither NOAA or DLNR has received a response from SHPD.



SCENIC AND OPEN SPACE RESOURCES

Objective: Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

Policies:

- 1) Identify valued scenic resources in the coastal zone management area.
- 2) Ensure that new developments are compatible with their visual environment by designing and locating those developments to minimize the alteration of natural landforms and existing public views to and along the shoreline.
- 3) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources.
- 4) Encourage those developments that are not coastal dependent to locate in inland areas.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

- | | <u>Yes</u> | <u>No</u> |
|------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------------|
| 1. Will the proposed action alter any natural landforms or existing public views to and along the shoreline? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Does the proposed action involve the construction of a multi-story structure? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Is the project site located on or adjacent to an undeveloped parcel, including a beach or oceanfront land? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Does the proposed action involve the construction of a structure visible between the nearest coastal roadway and the shoreline? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Will the proposed action involve constructing or placing a structure in waters seaward of the shoreline? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |



SCENIC AND OPEN SPACE RESOURCES (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.



COASTAL ECOSYSTEMS

Objective: Protect valuable coastal ecosystems, including reefs, beaches, and coastal dunes, from disruption and minimize adverse impacts on all coastal ecosystems.

Policies:

- 1) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources.
- 2) Improve the technical basis for natural resource management.
- 3) Preserve valuable coastal ecosystems of significant biological or economic importance, including reefs, beaches, and dunes.
- 4) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land water uses, recognizing competing water needs.
- 5) Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

- | | <u>Yes</u> | <u>No</u> |
|--------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|
| 1. Does the proposed action involve dredge or fill activities? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Is the project site within the Special Management Area (SMA) or the Shoreline Setback Area? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Is the project site within the State Conservation District? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Will the proposed action involve some form of discharge or placement of material into a body of water or wetland? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Will the proposed action require earthwork, grading, clearing, grubbing, or stockpiling? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. Will the proposed action include the construction of waste treatment facilities, such as injection wells, discharge pipes, or septic systems? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7. Will the proposed action involve the construction or installation of a stormwater discharge or conveyance system? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 8. Is an intermittent or perennial stream located on or adjacent to the project parcel? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |



COASTAL ECOSYSTEMS (continued)

	<u>Yes</u>	<u>No</u>
9. Does the project site provide habitat for endangered species of plants, birds, or mammals?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. Is any such habitat located near the project site?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. Is a wetland located on the project site or parcel?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Is the project site situated in or abutting a Natural Area Reserve, Marine Life Conservation District, Marine Fisheries Management Area, or an estuary?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
13. Will the proposed action occur on or near a coral reef or coral colonies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

Sections 4.3 (Physical Environment) and 4.4 (Biological Environment) of the DEIS provide description of physical and biological resources, the threats they are facing, and the laws protecting them, respectively. Appendix D provides tables of biological resources, including endangered species, non-endangered marine mammals, non-endangered birds, and marine alien species that are known to occur within the boundary of the proposed sanctuary. Impacts of the preferred action and two alternatives on coastal ecosystems are analyzed in Chapter 5, which concludes that the preferred action will have long term, direct moderate benefits to physical and biological resources.

We answered Yes to Questions 3, 9, 10, 12, and 13. The project site falls under the State Conservation Land Use District, (Resource and Protective Subzones), has no applicable Tax Map Keys, and is located within the Honolulu judicial district (#3). It provides habitat for endangered species (#9, 10). While it does not abut a Natural Area Reserve, Marine Life Conservation District, Marine Fisheries Management Area or estuary, it does include waters of the Northwestern Hawaiian Islands Marine Refuge and the Kure Atoll Wildlife Sanctuary (#12); and encompasses coral reefs (#13).

The project is primarily administrative in nature, with the express purpose of enhancing protections for these resources through improved management and regulatory tools. The proposed action applies only to marine portions of Papahānaumokuākea, entails no new development, and does not increase activities in the area.



ECONOMIC USES

Objective: Provide public or private facilities and improvements important to the State's economy in suitable locations.

Policies:

- 1) Concentrate coastal development in appropriate areas.
- 2) Ensure that coastal dependent development and coastal related development are located, designed, and constructed to minimize exposure to coastal hazards and adverse social, visual, and environmental impacts in the coastal zone management area.
- 3) Direct the location and expansion of coastal development to areas designated and used for that development and permit reasonable long-term growth at those areas, and permit coastal development outside of designated areas when:
 - a) Use of designated locations is not feasible;
 - b) Adverse environmental effects and risks from coastal hazards are minimized; and
 - c) The development is important to the State's economy.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

- | | <u>Yes</u> | <u>No</u> |
|-----------------------------------------------------------------------------------------------|--------------------------|-------------------------------------|
| 1. Does the proposed action involve a harbor or port? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Is the proposed action a visitor industry facility or a visitor industry related activity? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Does the project site include agricultural lands or lands designated for such use? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Does the proposed action relate to commercial fishing or seafood production? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Is the proposed action related to energy production or transmission? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |



ECONOMIC USES (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.



COASTAL HAZARDS

Objective: Reduce hazard to life and property from coastal hazards.

Policies:

- 1) Develop and communicate adequate information about the risks of coastal hazards.
- 2) Control development, including planning and zoning control, in areas subject to coastal hazards.
- 3) Ensure that developments comply with requirements of the National Flood Insurance Program.
- 4) Prevent coastal flooding from inland projects.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

- | | <u>Yes</u> | <u>No</u> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|
| 1. Is the project site on or adjacent to a sandy beach? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. If "Yes" to question no. 1, has the project parcel or adjoining shoreline areas experienced erosion? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. Is the project site within a potential tsunami inundation area?
Refer to tsunami evacuation maps at:
https://dod.hawaii.gov/hiema/public-resources/tsunami-evacuation-zone/ | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Is the project site within a flood hazard area according to a FEMA Flood Insurance Rate Map?
Refer to FEMA maps at: https://msc.fema.gov/portal/home | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Is the project site susceptible to or has it experienced ocean related impacts?
E.g., sea water inundation, high tides, wave runup, sea level rise, storm surge, ground water intrusion, or subsidence. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. Is the project site susceptible to or has it experienced either stormwater or groundwater impacts? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |



COASTAL HAZARDS (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

Section 4.3 (Physical Environment) of the DEIS includes text related to coastal hazards, including erosion of the islands and atolls, storm surges, and other phenomena. These concerns differ from the policies of the CZM Program, which address development in the coastal area. As the action provides supplementary and complementary regulatory and management measures for permitted activities in marine areas, the coastal hazard concerns of the CZM Program are not directly relevant. As such, with the exception of the accumulation and removal of marine debris in nearshore habitats, coastal hazards are not analyzed in the DEIS.

We answered Yes to Questions 1, 2, 3, and 5. However, as described above, the location status of the project, (i.e., adjacent to a sandy beach that has experienced erosion (#1, #2); within a tsunami inundation area (#3); is susceptible to ocean related impacts (#5)) does not affect its compatibility with the policies of the CZM Program.



MANAGING DEVELOPMENT

Objective: Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

Policies:

- 1) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development.
- 2) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements.
- 3) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

- | | <u>Yes</u> | <u>No</u> |
|-----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|
| 1. List the permits or approvals required for the proposed action and provide the status of each in the Discussion section below. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Does the proposed action conform with state and county land use designations for the site? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Has an environmental impact statement or environmental assessment been prepared for the proposed action? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Has the public, applicable neighborhood board, or community groups been notified of the proposed action? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |



MANAGING DEVELOPMENT (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

Similar to the rationale provided for coastal hazards, CZM Program policies related to managing development are not relevant for this action. The action area is the marine environment and the action is promulgating new regulations and management measures for permittees within the proposed sanctuary boundary, and does not extend to the land areas of Papahānaumokuākea. The DEIS does not include any discussion on development.

We answered Yes to Questions 1, 3 and 4.

Question 1: While permits are not required, this action is currently going through the NEPA approval process, which includes requiring consultations and favorable agency determinations with regards to endangered species, cultural and historic resources, environmental justice, and other laws and statutes. These requirements and the status of the determinations are described in Appendix C and E of the DEIS.

Questions 3 and 4: A DEIS was released for public comment on February 29, 2024 and the public comment period will continue through May 7, 2024. NOAA has announced the proposed sanctuary designation to the public through a variety of media, including television, email list-serves, website announcements and other social media; and will host 10 public meetings across the islands to solicit comments in both English and ‘Ōlelo Hawai‘i.



PUBLIC PARTICIPATION

Objective: Stimulate public awareness, education, and participation in coastal management.

Policies:

- 1) Promote public involvement in coastal zone management processes.
- 2) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities.
- 3) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

- | | <u>Yes</u> | <u>No</u> |
|-----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|--------------------------|
| 1. Has information about the proposed action been disseminated to the public, applicable neighborhood board, or community groups? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Has the public been provided an opportunity to comment on the proposed action? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. Has or will a public hearing or public informational meeting be held? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

We answered Yes to questions 1, 2 and 3, ensuring that the public has access to project information (#1), has the opportunity to comment on the action (#2), and that public hearings will be held (#3), as described above.

Sanctuary designation must comply with NEPA, including preparation of an EIS. The EIS process includes public scoping, which occurred in November and December 2021, as well as a public comment period.

NOAA is soliciting public comments from February 29 to May 7, 2024 through email, mail and at 10 public meetings being held across the islands. As the State is a partner, this action must adhere to the requirements of HEPA, which includes responses to all substantive written comments received during this period.



BEACH AND COASTAL DUNE PROTECTION

Objective:

- (A) Protect beaches and coastal dunes for:
 - (i) Public use and recreation;
 - (ii) The benefit of coastal ecosystems; and
 - (iii) Use as natural buffers against coastal hazards; and
- (B) Coordinate and fund beach management and protection.

Policies:

- 1) Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion.
- 2) Prohibit construction of private shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.
- 3) Minimize the construction of public shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.
- 4) Minimize grading of and damage to coastal dunes.
- 5) Prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor.
- 6) Prohibit private property owners from creating a public nuisance by allowing the private property owner's unmaintained vegetation to interfere or encroach upon a beach transit corridor.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

- | | <u>Yes</u> | <u>No</u> |
|------------------------------------------------------------------------------------------------|--------------------------|-------------------------------------|
| 1. Will the proposed action occur on a shoreline parcel? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Will the proposed action occur in an area or parcel that is adjacent to a shoreline parcel? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Is the proposed action located within the shoreline setback area? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Will the proposed action affect natural shoreline processes? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Will the proposed action affect recreational activities? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. Will the proposed action affect public access to or along the shoreline? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |



BEACH AND COASTAL DUNE PROTECTION (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

The proposed action is for marine waters only



MARINE AND COASTAL RESOURCES

Objective: Promote the protection, use, and development of marine and coastal resources to assure their sustainability.

Policies:

- 1) Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial.
- 2) Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency.
- 3) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone.
- 4) Promote research, study, and understanding of ocean and coastal processes, impacts of climate change and sea level rise, marine life, and other ocean resources to acquire and inventory information necessary to understand how coastal development activities relate to and impact ocean and coastal resources.
- 5) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.

Check either Yes or No for each of the following questions, and provide an explanation or information for Yes responses in the Discussion section that follows:

- | | <u>Yes</u> | <u>No</u> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|
| 1. Will the proposed action involve the use or development of marine or coastal resources? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Will the proposed action affect the use or development of marine or coastal resources? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Does the proposed action involve research of ocean processes or resources? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Will the proposed action occur in or abutting a Natural Area Reserve, Marine Life Conservation District, Marine Fisheries Management Area, or an estuary? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |



MARINE AND COASTAL RESOURCES (continued)

Discussion: Explain “Yes” responses to the questions above. If more space is needed, attach a separate sheet, or append additional information.

The proposed action aligns directly with the CZM Program policies for marine and coastal resources, including their use being ecologically and environmentally sound (objectives #1), coordination of management and asserting the State’s interests (objectives #2 and #3) as the State is a partner of this action, and promoting relevant research (objectives #4 and #5) as research is a key activity of the National Marine Sanctuary System [“to support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas” (16 U.S.C. § (b)(5))]. Section 4.6.2.1 provides an overview of research that has occurred in the proposed sanctuary, including conducting Native Hawaiian research.

We answered yes to Question 3 and 4 of this section.

Question 3: As noted above, and in Sections 4.2.7 (Management of Threats) and 4.6.2 (Human Uses of the Monument) of the DEIS, research is currently and will continue to be conducted to improve management of Papahānaumokuākea as well as the greater coral reef ecosystems of Hawai‘i.

Question 4: was previously answered under Coastal Ecosystems (Question 12).

Project Description:

Proposed Papahānaumokuākea National Marine Sanctuary

The National Oceanic and Atmospheric Administration (NOAA) proposes to designate the waters surrounding the Northwestern Hawaiian Islands as Papahānaumokuākea National Marine Sanctuary to protect nationally significant biological, cultural, and historical resources and to manage this special place as part of the National Marine Sanctuary System. Partnerships with Native Hawaiian practitioners, scientific organizations, educational institutions, and others will ensure that future generations continue to discover the cultural, historical, and scientific significance of the area and its connection to the greater Pacific. NOAA has prepared a draft environmental impact statement (EIS) analyzing the impacts on the human environment of the proposed action and a range of alternatives for sanctuary designation, including proposed regulations for managing the new sanctuary. A draft sanctuary management plan, which includes information about the proposed sanctuary's priority management goals and actions proposed to address those goals over the next five years, has been concurrently as an appendix to the draft EIS. A proposed rule identifying proposed regulations for the new sanctuary has also been published concurrently.

Project Location and Characteristics

The proposed sanctuary area extends 1,200 miles across the northwestern region of the Hawaiian archipelago, starting approximately 140 miles from the main Hawaiian islands, and roughly 3,000 miles from the nearest continental land mass. This vast ecosystem is one of the largest wild, pristine marine sites in the world, encompassing 582,578 square miles of the Pacific Ocean.

This vast coral reef ecosystem supports 98% of the breeding population of the threatened honu (Hawaiian green turtle), more than half of the population of the endangered ʻilioholoikauaua (Hawaiian monk seal), 14 million seabirds representing 21 species, and large populations of sharks, jacks, and other apex predators missing or significantly depleted from reef habitats around the world. Papahānaumokuākea¹ is an endemic (species found nowhere else) hotspot, a critical feature with the decline in global marine biodiversity.

The area of the proposed sanctuary includes the location of the Battle of Midway, a turning point in World War II for the allies in the Pacific Theater. Research indicates 60–80 military vessels and hundreds of aircraft are scattered across the seafloor. In addition to Navy steamers and

¹ The term Papahānaumokuākea, when used alone, refers to the place, also historically known as the Northwestern Hawaiian Islands, including the land and all waters to 200 nmi from shore. Papahānaumokuākea Marine National Monument or PMNM refers to the area designated as a monument via Presidential Proclamations 8031 and 8112, extending 50 nmi from all islands and emergent lands of the Northwestern Hawaiian Islands. The Papahānaumokuākea Marine National Monument Expansion Area or MEA refers to waters from 50 to 200 nmi designated as a monument in 2016 by Presidential Proclamation 9478. PMNM and the MEA are referred to collectively as the Monument.

aircraft, there are whaling ships, Japanese junks, Hawaiian fishing sampans, Pacific colliers, and other vessels from the 19th and 20th centuries.

Papahānaumokuākea is also a sacred place to Kānaka ʻŌiwi (Native Hawaiians), who regard the islands and wildlife as kūpuna, or ancestors. The region holds deep cosmological and traditional significance to Kānaka ʻŌiwi, who continue to weave knowledge, values, and practices from the past into the present to guide the co-management of Papahānaumokuākea into the future. Regarded by Kānaka ʻŌiwi as an ʻĀina Akua, or realm of the gods and ancestors, this special biocultural land and seascape is deeply rooted in ʻŌiwi creation and settlement stories and contains a host of intact and significant archaeological sites. Since nature and culture are considered to be one and the same, the protection of one of the last nearly pristine, natural, marine ecosystems in the archipelago is akin to preserving the living culture.

Protection Actions

Protection of the area began in 1909 when President Theodore Roosevelt designated the Hawaiian Islands Reservation, stretching from Nihoa to Hōlanikū (Kure Atoll), as a preserve and breeding ground for native birds. This designation, as well as the transfer of Midway Atoll from the U.S. Navy to the Department of the Interior, became the Midway Atoll and Hawaiian Islands national wildlife refuges.

On December 4, 2000, President William Clinton issued Executive Order 13178, designating the waters from 3 to 50 nautical miles (nmi) from Nihoa to Hōlanikū as the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve), and directed the secretaries of Commerce and Interior and the governor of Hawaiʻi to coordinate management of the Reserve. In 2005, the State of Hawaiʻi established the Northwestern Hawaiian Islands Marine Refuge, with waters extending three miles seaward of any coastline from Nihoa Island to Hōlanikū, excluding Kuaiahelani (Midway Atoll). In 2006, via Presidential Proclamations 8031 and 8112, President George W. Bush designated the land and waters of Papahānaumokuākea as a marine national monument, extending protection to include the land and nearshore State and national wildlife refuge waters extending out 50 nmi around the Northwestern Hawaiian Islands. The Papahānaumokuākea Marine National Monument (PMNM) designation included the prohibition of commercial fishing, creation of access restrictions, and led to regulations that codified a permitting system with application criteria, prohibitions, and regulated activities (50 CFR Part 404). In 2008, the International Maritime Organization (IMO) designated the waters from shoreline to 50 nmi as a Particularly Sensitive Sea Area (PSSA). The *Associated Protective Measures* for this PSSA include: 1) Areas to be Avoided depicted on international nautical charts, directing ships away from coral reefs; and 2) a ship reporting system upon entering and exiting the PSSA. In 2016, via Presidential Proclamation 9478, President Barack Obama created the Papahānaumokuākea Marine National Monument Expansion Area, extending from the 50 nmi boundary of the Papahānaumokuākea National Marine Monument to 200 nmi, the limit of the U.S. Exclusive Economic Zone. Combined, these two marine national monuments provide protections for 582,570 square miles of land, nearshore, and open ocean in the Northwestern Hawaiian Islands.

Sanctuary Designation

Three presidents (Clinton, Bush, and Obama) and Congress have directed NOAA over the years to work toward designating Papahānaumokuākea as a national marine sanctuary, recognizing the potential value such a designation would have to complement the historical conservation and management that has been in place for more than a century. Consideration of this area for designation as a national marine sanctuary began when Executive Orders 13178 and 13196 directed the Secretary of Commerce to initiate the process to designate the Reserve as a national marine sanctuary. NOAA initiated the process to designate the Reserve as a national marine sanctuary by issuing a notice of intent on January 19, 2001 (66 FR 5509). In 2016, Presidential Proclamation 9478 called for the Secretary of Commerce to consider initiating the process to designate the Monument Expansion Area and the Monument seaward of the Hawaiian Islands and Midway Atoll National Wildlife Refuges as a national marine sanctuary. Finally, in 2020, the Joint Explanatory Statement accompanying the Consolidated Appropriations Act directed NOAA to initiate the sanctuary designation process to “supplement and complement, rather than supplant, existing authorities.” NOAA published a Notice of Intent (NOI) to initiate the sanctuary designation process on November 19, 2021. The State of Hawai‘i published its EIS preparation notice on December 8, 2021. This proposed sanctuary designation is being conducted in consultation with all Papahānaumokuākea Marine National Monument managers. The State of Hawai‘i co-developed the draft EIS and would co-manage the proposed sanctuary.

Purpose of a Sanctuary

The purpose of this proposed action is to provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources through a sanctuary designation. Threats to these resources, including impacts from outside the proposed sanctuary’s boundary, remain an ongoing concern.

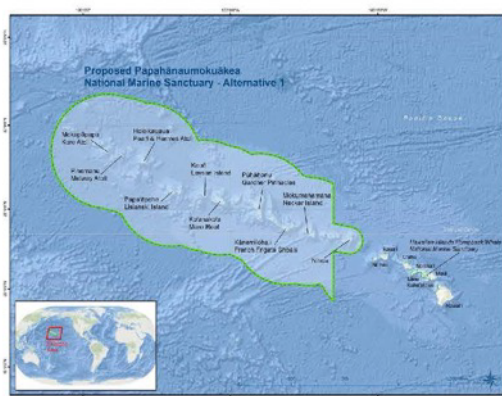
If NOAA designated this area as a national marine sanctuary, NOAA would implement regulations to complement and supplement existing authorities under the Antiquities Act; Presidential Proclamations 8031, 8112, and 9478; Executive Orders 13178 and 13196; 50 CFR 404; and existing federal and State statutes designed to protect marine resources. Sanctuary designation would provide the opportunity to develop a comprehensive and cohesive set of regulations that maintains and enhances existing resource protection. The regulations would adopt measures from the Monument, and in some places, add to those measures to allow for consistency in management and address discrepancies and gaps in prohibitions, regulated activities, and permit criteria. Through sanctuary designation, the National Marine Sanctuaries Act (NMSA) would provide additional regulatory tools for management and protection of Monument resources. Sanctuary designation also provides additional non-regulatory tools to further manage and protect Monument resources. As co-managers of the Monument for more than 20 years, NOAA has maintained robust and effective programs for conservation science; the weaving of Kānaka ‘Ōiwi (Native Hawaiians), heritage, knowledge, values, and practices into co-management; maritime heritage; and education, providing services and expertise that can be leveraged to support resource protection across the Monument and proposed sanctuary.

Proposed Action and Alternatives

The proposed action is the establishment of a sanctuary at Papahānaumokuākea, with terms of designation, regulations, and a sanctuary management plan. NOAA developed a reasonable range of alternatives for the proposed action as required by the Council on Environmental Quality NEPA regulations. The alternatives include a No Action Alternative and three action alternatives that vary by the proposed sanctuary boundaries. NOAA is proposing the same regulatory concepts and sanctuary management plan to manage the sanctuary under all alternatives. NOAA would ensure that the protections described in the Presidential Proclamations and regulations governing PMNM are the foundation of sanctuary management, and a sanctuary designation would only supplement and complement rather than supplant these protections.

Proposed Boundaries

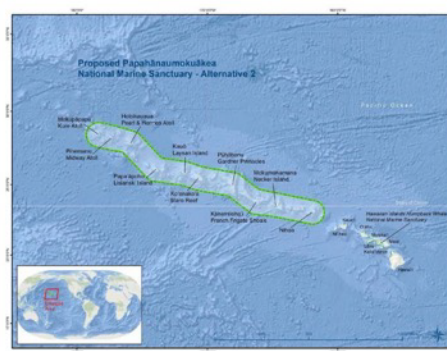
Alternative 1 is coextensive with the marine portions of the Monument. The boundary includes the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline of the islands and atolls seaward to 200 nmi, including all State waters and waters of the Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and State of Hawai'i Northwestern Hawaiian Islands Marine Refuge. The area encompassed in Alternative 1 is approximately 582,570 square miles (439,910 square nmi). Within the area considered under Alternative 1, there are five known whaling vessels lost between 1822 and 1842, five merchant ships dating between 1886 and 1957, 60–80 military vessels, and hundreds of aircraft primarily from the Battle of Midway. This alternative includes all shallow-water coral reef habitats most vulnerable to both human and natural threats, including impacts from marine debris, invasive species, and climate change. As the entirety of Papahānaumokuākea is sacred to Kānaka ʻŌiwi, this alternative ensures that the tangible resources and intangible values of Native Hawaiian culture are considered.



Geographic boundary of Alternative 1. Source: NOAA

Alternative 2 includes the marine environment from the shoreline of the islands and atolls seaward to 50 nmi. This alternative includes all State waters and waters of the Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and State of Hawai'i Northwestern Hawaiian Islands Marine Refuge. This alternative does not include the MEA, 50–200 nmi west of 163° West longitude. The area encompassed in Alternative 2 is approximately 139,782 square miles (105,552 square nmi).

The Alternative 2 boundary includes the same shallow water biocultural and maritime heritage resources included in Alternative 1, but would not include the open ocean and deep-water resources of the MEA, including seamounts supporting rare oases of life in this primarily pelagic and deep-ocean environment and maritime heritage resources from the Battle of Midway.



Geographic boundary of Alternative 2. Source: NOAA

Alternative 3 has the same boundaries as Alternative 1, excluding waters within the Midway Atoll and Hawaiian Islands National Wildlife Refuges. The area encompassed in Alternative 3 is approximately 581,263 square miles (438,923 square nmi). Alternative 3 excludes vulnerable, shallow reef waters, where impacts from land-based legacy pollutants, relatively higher human presence, and potential vessel groundings, marine debris, and invasive species introduction pose a threat. Many of the known maritime heritage resources also occur in these waters.

NOAA also proposes regulations to implement the ship reporting system (CORAL SHIPREP) adopted by the IMO, which would require entrance and exit notifications for vessels that pass without interruption through the sanctuary areas contained within a reporting area, which would be defined as “the area of the proposed sanctuary that extends outward ten nautical miles from the PSSA [Particularly Sensitive Sea Area] boundary, as designated by the IMO, and excludes the ATBAs [Areas to be Avoided] that fall within the PSSA boundary.” The ship reporting requirements would not apply to vessels conducting activities pursuant to a sanctuary permit or vessels conducting non-commercial fishing activities in the OSZ, authorized under the Magnuson-Stevens Fishery Conservation and Management Act. NOAA also proposes exemptions for emergency response and law enforcement purposes, and for activities and exercises of the Armed Forces.

Prohibited or Otherwise Regulated Activities

To supplement and complement existing management of this area, the following are proposed as prohibited or otherwise regulated activities:

- Exploring for, developing, or producing oil, gas, or minerals, or any energy development activities;
- Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a sanctuary resource;
- Introducing or otherwise releasing an introduced species from within or into the sanctuary;
- Deserting a vessel;
- Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope;
- Commercial fishing and possessing commercial fishing gear except when stowed and not available for immediate use;
- Non-commercial fishing and possessing non-commercial fishing gear except when stowed and not available for immediate use;
- Drilling into, dredging, or otherwise altering the submerged lands other than by anchoring a vessel; or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands;
- Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource;
- Attracting any living sanctuary resource;
- Touching coral, living, or dead;
- Swimming, snorkeling, or closed or open circuit scuba diving;
- Discharging or depositing any material or other matter into the sanctuary, or discharging or depositing any material or other matter outside of the sanctuary that subsequently enters the sanctuary and injures or has the potential to injure any resources of the sanctuary, except for vessel passage without interruption; or
- Anchoring a vessel.

Exemptions and Exceptions

Consistent with existing management of this area, the access restriction and proposed prohibitions would not apply to the following activities:

- Activities necessary to respond to emergencies that threaten life, property, or the environment;
- Activities necessary for law enforcement purposes;
- Activities and exercises of the U.S. Armed Forces including those carried out by the U.S. Coast Guard (USCG);
- Non-commercial fishing in the area of the proposed sanctuary that overlaps with the MEA, the OSZ, authorized under Magnuson-Stevens Fishery Conservation and Management Act regulations is exempt from prohibitions 7–14, provided that no sale of harvested fish occurs; and
- Scientific exploration or research activities by or for the Secretary of Commerce and/or the Secretary of the Interior in the area of the proposed sanctuary that overlaps with the MEA.

Sanctuary General Permits

The proposed sanctuary regulations would include authority to issue sanctuary general permits pursuant to 15 CFR 922.30 to allow certain activities that would otherwise violate prohibitions in the proposed sanctuary's regulations. Three categories of national marine sanctuary general permits, Research, Education, and Management, would apply to this proposed sanctuary. NOAA is proposing to add two additional permit categories to 15 CFR 922.30, Native Hawaiian Practices and Recreation, to be consistent with the types of activities permitted for PMNM under regulations at 50 CFR part 404. The general regulations in 15 CFR 922, subpart D relating to the permit application process, review procedures, amendments, and other permitting stipulations would apply. These national permitting regulations include a list of factors NOAA considers in deciding whether or not to issue the permit, such as whether the activity must be conducted within the sanctuary, and whether the activity will be compatible with the primary objective of protection of sanctuary resources and qualities. NOAA would be able to impose specific terms and conditions through a permit as appropriate.

Special Use Permits

The proposed sanctuary regulations would include authority to issue special use permits (SUPs) pursuant to 15 CFR 922 subpart D to authorize the conduct of specific activities in a national marine sanctuary under certain circumstances.

Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation for national marine sanctuaries include (1) the geographic area included within the sanctuary; (2) the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or esthetic value; and (3) the types of activities subject to regulation by NOAA to protect those characteristics. See the accompanying proposed rule for the full text of the proposed terms of designation.

Draft Sanctuary Management Plan

NOAA is proposing to implement the same draft sanctuary management plan under all alternatives. Management plans are sanctuary specific planning and management documents used by all national marine sanctuaries. A management plan describes goals for resource protection, research, education, stewardship, and accompanying sanctuary management actions. This plan would chart the course for the proposed sanctuary over the next five to seven years (see Appendix A of the DEIS for the draft sanctuary management plan).

The draft sanctuary management plan was developed in coordination with the Monument's co-managers and is intended to function as a companion document to the Monument Management Plan. At the heart of the draft sanctuary management plan are five kükulu (pillars of management):

- Resource Protection and Conservation
- Research and Monitoring
- Governance and Operations
- Partnerships and Constituent Engagement
- Education, Interpretation, and Mentoring.

Each kükulu includes a goal and five to 13 strategies. The kükulu do not describe explicit activities, which are to be developed as needed within separate tactical or operational plans.

Summary of Impacts for the Preferred Alternative

NOAA evaluated the impacts of its alternatives on the existing laws and management, physical resources, biological resources, cultural and maritime heritage resources, human uses and socioeconomic resources. Because of the existing protection summarized in History of Management (Section 1.2.2) and the current access limitations of PMNM, this proposed sanctuary designation primarily supplements existing resource protections and imparts few minor adverse impacts. Sanctuary designation would not remove the Monument designation or accompanying regulations. Rather, it would give NOAA the authority to provide additional protection. Beneficial impacts of the proposed action would include stronger incentives for compliance through enhanced enforcement, as well as new authorities to respond to and hold financially liable those responsible for destruction, loss of, or injury to sanctuary resources. The proposed sanctuary includes a permitting system modeled after the existing Monument permitting system, with minor changes proposed. The proposed permitting system would not supplant the joint permitting system for PMNM, and was developed to ensure a continued joint permitting system administered by Monument co-managers that incorporates the authorities provided through the NMSA.

Impacts to Laws and Management. Sanctuary designation would allow NOAA to apply National Marine Sanctuary Program Regulations (15 CFR 922) to supplement existing authorities, in part through: 1) emergency regulations; 2) penalties; and 3) authorities to respond to and hold financially liable those responsible for destruction or loss of, or injury to, sanctuary resources. The proposed site-specific regulations would address discrepancies and gaps in prohibitions, regulated activities, and permitting across the area. Alternative 1 would provide NOAA with the

authority to issue permits in the OSZ, for area of the proposed sanctuary that overlaps with the MEA, and vessels wishing to operate within the OSZ would be required to obtain a permit and adhere to all regulations and permit conditions, including installing a Vessel Monitoring System (VMS) that remains on and working when in sanctuary waters. These additional authorities provide NOAA with new tools to improve management and compliance, and address impacts to sanctuary resources.

Impacts to Physical Resources. Sanctuary designation would provide moderate benefits and no adverse impacts to physical resources (e.g., water quality, benthic habitat). Regulations promulgated for the area of the proposed sanctuary that overlaps with the MEA would provide additional protection through permitting requirements, as well as prohibitions related to seafloor disturbance and vessel discharge, both for permitted vessels and those conducting passage without interruption through the sanctuary.

Impacts to Biological Resources. The authorities afforded by sanctuary designation provides new and effective deterrents to permit and regulatory violations, as well as providing a mechanism to conduct damage assessments and hold a permittee or vessel liable for response costs and damages resulting from destruction, loss, or injury of a sanctuary resource. Codified regulations in the area of the proposed sanctuary that overlaps with the MEA provides NOAA's Office of Law Enforcement the option to impose civil penalties, deterring illegal fishing and other prohibited activities, and protecting fish stocks and fragile benthic ecosystems from exploitation on seamounts and on the seafloor. These additional authorities provide enhanced protection and response mechanisms, benefiting biological resources from accidental or intentional loss or damage to sanctuary resources, particularly due to ship groundings in the shallow coral reef ecosystem.

Impacts to Cultural and Maritime Heritage Resources. Cultural heritage is a primary focus of current management, indicated through the use of appropriate protocols, assigning biocultural resource monitors on permitted activities, and employing numerous other measures to protect tangible and intangible cultural resources. These efforts would be expanded to the area of the proposed sanctuary that overlaps with the MEA under sanctuary designation, imparting minor benefits to cultural resources. Sanctuary designation provides new protections for the maritime heritage resources described above, particularly in the OSZ. Permitting authority and new prohibitions, including disturbance of the seafloor and access regulations, would complement existing federal and State regulations for all underwater maritime resources throughout the sanctuary.

Impacts to Socioeconomic Resources. Sanctuary designation would provide alternative sources of funding to support education initiatives and programs in Hawai'i (outside the waters of the proposed sanctuary), including from Friends Groups, the National Marine Sanctuary Foundation, and other non-profit organizations. Additional funding sources provide opportunities to strengthen the public's appreciation of this area.

NOAA determined that sanctuary designation of the preferred alternative (Alternative 1) would have **direct, long-term, moderate beneficial impacts** for laws and management, physical, biological, and maritime heritage resources, **direct, long-term, minor beneficial impacts**

for cultural resources, and **indirect, long-term, minor adverse impacts** for socioeconomic resources for the largest proposed sanctuary area of the three alternatives.



STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT

235 South Beretania Street, 6th Floor, Honolulu, Hawai'i 96813
 Mailing Address: P.O. Box 2359, Honolulu, Hawai'i 96804

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

MARY ALICE EVANS
DIRECTOR

Telephone: (808) 587-2846
 Fax: (808) 587-2824
 Web: <https://planning.hawaii.gov/>

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Coastal Zone
Management
Program

May 17, 2024

Environmental Review
Program

Land Use Commission

Land Use Division

Special Plans Branch

State Transit-Oriented
Development

Statewide Geographic
Information System

Statewide
Sustainability Branch

Mr. Eric Roberts
Superintendent
Papahānaumokuākea Marine National Monument
and UNESCO World Heritage Site
NOAA/ONMS/PMNM
1845 Wasp Blvd., Building 176
Honolulu, Hawai'i 96818

Dear Mr. Roberts:

Subject: Hawai'i Coastal Zone Management Program Federal
Consistency Review for the proposed designation of the
Papahānaumokuākea National Marine Sanctuary

The Hawai'i Coastal Zone Management (CZM) Program has reviewed the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service federal consistency determination submitted to our office on March 21, 2024, on the proposed designation of portions of marine areas of the Papahānaumokuākea National Monument to a National Marine Sanctuary (NMS). This Coastal Zone Management Act (CZMA) federal consistency review covers the proposed Papahānaumokuākea NMS designation and the boundary alternatives, as represented in the CZM federal consistency application and supporting information.

As stated in your determination transmittal letter, the NOAA proposes to designate marine portions of the Papahānaumokuākea Marine National Monument as a national marine sanctuary to provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources.

It is our understanding that the designation of the sanctuary would not replace the area's current status as a marine national monument. Through sanctuary designation, NOAA is proposing to supplement and complement existing management of the Monument and would manage the sanctuary in close collaboration with Monument co-trustees.

The Hawai'i CZM Program received your CZM federal consistency determination on March 21, 2024; published a public notice in the Office of

Mr. Eric Roberts

May 17, 2024

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Planning and Sustainable Development, Environmental Review Branch's "The Environmental Notice," on April 8, 2024, with the public review and comment period concluding on April 22, 2024. During the public notice period no public or agency comments or inquiries were received.

Pursuant to 15 CFR Subpart A § 930.4(a)(1), this federal consistency concurrence is based on a review of the potential effects of the proposed action on Hawai'i coastal uses and resources and the Hawai'i CZM program's enforceable policies. We conditionally concur with NOAA's determination that the proposed designation of marine areas of Papahānaumokuākea as a national marine sanctuary is consistent to the maximum extent practicable with the enforceable policies of the Hawai'i CZM Program. The following conditions shall apply to this consistency concurrence:

1. This conditional concurrence applies to the NOAA ONMS proposal to designate marine areas of Papahānaumokuākea Marine National Monument and the Monument Expansion Area as a national marine sanctuary. This includes all three boundary alternatives as represented in the consistency application and supporting information (Draft Environmental Impact Statement (DEIS), March 2024). Our conditional concurrence does not cover any subsequent federal reviews (permits or licenses required within National Marine Sanctuaries) or changes to the National Monument or National Marine Sanctuary that may be required. The proposed actions shall be carried out as represented in the CZM federal consistency application and determination. Any changes to the proposed activity shall be submitted to the Hawai'i CZM Program for review and approval. Changes to the proposed activity may require a full CZM federal consistency review, including publication of a public notice and provision for public review and comment. This condition is necessary to ensure that the proposed action is implemented as reviewed for consistency with the enforceable policies of the Hawai'i CZM Program.

Hawai'i Revised Statutes (HRS) Chapter 205A, CZM are the federally approved enforceable policies of the Hawai'i CZM Program that applies to this condition.

2. The proposed activity shall be in compliance with the requirements that result from the State Historic Preservation Division (SHPD), Department of Land and Natural Resources (DLNR) consultation initiated on November 22, 2021, as part of the National Historic Preservation Act (NHPA) Section 106 Review Process. Additionally, as a co-applicant, the State Department of Land and Natural Resources, Division of Aquatic Resources submitted a letter on May 31, 2023, to SHPD under HRS Chapter 6E Historic Preservation requirements. We note that the Section 106 and HRS Chapter 6E consultation is ongoing.

HRS § 205A-2(b)(2) Historical Resources and HRS 6E Historic Preservation Program, which are the federally approved enforceable policies of the Hawai'i CZM Program that

Mr. Eric Roberts

May 17, 2024

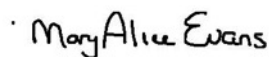
Page 3

applies to this condition.

If the requirements for conditional concurrences specified in 15 CFR § 930.4(a), (1) through (3), are not met, then all parties shall treat this concurrence letter as an objection pursuant to 15 CFR Part 930, subpart C. The NOAA ONMS shall immediately notify the Hawai'i CZM Program if the conditions are not acceptable in accordance with 15 CFR § 930.4(a)(2). Otherwise, acceptance of the conditions shall be presumed at the end of the 90-day federal consistency notification period on June 30, 2024. This CZM concurrence is not an endorsement of the proposed action, nor does it convey approval of any other regulations administered by any State or County agency.

Thank you for your cooperation in complying with the Hawai'i CZM Program. If you wish to respond to this comment letter, please include DTS202403271042HE in the subject line. If you have any questions or concerns regarding this matter, please contact Joshua Hekeka at (808) 587-2845 or by email to Joshua.K.Hekeka@hawaii.gov.

Sincerely,



Mary Alice Evans
Director

c: DLNR, State Historic Preservation Division
DLNR, Division of Aquatic Resources

Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*) – Section 7 Consultation and Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §§ 1801 *et seq.*) – Essential Fish Habitat Consultation



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Office of National Marine Sanctuaries
1305 East-West Highway
Silver Spring, Maryland 20910

Sarah Malloy
Acting Regional Administrator
NOAA Fisheries Pacific Islands Regional Office

Re: Request for Initiation of Informal Consultation under section 7(a)(2) of the Endangered Species Act for the Proposed Designation of Papahānaumokuākea National Marine Sanctuary.

Dear Ms. Malloy:

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) proposes to designate the marine portions of Papahānaumokuākea Marine National Monument as Papahānaumokuākea National Marine Sanctuary (PNMS). ONMS requests initiation of informal consultation under Section 7(a)(2) of the Endangered Species Act (ESA) for the proposed designation of PNMS. ONMS has determined that the proposed action may affect, but is not likely to adversely affect (NLAA), the ESA-listed species and critical habitat discussed below. ONMS's supporting analysis is discussed below. ONMS requests your written concurrence with our determinations. This letter also serves to request initiation of informal Essential Fish Habitat consultation under Section 305 (b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act.

Proposed Action

On March 1, 2024, ONMS proposed to designate marine portions of Papahānaumokuākea Marine National Monument as a sanctuary, and released for public comment a draft management plan, notice of proposed rulemaking, and an accompanying draft environmental impact statement (DEIS). The documents are available for public comment until May 7, 2024 at <https://sanctuaries.noaa.gov/papahanaumokuakea/>. As described in the enclosed DEIS, NOAA's preferred boundary alternative is Alternative 1, which includes all marine waters of the Papahānaumokuākea Marine National Monument and Monument Expansion Area from the shoreline of all islands and atolls to 200 nautical miles (see DEIS Section 3.4). NOAA is also proposing a set of proposed regulations, based on the existing Monument regulations (see DEIS Section 3.3 as well as the notice of proposed rulemaking for the full text of the proposed regulations).¹

Impacts on listed species and critical habitat

To support this request for informal Section 7 consultation, the enclosed DEIS provides the following information:

¹ The draft Sanctuary Management Plan is an overarching administrative document, describing strategies to meet the proposed sanctuary's Goals and Objectives and not specific activities. As the scope, nature, location and timing of future projects are unknown, and because each permitted activity will undergo NEPA review, impacts from implementation of the sanctuary management plan, including impacts to ESA-listed species, are not analyzed in the DEIS.

- A description of the action (Section 3.3);
- A description of the action area (Section 3.4);
- A description of any listed species or designated critical habitat that may be affected by the action (Section 3.11); and
- A description of habitat requirements, occurrence patterns, and federal status for each of the listed species (Sections 4.4.8, 4.4.9).
- A brief analysis of negligible benefits to ESA-listed species and critical habitat (Section 5.3.3)

ONMS used the NOAA Fisheries “Threatened and Endangered Species Directory” to identify any ESA-listed species or critical habitat that may be present in the action area. ONMS evaluated the species’ habitat requirements, habitat availability within the action area, and the components of the proposed action and determined that 16 listed species and designated critical habitat for two species may occur in the action area and may be affected by the proposed action. Critical habitat is also proposed for one coral species that occurs within the action area.

The nature of the action (sanctuary designation) enhances existing protections for all resources within the proposed boundaries. The area of the proposed sanctuary is extremely remote, nearly 300 miles at its closest point from the main Hawaiian Islands. Therefore, the proposed action is not expected to result in an increase in activity, or in the number of permit requests. In addition, the proposed sanctuary is not expected to increase management activities, as NOAA’s Office of National Marine Sanctuaries currently serves as a co-manager of the existing Monument. With regards to endangered species and their habitats, including designated critical habitat, the proposed protections provide negligible benefits, as briefly noted in Section 5.3.3 of the enclosed draft environmental impact statement for the species listed in Table 4.5.

Potential impacts to these species and critical habitat from human disturbance, vessel strikes, and entanglement have been described in Sections 4.3, 4.4.8, 4.4.9, and 4.4.10. Routine field activities conducted by ONMS staff, including marine debris removal, protected species management, small boat operations, in-water research and monitoring activities, and sustenance fishing, have been assessed during the Monument permitting process for these potential impacts and will continue to be assessed under sanctuary designation. The proposed action does not create an increase in any activities within the action area, including permitted activities conducted by NOAA and its partners in the management of the Monument.

ONMS’s analysis concludes that any impacts resulting from sanctuary designation of the marine waters of the Papahānaumokuākea Marine National Monument would be beneficial, insignificant, or discountable for the following reasons:

- Extending the access and permitting requirements to the areas of the proposed sanctuary overlapping the Monument Expansion Area (50-200 nautical miles) to ensure management and enforcement of prohibited and otherwise regulated activities;
- Regulation protecting waters that overlap with the Monument Expansion Area through a prohibition on disturbance of the submerged lands of the proposed sanctuary ;
- Regulation protecting waters that overlaps with the Monument Expansion Area through the regulation of vessel discharge;
- Authorize NOAA to assess civil penalties for violations of provisions of the NMSA and regulations and permits issued pursuant to the NMSA;

- Impose liability for destruction, loss of, or injury to sanctuary resources and provide natural resource damage assessment authorities for destruction, loss of, or injury to any sanctuary resource; and
- Require interagency consultation for any federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource.

These complementary and supplementary resource protection measures to existing regulations and management strengthen protection of the endangered species and their habitat within the proposed sanctuary.

Therefore, ONMS determined that the proposed action will have a **beneficial effect on listed** species and their designated critical habitat. ONMS requests your concurrence with our determinations pursuant to Section 7 of the Endangered Species Act of 1973 and the consultation procedures at 50 C.F.R. Part 402. ONMS certifies that the best scientific and commercial data available was used in order to prepare the environmental impact statement and this accompanying request for consultation.

Impacts on Essential Fish Habitat

ONMS also evaluated the potential impacts of the proposed action on Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPC) and determined that the proposed action would not adversely affect EFH. The enclosed environmental assessment provides the following information related to this analysis:

- A description of the action (Section 3.3 and 3.4);
- A description of EFH and HAPC found in the sanctuary (Section 4.3.1); and
- An analysis of the potential impacts to physical habitat (bottom habitat and water column) in the project area, including all EFH and HAPC, from implementing the proposed action (5.3.2, 5.4.2, and 5.5.2).

The proposed sanctuary designation encompasses EFH, as it is broadly defined in the *Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific* and the *Fishery Ecosystem Plan for the Hawaii Archipelago*. Within these documents, across all species groups, EFH includes all bottom habitat to 400 meters (or deeper for deep-water shrimp) and the water column to 1000 meters. Because of this broad definition, the analysis of impacts to habitat corresponds to impacts to EFH. Further, no HAPC is designated within the boundary of the proposed sanctuary. Regulations proposed under this action, also listed above for impacts to critical habitat, provide the following direct benefits to EFH;

- New discharge regulations for waters 50-200 nm from the islands and atolls, benefiting water quality of the water column,
- New seafloor disturbance regulations for waters 50-200 nm from the islands and atolls, benefiting deep-water habitat,
- New enforcement mechanisms, including civil penalties and damage assessment authority, for infractions of regulations or permit requirements and destruction of sanctuary resources, benefiting shallow-water and seamount benthic habitat.

Conclusion

ONMS appreciates your cooperation in completing this informal Section 7 consultation and EFH consultation in a timely manner. ONMS will continue to coordinate with NMFS via email to

provide any requested information or to answer any questions related to this consultation request. Please contact me at eric.roberts@noaa.gov with any questions.

Sincerely,

Eric Roberts
Superintendent, Papahānaumokuākea Marine National Monument
and UNESCO World Heritage Site
NOAA Inouye Regional Center
NOS/ ONMS/ PMNM/ E.Roberts
1845 Wasp Blvd Bldg 176
Honolulu, HI 96818-5007

cc: Ellie Roberts, Phillip Howard, Dawn Golden, Gerry Davis

Enclosure: *Draft EIS for Proposed Papahānaumokuākea National Marine Sanctuary*



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric
Administration

NATIONAL MARINE FISHERIES SERVICE
 Pacific Islands Regional
 Office 1845 Wasp Blvd.,
 Bldg 176
 Honolulu, Hawaii 96818
 (808) 725-5000 · Fax: (808) 725-5215

April 29, 2024

Eric Roberts
 Superintendent
 Papahānaumokuākea Marine National Sanctuary
 Office of National Marine Sanctuaries
 NOAA Inouye Regional Center
 1845 Wasp Blvd., Building 176
 Honolulu, HI 96818

RE: Request for ESA Consultation on the Designation of the Papanānaumokuākea National Marine Sanctuary (I-PI-24-2284-DG; PIRO-2024-00674).

Dear Mr. Roberts:

On March 8, 2024, NOAA's National Marine Fisheries Service's (NMFS) Protected Resources Division (PRD) received your written request for informal consultation on the Office of National Marine Sanctuaries (ONMS) action of designating the Papahānaumokuākea National Marine Sanctuary. Your request, which included a draft environmental impact statement, qualified for our expedited review. It met our screening criteria and contained all required information on your proposed action and its potential effects to listed species and designated critical habitat.

We reviewed your consultation request document and related materials. Based on our knowledge, expertise, and the materials you provided; and because, if implemented, sanctuary regulations would complement, rather than replace, existing authorities in the Papahānaumokuākea Marine National Monument; we concur with your conclusions that the proposed action may affect, but is not likely to adversely affect the endangered and threatened species under our jurisdiction found in Table 1; and designated critical habitat for Hawaiian monk seals and Main Hawaiian Islands insular false killer whales.

Table 1. Common name, scientific name, ESA status, effective listing date, and Federal Register reference for ESA-listed species and critical habitats considered in this consultation.

Species/ common name	ESA Status	Effective Listing Date/ FR Notice	Critical Habitat	Recovery Plan
<i>Chelonia mydas</i>	Threatened	05/06/2016 81 FR 20057		

Species/ common name	ESA Status	Effective Listing Date/ FR Notice	Critical Habitat	Recovery Plan
Central North Pacific Green Sea Turtle				
<i>Eretmochelys imbricata</i> Hawksbill Sea Turtle	Endangered	06/03/1970 35 FR 8491		5/22/98 63 FR 28359
<i>Caretta caretta</i> North Pacific Loggerhead Sea Turtle	Endangered	10/24/2011 76 FR 58868		5/22/98 63 FR 28359
<i>Lepidochelys olivacea</i> Olive Ridley Sea Turtle	Threatened	08/27/1978 43 FR 32800		5/22/98 63 FR 28359
<i>Dermochelys coriacea</i> Leatherback Sea Turtle	Endangered	06/03/1970 35 FR 8491		5/22/98 63 FR 28359
<i>Neomonachus schauinslandi</i> Hawaiian Monk Seal	Endangered	11/23/1976 41 FR 51612	9/21/2015 (revised) 80 FR 50925	8/22/07 72 FR 46966
<i>Balaenoptera musculus</i> Blue Whale	Endangered	12/02/1970 35 FR 18319		Proposed 10/12/18 83 FR 51665
<i>B. physalus</i> Fin Whale	Endangered	12/02/1970 35 FR 18319		8/06/10 75 FR 47538
<i>B. borealis</i> Sei Whale	Endangered	12/02/1970 35 FR 18319		7/22/11 76 FR 43985
<i>Physeter macrocephalus</i> Sperm Whale	Endangered	12/02/1970 35 FR 18319		12/28/10 75 FR 81584
<i>Eubalaena japonica</i> North Pacific Right Whale	Endangered	04/07/2008 73 FR 12024		6/07/13 78 FR 34347
<i>Pseudorca crassidens</i>	Endangered	12/28/2012	8/23/2018	

Species/ common name	ESA Status	Effective Listing Date/ FR Notice	Critical Habitat	Recovery Plan
False Killer Whale Main Hawaiian Island Insular		77 FR 70915	83 FR 35062	
<i>Sphyrna lewini</i> Scalloped Hammerhead Shark Indo West Pacific	Threatened	09/02/2014 79 FR 38213		
<i>Carcharhinus longimanus</i> Oceanic Whitetip Shark	Threatened	03/01/2018 83 FR 4153		
<i>Manta birostris</i> Giant Manta Ray	Threatened	02/21/2018 83 FR 2916		
Corals <i>Acropora globiceps</i>	Threatened	10/10/2014 79 FR 53852	Proposed on 11/30/2023	

This concludes informal consultation under section 7 of the ESA for species under our jurisdiction. A complete record of this consultation is on file at the Pacific Island Regional Office, Honolulu, Hawaii. Reinitiation of consultation is required and shall be requested by NMFS ONMS or by NMFS PRD, where discretionary Federal involvement or control over the action has been retained or is authorized by law and if:

- a. New information reveals effects of the action that may affect ESA-listed species or designated critical habitat in a manner or to an extent not previously considered;
- b. The identified action is subsequently modified in a manner that causes an effect to ESA- listed species or designated critical habitat that was not considered in this concurrence; or
- c. A new species is listed or critical habitat designated that may be affected by the identified action.

If you have further questions, please contact Richard Hall at (808) 725-5018 or richard.hall@noaa.gov. Thank you for working with us to protect our nation's living marine resources.

Sincerely,

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Date: 2024.04.29 16:52:00 -10'00'

Dawn Golden
Assistant Regional
Administrator Protected
Resources Division



CC: Phillip Howard, ONMS PMNM



Fwd: NOS PNMS Designation EFH Consultation Response

From: Richard Hall - NOAA Federal <richard.hall@noaa.gov>
 Date: Thu, Mar 21, 2024 at 7:46 AM
 Subject: NOS PNMS Designation EFH Consultation Response
 To: Eric Roberts <eric.roberts@noaa.gov>
 Cc: Sean Hanser - NOAA Federal <sean.hanser@noaa.gov>, David Delaney - NOAA Federal <david.delaney@noaa.gov>, Gerry Davis <gerry.davis@noaa.gov>, Ellie Roberts - NOAA Federal <ellie.roberts@noaa.gov>, Phillip Howard - NOAA Federal <phillip.howard@noaa.gov>, Malia Chow - NOAA Federal <malia.chow@noaa.gov>

Mr. Roberts,

The National Marine Fisheries Service, Pacific Islands Regional Office (NMFS) received a request for an essential fish habitat (EFH) consultation from the Office of National Marine Sanctuaries (ONMS) on March 8, 2024. The consultation request was for the proposed designation of the waters surrounding the Northwestern Hawaiian Islands (NWHI) as the Papahānaumokuākea National Marine Sanctuary (PNMS) as described in the Draft Environmental Impact Statement (DEIS). We appreciate the opportunity to review the proposed action pursuant to the EFH provision (Section 305(b) as described by 50 CFR 600.920) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1855(b)).

Project Description

The NWHI extends 1,200 miles across the northwestern region of the Hawaiian archipelago and encompasses an area within the U.S. Exclusive Economic Zone of 582,578 square miles. The three alternatives for the PMNS described in the DEIS are each a subset of that total area. Alternative 1 overlays the marine portions of the Papahānaumokuākea Marine National Monument (Monument) and would cover 582,570 square miles. Alternative 2 would include the marine environment between 50 – 200 miles beyond the islands and atolls in the NWHI, and would encompass 139,782 square miles. Alternative 3 would have the same boundaries as Alternative 1, but would exclude the waters within Midway Atoll and Hawaiian Islands National Wildlife Refuges. The sanctuary under Alternative 3 would be 581,263 square miles in size.

Along with the designation, ONMS has developed a draft sanctuary management plan and a set of proposed sanctuary regulations. The management plan that would be implemented would be the same under each of the three proposed sanctuary designations, and describes goals for resource protection, research, education, stewardship, and accompanying management actions. The proposed sanctuary regulations would supplement and complement existing management of the Monument, and would control access and define prohibited, regulated, and exempted activities.

Essential Fish Habitat

The marine water column from the surface to a depth of 3280.8 feet from shoreline to the outer boundary of the EEZ (200 nautical miles), and the seafloor from the shoreline out to a depth of 2296.6 feet around each of the Hawaiian Islands, has been designated as EFH. As such, the water column and bottom of the Pacific Ocean near all of the islands and atolls of the Northwestern Hawaiian Islands, and their surrounding waters and submerged lands are designated as EFH and support various life stages for the management unit species (MUS) identified under the Western Pacific Fishery Management Council's Pelagic and Hawai'i Archipelago Fishery Ecosystem Plans. The MUS and life stages found in these waters include larvae, juveniles, and adults of Bottomfish, Crustacean, and Pelagic MUS. Specific types of habitats considered as EFH include coral reef, patch reefs, hard substrate, artificial substrate, seagrass beds, soft substrate, mangrove, lagoon, estuarine, surge zone, deep-slope terraces, and pelagic/open ocean.

Baseline Condition

The NWHI stretches in a northwesterly direction from 22° N to 30° N latitude, and 161° W to 180° W longitude. The islands and atolls of the NWHIs are remnants of volcanic islands that formed over centuries as the Pacific Plate moved in a northwesterly direction over a hot spot in the Earth's mantle (Dalrymple et al. 1974). Each of these emergent lands are described below.

French Frigate Shoals is the largest atoll in the NWHI chain, and consists of 67 acres of total emergent land surrounded by approximately 230,000 acres of coral reef. The atoll has a more diverse ecosystem than other islands in the NWHI, with 41 coral species and 178 reef fish species. The atoll is made of several small islands and islets, of which Tern Island is the largest with a land mass of nearly 26 acres (PMNM 2009).

Gardner Pinnacles consist of two emergent basaltic volcanic peaks. The surrounding coral reef habitat encompasses approximately 600,000 acres, and provides habitat for 124 reef fish species and 27 coral species (PMNM 2009).

Kure Atoll is a nearly circular reef containing two islets comprising 200 acres of emergent land surrounded by nearly 80,000 acres of coral reef habitat. Its marine environment supports 155 species of fish and 27 species of corals (PMNM 2009).

Laysan is a raised atoll, with a maximum elevation of 45 feet, and land area of approximately 1,023 acres. The atoll is surrounded with nearly 100,000 acres of coral reef and supports 131 species of reef fish and 27 species of coral (PMNM 2009).

Lisianski is a raised atoll, with approximately 400 acres of emergent land. The reef area around the island, called Neva Shoals, covers nearly 290,000 acres and supports 124 species of reef fish and 24 coral species (PMNM 2009).

Maro Reef is a largely submerged atoll with less than one acre of emergent land. While there is no terrestrial biota, the shallow water reef system is extensive, covering nearly 500,000 acres, and supports 37 coral species and 142 fish species (PMNM 2009).

Midway Atoll consists of three sandy islets (Sand, Eastern, and Spit) with a total of nearly 1,500 acres of terrestrial habitat. Their surrounding reef environment encompasses approximately 90,000 acres and supports 16 species of corals and 163 species of fish (PMNM 2009).

Necker Island is a small basalt island with only 46 acres of emergent land. The reef surrounding the island covers over 380,000 acres and supports 125 reef fish species and 18 coral species (PMNM 2009).

Nihoa is the first, and youngest island, in the NWHI chain. The island's surrounding reef habitat is approximately 142,000 acres, and supports approximately 127 fish species and 17 coral species (PMNM 2009).

Pearl and Hermes Atoll is a large atoll with several small islets, which total 96 acres of land. The surrounding coral reef habitat encompasses more than 300,000 acres. The atoll has a high rate of reef fish endemism, with 62% of its 174 species documented as endemic to the Hawaiian Archipelago; while coral species richness is high with 33 species present (PMNM 2009).

The islands, atolls, and associated reef environments mentioned above represent a small fraction of the area of the proposed sanctuary, the vast amount would be pelagic marine environments, of which a large portion (84 %) are deeper than 6,000 feet (Miller et al. 2006).

Adverse Effects

Because proposed sanctuary regulations would provide incentives for compliance, through enhanced enforcement, and would allow for determining financial liability for destruction or injury to sanctuary resources through the implementation of new authorities; there would be some minor beneficial impacts of a sanctuary designation. On the other hand, sanctuary designation would likely result in minor negative impacts related to an increase in activities in a designated sanctuary from actions that would be undertaken as described in the sanctuary management plan and from other actions that would likely come from new funding sources made available after the sanctuary is designated. These activities may result in short- and long-term adverse effects to EFH related to the potential for physical damage to corals and other benthic habitats, possible accidental release of chemical contaminants, and the potential for the introduction of invasive species.

ONMS-imposed Best Management Practices (BMPs)

To avoid or minimize potential project impacts to EFH, the ONMS would require adherence to the following BMPs by any permittees granted access and on Sanctuary staff conducting field activities:

Vessel Use and Maintenance: Marine Alien Species Inspection Standards for Maritime Vessels; BMPs for Boat Operations and Diving Activities; Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment; and BMPs to Minimize the Spread of Nuisance Algae

Scuba Diving: BMPs for Boat Operations and Diving Activities; Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment; and BMPs to Minimize the Spread of Nuisance Algae

Deploying Research and Monitoring Equipment or Buoys: Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment and BMPs to Minimize the Spread of Nuisance Algae

Sampling Organisms: General Storage and Transport Protocols for Collected Samples; Disease and Introduced Species Prevention Protocol for Permitted Activities in the Marine Environment; and BMPs to Minimize the Spread of Nuisance Algae

Collecting Artifacts for Time-Sensitive Maritime Heritage Resource Protection Needs: BMPs for Maritime Heritage Sites

Removal of Materials: BMPs to Minimize the Spread of Nuisance Algae.

NMFS Concerns

While the BMPs listed above will help to avoid or minimize impacts to EFH from permitted activities and management activities undertaken by ONMS in a designated Papahānaumokuākea National Marine Sanctuary, NMFS is concerned that the range of possible management actions that ONMS may have to undertake to implement the goals of the sanctuary management plan and to address issues related to climate change cannot be fully addressed in the DEIS and the proposed sanctuary management plan at this time.

In the event that the Sanctuary is designated, NMFS recommends that the ONMS should continue to seek technical assistance from our agency in advance of any management actions, when appropriate, and to continue to initiate EFH consultations for those actions (including permitted actions) where there is the potential for adverse effects to EFH.

Conclusion

NMFS greatly appreciates the ONMS' efforts to comply with the EFH provisions of the Magnuson-Stevens Act for the proposed designation of the PNMS. NMFS agrees with ONMS that the act of designating the PNMS will not adversely affect EFH, however, as we mention above, future management actions (including issuing permits) may result in impacts to EFH, so ONMS should continue to engage our office for technical assistance or to initiate consultations when necessary.

We look forward to working with ONMS to ensure that adverse effects to EFH are avoided, minimized, offset, or otherwise mitigated if the Sanctuary is designated. Thank you for coordinating on this action. Feel free to contact me 808-725-5018 or at richard.hall@noaa.gov with any questions or comments.

References

- Dalrymple, G.B., E.A. Silver, E. Jackson. 1974. NASA. Ames Res. Center Guidebook to the Hawaiian Planetology Conference: 23-36.
- Miller, J.E., S. Vogt, R. Hoeke, S. Ferguson, B. Applegate, J.R. Smith, and M. Parke 2006. Bathymetric atlas and website for the northwestern Hawaiian Islands. *Atoll Research Bulletin* 543: 409-422.
- PMNM. 2009. Papahānaumouākea Marine National Monument Management Plan. Prepared by the Papahānaumouākea Marine National Monument. December, 2008. Vol. 1. P. 411.

—

Richard Hall

Fishery Policy Analyst, Pacific Islands Regional Office
NOAA Fisheries | U.S. Department of Commerce
Office: (808) 725-5018
www.fisheries.noaa.gov

From: Phillip Howard - NOAA Federal <phillip.howard@noaa.gov>
Sent: Tuesday, April 30, 2024 3:02 PM
To: Sachs, Elyse M <elyse_sachs@fws.gov>
Subject: [EXTERNAL] Amended_No effect ESA determination

Aloha Elyse,

Per our conversation our office would like to amend our ESA determination as follows:

On March 1, 2024, NOAA proposed to designate marine portions of Papahānaumokuākea Marine National Monument as a sanctuary, and released for public comment a draft management plan, notice of proposed rulemaking, and an accompanying draft environmental impact statement (EIS). The documents are available for public comment until May 7, 2024 at <https://sanctuaries.noaa.gov/papahanaumokuakea/>. As described in the enclosed draft environmental impact statement, NOAA's preferred boundary alternative is Alternative 1, which includes all marine waters of the Papahānaumokuākea Marine National Monument from the shoreline of all islands and atolls to 200 nautical miles (See Section 3.4). NOAA is also proposing a set of proposed regulations based on the existing Monument regulations (see EIS Section 3.3 as well as the notice of proposed rulemaking for the full text of the proposed regulations).

NOAA used the USFWS's Environmental Conservation Online System (ECOS) Information for Planning and Conservation (IPaC) tool to identify species or critical habitat that may be present in the action area. This search identified 15 endangered or threatened species under USFWS jurisdiction and critical habitat for 6 species.

Birds (8):

Seabirds (4)

Band-rumped Storm-petrel, *Hydrobates castro*. Endangered
 Hawaiian Petrel, *Pterodroma sandwichensis*. Endangered
 Newell's Shearwater, *Puffinus newelli*. Threatened
 Short-tailed Albatross, *Phoebastria (=Diomedea) albatrus*. Endangered

Landbirds(4)

Laysan Duck, *Anas laysanensis*. Endangered
 Laysan Finch, *Telespiza cantans*. Endangered
 Nihoa Finch, *Telespiza ultima*. Endangered
 Nihoa Millerbird (old World Warbler), *Acrocephalus familiaris kingi*. Endangered

Reptiles (1)

Green Sea Turtle, *Chelonia mydas*. Threatened

Flowering Plants (6)

Amaranthus brownii. Endangered
Cyperus pennatifomis. Endangered
 Ihi, *Portulaca villosa*. Endangered
 Loulou, *Pritchardia remota*. Endangered
 Popolo, *Solanum nelsonii*. Endangered
Schiedea verticillata. Endangered

Critical habitats (6)

Amaranthus brownii
Cyperus pennatifomis
 Green Sea Turtle, *Chelonia mydas* (Proposed)
 Loulou, *Pritchardia remota*
 Ohai, *Sesbania tomentosa*
Schiedea verticillata

NOAA evaluated these species' habitat requirements, habitat availability within the action area, and the components of the proposed action, and determined the proposed action will have no effects on ESA-listed species or critical habitats.

If there are any further questions or required information from ONMS regarding this consultation please let me know.

Mahalo,

Phillip Howard
 Permit Specialist

National Historic Preservation Act of 1966 (54 U.S.C. §§ 300101 et seq.)

Finding of No Historic Properties Affected for the Proposed Papahānaumokuākea National Marine Sanctuary Designation

Summary

This document describes the National Oceanic and Atmospheric Administration's (NOAA's) compliance with Section 106 of the National Historic Preservation Act (NHPA) and documents the agency's Finding of No Historic Properties Affected (Finding) for the undertaking of designating a national marine sanctuary within the marine portions of the existing Papahānaumokuākea Marine National Monument, pursuant to 36 CFR § 800.4(d)(1). NOAA has prepared this documentation following the standards outlined in 36 CFR § 800.11(d). This Finding and supporting documentation are being provided to the consulting parties and will be available to the [public](#).

NOAA has determined that historic properties are present within the Area of Potential Effects (APE), but that the undertaking would have no effect on them. If NOAA designates this area as a national marine sanctuary, NOAA would implement regulations to complement and supplement existing authorities under the Antiquities Act; Presidential Proclamations 8031, 8112, and 9478; Executive Orders 13178 and 13196; 50 CFR 404; and existing federal and State of Hawai'i (State) statutes designed to protect marine resources, including historical and cultural resources. In the proposed sanctuary regulations, NOAA has adopted the management measures from the presidential proclamations, and in a few places, added on to those measures to provide consistency in regulations and management, including for historic properties.

Native Hawaiian cultural and maritime heritage resources are a focus of management for the current monument, and designation as a national marine sanctuary would strengthen and increase management and protections of these unique resources. The proposed sanctuary regulations consistently apply a prohibition on removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource, the definition of which encompasses historic properties. The proposed regulations further include prohibition on access to the proposed sanctuary without a permit, and Native Hawaiian practices permits to ensure access to the proposed sanctuary for activities that perpetuate traditional knowledge, care for and protect the environment, and strengthen cultural and spiritual connections to the Northwestern Hawaiian Islands. Additionally, in bringing to bear consistent authority under the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*), NOAA will continue its robust and effective management, outreach, and education programs that highlight resource protection. These include the engagement of Kānaka ʻŌiwi (Native Hawaiians) to continually guide the co-stewardship framework; long-term conservation science programs; maritime heritage research; and educational programming.

Description of the Undertaking

Federal Involvement

On June 15, 2006, President George W. Bush issued Presidential Proclamation 8031 establishing the Northwestern Hawaiian Islands Marine National Monument under the authority of the Antiquities Act of 1906 (16 U.S.C 431). A year later, the Monument was re-named with its Hawaiian name as Papahānaumokuākea Marine National Monument (Presidential Proclamation 8112, February 28, 2007). The Monument encompasses a number of existing federal conservation areas, including: the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (managed by the U.S. Department of Commerce through NOAA) and Midway Atoll National Wildlife Refuge, Hawaiian Islands National Wildlife Refuge, and Battle of Midway National Memorial, managed by the U.S. Department of Interior through the U.S. Fish and Wildlife Service (USFWS). These areas remain in place within the Monument subject to their applicable laws and regulations in addition to the provisions of the Proclamation.

The Northwestern Hawaiian Islands also include State of Hawai'i lands and waters, managed by the State through the Department of Land and Natural Resources as the Northwestern Hawaiian Islands Marine Refuge (Chapter 60.5 Hawaii Administrative Rules), and the Seabird Sanctuary at Kure Atoll. These areas also remain in place and are subject to their applicable laws and regulations.

To provide the most effective management of the area, Governor Linda Lingle, Secretary of Commerce Carlos M. Gutierrez, and Secretary of the Interior Dirk Kempthorne signed a memorandum of agreement (MOA) on December 8, 2006, which provided for coordinated administration of all the federal and State lands and waters within the boundaries of the Monument. The MOA provided that management of the Monument is the responsibility of the three parties acting as co-trustees: the State of Hawai'i, Department of Land and Natural Resources; the U.S. Department of the Interior, USFWS; and the U.S. Department of Commerce, NOAA. It also established the institutional arrangements for managing the Monument, including representation of Native Hawaiian interests by the Office of Hawaiian Affairs on the Monument Management Board (MMB).

The NMSA is the organic legislation governing NOAA's Office of National Marine Sanctuaries. The NMSA authorizes the Secretary of Commerce to designate as a national marine sanctuary any discrete area of the marine or Great Lakes environment with special national significance due to its conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities (16 U.S.C. 1433(a)). In addition to designating and managing these special places, the NMSA provides additional purposes and policies that guide how NOAA manages these areas, including guidance to:

- Provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities (16 U.S.C. 1431 (b)(2));
- Enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System (16 U.S.C. 1431 (b)(4));

- Support, promote, and coordinate scientific research on, and long-term monitoring of, the resources of these marine areas (16 U.S.C. 1431 (b)(5));
- Facilitate, to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities (16 U.S.C. 1431 (b)(6));
- Develop and implement coordinated plans for the protection and management of these areas with appropriate federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas (16 U.S.C. 1431 (b)(7)).

The Undertaking

The proposed designation of marine areas of Papahānaumokuākea Marine National Monument as a national marine sanctuary meets the definition of an undertaking as defined at § 800.16(y). Specifically, the undertaking includes:

1. delineation of proposed boundaries for the Papahānaumokuākea National Marine Sanctuary;
2. a notice of proposed rulemaking containing proposed regulations for the sanctuary; and
3. publication of a management plan for the proposed national marine sanctuary, which outlines the proposed goals, objectives, and strategies for managing sanctuary resources for the next five years, as described in section 304(a)(2)(C) of the NMSA.

The purpose of this proposed designation is to provide comprehensive and coordinated conservation and management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources. Through the proposed designation, NOAA aims to address threats to these resources and discrepancies in management across the Monument.

NOAA is the lead federal agency for this proposed action. This proposed sanctuary designation is being conducted in cooperation with all Monument co-managers, which includes the USFWS, State of Hawai‘i Department of Land and Natural Resources, and the Office of Hawaiian Affairs. The State of Hawai‘i co-developed the draft environmental impact statement and would co-manage the proposed sanctuary.

The undertaking does not include assessment of project-specific effects on historic properties that may occur once the proposed sanctuary is designated (e.g., research, education, management activities, or issuance of permits). Future project-specific undertakings will be reviewed on a case-by-case basis in compliance with NHPA.

Area of Potential Effects

As defined in the Section 106 regulations (36 CFR § 800.16(d)), the APE is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The dimensions of the APE are influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Papahānaumokuākea is the name given to a vast and isolated linear cluster of small, low-lying islands and atolls, with their surrounding ocean, extending to the north west of the main Hawaiian Archipelago, located in the north-central Pacific Ocean. The APE for this undertaking, consistent with the scope of the study area and impact analysis in the EIS for the proposed sanctuary designation, is defined as the areas within the boundaries of the proposed action and alternatives, as illustrated in Figure 1. The proposed national marine sanctuary boundaries only include the submerged lands, seamounts, and Pacific Ocean waters; terrestrial areas of the islands and atolls are not included within the APE. The boundary alternatives include the following:

- Alternative 1 is coextensive with the marine portions of the Monument. The boundary includes the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline of the islands and atolls seaward to 200 nautical miles (nmi), including all State waters and waters of the Reserve, Midway Atoll National Wildlife Refuge, Hawaiian Islands National Wildlife Refuge, the Battle of Midway National Memorial, and State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge. The area encompassed in Alternative 1 is approximately 582,570 square miles (439,910 square nmi).
- Alternative 2 includes the marine environment from the shoreline of the islands and atolls seaward to 50 nmi. This alternative includes all State waters and waters of the Reserve, Midway Atoll National Wildlife Refuge, Hawaiian Islands National Wildlife Refuge, the Battle of Midway National Memorial, and State of Hawai‘i Northwestern Hawaiian Islands Marine Refuge. This alternative does not include the Monument Expansion Area. The area encompassed in Alternative 2 is approximately 139,782 square miles (105,552 square nmi).
- Alternative 3 has the same boundaries as Alternative 1, but excludes waters within the Midway Atoll National Wildlife Refuge, Hawaiian Islands National Wildlife Refuge, and the Battle of Midway National Memorial. The area encompassed in Alternative 3 is approximately 581,263 square miles (438,923 square nmi).

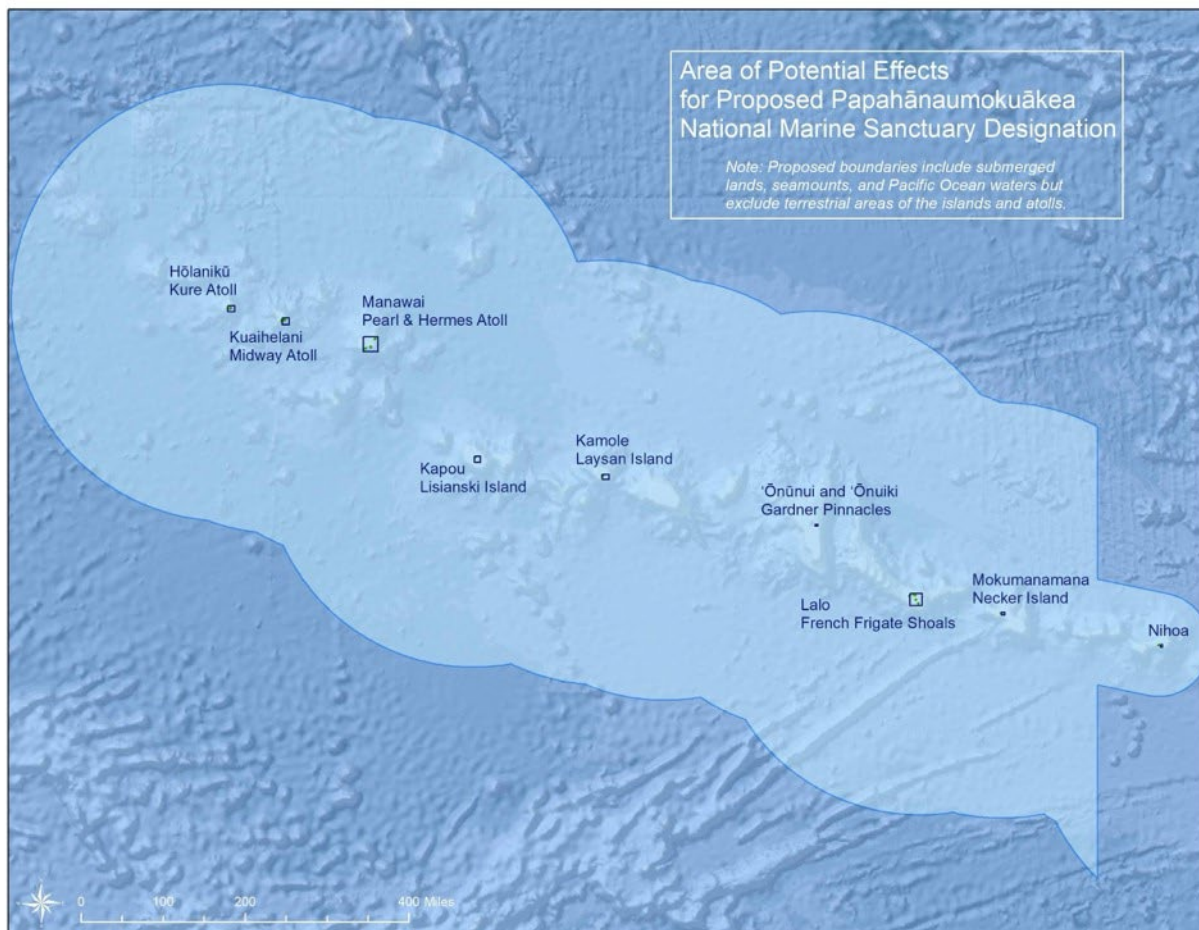


Figure 1. The Area of Potential Effects.

Consultation with Appropriate Parties and the Public

NOAA's Consultation Efforts

NOAA published a *Notice of Intent to Conduct Scoping and to Prepare an Environmental Impact Statement* for designating the Papahānaumokuākea National Marine Sanctuary on November 19, 2021 (86 FR 64904). Through this notice NOAA invited public participation in the Section 106 process, per 36 CFR § 800.2(d)(3). NOAA additionally initiated consultation with the Hawai'i State Historic Preservation Division (SHPD) which serves as the State Historic Preservation Office and invited the Advisory Council on Historic Preservation (ACHP) to participate.

NOAA further initiated an effort to identify consulting parties to participate in the Section 106 process through distribution of over 500 letters to Native Hawaiian organizations,¹ historic preservation organizations, and individuals and organizations with demonstrated interests or expertise in the project and/or APE. This included outreach to Native Hawaiian individuals and families with lineal and cultural connections to Papahānaumokuākea, cultural practitioners, the fishing community (including subsistence, recreational, and commercial fishers), maritime heritage organizations, government agencies, and others. These letters solicited input regarding the identification of, and potential effects on, historic properties from the proposed sanctuary designation for the purpose of obtaining input for the Section 106 review and to additionally determine their interest in participating as a consulting party. A list of entities that received invitation from NOAA to participate as consulting parties is included as Appendix 1. A sample letter of invitation to participate as a consulting party is included as Appendix 2.

In December of 2021, NOAA and the State hosted four virtual public scoping meetings concurrent with the public comment period which ended January 31, 2022. At the end of the comment period, NOAA received six requests to participate as a consulting party to the Section 106 review. In June of 2022, NOAA distributed approximately 200 follow-up letters and inquiries to individuals and entities that may have interest in participating as a consulting party. In response, NOAA received 31 requests to be a consulting party. The individuals and entities that NOAA has recognized as consulting parties are listed in Appendix 3. NOAA subsequently hosted 10 Section 106 consultation meetings with the consulting parties, summarized in Table 1. Through these consultation meetings NOAA further sought to invite consulting party and public input regarding the identification of, and potential effects on, historic properties from the proposed sanctuary designation.

On March 1, 2024, NOAA's ONMS released for public comment a draft sanctuary management plan, a notice of proposed rulemaking, and an accompanying draft EIS for proposed designation of Papahānaumokuākea National Marine Sanctuary. These documents are available to the [public](#). In the draft designation documents, NOAA further sought to identify consulting parties pursuant to 36 CFR § 800.3(f); consult on existing information regarding the proposed undertaking and the geographic extent of the APE; and solicit additional information on historic properties within the APE from the public. NOAA held a 68-day public review and comment period on the draft designation documents, during which NOAA held 11 public comment meetings (two virtual and nine in-person meetings on O‘ahu, Kaua‘i, Hawai‘i Island, Maui, and Moloka‘i). Copies of public comments received will be included in Appendix K to the final EIS, and comments also can be viewed [online](#).

¹ The NHPA defines a Native Hawaiian organization as “any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.” The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai‘i Nei, an organization incorporated under the laws of the State of Hawaii. 54 U.S.C. § 300314. The NHPA defines Native Hawaiian as “any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.” 54 U.S.C. § 300313.

Table 1. Summary of Section 106 consultation meetings.

Meeting:	Date:	Format:	Description:
1	8/23/2022	Virtual	Orientation Meeting for Recognized Consulting Parties
2	10/25/2022	Virtual	Consulting Parties meeting with Native Hawaiian Organizations with a focus on cultural resources
3	10/27/2022	In-person	Individual consultation with two lineal descendants of Papahānaumokuākea
4	10/28/2022	Virtual	Consultation with Maritime Heritage Consulting Parties
5	10/31/2022	Virtual	Individual consultation with Maritime Heritage Consulting Parties
6	1/24/2023	Virtual	Group consultation with Native Hawaiian Organizations and Maritime Heritage Consulting Parties
7	3/19/2024	Virtual	Additional consultation made available to all Consulting Parties following the release of the draft Environmental Impact Statement
8	3/25/2024	Virtual	Additional consultation made available to all Consulting Parties following the release of the draft Environmental Impact Statement
9	3/26/2024	Virtual	Additional consultation made available to all Consulting Parties following the release of the draft Environmental Impact Statement
10	4/16/2024	Virtual	Individual consultation with Office of Hawaiian Affairs Chief Advocate and Policy Team

Related State Reviews

In addition to the consultation activities described above, NOAA engaged with the State of Hawai‘i Department of Land and Natural Resources (DLNR) as they conducted their Cultural Impact Assessment (CIA). The State of Hawai‘i CIA is triggered by requirements of the Hawai‘i Environmental Policy Act (HEPA), Hawai‘i Revised Statutes (HRS) §343, and was conducted parallel to the Section 106 process and NEPA review conducted by NOAA. The State of Hawai‘i Historic Preservation program is codified under HRS Chapter 6E and recognizes the State’s constitutional duty to conserve and develop the historic and cultural property in the State. SHPD review includes identification and inventory of historic properties, evaluation of significance of the properties, determination of effects to significant properties, and mitigation. Pursuant to HRS § 6E-8 and HAR § 13-275-3, the state proposing agency, DLNR-Division of Aquatic Resources (DAR) submitted a written request to SHPD for an agency determination letter. On June 7, 2024, SHPD concurred with DAR’s determination of no historic properties affected. DAR’s determination and the concurrence letter from SHPD are included as Appendix 4.

A legal analysis was also conducted to support the State’s constitutional duties to protect Native Hawaiian traditional and customary practices. Nohopapa Hawai‘i, LLC created the document *Ho‘i I Ke Au A Kanaloa* (Nohopapa Hawai‘i, 2023) containing the CIA and a legal analysis relating to Native Hawaiian rights and cultural resources.

The CIA presents a detailed genealogy of Papahānaumokuākea, its connection to Hawaiian history and the main Hawaiian Islands, and the cultural resources, practices, beliefs, and spirituality associated with this biocultural seascape that are fundamental to Native Hawaiians. Following extensive outreach to identify individuals and groups interested in participating, Nohopapa Hawai‘i, LLC interviewed 25 people with connections to Papahānaumokuākea. These

interviewees identified their cultural practices and connection to Papahānaumokuākea, potential impacts to these practices and cultural resources, recommendations, and other considerations. The CIA outlines several Native Hawaiian customs such as voyaging, kilo (Indigenous observational science), feather gathering, and fishing. Based on analysis in the CIA, these traditions and customs are not significantly impacted by sanctuary designation but may actually be subject to greater protection with sanctuary designation.

Description of the Steps Taken to Identify Historic Properties

NOAA has compiled existing and available information on historic properties within the APE, including data concerning possible historic properties not yet identified. This includes information compiled through development of the draft EIS for the proposed sanctuary, consultation with the parties, coordination with other federal agencies, and research conducted at relevant repositories including SHPD site files, as listed below in Appendix 5. A description of historic properties and cultural resources is also available in sections 4.5.1 and 4.5.2 of the EIS and a summary is provided below.

If designated as a national marine sanctuary, NOAA recognizes that additional long-term historic property identification efforts are warranted, in part to meet the agency's responsibilities to identify and evaluate historic property under Section 110 of NHPA. These continuing efforts are reflected in the draft management plan and are built upon 16 years of archaeological survey, and cultural research conducted by Kānaka 'Ōiwi scholars and cultural practitioners in the Monument.

Native Hawaiian Cultural Resources and UNESCO World Heritage Designation

Kānaka 'Ōiwi (Native Hawaiian) cultural resources that may be present within the APE include formerly terrestrial areas now submerged that have the potential to contain archaeological sites, landscape features, and locations potentially significant as Traditional Cultural Properties. The EIS Section 4.5.1 provides further background on the cultural significance of the APE.

Numerous significant properties are located adjacent to the APE on the terrestrial portions of the islands and atolls. The occupation and use of these islands represent one of the earliest signs of Hawaiian religious activity. For over four hundred years (ca. 1400–1815), the islands were used as a ritual center of power connected by an extensive voyaging interaction sphere that supported long-term settlement of the islands (Kikiloi, 2012). Nihoa and Mokumanamana contain more than 140 archaeological sites that include agricultural, habitation, and religious structures. Based on radiocarbon data, it has been estimated that Nihoa and Mokumanamana Islands could have been inhabited from 100 C.E. to 1700 C.E. (Kikiloi, 2012; PMNM, 2008). Nihoa and Mokumanamana are listed in the National Register of Historic Places as archaeological districts.

The area of the proposed sanctuary is a sacred place to Kānaka 'Ōiwi, who regard the islands and wildlife as kūpuna, or ancestors. The region holds deep cosmological and traditional significance for living Kānaka 'Ōiwi culture. Papahānaumokuākea is as much a spiritual as it is a physical geography, deeply rooted in Kānaka 'Ōiwi creation and settlement stories. Since Kānaka 'Ōiwi culture considers nature and culture to be one and the same, the protection of one of the last nearly pristine, natural, marine ecosystems in the archipelago is seen as being akin to preserving the living culture.

NOAA recognizes that areas of the proposed national marine sanctuary may constitute one or more Traditional Cultural Properties. This potential property has not been formally assessed and boundaries have not been determined; however, for the purpose of this Section 106 review, NOAA is considering the area to be potentially eligible for the National Register of Historic Places based on the association with cultural practices of a living community that are rooted in that community's history and that are important to maintaining the continuity of cultural identity to the community (Parker & King, 1990). The area has played, and continues to play, a significant role in the culture and traditions of Kānaka ʻŌiwi. From the time of the first Polynesian voyagers who first populated the Hawaiian Archipelago to the present renaissance of Hawaiian culture, Kānaka ʻŌiwi have considered Papahānaumokuākea a profoundly sacred place.

In 2010, Papahānaumokuākea was inscribed as a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site. Of note, the site was nominated and inscribed as both a site of global natural and cultural significance. The listing is in recognition of the inextricably linked pristine natural heritage of the area and its deep cosmological and traditional significance for living Kānaka ʻŌiwi culture, as an ancestral environment, as an embodiment of the Hawaiian concept of kinship between people and the natural world, and as the place where it is believed that life originates and where the spirits return to after death.

Post-Contact Historic Properties

The Hawaiian Archipelago has a history of hundreds of years of intensive maritime activity, and thus possesses many historical and archaeological resources such as shipwrecks and other types of maritime heritage sites. Archaeological survey within the Northwestern Hawaiian Islands by NOAA began during research and monitoring expeditions in 2002 and continued opportunistically through 2018. There are more than 60 reported vessel losses in the historic record, and hundreds of naval aircraft lost within the Monument's current marine boundaries. The following provides an overview of the currently known post-contact resources within the APE, separated by resource type. For the purpose of this review and unless otherwise noted, NOAA is considering known wreck sites to be potentially eligible for the National Register of Historic Places, with the general exception of those younger than 50 years. Formal Determinations of Eligibility have yet to be completed for the majority of sites, as noted below.

Whaling activities represented a global industrial pursuit. At the peak of historic whaling activity, hundreds of whaling vessels came to port in Hawai'i annually. Native Hawaiians quickly adapted the skills necessary to sail and work these foreign vessels, and many young Hawaiian men found employment on board whalers. There are 10 recorded losses of British and American whaling vessels in the APE, five of which have been located by NOAA and assessed (Table 2). These whaler wrecks are scattered archaeological sites composed generally of ceramics and iron/copper artifacts. The archaeological remains of the whaler *Two Brothers*, discovered in 2008, is listed on the National Register of Historic Places. Additionally, onshore WWII-era military facilities located at Midway Atoll are designated as a National Historic Landmark. This property is located outside of the APE; however, NOAA recognizes that additional sites associated with the Battle of Midway are located within the APE, as described below, and are likely eligible for National Register (NR) listing.

Table 2. Known sites associated with the whaling industry.

Site Name	Atoll Location	Year Lost	NR Status	Description
<i>Parker</i>	Kure	1842	Not evaluated	406-ton American whaling ship; built New Bedford. Low relief; scattered artifact site.
<i>Gledstanes</i>	Kure	1837	Not evaluated	428-ton British whaling ship; built 1827 Leith, Scotland. Low relief; scattered artifact site.
<i>Pearl</i>	Pearl and Hermes	1822	Not evaluated	British whaling vessel. Medium relief; confined scatter site. Possibly eligible under criterion D.
<i>Hermes</i>	Pearl and Hermes	1822	Not evaluated	British whaling vessel. Medium relief; scattered archaeological site. Possibly eligible under criterion D.
<i>Two Brothers</i>	French Frigate Shoals	1823	Listed (A, B, D)	217-ton whaling ship out of Nantucket, Captain George Pollard, Jr. Low relief; archaeological scatter site

Merchant vessels that strayed off course and fell prey to these shallow and unseen reefs included iconic Pacific lumber schooners and iron-hulled square-rigged tall ships of a bygone age (Table 3). Wooden sailing vessels like *Carrollton* and *Churchill* are archaeological sites of scattered iron and steel artifacts and features (e.g., anchors, windlass, ship's pumps, chain), while iron and steel-hulled ships like *Dunnottar Castle*, *Quartette*, and *Mission San Miguel*, have greater site integrity, exhibiting more complete site structures.

Table 3. Known merchant vessels.

Site Name	Atoll Location	Year Lost	NR Status	Description
<i>Carrollton</i>	Midway	1906	Not evaluated	1450-ton American sailing bark; built Bath, Maine, 1872. Low relief; scattered artifact site
<i>Dunnottar Castle</i>	Kure	1886	Not evaluated	1750-ton British iron-hulled tall ship; built Glasgow, 1874. High relief; large area major site, hull portions, features, artifacts. Possibly eligible under criterion D.
<i>Churchill</i>	French Frigate Shoals	1917	Not evaluated	Four-masted wooden merchant lumber schooner built North Bend, Oregon, 1900. Medium relief; archaeological scatter site
<i>Quartette</i>	Pearl and Hermes	1952	Not evaluated	Former WWII Liberty ship, built Savannah, Georgia, 1944. High relief; archaeological confined scatter site both inside/outside reef crest
USNS <i>Mission San Miguel</i>	Maro Reef	1957	Not evaluated	523-foot WWII T2 tanker, built Sausalito, California, 1943. Medium relief; intact stern on port side; mangled midships area

Fishing in the Northwestern atolls has a long and varied history. The identity of some of these shipwrecks remains unknown, but the types of propulsion make it very likely that some were long-range fishing sampans. Distinctive Hawaiian fishing sampans, a local hybrid of original Japanese traditional watercraft design with modernized diesel engines, are historically

associated with Hawaii's commercial tuna fishery, centered at Kewalo Basin on O'ahu, and Hawaiian Tuna Packers Ltd. established in 1916. Known wrecks of fishing vessels and possible fishing vessels are summarized at Table 4.

Table 4. Known fishing/miscellaneous vessels.

Site Name	Atoll Location	Year Lost	NR Status	Description
<i>Mimi</i>	Pearl and Hermes	1989	Not eligible	Possible fishing vessel. Low relief; single object
"Oshima" wreck	Pearl and Hermes	UNK	Not evaluated	Possible fishing sampan; low relief; partial structure and discrete features
<i>Kaiyo Maru</i>	Laysan	1959	Not evaluated	Possible fishing sampan; low relief; partial hull
Steel bow wreck site	Kure	UNK	Not evaluated	Possible modern (fishing) vessel; low relief; partial hull
<i>Hoei Maru</i>	Kure	1976	Not eligible	Diesel powered steel fishing vessel; low relief; bow and stern sections intact.
Sailing vessel	Pearl and Hermes	UNK	Not evaluated	Modern sloop; medium relief; intact hull portion
Motorized vessel	Pearl and Hermes	UNK	Not evaluated	Possible fishing sampan; low relief; single object
<i>Paradise Queen-II</i>	Kure	1998	Not eligible	Longline steel fishing vessel; Low relief; partial structure

The military's activities within the Northwestern atolls dates back to the survey of the Civil War-era sloop-of-war USS *Lackawanna* at Midway Atoll in 1867 and extends through the closure of Midway Naval Air Station in 1993. The significance of World War II and the Battle of Midway often overshadow properties associated with other periods. The Battle of Midway, June 4–7 1942, was one of the major watershed moments of World War II and a significant historical factor in the designation of the marine national monument in 2006. Military vessels with known locations are summarized at Table 5. The Monument Expansion Area, designated in 2016 encompasses many Japanese and American vessels and aircraft lost in the conflict. American losses totaled one fleet carrier (USS *Yorktown*) and one destroyer (USS *Hammann*) sunk, along with approximately 150 aircraft and 307 casualties. Japanese losses totaled four fleet carriers (IJN *Kaga*, *Akagi*, *Hiryu*, *Soryu*) and one heavy cruiser (IJN *Mikuma*) sunk, along with approximately 248 aircraft and 3,057 casualties. The USS *Yorktown* was discovered and recorded by Robert Ballard/National Geographic in 1998. IJN *Kaga* and *Akagi* were discovered and recorded by Rob Kraft/Vulcan Inc. in 2019. A subsequent deep ocean survey of *Yorktown*, *Kaga*, and *Akagi* was conducted by NOAA and Ocean Exploration Trust in 2023.

Table 5. Known military craft.

Site Name	Atoll Location	Year Lost	NR Status	Description
USS <i>Macaw</i>	Midway	1944	Not evaluated	Naval submarine rescue/salvage vessel built; high relief; large area major site, hull portions, features, artifacts. Possibly eligible under criteria A and D.
LCVP landing craft	Midway	UNK	Not evaluated	Naval amphibious craft; medium relief; intact
Navy water barge	Midway	UNK	Not evaluated	Ferro-concrete barge medium relief; intact
Navy barge	Midway	UNK	Not evaluated	Steel barge; medium relief; intact
Navy landing craft	French Frigate Shoals	UNK	Not evaluated	Inverted LC; medium relief; relatively intact
IJN <i>Akagi</i>	Midway	1942	Not evaluated	Japanese Amagi-class battlecruiser converted to WWII aircraft carrier, built Kure, Japan, 1920; high relief; intact vessel. Possibly eligible under criteria A and D.
IJN <i>Kaga</i>	Midway	1942	Not evaluated	Japanese Tosa-class battleship converted to WWII aircraft carrier, built Kobe, Japan, 1921; high relief; intact vessel. Possibly eligible under criteria A and D.
USS <i>Saginaw</i>	Kure	1870	Not evaluated	508-ton U.S. Civil War-era Navy steam sloop; built Mare Island, 1859; medium relief; large scattered artifact site. Possibly eligible under criteria A, B and D.
USS <i>Yorktown</i>	Midway	1942	Not evaluated	American Yorktown-class aircraft carrier, built Newport News, Virginia, 1936; high relief; intact vessel. Possibly eligible under criteria A and D.

Naval aviation exercises in the Northwestern Hawaiian Islands began in the early 1930s, and activity at French Frigates Shoal and Midway Atoll increased during wartime preparations. Losses during the Battle of Midway June 4–7, 1942, and subsequent intensive aviation activities at Midway during subsequent decades have added significantly to the submerged aircraft resource. Military aircraft with known locations are listed in Table 6.

Table 6. Known aircraft.

Site Name	Atoll Location	Year Lost	NR Status	Description
F4U-1 Corsair	Kure	1945	Not evaluated	Single-seat navy fighter aircraft; low relief; partial feature
Sikorsky helicopter	Kure	UNK	Not evaluated	Partial rotor and engine elements; low relief; feature partially buried

Site Name	Atoll Location	Year Lost	NR Status	Description
F4U Corsair	Midway	UNK	Not evaluated	Single-seat navy fighter aircraft; low relief; wing/partial fuselage only (inverted); engine nearby
P-40K Warhawk	Midway	1943	Not evaluated	Single-seat army fighter aircraft; low relief; few artifacts
F2A Brewster Buffalo	Midway	UNK	Not evaluated	Single-seat navy fighter aircraft; low relief; only partial landing gear

Some isolated properties may be associated with specific locations (context) or specific historic activities, such as multiple anchors within a known historic anchorage. Anchors in particular are multifunctional and tend to be used and reused once being lost or abandoned by a ship (for moorings, navigational markers, stored on reefs for later use, etc.). A summary of known miscellaneous properties is provided in Table 7.

Table 7. Known miscellaneous features.

Site Name	Atoll Location	Year Lost	NR Status	Description
3 anchors near landing site	Laysan	UNK	Not evaluated	Possible wreck site; low relief; features
2 anchors and debris	Laysan	UNK	Not evaluated	Possible wreck site; low relief; features
Anchor in Welles Harbor lagoon anchorage	Midway	UNK	Not evaluated	Possible wreck site; low relief; features

The Basis for the Determination of No Historic Properties Affected

Through its analysis of the undertaking and having considered input received through the consultation process, NOAA has determined that the designation of Papahānaumokuākea National Marine Sanctuary will not have an effect, as defined at (36 CFR § 800.16(i)) on historic properties within the APE.

NOAA's Finding of No Historic Properties Affected is consistent with the impact assessment in the EIS which has determined that designation of the national marine sanctuary would have no adverse impacts on historic properties or cultural resources and may create direct, long-term, moderate beneficial impacts. Specifically, NOAA's mission in management of the proposed sanctuary is to carry out seamless integrated management to ensure ecological integrity and achieve strong, long-term protection and perpetuation of Northwestern Hawaiian Islands ecosystems, Kānaka 'Ōiwi culture, and heritage resources for current and future generations.

This Finding is supported by NOAA's proposed sanctuary regulations that provide comprehensive and coordinated conservation and management, including for maritime heritage

and cultural resources, and the submerged lands within the proposed sanctuary boundaries while still allowing access, where appropriate, through a permitting system. Access to the sanctuary would be prohibited except under specific circumstances (e.g., emergency response actions, law enforcement activities, exercises of the Armed Forces, passing through the sanctuary without interruption). Specifically, the Finding is supported by NOAA's inclusion of a proposed prohibition on moving, removing, or injuring, or attempting to move, remove, or injure, a sanctuary historical resource; or possessing or attempting to possess a sanctuary resource. If designated as a national marine sanctuary, this protection would apply to all areas of the sanctuary. Furthermore, the proposed regulations would strengthen NOAA's ability to enforce this prohibition and would authorize NOAA to assess civil penalties for violations of sanctuary regulations or violation of permit terms and conditions. Sanctuary designation also provides additional NMSA authorities, which allow for emergency regulations and cost recovery in the event of damage or potential damage to sanctuary resources.

NOAA further proposes to continue issuance of Native Hawaiian practices permits. Native Hawaiian practices are cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment, and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. Additionally, the Papahānaumokuākea Native Hawaiian Cultural Working Group (CWG) which formed when the Monument was first established, is composed of Kānaka ʻŌiwi kūpuna, researchers, cultural practitioners, educators, and community members with deep connections and historical ties to Papahānaumokuākea. The CWG represents a Kānaka ʻŌiwi community voice to aid in Monument management. The CWG has taken major roles in developing cultural protocols, perpetuating ancestral knowledge, and developing the Mai Ka Pō Mai management guidance document (OHA, 2021). Mai Ka Pō Mai is a collaborative management framework that guides co-trustee agencies towards integrating traditional Hawaiian knowledge systems, values, and practices into all areas of management. The CWG provides recommendations on a variety of issues as they develop. CWG welcomes members at any time who wish to contribute to the perpetuation of Kānaka ʻŌiwi practices and protocols to protect the cultural significance of Papahānaumokuākea. The CWG often reviews applications for Native Hawaiian practice permits, which are specifically authorized to provide access for activities that perpetuate living cultural practices.

References

- Kikiloi, K. S. T. 2012. Kūkulu manamana: Ritual power and religious expansion in Hawai‘i the ethno-historical and archaeological study of Mokumanamana and Nihoa Islands. [Doctoral dissertation, University of Hawai‘i at Mānoa].
- Nohopapa Hawai‘i. 2023. E Ho‘i I Ke Au A Kanaloa. Cultural Impact Statement and Legal Analysis for the Proposed Designation of a Papahānaumokuākea National Marine Sanctuary.
- Office of Hawaiian Affairs, National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service, and State of Hawai‘i. 2021. Mai Ka Pō Mai: A Native Hawaiian Guidance Document for Papahānaumokuākea Marine National Monument. Honolulu, HI: Office of Hawaiian Affairs.
- Papahānaumokuākea Marine National Monument (PMNM). 2008. Papahānaumokuākea Marine National Monument Management Plan. National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service & State of Hawai‘i, Department of Land and Natural Resources.
<https://www.Papahanaumokuakea.gov/management/mp.html>
- Parker, P.L., and T.F. King. 1998. Guidelines for Evaluating and Documenting Traditional Cultural Properties. National Register Bulletin 38. Originally published 1990 (revised 1992), U.S. Department of the Interior, National Park Service, Washington, D.C.

Appendix 1. List of entities that received invitation from NOAA to participate as a consulting party

‘Aha Kāne - Foundation for the Advancement of Native Hawaiian Males	Au Puni O Hawaii	Hālau Ka Lei Mokihana O Leina‘ala
‘Aha Kiōle	Brian Kaniela Nae‘ole Naauao	Hālau Ka Waikahe Lani Mālie
Aha Kukaniloko	Charles Pelenui Mahi Ohana	Hālau Kaulupuaonālani
Aha Kukaniloko Koa Mana mea ola kanaka maui	CNO Office, Infrastructure, Posture, and Environmental Planning Branch, Department of Navy	Hālau Ke‘alaokamaile
Aha Moku		Hālau Mōhala O Ka Pua Hau Hele
‘Aha Moku Council		Hālau o Huluena
Aha Moku O Kahikinui	Council for Native Hawaiian Advancement	Hālau Palaihiwa O Kaipuwai
Aha Moku o Kaupō	Daughters of Hawai‘i	Hale Naua III
Aha Moku o Maui Inc.	EAO Hawaii Inc.	Hanona
Aha Puhala O Puna	Edith Kanaka‘ole Foundation	Hau‘oli Mau Loa Foundation
‘Aha Pūnana Leo		
Aha Wahine	Florida Hawaiian Civic Club	Hau‘ouiwi Homestead Association on Lāna‘i
‘Aha Wāhine Kūhinapapa		
Ahahui Ka‘ahumanu	Friends of ‘Iolani Palace	Hawai‘i Alliance of Nonprofit Organizations
‘Ahahui Siwila Hawai‘i O Kapōlei	Friends of Moku‘ula	Hawai‘i Island Burial Council
	Friends of Waimanalo	
Ahonui Homestead Association	George K. Cypher ‘Ohana	Hawai‘i Pacific Foundation
Ahupua‘a o Moloka‘i	God’s Country Waimanalo	
‘Āina Momona	Hā Kūpuna	Hawai‘i Pono‘ī Coalition
Ala Kahakai Trail Association	Haawi Hemolele O Keakawaiola	Hawai‘i Pono‘i Foundation
Ali‘i Trust	Hale Halawai ‘Ohana o Hanalei	Hawaii State Historical Preservation Division
Aloha First	Hālau Hula Na Lei Kupua O Kaua‘i	Hawaiian Civic Club of Honolulu
Alu Like, Inc.		
‘Ao‘ao O Nā Loko I‘a O Maui	Hālau Hula O Kauioamakakeahiopuna / Hālau Hula Makaanahale O Kapi‘ioho	Hawaiian Civic Club of Wahiawa
Association of Hawaiian Civic Clubs		Hawaiian Community Assets, Inc.
Association of Hawaiians for Homestead Lands	Hālau Hula O Leilani	Hawaiian Historical Society
	Hālau Hula O Nani	

Healani's Hula Hālau	Institute for Native Pacific Education and Culture	Kamiloloa One Ali'i Homestead Association
Historic Hawaii Foundation	International Midway Memorial Foundation	Kānehūnāmoku Voyaging Academy
Ho Ohana	Island Burial Councils	Kanu o ka 'Āina Learning 'Ohana
Ho'okano Family Land Trust	John A. Burns School of Medicine, University of Hawai'i – Department of Native Hawaiian Health	Kāpili Like
Hoa 'Āina o Mākaha	Johnson 'Ohana Foundation	Kapolei Community Development Corporation
Honolulu Community College	Ka 'Aha Hula O Hālauaola	Kā'ū Women's Health Collective
Honua Consulting	Ka Honua Momona International	Kaua'i and Ni'ihau Islands Burial Council
Honu'apo	Ka 'Ike O Ka 'Āina	Kauai Heritage Center of Hawaiian Culture & The Arts
Hookipa Network of Hawaiian CBO's	Ka'ala Farms	Kaupe'a Homestead Association
Hookuaaina	Kaha I Ka Panoa Kaleponi Hawaiian Civic Club	Kauwahi 'Anaina Hawai'i Hawaiian Civic Club
Hui Aloha 'Āina Momona	Kahiko Ha Lapa I Hula Alapai	Kawaihapai Ohana
Hui Aloha Kīholo	Kaho'olawe Island Reserve Commission	Ke Ea Hawai'i
Hui Huliau Inc.	Kahumana Farms	Ke Kula Nui O Waimanalo
Hui 'Ai Pohaku Hula	Kai Kuleana	Ke Ola Mamo
Hui Kaleleiki Ohana	Kai Palaoa	Ke One O Kakuhihewa
Hui Maka'ainana o Makana	Kāko'o 'Ōiwi	Keaukaha Community Association
Hui Mālama I Nā Kūpuna O Hawai'i Nei	Kalaeloa Heritage and Legacy Foundation	Kēhaulani Hula Studio
Hui Mālama O Ke Kai Foundation	Kalama'ula Homesteaders Association	Kia Manu Project - Nā Kia'i Nihokū
Hui Mālama o Mo'omomi	Kalihi Palama Hawaiian Civic Club	Kia'i Kanaloa
Hui Mālama Ola Nā 'Ōiwi	Kali'uokapa'akai	Kia'i Kaua'ula
Hui o Kuapā	Kamealoha	Kimokeo Foundation
Hui O Wa'a Kaulua	Kamehameha Schools - Community Relations and Communications Group, Government Relations	Kina'ole Foundation
Huli		Kingdom of Hawai'i
Huliauapa'a		Kīpahulu 'Ohana
Īlio'ulaokalani/Pa'i Foundation		Koa Ike
I Nui Ke Aho		
Imua Hawaii		

Koa Mana	Makaha Hawaiian Civic Club	Moloka‘i Island Burial Council
Kohala Center		
Kokua Hawai‘i Foundation	Makana o Ke Akua Inc.	Na Aikane O Maui
Kōkua Kalihi Valley Comprehensive Family Services - Ho‘oulu ‘Āina	Maku‘u Farmers Association	Nā Hoaloha
Ko‘olau Foundation	Malama Kakanilua	Nā Hui O Kamakaokalani
Ko‘olau Cooperative Community Hub	Mālama Learning Center	Nā Hula O Kaohikukupulani
Ko‘olaupoko Hawaiian Civic Club	Mālama Loko Ea	Na Kālai Wa‘a
Kua‘āina Ulu ‘Auamo	Mālama Mākua	Nā Kama Kai
Kuhialoko	Mālama Mano/Moana ‘Ohana	Na Koa Ikaika Ka Lahui Hawaii
Kūkulu Kumuhana o Anahola	Mālama Maunalua	Na Ku‘auhau ‘o Kahiwakaneikopolei
Kula no na Po‘e Hawaii	Mālama Pupukea	Nā Kuleana o Kānaka ‘Ōiwi
Kuleana Coral Reefs	Malu‘ōhai Residents Association	Na Kupuna Moku O Keawe
Kuloloī‘a Lineage - I ke Kai ‘o Kuloloī‘a	Mana Health Services, Inc.	Na Lei Aloha Foundation
Kupu	Manaiakalani	Nā Mahi‘ai O Keanae
Lā Ho‘iho‘i Ea Honolulu	MA‘O Organic Farms	Nā Maka Onaona
Lahaina Restoration Foundation	Marae Ha‘a Koa	Nā Mamo o Mū‘olea
Lahui Kaka‘ikahi	Maui and Lana‘i Islands Burial Council	Na Mookupuna O Wailua
La‘i‘Ōpua 2020	Maui Cultural Lands	Na Ohana o Puaoi a me Hanawahine
Lili‘uokalani Trust	Maui Native Hawaiian Chamber of Commerce	Nā Pua No‘eau
Living Pono Project	Maui Nui Makai Network	Na‘aikane o Maui
Ma Ka Hana Ka ‘Ike	Mauliola Endowment	Nakupuna Foundation
Ma‘a ‘Ohana c/o Lani Ma‘a Lapilio	Mauna Kea Anaina Hou	Namahoe
Machado-Akana-Aona-Namakaeha Ohana	Maunakea Education & Awareness	Nanakuli Housing Corporation
Mahamoku Ohana Council	Meleana Kawaiaea, LLC	Nation of Hawaii
Mahu Ohana	Menehune Foundation	Native Hawaiian Chamber of Commerce
Mainland Council Association of Hawaiian Civic Clubs	Moanalua Gardens Foundation	Native Hawaiian Church
	Mokauea Fishermen’s Association	Native Hawaiian Education Association

Native Hawaiian Education Council	Papahānaumokuākea Native Hawaiian Cultural Working Group	State Council on Hawaiian Heritage
Native Hawaiian Hospitality Association	Papa Ola Lokahi	State Historic Preservation Division
Native Hawaiian Legal Corporation	Papahana Kuaola	The Friends of Hokule‘a and Hawai‘iloa
Native Hawaiian Organizations Association	Papakōlea Community Development Corporation	The I Mua Group
Native Stories	Partners in Development Foundation	The Makua Group
Naval History and Heritage Command, Department of Navy	Paukukalo Hawaiian Homes Community Association	The Mary Kawena Pūku‘i Cultural Preservation Society
Nekaifes Ohana	Peahi Ohana	The Pōpolo Project
Nohopapa Hawai‘i	Pearl Harbor Hawaiian Civic Club	The State Foundation on Cultural and the Arts
Northwestern Hawaiian Island HUI	Pele Defense Fund	Tokyo University Marine Science and Technology
O‘ahu Island Burial Council	Piihonua Hawaiian Homestead Community Association	Tokai University School of Humanities
Office of Hawaiian Affairs	PLACES (Place-Based Learning And Community Engagement In Schools)	UH Hilo Kīpuka Native Hawaiian Student Center
Office of Hawaiian Education, Hawai‘i Department of Education	Pōhāhā i Ka Lani	Uhiwai O Haleakalā
‘Ohana Ayau	Polanui Hiu	Ulu A‘e Learning Center
‘Ohana Hāpai	Polynesian Voyaging Society	Wahiawa Ahupuaa LCA 7714B Apana 6 RP 7813
‘Ohana Kahaunaele	Protect Kaho‘olawe ‘Ohana	Waialua Hawaiian Civic Club
‘Ohana Keaweamahi	Pūlama	Wai‘anae Coast Community Foundation
‘Ohana O Hanalei	Purple Mai‘a Foundation	Wai‘anae Hawaiian Civic Club
Order of Kamehameha I	Royal Hawaiian Academy of Traditional Arts	Waiehu Kou Phase 3 Association
Our Lady of Kea‘au	Royal Order of Kamehameha	Wailuku Ahupua‘a
Pa‘a Pono Miloli‘i	Society for Hawaiian Archaeology	Waimānalo Hawaiian Homes Association
Pacific Agricultural Land Management Systems	Sovereign Council of Hawaiian Homestead Associations	Waimanalo Limu Hui
Pacific Islands Institute		Waimea Valley
Pacific Justice & Reconciliation Center		Waipā Foundation
Paepae o He‘eia		
PA‘I Foundation		

Appendix 2. Sample letter of invitation to participate as a consulting party



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE

Papahānaumokuākea Marine National Monument
NOAA DKIRC
NOS/ONMS/PMNM
1845 Wasp Blvd, Building 176
Honolulu, Hawaii 96818

November 22, 2021

Re: Invitation for Consultation under Section 106 of the National Historic Preservation Act
Papahānaumokuākea Marine National Monument proposed Sanctuary Designation and
Environmental Impact Statement (EIS)

Aloha,

“Ua mau ke ea o ka ‘āina i ka pono”
(The life of the land is perpetuated in righteousness)

Spoken by Kamehameha III, King of Hawai‘i, in 1843
and adopted in 1959 as the motto of the State of Hawai‘i

Historic Significance of the Papahānaumokuākea Marine National Monument

The area known as the Papahānaumokuākea Marine National Monument (Monument) includes the Northwestern Hawaiian Islands (NWHI), an immense seascape of natural and cultural significance. According to Hawaiian traditions, this vast region is considered a sacred place that is foundational to the cultural origins of Native Hawaiians. This place is connected to Hawaiian cosmology, religion and spirituality, and historical accounts which shaped the social and political development of traditional Hawaiian society. The island of Mokumanamana, became a ritual center of power, supported by long-term habitation of the island of Nihoa as an extensive voyaging sphere that helped to support prolonged recurring access and use throughout the NWHI. Up until the late 1800s, Hawaiian chiefs and monarchs traveled to these remote islands and initiated expeditions to bring these islands under political authority and control of the Hawaiian Kingdom.

After European contact with the area, commercial access led to a variety of extractive activities during the 1800s and early 1900s, such as the harvest of whales, seals, turtles, sharks, seabirds, pearl oysters, fish, and other natural resources. In the 1900s, the atolls played a role in transpacific cable communications and early aviation routes. During World War II, most of the Battle of Midway occurred at sea in the NWHI region, and for much of the latter part of the 1900s, most activities were military, commercial fishing, conservation, and scientific in nature.

Over the last two decades, several state and federal protections have been afforded to the NWHI which are now known as Papahānaumokuākea, a name conferred by the Native Hawaiian community. Currently, Papahānaumokuākea is one of the largest marine protected areas in the world and the only natural and cultural (mixed) World Heritage site in the country recognized by the United Nations Educational, Scientific, and Cultural Organization (UNESCO). The Monument is managed by four Co-trustees: the National Oceanic and Atmospheric Administration (NOAA) for the Department of Commerce, the U.S. Fish and Wildlife Service (USFWS) for the



Department of Interior, the Department of Land and Natural Resources (DLNR) for the State of Hawai'i, and the Office of Hawaiian Affairs (OHA).

Purpose of this Letter

NOAA is initiating the process to consider the designation of marine portions of the Monument as a national marine sanctuary under the authority of the National Marine Sanctuaries Act (16 U.S.C. § 1431 *et seq.*). Sanctuary designation would provide continued or enhanced long-term protection for the marine waters within the Monument. As part of the sanctuary designation process, NOAA will work with cooperating agencies including the USFWS, the State of Hawai'i, and OHA, to prepare a draft environmental impact statement to evaluate the potential environmental effects of this action on the human environment under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 *et seq.*). Additionally, NOAA will coordinate responsibilities under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 3001 *et seq.*) with the NEPA process for the sanctuary designation. The Section 106 consultation process specifically applies to any federal agency undertaking that may affect historic properties and requires federal agencies to take into account the effects of their undertakings on historic properties. NOAA is requesting public input on potential effects on historic properties from the proposed sanctuary designation as part of the NEPA scoping process. Through this letter, NOAA is seeking to identify and invite consulting parties to participate in this process. Consulting parties will have a reasonable opportunity to identify their concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional, religious, and cultural importance, articulate their views on the undertaking's effects on such properties, and participate in the resolution of any adverse effects, if identified.

Proposed Federal Action and Undertaking

The purpose and need of the sanctuary designation is to fulfill the purposes and policies outlined in Section 301(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. § 1431(b)), including to identify and designate as sanctuaries, areas of the marine environment which are of special national significance, provide authority for comprehensive and coordinated conservation and management of these marine areas, and to provide continued or enhanced long-term protection for the resources of these areas. Additionally, the purpose and need for the designation is to implement the provisions of Executive Order 13178 and Presidential Proclamation 9478 that direct NOAA to consider initiating the sanctuary designation process. NOAA will consider marine areas within the original Monument boundary and the Monument Expansion Area for designation as a national marine sanctuary. The proposed sanctuary would not replace or supersede any existing designations or authorities in the marine areas of the Monument, but would provide a means of supplementing and reinforcing protection in these areas.

Coordinating NEPA and Section 106

NOAA is coordinating this Section 106 review with the NEPA process, pursuant to 36 C.F.R. 800.8(a). Through this coordination, NOAA will use the NEPA scoping process and other public notices and meetings to solicit participation from the public and other stakeholders and to seek input and information regarding the identification of, and potential effects to, historic properties associated with this undertaking. Further information on how you can provide comments and participate in this process is detailed below.

Proposed Area of Potential Effects

The proposed area of potential effects is the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The proposed area of potential effects for this project will encompass the entirety of the marine area of Papahānaumokuākea, including the Monument Expansion Area. The proposed area of potential effects is shown in Attachment A.

Identification of Historic Properties within the Proposed Area of Potential Effects

NOAA invites your comments to aid in the identification of historic properties that may be present within the proposed area of potential effects, including traditional and cultural properties associated with traditional and customary practices of Native Hawaiians. NOAA also seeks comments to help identify issues relating to the proposed designation's potential effects on historic properties.

Of note, the draft environmental impact statement will include archaeological survey reports, architectural inventories, and a cultural assessment. The State of Hawai'i, a cooperating agency, will be responsible for the cultural impact assessment and compliance with the Hawai'i Environmental Policy Act (HEPA), hence the need for a comprehensive approach to the Section 106 and cultural assessment process. In compliance with the State of Hawai'i's Guidelines for Assessing Cultural Impacts, the Section 106 process will address the necessary methodology and content of cultural impact assessment as per Chapter 343 Hawai'i Revised Statutes.

Participation as a Consulting Party

NOAA is currently identifying consulting parties through outreach to potentially interested entities such as Native Hawaiian organizations (NHO); including Native Hawaiian descendants with ancestral, lineal, or cultural connections to or knowledge of Papahānaumokuākea; and/or cultural practitioners. Other consulting parties may be fishers (commercial, recreational, and subsistence); representatives of local government, other parties, and the public. Certain individuals and organizations may also participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the potential effects on historic properties. With this letter, NOAA is inviting you to participate as a consulting party in the Section 106 consultation process. Should you wish to participate as a consulting party, we request that you complete and return the attached Consulting Party Response form. You may also register by sending a letter of interest.

By becoming a consulting party, you will be actively informed of steps in the Section 106 process, including public meetings, and your views will be actively sought. You may elect to participate as a consulting party at any time and you may also choose to withdraw your request to be a consulting party at any time. NOAA will consider these requests throughout the consultation process, and intends to provide multiple opportunities to comment on this project and its potential effects on historic properties.

Opportunities to Comment

Concurrent with the initiation of Section 106 consultation, NOAA published a Notice of Intent to prepare an EIS in the Federal Register on November 19, 2021. Through this Notice, NOAA is inviting public and consulting party participation and input regarding the identification of historic properties and potential effects to historic properties related to the undertaking. This Notice directs the public to the project website <https://www.papahanaumokuakea.gov> for additional information.

Type of Participation and Input	Methods of Participation and Input Options for providing comments include:
Section 106 Consulting Party Participation	<ul style="list-style-type: none"> • Submit written comment letter and/or Consulting Party Response Form by email or by U.S. Postal Service • Submit written comments at regulations.gov, docket # NOAA-NOS-2021-0114 • Provide comments at public scoping meetings
Public Participation Provide comments but not as a consulting party	<ul style="list-style-type: none"> • Submit written comment letter by U.S. Postal Service • Submit written comments at regulations.gov, docket # NOAA-NOS-2021-0114 • Provide comments at public scoping meetings

NOAA will also host virtual public scoping meetings to gather public and consulting party comments at the dates and times listed below. Written comments can be provided at: [regulations.gov](https://www.regulations.gov), docket # NOAA-NOS-2021-0114]. Following the close of the public comment period, NOAA will continue to seek engagement and input from consulting parties in order to inform the Section 106 review. Options for consulting parties include individual consultations upon request.

Public scoping meetings will be hosted virtually on the Zoom online platform and require registration to participate on the following dates:

- Wednesday, December 8, 2021, 6:00 PM HST
Register at:
https://zoom.us/meeting/register/tZ0vc--przotHdAlz-shgXe_ceEcH-RSB1b7
- Saturday, December 11, 2021, Noon (12:00 PM) HST
Register at:
https://zoom.us/meeting/register/tZAocO6urTMiHTXpAGJq5_4YODHChlPlz1qN
- Tuesday, December 14, 2021, 6:00 PM HST
Register at:
<https://zoom.us/meeting/register/tZ0pceGurTopHNc80XiGhIAnftQ5mhGrdAle>
- Thursday, December 16, 2021, 3:00 PM HST
Register at:
https://zoom.us/meeting/register/tZMpfiurTwsEt3p_c569akQUaYxgHo7JJXV

Hāmama ‘ia nā hālāwai lehulehu a pau
i ka hāpai ‘ana i ka mana’o ma ka ‘ōlelo Hawai‘i a ho‘opa‘a kūhelu ‘ia.
We welcome comments in ‘ōlelo Hawai‘i (Hawaiian language) at all public scoping meetings.

Conclusion

On behalf of NOAA, we respectfully request your review and consideration of the information contained in this letter and additional information at this website <https://www.papahānaumokuākea.gov>.

Should you wish to register as a consulting party please submit the Consulting Party Response Form (Attachment B). If you choose to submit a letter of interest, please include the following information:

- Organization/Agency/Native Hawaiian organization (NHO)
- Organization/Agency/NHO address, telephone number, email
- Point of Contact (POC) and/or Authorized Representative (AR)
- POC or AR address, telephone number, email
- Geographic and/or cultural areas of interest and/or expertise
- If desired, the letter may also include comments you may have on historic properties within the proposed area of potential effects or that may be beyond the boundaries of the proposed area of potential effects but associated with traditional and customary practices, as well as the names and contact information of Native Hawaiian descendants with ancestral, lineal or cultural connection to or knowledge of Papahānaumokuākea; cultural practitioners; fishers (commercial, recreational, and subsistence); NHOs; individuals; or organizations who may have a cultural affiliation and historical properties information within the proposed area of potential effects.

Please send the Consulting Party Response Form (Attachment B) and/or letter of interest via email to pmnm.section106@noaa.gov or via U.S. Postal Service to:

Papahānaumokuākea Marine National Monument
Attn: Response to Section 106 Letter
NOAA/Daniel K. Inouye Regional Center
1845 Wasp Blvd, Building 176
Honolulu, HI 96818

Further information is available at <https://www.papahānaumokuākea.gov>. Should you have any questions, please contact Kalani Quioco, Cultural Resources Coordinator for NOAA Office of National Marine Sanctuaries - Pacific Islands Region, at pmnm.section106@noaa.gov.

Mahalo,

Athline M. Clark

Athline Clark
Superintendent

Attachments

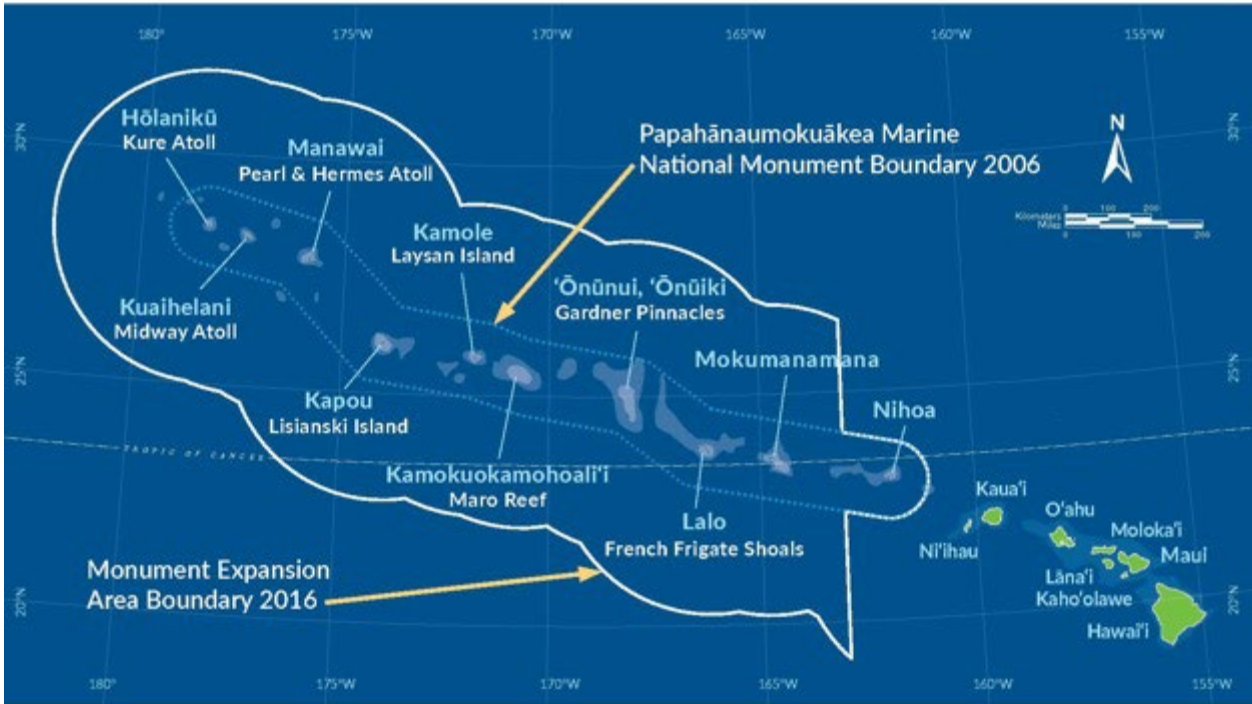
Selected background information:

The Papahānaumokuākea 2020 State of the Monument Report can be downloaded at: <https://sanctuaries.noaa.gov/science/condition/pmnm/>

Guidance on consultation with Native Hawaiian organizations by the Advisory Council on Historic Preservation: <https://www.achp.gov/sites/default/files/guidance/2020-01/ConsultationwithNHOshandbookupdate29Jan2020final.pdf>

Information about Section 106 of the National Historic Preservation Act can be found here: <http://www.achp.gov/work106.html>

Attachment A



Attachment B

Consulting Party Response Form for Section 106 Review Process

Aloha - Thank you for your interest in consulting on NOAA's proposed sanctuary designation process for Papahānaumokuākea Marine National Monument (PMNM). Consultation is the process of seeking, discussing, and considering the views of consulting parties and how this undertaking affects historic properties. Consulting parties play an important role in the Section 106 process and are provided with opportunities to share their views, receive and review pertinent information, offer ideas, and consider possible mitigation efforts if potential impacts to historic properties are identified. NOAA has identified members of Native Hawaiian organizations, fishers (commercial, recreational, and subsistence), representatives of local government, and other parties as potential consulting parties. It is up to you to decide how actively you want to participate in consultation.¹ Pursuant to the regulations implementing the National Historic Preservation Act, Native Hawaiian organizations are specifically afforded a reasonable opportunity to identify their concerns about historic properties; advise on the identification and evaluation of historic properties, including those of traditional, religious, and cultural importance; articulate their views on the undertaking's effects on such properties; and participate in the resolution of adverse effects. See 36 C.F.R. 800.2(c)(2)(ii)(A).

Please complete this form and return it via email to pmnm.section106@noaa.gov or via U.S. Postal Service to:

Papahānaumokuākea Marine National Monument
Attn: Response to Section 106 Letter
NOAA/Daniel K. Inouye Regional Center
1845 Wasp Blvd, Building 176
Honolulu, HI 96818

If desired, you may also include comments below on the proposed area of potential effects, any information you may have on historic properties or cultural resources within the area of potential effects, or that may be beyond the boundaries of the area of potential effects but associated with traditional and customary practices.

¹ Advisory Council on Historic Preservation, *Protecting Historic Properties: A Citizen's Guide to Section 106 Review*, available electronically at https://www.achp.gov/sites/default/files/documents/2021-01/CitizenGuide2021_011321.pdf.

Attachment B

Consultation Participation

- I accept NOAA's invitation to be a consulting party on the proposed undertaking.
- I do not wish to participate in consultation on the undertaking. *(Please note you may request to rejoin the consultation process later.)*

Contact Information Preference

Please take this opportunity to provide and/or update your contact information with us, including your mailing address, email address, and phone number. Please note that our preference is to conduct all future correspondence via email. However, if you are unable to receive correspondence via email and would prefer to be contacted via postal mail or telephone, please check one of the boxes below.

Name/Point of Contact:

(First) _____
 (Last) _____

Title (if applicable): _____

Name of Agency/Organization/Native Hawaiian organization:

Address: (Street) _____

(City/Town) _____ (State) _____

Phone: _____

Email: _____

Geographic and/or Cultural Areas of Interest and/or Expertise:

Please provide all future correspondence via (mark response):

- Email
 U.S. Postal Service
 Telephone

Appendix 3. Confirmed consulting parties

‘Āina Momona

Advisory Council on Historic Preservation (ACHP)

Chief of Naval Operations, Cultural Resources Team, Department of the Navy

Daughters of Hawai‘i

Hale Halawai ‘Ohana O Hanalei

Hawai‘i Department of Education Office of Hawaiian Education

Hawai‘i Department of Land and Natural Resources

Honolulu Community College

International Midway Memorial Foundation

Kai Palaoa

Kānehūnāmoku Voyaging Academy

Kiama Project/Nā Kia‘i Nihokū

Lineal descendant

Malama Manō/Moana Ohana

Mauliola Endowment

Mauna Kea Anaina Hou

Moana Ohana/Lawai`a Pono

Nā Maka Onaona

Native Hawaiian Individual

Native Hawaiian Individual

Native Hawaiian Individual

Naval History and Heritage Command, Department of the Navy

Office of Hawaiian Affairs

‘Ohana Hāpai, ‘Ohana Kahaunaele, ‘Ohana Ayau

Pacific Agricultural Land Management Systems

Papahānaumokuākea Native Hawaiian Cultural Working Group

Pi‘ihonua Hawaiian Homestead Community Association/Sovereign Council of Hawaiian Homestead Associations

Society for Hawaiian Archaeology

State Historic Preservation Division (SHPD)

Tokai University, School of Humanities

Tokyo University of Marine Science and Technology

Appendix 4. DLNR-DAR's determination of no historic properties affected, and SHPD's concurrence

JOSH GREEN, M.D.
GOVERNOR | KE KA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAUKUA
FIRST DEPUTY


M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Memorandum:

To: Alan Downer, Administrator
State Historic Preservation Division

Attn: Stephanie Hacker, Historic Preservation Archaeologist IV

From: Dawn N.S. Chang, Chairperson 
Department of Land and Natural Resources

Subject: Hawaii Revised Statutes §6E-8 Compliance – Request Review of Proposed Sanctuary Designation of the State Waters within the Papahānaumokuākea Marine National Monument, State of Hawai'i, Northwestern Hawaiian Islands

The Department of Land and Natural Resources (DLNR) is requesting a letter of determination for the proposed project to designate the marine area of Papahānaumokuākea Marine National Monument (Papahānaumokuākea) as a national marine sanctuary which includes State of Hawai'i waters and submerged lands. The letter is sought in conjunction with the ongoing National Historic Preservation Act (NHPA) Section 106 review process.

In 2006, the President established Papahānaumokuākea to preserve the unique areas of the Northwestern Hawaiian Islands. The original boundary included the islands and atolls from Nihoa to Kure Atoll, including Midway and surrounding waters and submerged lands to fifty nautical miles. This included all lands and waters in the Northwestern Hawaiian Islands that are under the State of Hawai'i jurisdiction. In 2016, Proclamation 9478 expanded the Monument into the waters and submerged lands to the seaward limit of the U.S. Exclusive Economic Zone, the Monument Expansion Area. In December of 2020, Congress directed the National Oceanic and Atmospheric Administration (NOAA) to initiate a national marine sanctuary designation process under the National Marine Sanctuaries Act. NOAA is initiating designation in partnership with the State of Hawai'i (the State). NOAA and the State are preparing a draft environmental impact statement (DEIS) to evaluate potential environmental effects of these actions. The DEIS will meet National Environmental Policy Act and Hawaii Environmental Policy Act requirements to identify and describe the potential effects of the Proposed Action and reasonable alternatives, on the human environment. Potential impacts will include possible impacts to Papahānaumokuākea's cultural and historic resources including Traditional Cultural Properties and archaeological sites.

Project Description

There is a long history of considering this area for national marine sanctuary designation, beginning with an Executive Order in 2000 by President William J. Clinton for the establishment of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. Groundwork was laid for national marine sanctuary designation when the monument was designated in 2006 by President George W. Bush. The proclamation in 2016 by President Barack H. Obama expanding Papahānaumokuākea also called for initiating the process to designate a national marine sanctuary. Then in December of 2020, Congress directed NOAA to initiate the process to designate Papahānaumokuākea as a national marine sanctuary under the National Marine Sanctuaries Act.

Designation as a national marine sanctuary would strengthen and increase the long-term protections already existing in the monument by enhancing authorities and the regulatory and enforcement framework. Many of Papahānaumokuākea's extensive education, outreach, and research accomplishments have been executed under the authority of the National Marine Sanctuaries Act. Sanctuary designation will ensure the full benefits and expertise offered by the National Marine Sanctuary System and staff. The current co-management structure with four co-trustees (the State through DLNR), the Secretaries of the U.S. Department of Interior and the U.S. Department of Commerce, and OHA), and seven co-managers (DLNR Division of Aquatic Resources, DLNR Division of Forestry and Wildlife, NOAA National Marine Fisheries Service, NOAA Office of National Marine Sanctuaries, USFWS Refuges, USFWS Ecological Services, and OHA) will continue.

The proposed area of potential effects for this project is the entirety of the marine area of Papahānaumokuākea, including state waters and submerged lands, and the Monument Expansion Area. The project is subject to review under Hawaii Revised Statutes (HRS) §6E-8 because the inclusion of State waters and submerged lands may affect historic properties.

Summary of Historic Properties

The Northwestern Hawaiian Islands (NWHI) holds important cultural, historical, and archaeological importance. When agencies propose undertakings that may affect the cultural landscape, the potential impacts to these values must be taken into consideration.

Under HRS §6E-8, proposed State projects that may affect aviation artifacts, burial sites, and historic properties require review.¹ An aviation artifact is defined as "airplanes, fallen aircraft, crash sites, or any objects or materials associated with the history of aerospace in Hawaii which are over fifty years old, or determined to be of exceptional historic significance by the department."² A burial site is defined as "any specific unmarked location where prehistoric or historic human skeletal remains and their associated burial goods are interred, and its immediate surrounding archaeological context."³ A historic property is defined as "any building, structure, object, district, area, or site, including heiau and underwater site, which is over fifty years old."⁴ These properties include properties listed on the Hawai'i Register of Historic Places (HRHP) and the National Register of Historic Places (NRHP).

¹ Haw. Rev. Stat. §6E-8.

² Haw. Rev. Stat. §6E-2.

³ *Id.*

⁴ *Id.*

Historic properties as defined under the NHPA mean any prehistoric or historic districts, sites, buildings, structures, or objects included in, or eligible for inclusion in the NRHP maintained by the Secretary of Interior.⁵ The term includes properties of traditional religious and cultural importance to Native Hawaiian Organizations and properties that meet the NRHP criteria. As part of sanctuary designation, these cultural values are also considered within the framework of the National Environmental Policy Act and Hawaii Environmental Policy Act through analysis in the DEIS, draft Management Plan, and the Cultural Impact Assessment.

The Hawaiian Archipelago has a history of hundreds of years of intensive maritime activity, and thus possesses many historical and archaeological resources such as shipwrecks and other types of maritime heritage sites including historic anchorage sites. Aviation in Hawai'i also has a significant past. Naval aviation exercises in the NWHI began in the early 1930s with activity at French Frigates Shoal and Midway Atoll increasing during wartime preparations. Losses during the Battle of Midway June 4-7, 1942, and subsequent intensive aviation activities at Midway during subsequent decades have added to the submerged aircraft resource.

NOAA, the State, and USFWS also share the statutory responsibility to inventory, evaluate and protect these resources, guided by the NHPA and other preservation laws. An archaeological survey within the NWHI began in 2002 and continued opportunistically through 2018. In addition to the terrestrial archaeological properties of the atolls and islands, there are more than 60 reported vessel losses in the historic record, and hundreds of sunken naval aircraft lost within Papahānaumokuākea's currently existing marine boundaries. NOAA's Maritime Heritage Program maintains the database (MS Access/GIS-compatible) on these heritage properties within Papahānaumokuākea.

A full list and detailed description of these historic maritime properties is attached.

Historic Significance

The historic properties within Papahānaumokuākea have not all been individually assessed for significance. NOAA considers all properties to be potentially significant. Furthermore, the whaler *Two Brothers*, discovered in 2008, is listed on the NRHP and the Hawai'i Register of Historic Places (HRHP).

Chapters one and two of the Maritime Heritage Plan include more detailed explanations of the historical, cultural, and archaeological significance of Papahānaumokuākea and its various historic properties.

Project Effects

DLNR believes that there will be no direct or indirect impacts to significant properties because the proposed action is administrative and there will be no development or physical alterations to the properties. Pursuant to Hawaii Administrative Rules §13-275-7, DLNR recommends that a "no historic properties affected" determination be established.

Mitigation

The proposed action will increase these management measures and protections. All projects in Papahānaumokuākea will require a permit with associated review and provision of permit conditions to protect tangible and intangible resources. Regulated activities may be permitted to occur within

⁵ 36 C.F.R. § 800.16.

Papahānaumokuākea only if an applicant can demonstrate that their proposed activities are consistent with the goals of Papahānaumokuākea and meet all relevant findings criteria to support issuance of the permit.

Applications are reviewed by managers, scientists, and other experts from the Co-Trustee agencies and by Native Hawaiian cultural reviewers. The Monument Management Board may require applicants to submit additional information, comply with special conditions, or undergo additional training to meet this requirement. Permit applications are posted for public notification, and applications with activities in State waters are approved by the State Board of Land and Natural Resources Land. Any actions within Papahānaumokuākea are also individually subject to all applicable State and Federal laws including HRS Chapter 6E and Section 106 of the NHPA. Chapter five of the Maritime Heritage Plan covers management of the maritime heritage resources in the monument in more detail.

If you have any questions about the proposed sanctuary designation, please feel free to contact Ryan Okano, DLNR Division of Aquatic Resources Ecosystem Protection Program Manager, by email at ryan.ly.okano@hawaii.gov.

Attachments

Photos of the Two Brothers Site
Provided by NOAA.

Rough Map
The locations of maritime heritage sites are roughly specified on the map.

Summary of Properties
This document was produced by NOAA for the current Section 106 process.

Maritime Heritage Plan (2011)
This document guides current maritime heritage management in Papahānaumokuākea.

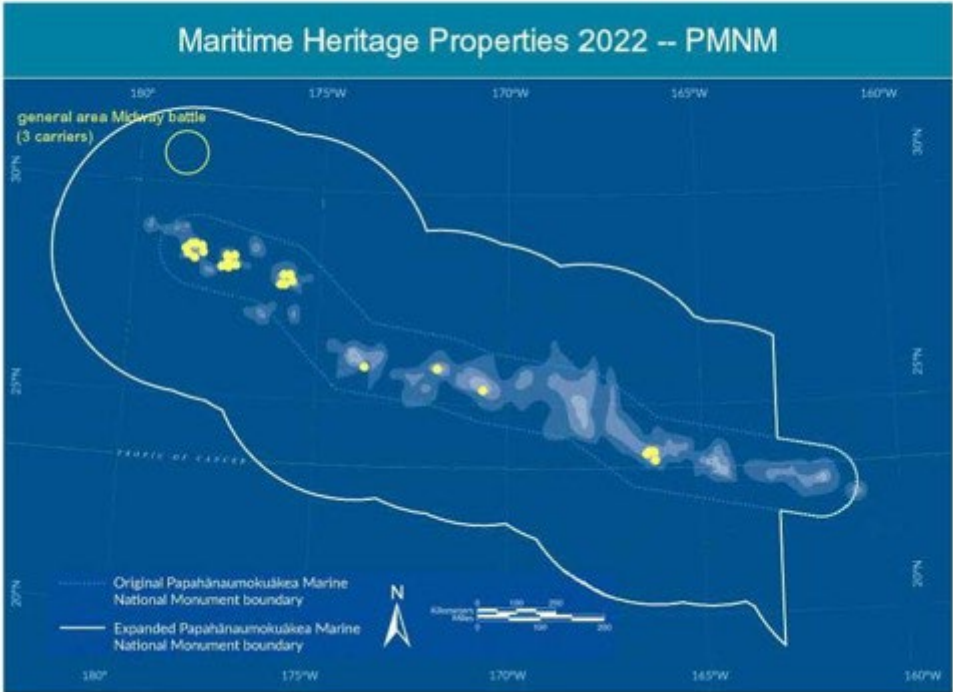
For the purposes of this document, the Maritime Heritage Plan can be found on the [Papahānaumokuākea website](#).



Two Brothers site: Cooking Pot



Two Brothers site: Blubber hook



Summary of Known Historical and Archaeological Properties within PMNM

7/08/2022

Background:

The Northwestern Hawaiian Islands (NWHI) not only feature unique natural ecosystems, the area possesses important cultural, historical, and archaeological significance as well. When federal agencies propose undertakings that may affect the cultural landscape, the potential impacts to these values must be taken into consideration. The National Historic Preservation Act of 1966 (NHPA), specifically NHPA Section 106, is one part of this process. Section 106 review requires federal agencies to consider the effects of their undertakings on certain cultural, historical, and archaeological resources which the Act defines as "historic properties."

Historic properties as defined by the NHPA means any prehistoric or historic districts, sites, buildings, structures or objects included in, or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of Interior. The term includes properties of traditional religious and cultural importance to Native Hawaiian Organizations and that meet the National Register criteria. As part of sanctuary designation, these cultural values are also considered within the framework of the National Environmental Policy Act (e.g., within the draft Environmental Impact Statement, draft Management Plan, and the State's Cultural Impact Assessment).

Historic properties as defined by NHPA also include historical and archaeological resources that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and exhibit one or more criteria:

- A. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- B. That are associated with the lives of persons significant in our past; or
- C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- D. That have yielded, or may be likely to yield, information important in prehistory or history.

The Hawaiian Archipelago has a history of hundreds of years of intensive maritime activity, and thus possesses many historical and archaeological resources such as shipwrecks and other types of maritime heritage sites. NOAA, the State of Hawai'i, and the U.S. Fish and Wildlife Service also share the statutory responsibility to inventory, evaluate and protect these resources, guided by the NHPA and other preservation laws. Archaeological survey within the NWHI was begun during the NOWRAMP research expedition in 2002 and continued opportunistically through 2018. In addition to the terrestrial archaeological properties of the atolls and islands, there are more than 60 reported vessel losses in the historic record, and hundreds of sunken naval aircraft lost within the Monument's currently existing marine boundaries. NOAA's

Maritime Heritage Program maintains the database (MS Access/GIS-compatible) on these heritage properties within the Monument.

This document acknowledges the cultural significance of the NWHI (above) and, additionally, provides a brief summary of the subset of currently known (discovered/located) maritime heritage shipwreck and aircraft properties (historical and archaeological resources) within the marine environment of the Papahānaumokuākea Marine National Monument, prior to sanctuary designation-related Section 106 consultations.

Whaling vessels:

Western whaling activities represent a global industrial pursuit, one which brought European and American voyagers into the Pacific in the late 18th/early 19th centuries. Whaling was often the context for cultural contacts with the foreigners. At the peak of historic whaling activity, hundreds of whaling vessels called in Hawai'i annually. Ships not only needed provisions, they needed crews; whaling captains constantly needed to recruit for labor. Hawaiians quickly adapted the skills necessary to sail and work these foreign vessels, and many young Hawaiian men found employment on board whalers, venturing again for the first time in hundreds of years beyond the waters of the Hawaiian Kingdom.

The wrecks of whaling vessels can preserve aspects of ship construction and fitting out for the voyage, the tools and whalecraft of the 19th century, and evidence of the wrecking event and subsequent rescue and salvage itself. Certain individuals, such as carpenter James Robinson, had an important influence on the history of the islands (opening the first modern shipyard) following the dual shipwrecks of the British whalers *Pearl* and *Hermes* in 1822. There are ten recorded losses of British and American whaling vessels in PMNM, five of which have been located by NOAA and assessed. These whaler wrecks are scattered archaeological sites comprised generally of heavy ceramics and iron/copper artifacts (e.g., bricks, anchors, try pots, ballast, cannon, hull sheathing...the wooden structure having deteriorated long ago) subject to powerful shallow water surf, surge and storm effects. (The predominantly low integrity ratings for all sites reflect the dynamic environment of the NWHI.) The whaler *Two Brothers*, discovered in 2008, is now listed on the National Register of Historic Places.

Site Name (whalers)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
<i>Parker</i>	Kure	1842	arch site	TBD	406-ton American whaling ship; built New Bedford	ship's equipment elements (windlass, anchors, rigging, ship's bell); whalecraft (blubber hook, tryworks bricks)	low; scattered artifact site	Discovered 2003; survey complete in 2006; site plan, cruise report, web content, digital images
<i>Gledstanes</i>	Kure	1837	arch site	TBD	428-ton British whaling ship; built 1827 Leith, Scotland	ship's equipment elements (ballast, anchor, cannon)	low; scattered artifact site	Discovered/surveyed 2008; site plan, cruise report, web content, digital images
<i>Pearl</i>	Pearl and Hermes	1822	arch site	eligible (D)	British whaling vessel	ship structure (keel/keelson); ship's	medium; confined scatter site	Discovered 2005; surveyed 2006-2007; site plan, cruise report, web content, digital

						equipment elements (anchors, rigging, fasteners, cannon, grinding wheel, pintle/gudgeon); whalecraft (tryworks bricks, trypots)		images
Hermes	Pearl and Hermes	1822	arch site	eligible (D)	British whaling vessel	ship's equipment elements (anchors, rigging, fasteners, cannon; whalecraft (tryworks bricks, trypots)	medium; scattered arch site	Discovered 2005; surveyed 2006-2007; site plan, cruise report, web content, digital images
Two Brothers	French Frigate Shoals	1823	arch site	listed NRHP (A, B, D)	217-ton whaling ship out of Nantucket, Captain George Pollard Jr.	ship's equipment elements (rigging, anchors, cast iron cooking pots, ceramics and glass); whalecraft (blubber hooks, lances, try pots, tryworks bricks, harpoon tips)	low; large arch scatter site	discovered 2008; site plan, cruise report, web content, digital images; possible associated site east of original location discovered 2021

Merchantmen:

Even after they had been placed on Western charts, the low islands and atolls of the Hawaiian archipelago (without navigational aids) presented hazardous obstacles for commercial vessels transiting the Pacific. Ships that strayed off course and fell prey to these shallow and unseen reefs included iconic Pacific lumber schooners and iron-hulled square-rigged tall ships of a bygone age. Wooden sailing vessels like *Carrollton* and *Churchill* are archaeological sites of scattered iron and steel artifacts and features (e.g., anchors, windlass, ship's pumps, chain), while iron and steel-hulled ships like *Dunnottar Castle*, *Quartette*, and *Mission San Miguel*, have greater site integrity, exhibiting more complete site structure. Even relatively modern ships like *Mission San Miguel*, a former 500-foot WWII T2 tanker, are subject to the forces of nature. The steel ship's aft section lies crushed on its side, the ship's forward section broken and lost altogether.

Site Name (merchants)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
Carrollton	Midway	1906	arch site	not eligible	1450-ton American sailing bark; built Bath, Maine 1872	ship's equipment elements (windlass, aux boiler, ship's pump, hawse pipes, rigging, pintle/gudgeon, anchors, anchor chain, fasteners)	low; scattered artifact site	Surveyed 2003; site plan; site photographs; historical docs
Dunnottar Castle	Kure	1886	arch site	eligible (D)	1750-ton British iron-hulled tall ship; built Glasgow 1874	hull sections, deck machinery, anchors, cargo (coal blocks), mast sections, rigging	high; large area major site, hull portions, features, artifacts	Discovered 2006, survey 2007 and 2008; site plan, cruise report, web content, digital images
Churchill	French Frigate Shoals	1917	arch site	TBD	four-masted wooden merchant lumber schooner built	deck machinery, ships pumps, hawse pipes, wire rigging, fasteners, blocks	medium; large arch scatter site	Surveyed 2007; site plan, cruise report, web content, digital images
Quartette	Pearl and Hermes	1952	arch site	TBD	former WWII Liberty ship built	major engine shaft propeller features and large steel hull/cargo mast sections	high; arch confined scatter site both inside/outside reef crest	Surveyed 2002, follow up 2006; GPS survey started 2007, survey outside reef 2008; site photographs; historical photographs; historical docs

USNS Mission San Miguel	Maro Reef	1957	structure	TBD	523-foot WWII T2 tanker built	gun tubs, cargo masts	medium; intact stern on port side; mangled midships area	site photographs; ship plans; historic photographs; salvage and assessment docs;
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Fishing/miscellaneous vessels:

Fishing in the Northwestern atolls has a long and varied history, from Native Hawaiians making regular canoe trips to Mokupapapa for turtles and seabirds and traditional resources, to Western sailing ships exploit the area in the 19th century for seals, reef fish, turtles, sharks, birds, pearl oysters and sea cucumbers. The history of some of these shipwrecks remains unknown, but the types of propulsion make it very likely that some were long-range fishing sampans. Distinctive Hawaiian fishing sampans, a local hybrid of original Japanese traditional watercraft design with modernized diesel engines, are historically associated with Hawaii's commercial tuna fishery, centered at Kewalo Basin on O'ahu, and Hawaiian Tuna Packers Ltd. established in 1916.

Site Name (fishing vessels)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
Mimi	Pearl and Hermes	1989	arch site	not eligible	possible fishing vessel	engine component	low; single object	2006
"Oshima" wreck	Pearl and Hermes	UNK	arch site	not eligible	possible fishing sampan	engine house cover and stack; engine, anchors, hawse pipes	low; partial structure and discrete features	Surveyed 2006-2007; site plan, cruise report, web content, digital images
Kaiyo Maru	Laysan	1968	arch site	not eligible	possible fishing sampan	bow structure on beach	low; partial hull	2006
steel bow wreck site	Kure	UNK	structure	not eligible	modern (fishing) vessel?	cabin house	low; partial hull	assessed 2002
Hoei Maru	Kure	1976	structure	not eligible	diesel powered steel fishing vessel	bow structure (ashore)	low; bow and stern sections intact	assessed 2002
sailing vessel	Pearl and Hermes	UNK	object	not eligible	modern sloop	fiberglass hull/cabin	medium; intact hull portion	assessed 2002
motorized vessel	Pearl and Hermes	UNK	arch site	not eligible	possible fishing sampan	single engine block	low; single object	2002; 2005 site photographs;
Paradise Queen-II	Kure	1998	object	not eligible	longline steel fishing vessel	single deck	low; partial structure	assessed 2002

Sunken military craft:

The military's activities within the Northwestern atolls dates back to the survey of the Civil War-era sloop-of-war USS *Lackawanna* at Midway Atoll in 1867...and extends through the closure of Midway Naval Air Station in 1993. Sunken military craft range in time from USS *Saginaw* lost at Kure Atoll in 1870 to a Sikorsky helicopter of more recent years. However, the significance of World War II and the Battle of Midway overshadow properties associated with other periods.

The bulk of wartime preparations took place in the main Hawaiian Islands, but the strategic location of Midway and the NWHI was clear. Tern Island at French Frigate Shoals was developed

as a staging point for flights. French Frigate Shoals had been used before World War II for seaplane maneuvers, and the shoals were a staging point for two Japanese seaplane attack/reconnaissance patrols between December 1941 and June 1942. Construction of the landing strip on Tern Island began in July 1942, but by late 1942, expendable wing tanks became available, making the intermediate staging at French Frigate Shoals unnecessary.

Midway had previously been an important stop for PanAmerican transpacific commercial flights. Initial naval plans included support for one squadron of seaplanes at the atoll. War-construction PNAB contract work began at Midway in March 1940. Three runways and two hangars were constructed on Eastern Island. Sand Island featured seaplane ramps and hangar, ordnance, radio, engine, and repair shops, communication facilities, a naval hospital, and housing. Following the Battle of Midway, plans for Midway intensified. By the spring of 1943 Midway's role was changed from a defensive to an offensive base, and construction of a major submarine base was begun. By 1944, three 471-foot piers, a 769-foot tender pier, and an ARD wharf had been completed.

The Battle of Midway, June 4-7 1942, was one of the major watershed moments of World War II and a significant historical factor in the designation of the Marine National Monument in 2006. The Monument's expansion in 2016 likely encompasses the many Japanese and American vessels and aircraft lost in the conflict. American losses totaled one fleet carrier (USS *Yorktown*) and one destroyer (USS *Hammann*) sunk, along with approximately 150 aircraft and 307 casualties. Japanese losses totaled four fleet carriers (IJN *Kaga*, *Akagi*, *Hiryu*, *Soryu*) and one heavy cruiser (IJN *Mikuma*) sunk, along with approximately 248 aircraft and 3,057 casualties. USS *Yorktown* was discovered and recorded by Robert Ballard/National Geographic in 1998. IJN *Kaga* and *Akagi* were discovered and recorded by Rob Kraft/Vulcan Inc. in 2019. Data (including positions) from these private surveys remains proprietary and has not been shared with the management agencies.

Site Name (military)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
USS <i>Mecaw</i>	Midway	1944	structure	eligible (A, D)	Naval submarine rescue/salvage vessel built	salvage machinery, naval auxiliary fittings, anchors	high; large area major site, hull portions, features, artifacts	Surveyed 2003; site plan; site photographs; site mosaic; salvage docs; historical docs; monograph published 2022
LCVP landing craft	Midway	UNK	structure	not eligible	naval amphibious craft	ramp	medium; intact	assessed 2002
navy water barge	Midway	UNK	structure	not eligible	ferro-concrete barge	ferro-concrete construction	medium; intact	assessed 2002, 2005
navy barge	Midway	UNK	structure	not eligible	steel barge	hull	medium; intact	assessed 2002, 2007
navy landing craft	French Frigate Shoals	UNK	structure	not eligible	inverted LC	ramp	medium; relatively intact	
IJN <i>Akagi</i>	Midway	1942	structure	eligible (A, D)	Japanese Amagi-class battlecruiser converted to WWII aircraft carrier	hull, flight deck, gunnery, primary flight control, aircraft, assoc aircraft in vicinity (presumably)	high; intact vessel	Vulcan Inc. video and survey data proprietary (not shared) 2019
					Japanese Amagi-	hull, flight deck,	high; intact vessel	Vulcan Inc. video and survey data

USS Kaga	Midway	1942	structure	eligible A, D)	class battlecruiser converted to WWII aircraft carrier	gunnery, primary flight control, aircraft, assoc aircraft in vicinity (presumably)		proprietary (not shared) 2019
USS Saginaw	Kure	1870	arch site	eligible (A, B, D)	508-ton US Civil War-era Navy steam sloop; built Mare Island 1859	boiler face, anchors, cannon, engine components, rigging components	medium; large scattered artifact site	Survey complete in 2006; site plan, cruise report, web content, digital images, historical documents, 2010 monograph published University Press of Florida
USS Yorktown	Midway	1942	structure	eligible A, D)	Yorktown-class aircraft carrier	hull, flight deck, gunnery, primary flight control,	high; intact vessel	video and survey data proprietary (not shared) 1998

Naval aircraft:

It would be difficult to overemphasize the overall impact naval aviation would ultimately have on Hawai'i and in the Pacific. Hawai'i evolved very quickly from a few small seaplane bases to six major naval air stations operating during World War II, not to mention the aviation training activities conducted from aircraft carriers in Hawaiian waters. Naval aviation exercises in the Northwestern Hawaiian Islands began in the early 1930s, and activity at French Frigates Shoal and Midway Atoll increased during wartime preparations. Losses during the Battle of Midway June 4-7, 1942, and subsequent intensive aviation activities at Midway during subsequent decades have added to the submerged aircraft resource.

The wrecks of naval aircraft are a specific subset of archaeological resources. Even though mass produced in great number, with interchangeable engines and components, submerged aircraft wreck sites are still capable of revealing details of aircraft construction, modifications over time, and even use by aircrews. Like sunken military craft, submerged aircraft may be war graves as well. Sunken aircraft can exhibit evidence of water ditching and emergency escape, engine failure or combat loss events that led to the crash. Except for heavier features like machine guns, rotary engines and landing gear, naval aircraft are relatively fragile (composed of lightweight aluminum skin). Aircraft which ditched in "low impact" events and lost in deep waters are often amazingly intact on the seafloor. However, aircraft which crashed in "high impact" events or sunk in shallower waters are impacted by surf and surge and a very scattered archaeological sites, sometimes consisting only of a few landing gear components, or propeller, or single machine gun.

Site Name (aircraft)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
F4U-1 Corsair	Kure	1945	object	TBD	single-seat navy fighter aircraft		low; partial feature	survey complete in 2008
Sikorsky helicopter	Kure	UNK	arch site	not eligible	partial rotor and engine elements	engine part	low; feature partially buried	
F4U Corsair	Midway	UNK	structure	TBD	single-seat navy fighter aircraft	wing/landing gear design	low; wing/partial fuselage only (inverted); engine nearby	Surveyed 2002, 2007; site plan, cruise report, web content, digital images
P-40K Warhawk	Midway	1943	arch site	not eligible	single-seat army		low; few artifacts	Surveyed 2014;

					fighter aircraft			
F2A Brewster Buffalo	Midway		arch site	not eligible	single-seat navy fighter aircraft	landing gear	low; only partial landing gear	Surveyed 2015; cruise report, web content, digital images

Miscellaneous features:

Flotsam and jetsam have deposited numerous items on the seafloor. Debris which has drifted into the PMNM or been left randomly behind (e.g., timbers from elsewhere, isolated anchors, fishing gear, discarded materials) is to be expected and, while included in research records, is without context and generally not associated with archaeological sites or historic properties. The exception to this are those artifacts that may be evidence of more complex properties or wreck sites, and artifacts associated with specific locations (context), such as multiple anchors within a know historic anchorage. Anchors in particular are multifunctional and tend to be used and reused once being lost or abandoned by a ship (for moorings, navigational markers, stored on reefs for later use, etc.).

Site Name (misc features)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
3 anchors near landing site	Laysan	UNK	features	not eligible		historic iron admiralty-style anchors in context	low; features	2002
2 anchors and debris	Laysan	UNK	features	not eligible	possible wreck site	historic iron admiralty-style anchors in context	low; features	2002
anchor in Welles Harbor lagoon anchorage	Midway	UNK	object	TBD		historic iron admiralty-style anchor in context	low; features	2003

JOSH GREEN, M.D.
GOVERNOR | ILE IKA AINA
SYLVIA LIKE
LIEUTENANT GOVERNOR | KA HOPE IKA AINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OHIANA KUMUWAIWAI 'ĀINA

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD, STE 555
KAPOLEI, HAWAII 96707

DAWN K. S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION OF WATER RESOURCE MANAGEMENT
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LAND
STATE PARKS

June 7, 2024

Brian Neilson
Administrator
Division of Aquatic Resources
Department of Land and Natural Resources
1151 Punchbowl Street, Room 330
Email Reply to: Edward.L.Kekoa@hawaii.gov
Electronic Transmittal Only, No Hard Copy to Follow

IN REPLY REFER TO:
Project No.: 2022PR00296
Doc No.: 2406SH06
Archaeology
History and Culture Branch

Dear Brian Neilson:

**SUBJECT: Hawai'i Revised Statutes (HRS) Chapter 6E-8 Historic Preservation Review –
Initiation of Consultation and Request for Concurrence with the Effect Determination
Proposed Sanctuary Designation of the State Waters within the Papahānaumokuākea
Marine National Monument
Northwestern Hawaiian Islands, State of Hawai'i
TMK: (5)**

The State Historic Preservation Division (SHPD) received a letter from the State of Hawai'i Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (DAR) to initiate the HRS Chapter 6E historic preservation review and to request the SHPD's concurrence with the effect determination for the Proposed Sanctuary Designation of the State Waters within the Papahānaumokuākea Marine National Monument in the Northwestern Hawaiian Islands (HICRIS Submission No. 2022PR00296.002). The SHPD received this submittal on May 26, 2023.

According to the letter received, in December of 2020 Congress directed the National Oceanic and Atmospheric Administration (NOAA) to initiate a national marine sanctuary designation process under the National Marine Sanctuaries Act. NOAA has initiated the designation in partnership with the State of Hawai'i. The original boundary of Papahānaumokuākea included the islands and atolls from Nihoa to Kure Atoll, including Midway and surrounding waters and submerged lands to fifty nautical miles. This included all lands and waters in the Northwestern Hawaiian Islands that are under the State of Hawai'i jurisdiction. In 2016, Proclamation 9478 expanded the Monument into the waters and submerged lands to the seaward limit of the U.S. Exclusive Economic Zone, the Monument Expansion Area.

The project is subject to review under HRS Chapter 6E-8 because of the inclusion of State waters and submerged lands. The proposed action is also a federal undertaking as defined in 36 CFR 800.16(y) and is subject to compliance with Section 106 of the NHPA. NOAA is the lead federal agency, and the Section 106 review process is on-going at this time.

DAR states that designation as a national marine sanctuary would strengthen and increase the long-term protections already existing in the monument by enhancing authorities and the regulatory and enforcement framework. Many of Papahānaumokuākea's extensive education, outreach, and research accomplishments have been executed under the authority of the National Marine Sanctuaries Act. Sanctuary designation will ensure the full benefits and expertise offered by the National Marine Sanctuary System and staff. The current co-management structure with four co-

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trustees (the State through DLNR), the Secretaries of the U.S. Department of Interior and the U.S. Department of Commerce, and OHA), and seven co-managers (DLNR Division of Aquatic Resources, DLNR Division of Forestry and Wildlife, NOAA National Marine Fisheries Service, NOAA Office of National Marine Sanctuaries, USFWS Refuges, USFWS Ecological Services, and OHA) will continue.

According to the document received, the proposed action will increase management measures and protections. All projects in Papahānaumokuākea will require a permit with associated review and provision of permit conditions to protect tangible and intangible resources. Regulated activities may be permitted to occur within Papahānaumokuākea only if an applicant can demonstrate that their proposed activities are consistent with the goals of Papahānaumokuākea and meet all relevant findings criteria to support issuance of the permit. Any actions within Papahānaumokuākea are individually subject to all applicable State and Federal laws including HRS Chapter 6E and Section 106 of the NHPA.

The proposed project area is the entirety of the marine area of Papahānaumokuākea, including state waters and submerged lands and the Monument Expansion Area. The project area totals 373,120,000 acres.

The Hawaiian Archipelago has a history of hundreds of years of intensive maritime activity, and thus possesses many historical and archaeological resources such as shipwrecks and other types of maritime heritage sites including historic anchorage sites. Aviation in Hawai'i also has a significant past. Naval aviation exercises in the NWHI began in the early 1930s with activity at French Frigates Shoal and Midway Atoll increasing during wartime preparations. Losses during the Battle of Midway June 4-7, 1942, and subsequent intensive aviation activities at Midway during subsequent decades have added to the submerged aircraft resource. In addition to the terrestrial archaeological properties of the atolls and islands, there are more than 60 reported vessel losses in the historic record, and hundreds of sunken naval aircraft lost within Papahānaumokuākea's currently existing marine boundaries. The historic properties within Papahānaumokuākea have not all been individually assessed for significance and integrity. DAR states that NOAA, the lead federal agency for this proposed action, considers all properties to be potentially significant. Within the project area is the whaler Two Brothers, discovered in 2008, which is listed in the National Register of Historic Places and the Hawaii Register of Historic Places. A summary of identified historic properties is provided with DAR's letter.

The DLNR DAR has determined there will be no direct or indirect impacts to significant properties because the proposed action is administrative and there will be no development or physical alterations to the properties. Pursuant to Hawaii Administrative Rules §13-275-7, DLNR DAR has recommended a "No historic properties affected" determination be established.

Based on the information received, **the SHPD concurs** with DAR's effect determination of "No historic properties affected". The SHPD's concurrence is based on the project area defined and the written scope of work received from the DAR. Any deviations from the scope of work or the project area requires the Chapter 6E historic preservation review process is re-opened prior to the project moving forward, to consider the potential for effects to historic properties resulting in project scope or project area revisions.

The SHPD requests the opportunity to review future actions proposed in the Papahānaumokuākea Marine National Monument under the HRS Chapter 6E and NHPA Section 106 historic preservation review processes, when applicable.

Please submit any forthcoming information and correspondence related to the subject project to SHPD via HICRIS under Project No. 2022PR00296 using the Project Supplement option.

The DLNR DAR and NOAA are the offices of record for this undertaking. Please maintain a copy of this letter with your environmental review record for this undertaking.

Please contact Stephanie Hacker, Historic Preservation Archaeologist IV, at Stephanie.Hacker@hawaii.gov or at (808) 692-8046, for any matters regarding archaeological resources or this letter.

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Aloha,



Jessica Puff
Architecture Branch Chief
Acting Administrator, State Historic Preservation Division

cc: Kelli Ann Koboyashi, DAR (Kelliann.Koboyashi.researcher@hawaii.gov)
Kalani Quiocho, NOAA (Kalani.Quiocho@noaa.gov)

Appendix 5. Repositories reviewed for information regarding the identification of historic properties

- State Historic Preservation Division Library, Kapolei
- Bishop Museum Library and Archives
- State of Hawai‘i public library and archives division
- Hawai‘i Maritime Center manuscripts and library inventory
- University of Hawai‘i library system
- National Archives and Records Administration (San Bruno, California; Washington, D.C.; and College Park, Maryland)
- Public and private libraries and collections (Thrum’s Hawaiian Almanac, Richard Roger’s database collection, Bob Krauss Memorial Shipwreck Article Database)
- Historic newspapers (Pacific Commercial Advertiser, Honolulu Star Bulletin, The Friend, Polynesian Paradise)
- Historic maps and navigation charts (University of Hawai‘i at Manoa Government Documents section historic maps, NOAA Office of Coast Survey Historical Maps and Chart Collection)
- Archaeological site reports (University of Hawai‘i Manoa Marine Option Program reports, Department of Defense navy shipwreck and aircraft database (Naval History & Heritage Command) and legacy report US Navy Shipwrecks in Hawaiian Waters: an Inventory of Submerged Naval Properties (Van Tilburg, 2003), Department of Homeland Security United States Coast Guard records, U.S. Army Corps of Engineers Honolulu District); NOAA Resources and Undersea Threats (RUST), MHP internal database for Pacific Islands Region)
- Archaeological survey data from: University of Hawai‘i Marine Option Program (UH MOP), NOAA MHP and Office of Exploration and Research (OER); and Online sources (International Registry of Sunken Ships, Northern Mariner Research shipwrecks database 2002, Papakilo Database, Automated Wreck and Obstruction Information System, Electronic Navigation Charts, Hawai‘i State wreck inventory)

Appendix D: Biological Species Associated with Consultations

Table D.1a. ESA and State-Listed Marine Reptile Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Central North Pacific green sea turtle	Honu	<i>Chelonia mydas</i>	Resident	Threatened
Hawksbill turtle	Honu'ea	<i>Eretmochelys imbricata</i>	Resident to Main Hawaiian Islands	Endangered
North Pacific loggerhead turtle	Unknown	<i>Caretta caretta</i>	Transient	Endangered
Olive ridley turtle	Unknown	<i>Lepidochelys olivacea</i>	Transient	Threatened
Leatherback turtle	Unknown	<i>Dermochelys coriacea</i>	Transient	Endangered

Table D.1b. ESA and State-Listed Marine Mammal Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Hawaiian monk seal	ʻĪlioḥoloikauaaua	<i>Neomonachus schauinslandi</i>	Resident	Endangered
Sperm whale	Palaoa	<i>Physeter macrocephalus</i>	Transient	Endangered
Blue whale	Koholā	<i>Balaenoptera musculus</i>	Transient	Endangered
Sei whale	Koholā	<i>B. borealis</i>	Transient	Endangered
Fin whale	Koholā	<i>B. physalus</i>	Transient	Endangered
North Pacific right whale	Koholā	<i>Eubalaena japonica</i>	Transient	Endangered
False killer whale, Main Hawaiian Islands insular	Unknown	<i>Pseudorca crassidens</i>	Unknown	Endangered

This table has been updated since the draft EIS, based on additional information provided through the ESA consultation process.

Table D.1c. ESA and State-Listed Marine Fish Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Giant manta ray	Hāhālua	<i>Manta birostris</i>	Unknown	Threatened
Oceanic whitetip shark	Manō	<i>Carcharhinus longimanus</i>	Unknown	Threatened
Shortfin mako shark	Manō	<i>Isurus oxyrinchus</i>	Unknown	Candidate
Scalloped hammerhead shark, Indo West Pacific	Unknown	<i>Sphyrni lewini</i>	Unknown	Threatened

This table has been updated since the draft EIS, based on additional information provided through the ESA consultation process.

Table D.1d. ESA and State-Listed Seabird Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Short-tailed albatross	Mōlī	<i>Phoebastria albatross</i>	Resident	Endangered
Band-rumped storm petrel	'Ake'ake	<i>Oceanodroma castro</i>	Transient	Endangered
Hawaiian petrel	'Ua'u	<i>Pterodroma sandwichensis</i>	Transient	Endangered
Newell's shearwater	'A'o	<i>Puffinus newellii</i>	Resident	Threatened

This table has been updated since the draft EIS, based on additional information provided through the ESA consultation process.

Table D.1e. ESA and State-Listed Coral Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
No common name	Unkown	<i>Acropora globiceps</i>	Resident	Threatened

Of the above listed species, NMFS has designated critical habitat for the Hawaiian monk seal and the false killer whale Main Hawaiian Islands insular population. Critical habitat for the Hawaiian monk seal spans from shore to 20 fathoms around every island, atoll, and bank of Papahānaumokuākea, except Sand Island at Midway Atoll, including all beach areas, sand spits and islets, inner reef waters, and ocean waters. Critical habitat for the Main Hawaiian Islands insular population of the false killer whale includes waters from the 45-meter depth contour to the 3,200-meter depth contour around the main Hawaiian Islands from Ni'ihau east to Hawai'i. No other critical habitat has been designated in the project area for any other of the species of Table D.1.

Table D.2a. ESA and State-Listed Shorebird and Land Bird Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Laysan suck	Koloa pōhaka	<i>Anas platyrhynchos laysanensis</i>	Resident	Endangered
Laysan finch	‘Ekupu‘u	<i>Telespyza cantans</i>	Resident	Endangered
Nihoa millerbird	Ulūlu	<i>Acrocephalus familiaris</i>	Resident	Endangered
Nihoa finch	Palihoa	<i>Telespyza ultima</i>	Resident	Endangered

Table D.2b. ESA and State-Listed Terrestrial Plant Species of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Nihoa fan palm	Loulu	<i>Pritchardia remota</i>	Endemic	Endangered
No common name	‘Ihi	<i>Portulaca villosa</i>	Endemic	Endangered
No common name	Pōpolo	<i>Solanum nelsonii</i>	Endemic	Endangered
No common name	‘Ōhai	<i>Sesbania tomentosa</i>	Endemic	Endangered
No common name	Unknown	<i>Amaranthus brownii</i>	Endemic	Critically endangered
No common name	Unknown	<i>Cenchrus agrimonioides var. laysanensis</i>	Endemic	Endangered, potentially extinct

Table D.3a. Marine Mammals of Papahānaumokuākea: Family Phocidae

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Hawaiian monk seal	‘Īlioholoikauaua	<i>Neomonachus schauinslandi</i>	Resident	Endangered

Table D.3b. Marine Mammals of Papahānaumokuākea: Family Balaenopteridae (Baleen Whales)

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Humpback whale	Koholā	<i>Megaptera novaeangliae</i>	Resident	Least Concern
Blue whale	Koholā	<i>Balaenoptera musculus</i>	Transient	Endangered
Sei whale	Koholā	<i>B. borealis</i>	Transient	Endangered
Fin whale	Koholā	<i>B. physalus</i>	Transient	Vulnerable
North Pacific right whale	Koholā	<i>Eubalaena japonica</i>	Transient	Endangered
Bryde's whale	Palaoa	<i>Balaenoptera edeni</i>	Unknown	Least Concern
Minke whale	Unknown	<i>Balaenoptera acutorostrata</i>	Unknown	Least concern

Table D.3c. Marine Mammals of Papahānaumokuākea: Family Physeteridae (Toothed Whales)

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Sperm whale	Palaoa	<i>Physeter macrocephalus</i>	Transient	Endangered

Table D.3d. Marine Mammals of Papahānaumokuākea: Family Ziphiidae (Beaked Whales)

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Baird's beaked whale	Unknown	<i>Berardius bairdii</i>	Transient	Least Concern
Blainville's beaked whale	Unknown	<i>Mesoplodon densirostris</i>	Transient	Least Concern
Cuvier's beaked whale	Unknown	<i>Ziphius cavirostris</i>	Transient	Least concern

Table D.3e. Marine Mammals of Papahānaumokuākea: Family Delphinidae (dolphins)

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
False killer whale	Koholā	<i>Pseudorca crassidens</i>	Transient	Near threatened
Killer whale	Unknown	<i>Orcinus orca</i>	Transient	Data deficient
Melon-headed whale	Unknown	<i>Peponocephala electra</i>	Transient	Least concern
Short-finned pilot whale	Unknown	<i>Globicephala macrorhynchus</i>	Transient	Least concern

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Bottlenose dolphin	Nai'a	<i>Tursiops truncatus</i>	Resident	Least concern
Spinner dolphin	Nai'a	<i>Stenella longirostris</i>	Resident	Least concern
Striped dolphin	Nai'a	<i>Stenella coeruleoalba</i>	Transient	Least concern
Rough-toothed dolphin	Unknown	<i>Steno bredanensis</i>	Transient	Least concern
Pantropical spotted dolphin	Unknown	<i>Stenella attenuata</i>	Transient	Least concern
Pacific White-sided dolphin	Unknown	<i>Lagenorhynchus obliquidens</i>	Transient	Least concern
Pygmy killer whale	Unknown	<i>Feresa attenuata</i>	Transient	Least concern
Risso's dolphin	Unknown	<i>Grampus griseus</i>	Transient	Least concern

Table D.3f. Marine Mammals of Papahānaumokuākea: Family Kogiidae

Common Name	Hawaiian Name	Scientific Name	Occurrence	ESA Listing
Pygmy sperm whale	Unknown	<i>Kogia breviceps</i>	Transient	Least concern
Dwarf sperm whale	Unknown	<i>Kogia sima</i>	Transient	Least concern

Table D.4. Shorebirds and Land birds of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name
Laysan duck	Koloa pōhaka	<i>Anas platyrhynchos laysanensis</i>
Nihoa millerbird	Ulūlu	<i>Acrocephalus familiaris</i>
Laysan finch	'Ekupu'u, 'Ainohu kauo	<i>Telespyza cantans</i>
Nihoa finch	Palihoa	<i>Telespyza ultima</i>
Bristle-thighed curlew	Kioea	<i>Numenius tahitiensis</i>
Wandering tattler	'Ūlili	<i>Heteroscelus incanus</i>
Ruddy turnstone	'Akekeke	<i>Arenaria interpres</i>
Pacific golden plover	Kōlea	<i>Pluvialis fulva</i>

Table D.5. Seabirds of Papahānaumokuākea

Common Name	Hawaiian Name	Scientific Name	PMNM Status	BCC?	IUCN Status	ESA Status
Black-footed albatross	Ka'upu	<i>Phoebastria nigripes</i>	I	Y	NT	T
Laysan albatross	Mōlī	<i>Phoebastria immutabilis</i>	I	Y	NT	NL
Short-tailed albatross	Makalena	<i>Phoebastria albatrus</i>	I	Y	E	E
Bonin petrel	Nunulu	<i>Pterodroma hypoleuca</i>	I	Y	V	NL
Hawaiian petrel	'Ua'u	<i>Pterodroma sandwichensis</i>	M	Y	E	E
Bulwer's petrel	'Ou	<i>Bulweria bulwerii</i>	I	Y	LC	NL
Wedge-tailed shearwater	'Ua'u kani	<i>Puffinus pacificus</i>	I	N	LC	ENL
Christmas shearwater	'Ao'ū	<i>Puffinus nativitatus</i>	I	Y	V	E
Newell's shearwater	'A'o	<i>Puffinus newellii</i>	M	Y	E	E
Tristram's storm-petrel	'Akihike'ehi'ale	<i>Oceanodroma tristrami</i>	I	Y	LC	NL
Band-rumped storm petrel	'Ake'ake	<i>Hydrobates castro</i>	M	Y	LC	NL
Red-tailed tropicbird	Koa'e 'ula	<i>Phaethon rubricauda</i>	I	Y	LC	NL
White-tailed tropicbird	Koa'e kea	<i>Phaethon lepturus</i>	I	N	LC	NL
Masked booby	'Ā, Akeake	<i>Sula dactylatra</i>	I	N	LC	NL
Brown booby	'Ā	<i>Sula leucogaster</i>	I	N	LC	NL
Red footed booby	'Ā, Akeake	<i>Sula sula</i>	I	N	LC	NL
Nazca booby	'Ā, Akeake		M	N	LC	NL
Great frigatebird	'Iwa	<i>Fregata minor</i>	I	Y	LC	NL
White tern	Manu o Kū	<i>Gygis alba</i>	I	N	LC	NL
Grey-backed tern	Pakalakala	<i>Sterna lunata</i>	I	Y	LC	NL

Common Name	Hawaiian Name	Scientific Name	PMNM Status	BCC?	IUCN Status	ESA Status
Sooty tern	'Ewa'ewa	<i>Sterna fuscata</i>	I	N	LC	NL
Least tern	Unknown	<i>Sternula antillarum</i>	I	Y	LC	NL
Black noddy	Noio, lae hina	<i>Anous minutus</i>	I	Y	LC	NL
Brown noddy	Noio koha	<i>Anous stolidus</i>	I	N	LC	NL
Blue noddy	Noio hinaoku, manuhina	<i>Procelsterna cerulea</i>	I	Y	LC	NL

1 E = endemic to PMNM; I = indigenous to PMNM; M = non-breeding in PMNM. Source: USFWS

This table has been updated since the draft EIS, based on additional information provided through the ESA consultation process.

Table D.6a. Marine Alien Species of Papahānaumokuākea: Phylum Annelida (worms)

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Chaetopterus variopedatus</i>	A	Kuaihelani	
<i>Kuwaita (Lumbrineris) heteropoda</i>	C	Kuaihelani	
<i>Lumbrineris sphaerocephala</i>		No data	Not in database
<i>Branchiomma cingulatum</i>	A	Kuaihelani	
<i>Potamethus elongatus</i>	C	Kuaihelani	
<i>Sabellastarte spectabilis</i>	A	Multiple locations	
<i>Potamilla sp.</i>	C	Kuaihelani	
<i>Hydroides brachyacantha</i>	A	Kuaihelani	
<i>Hydroides elegans</i>	A	Kuaihelani	
<i>Hydroides exaltata</i>	A	Kuaihelani	
<i>Pseudovermilia pacifica</i>	A	Kuaihelani	
<i>Salmacina tribranchiata</i>	A	Kuaihelani	
<i>Protula cf. atypha</i>	C	Kuaihelani	Only genus in database
<i>Vermiliopsis sp.</i>	C	Kuaihelani	
<i>Lanice conchilega</i>	A	Kuaihelani	

Table D.6b. Marine Alien Species of Papahānaumokuākea: Phylum Arthropoda (crustaceans, barnacles, amphipods)

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Chthamalus proteus</i>	A	Kuaihelani	
<i>Caprella scaura</i>	A	Kapou	
<i>Ligia (Megaligia) exotica</i>	A	Kuaihelani	
<i>Amphibalanus reticulatus</i>	A	No data	Maybe seen at Lalo

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Amphibalanus venustus</i>	A	No data	Not established, seen only on R/V <i>Sette</i> hull during port inspection

Table D.6c. Marine Alien Species of Papahānaumokuākea: Phylum Bryozoa

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Amathia distans</i>	A	Kuaihelani	
<i>Amathia verticillata</i>	A	Kuaihelani, Kapou	
<i>Watersipora</i> sp.	C	Kuaihelani	Uncertain whether occurs
<i>Schizoporella</i> cf <i>errata</i>	A	Kuaihelani	
<i>Bugula</i> sp.	A	Kuaihelani	

Table D.6d. Marine Alien Species of Papahānaumokuākea: Phylum Chordata (non-vertebrates)

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Diplosoma listerianum</i>	A	Kuaihelani	
<i>Didemnum perlucidum</i>	A	Kuaihelani	
<i>Didemnum</i> sp.	A	Kuaihelani	
<i>Lissoclinum fragile</i>	A	Kuaihelani	
<i>Polyclinum constellatum</i>	A	Kuaihelani	
<i>Ascidia archaia</i>	A	Kuaihelani	
<i>Ascidia sydneiensis</i>	A	'Ōnūni and 'Ōnuiki, Kuaihelani	
<i>Phallusia nigra</i>	A	Kuaihelani	
<i>Ascidia</i> sp.	A	Kuaihelani	
<i>Microcosmus exasperatus</i>	A	Multiple locations	
<i>Herdmania pallida</i>	A	Kuaihelani	
<i>Cnemidocarpa irene</i>	A	Multiple locations	
<i>Polycarpa aurita</i>	C	Multiple locations	
<i>Styela canopus</i>	A	Kuaihelani	
<i>Symplegma brakenhielmi</i>	A	Kuaihelani	
<i>Symplegma</i> sp.	A	Manawai	
<i>Botrylloides</i> sp.	A	Kuaihelani	
<i>Botryllus</i> sp.	A	Kuaihelani	

Table D.6e. Marine Alien Species of Papahānaumokuākea: Subphylum Vertebrata (fish)

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Lutjanus fulvus</i>	A	Lalo	
<i>Lutjanus kasmira</i>	A	Multiple locations	
<i>Cephalopholis argus</i>	A	Multiple locations	

Table D.6f. Marine Alien Species of Papahānaumokuākea: Phylum Cnidaria

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Pennaria disticha</i>	A	Multiple locations	
<i>Diadumene lineata</i>	A	Manawai	Not established

Table D.6g. Marine Alien Species of Papahānaumokuākea: Phylum Porifera (sponges)

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Heteropia glomerosa</i>	A		
<i>Halichondria</i> sp.	C	Manawai	Uncertain whether occurs
<i>Chelonaplysilla violacea</i>	C	Kuaihelani	
<i>Darwinella australiensis</i>	C	Kuaihelani	
<i>Dictyodendrilla dendyi</i>	C	Kuaihelani	
<i>Dysidea arenaria</i>	C	Kuaihelani	
<i>Cladocroce burapha</i>	C	Kuaihelani	
<i>Haliclona</i> sp.	C	Kuaihelani	
<i>Callyspongia</i> sp.	C	Kuaihelani	
<i>Lissodendoryx similis</i>	C	Kuaihelani	
<i>Monanchora</i> cf. <i>unguiculata</i>	A	Kuaihelani	
<i>Monanchora quadrangulata</i>	A	Kuaihelani	
<i>Crella (Yvesia) spinulata</i>	C	Kuaihelani	
<i>Phorbas burtoni</i>	C	Kuaihelani	
<i>Strongylamma wilsoni</i>	C	Kuaihelani	
<i>Tedania (Tedania) strongylostyla</i>	C	Kuaihelani	
<i>Tethya deformis</i>	C	Kuaihelani	

Table D.6h. Marine Alien Species of Papahānaumokuākea: Phylum Rhodophyta (red algae)

Species Name	Alien/ Cryptogenic	Distribution	Notes
<i>Hypnea</i> sp.	C	Multiple locations	
<i>Chondra</i> sp.	C	Kuaihelani, Manawai	
<i>Acanthophora spicifera</i>	A	Kuaihelani	

Appendix E: Analysis of Relevant Federal and State Statutes

The resources within the proposed sanctuary are protected under numerous federal and State laws and their clarifying regulations. These include, but are not limited to, those listed below. Specific descriptions of some that contribute to day-to-day management are further described.

Laws and Existing Management (EIS Section 4.2)

Numerous federal and state agencies provide regulatory oversight to the resources within or near the study area. Many of these are particularly relevant to the study area, as they provide the primary current regulatory framework for resources in the study area. This appendix provides information on these federal and State laws and policies and how they intersect with management of the study area. NOAA's proposed sanctuary designation complies with all applicable environmental laws and regulations associated with the study area.

Federal Actions – Statutes

Antiquities Act of 1906, 54 U.S.C. § 320301, et seq.

This act grants the President the authority to designate national monuments on federal lands that contain historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest. The President is directed to reserve areas of land as monuments that are confined to the smallest area compatible with the proper care and management of the objects to be protected. Through Executive Order, President George W. Bush used the Antiquities Act to establish Papahānaumokuākea Marine National Monument in 2006. President Barack Obama also used the Antiquities Act to create the Monument Expansion Area.

National Marine Sanctuaries Act of 1972, as amended, §§16 U.S.C. 1431-1445c

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational or esthetic qualities as national marine sanctuaries. **The 2000 Amendments to the NMSA specifically authorized designation of a Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) to be managed by the Secretary of Commerce. President William J. Clinton subsequently issued Executive Order 13178 and Executive Order 13196 to establish the Reserve and manage it under the NMSA. Executive Order 13178 also established a Reserve Advisory Council pursuant to section 315 of the NMSA.**

National Wildlife Refuge System Administration Act of 1966, as amended, 16 U.S.C. §§ 668dd-ee

The National Wildlife Refuge System Administration Act (NWRSA) serves as the “organic act” for the National Wildlife Refuge System. The NWRSA consolidated the lands administered by the Secretary of the Interior, through the U.S. Fish & Wildlife Service (FWS), into a single National Wildlife Refuge System. The NWRSA establishes a process for determining

compatible uses of NWRs so long as wildlife conservation is the overarching principle. The NWRSA reinforces and expands the “compatibility standard” of the Refuge Recreation Act. The Refuge Administration Act authorizes the Secretary to “permit the use of any area within the System for any purpose including, but not limited to, hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established.” The NWRSA draws on the following previous acts:

- National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. §§ 668dd-ee)
- Refuge Recreation Act of 1966, as amended (16 U.S.C. 460k-460k-4)
- Fish and Wildlife Improvement Act of 1978, as amended, 16 U.S.C. 742l
- Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742a-742m)

The NWRSA notes that the Comprehensive Conservation Plan required for each national wildlife refuge “shall, to the maximum extent practicable and consistent with this Act consult with adjoining federal, state, local, and private landowners and affected State conservation agencies; and coordinate the development of the conservation plan or revision with relevant State conservation plans for fish and wildlife and their habitats.”

Federal Actions – Executive Orders

Executive Order 1019—Hawaiian Islands Reservation, February 3, 1909

Executive Order (E.O.) 1019 established the Hawaiian Islands Reservation as a preserve and breeding grounds for native birds, making it unlawful for any person to hunt, trap, capture, willfully disturb, or kill any bird, or take their eggs. The E.O. defined the boundaries of the reservation as the “islets and reefs” of all land except Midway atoll. The Reservation became the Hawaiian Islands National Wildlife Refuge, managed by the U.S. Fish and Wildlife service.

Executive Order 10413, Restoring Kure (Ocean) Island to the Jurisdiction of the Territory of Hawaii, 17 FR 10497 (November 17, 1952)

During the build-up to World War II, the U.S. Navy took control and jurisdiction of Kure Atoll and built a LORAN (Long Range Navigation) station (E.O. 7299, February 10, 1936). E.O. 10413 restored jurisdiction of the atoll and surrounding reefs to the Territory of Hawaii, while still providing for the Navy to maintain and access the LORAN station.

Executive Order 13022—Administration of the Midway Islands, November 1, 1996 (61 FR 56875)

E.O. 13022 executed the transfer of control of Midway Atoll, including the land and marine waters to 12 nm, under Department of the Interior jurisdiction. The U.S. Fish and Wildlife Service (FWS) administers the islands as the Midway Atoll National Wildlife Refuge in a manner consistent with Executive Order 12996 of March 25, 1996, to: (1) maintain and restore natural biological diversity; (2) provide for the conservation and management of fish, wildlife and their habitats; (3) fulfill international treaty obligations with respect to fish and wildlife; (4) provide opportunities for scientific research, environmental education, and compatible wildlife dependent recreational activities; and (5) in a manner compatible with refuge purposes,

recognize and maintain the historic significance of the Midway Islands consistent with E.O. 11593.

Executive Order 13089—Coral Reef Protection, June 11, 1998 (63 FR 32701)

E.O. 13089 for Coral Reef Protection created the U.S. Coral Reef Task Force, headed by the Secretaries of Commerce and Interior, fostering cooperation for protection of marine resources between these two agencies.

Executive Order 13158—Marine Protected Areas, May 26, 2000 (65 FR 34909)

E.O. 13158 for marine protected areas (MPAs) directed the Department of Commerce and Department of the Interior to develop a national system of MPAs. This E.O. included a Memorandum regarding Protection of U.S. Coral Reefs in the Northwest Hawaiian Islands, directing the Secretaries to “provide for culturally significant uses of the Northwest Hawaiian Islands’ marine resources by Native Hawaiians.” Native Hawaiians with decades of first-hand knowledge of the ecosystem’s fragility and dangers of over-exploitation gave testimony and support for greater protection of this area.

Executive Order 13178—Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, December 4, 2000 (65 FR 76903)

This E.O. established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve) in the federal waters of the Northwestern Hawaiian Islands from 3 - 50 nm around all islands and atolls. The Reserve remains under the proposed action and is managed by the U.S. Department of Commerce through NOAA. The E.O. stated “[t]he Secretary shall initiate the process to designate the Reserve as a national marine sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act.”

Executive Order 13196—Final Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, January 18, 2001 (66 FR 7395)

This executive order amended 13178, making the Reserve Preservation Areas permanent, capping the take of pelagic trolling and bottom fishing allowed in the Reserve, and establishing discharge regulations.

Federal Actions – Presidential Proclamations

Presidential Proclamation 8031—Establishment of the Northwestern Hawaiian Islands National Monument, June 15, 2006 (71 FR 36443)

This proclamation established the Northwestern Hawaiian Islands Marine National Monument, including all land and waters to 50 nm, establishing a co-management authority between the Department of Interior (through the U.S. Fish and Wildlife Service, Department of Commerce (through the Office of National Marine Sanctuaries), and the State of Hawai‘i (through the Department of Land and Natural Resources).

Presidential Proclamation 8112—Amending Proclamation 8031 of June 15, 2006, To Read, “Establishment of the Papahānaumokuākea Marine National Monument,” February 28, 2007 (72 FR 10031)

This proclamation renamed the Monument and required that living resources harvested in the Monument under a Native Hawaiian practices permit must be consumed in the Monument.

Presidential Proclamation 9478—Papahānaumokuākea Marine National Monument Expansion (81 FR 60227)

On August 26, 2016, President Barack Obama issued Presidential Proclamation 9478, which established the Monument Expansion Area to include the waters and submerged lands seaward of PMNM and extending to the seaward limit of the United States Exclusive Economic Zone (EEZ) west of 163° West longitude. Proclamations 8031, 8112, and 9478 are discussed in detail in the EIS.

Federal Actions – Secretarial Orders

Department of the Interior Secretary’s Order 3217—Designation of the Battle of Midway National Memorial (September 13, 2000)

This order recognized the Battle of Midway as one of the two most significant dates in U.S. Naval history. The memorial ensures that “the heroic courage and sacrifice of those who fought against overwhelming odds to win an incredible victory will never be forgotten.”

Federal Actions – Regulations

Papahānaumokuākea Marine National Monument Regulations, 50 CFR Part 404

These regulations codify prohibitions and management measures set forth in Presidential Proclamations 8031 and 8112, including those relating to boundaries, access, ship reporting requirements for Areas to be Avoided and Particularly Sensitive Sea Areas, prohibited activities, regulated activities, emergencies and law enforcement, armed forces actions, commercial fishing, permitting procedures and criteria, international law, boundaries of ecological preserves, special preservation areas and Midway Atoll Special Management Area. These regulations are discussed in detail in the EIS.

Papahānaumokuākea Marine National Monument Provisions, December 3, 2008, 73 FR 73592

These regulations, incorporated into 50 CFR 404, were promulgated following the International Maritime Organization 2008 designation of waters of the Monument as Particularly Sensitive Sea Areas, which expanded and consolidated the six existing Areas To Be Avoided, established in 1981, in the Monument into four larger areas, enlarged the class of vessels to which they apply, and established a ship reporting system for vessels transiting the Monument.

State of Hawai‘i Authorities and Actions

Hawaii Organic Act of April 30, 1900, c339, 31 Stat.141 § 2

The Organic Act established the Territory of Hawai‘i after the illegal overthrow of the Hawaiian Kingdom and the subsequent annexation of the Republic of Hawai‘i by the U.S.

Hawaii Admission Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4 § 2

The Admission Act granted the Territory of Hawai‘i statehood status and created the public land trust. Section 5 of the act established the public land trust. The trust has five trust purposes: the support of public schools and other public educational institutions, the betterment of the conditions of Native Hawaiians, the development of farm and home ownership, and for the provision of lands for public use. The State of Hawai‘i and U.S. government are trustees with Native Hawaiians and the general public as beneficiaries. This trust was adopted in the Constitution of the State of Hawai‘i.

Constitution of the State of Hawaii, Article XI, §§ 1, 4, 6, and 9 and Article XII § 7

The State of Hawai‘i has constitutional public trust duties to protect and conserve its natural resources for future generations. The State also has a constitutional duty to protect Native Hawaiian traditional and customary practices.

Hawaii Environmental Policy Act, Title 19, Chapter 343, Hawaii Revised Statutes

The Hawaii Environmental Policy Act (HEPA), provides the basis for the public environmental review through disclosure documents such as an environmental impact statement or environmental assessment for certain individual or agency actions. The requirements of HEPA are presented in Hawaii Administrative Rules (HAR) Chapter 200.1. Comments received during public scoping are included in [Appendix F](#), and relevant comments have been addressed in the EIS and attached appendices. This EIS and the associated public process meet the requirements of HEPA and HAR Chapter 200.1.

Physical Environment (EIS Section 4.3)

Federal Authorities

Air Quality and Climate Change

Federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*

The federal Clean Air Act requires the USEPA to set National Ambient Air Quality Standards (40 CFR part 50) for six principal pollutants (“criteria” air pollutants) that can be harmful to public health and the environment (USEPA, 2022a).

Section 176(c)(4) of the federal Clean Air Act contains provisions that apply specifically to federal agency actions, including actions that receive federal funding. This section of the Clean Air Act requires federal agencies to ensure that their actions are consistent with the Clean Air Act and with applicable state air quality management plans. The USEPA’s general conformity

rule applies to federal actions occurring in nonattainment or in certain designated maintenance areas when the total direct and indirect emissions of nonattainment pollutants (or their precursors) exceed specified thresholds under National Ambient Air Quality Standards. The federal agency providing the funding for the proposed action is responsible for submitting conformity determination documentation to the USEPA (USEPA, 2022b; USEPA, 2022c). Due to the remote nature of the sanctuary, permitted activities depend on large vessel support for both transport and accommodations, which would be controlled under sanctuary designation. The number of permits has been in decline over the past 10 years, rendering fewer vessels operating within the proposed sanctuary. While the lands of Midway Atoll are outside of the proposed sanctuary, the National Wildlife Refuge accommodates 50–60 staff at any given time, and relies on supply barges that travel through the proposed sanctuary, and airplanes to maintain operations, a 2,600-mile round trip. The proposed sanctuary designation does not include stationary sources of emissions and would not result in emissions that exceed thresholds. Therefore, the proposed sanctuary designation is not subject to a formal conformity determination.

During scoping, the EPA recommended that the draft EIS include a draft general conformity determination to fulfill the public participation requirements of 40 CFR 93.156. In response, NOAA has reviewed the requirements of the Clean Air Act, and determined that a conformity determination is not required as the proposed action meets the *de minimis* standard on 40 CFR 93.153(c)(2). Specifically, the proposed action falls under three categories of actions determined to “result in no emissions increase or an increase in emissions that is clearly *de minimis*,” 1) “Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted,” and 2) “Rulemaking and policy development and issuance,” and 3) “Routine operation of facilities, mobile assets and equipment.”

MARPOL Annex VI Regulations for the Prevention of Air Pollution from Ships

Annex VI of MARPOL, the International Convention for the Prevention of Pollution from Ships, addresses air pollution from ocean-going ships. Annex VI’s international air pollution requirements set limits on nitrogen oxides emissions and require use of fuel with lower sulfur content to reduce ozone-producing pollution. Designated emission control areas set more stringent standards for sulfur oxides, nitrogen oxides, and particulate matter. These requirements apply to vessels operating in U.S. waters as well as ships operating within 200 nautical miles of the coast of North America, also known as the North American Emission Control Area (USEPA, 2021). In 2011, the International Maritime Organization adopted more stringent measures to significantly reduce the amount of greenhouse gas emissions from ships; these measures went into effect on January 1, 2013 (IMO, 2019a). Transiting vessels, primarily international cargo ships, would be allowed to use identified sealanes in the sanctuary to avoid dangerous sea conditions, thus reducing fuel consumption, operating in calmer conditions, and reducing emissions.

Geology and Oceanography

Submerged Lands Act, 43 U.S.C. § 1301 *et seq.*

Under the Submerged Lands Act, the location of energy and mineral resources determines whether or not they fall under state control. The Submerged Lands Act granted states title to the natural resources located within 3 miles of their coastline. For purposes of the Submerged Lands Act, the term “natural resources” includes oil, gas, and all other minerals. The State has designated all State waters of Papahānaumokuākea, which includes a prohibition “to engage in any activity ... that can or does result in damaging or destroying coral.” This effectively prohibits the exploitation of natural resources, as defined in the Submerged Lands Act, within State waters.

Water Quality

Marine water quality is regulated by numerous statutes and government agencies. These serve to protect the marine environment from the various point and nonpoint sources of marine pollution.

Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA), 33 U.S.C. § 1251 *et seq.*

The CWA was passed in 1972 by Congress, and amended in 1987. Point source discharges into waters of the United States are prohibited under the CWA unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits require compliance with technology- and water quality–based treatment standards. Two sections of the CWA deal specifically with discharges to marine and ocean waters.

In 2018, the EPA added Tern Island to the List of Impaired Waters (Section 303(d)) for trash, determining that waters around Tern Island are not meeting the water quality standards of Hawai‘i for trash based on a Center for Biological Diversity review. The EPA recommended that NOAA consider strategies focused on minimizing trash and marine debris in the waters around Tern Island.

CWA Section 312 (33 U.S.C. § 1322) establishes a regulatory framework to protect human health and the aquatic environment from disease-causing microorganisms that may be present in sewage from boats. Pursuant to Section 312 of the CWA and its implementing regulations (33 CFR part 159), all recreational boats with installed toilet facilities must have an operable Marine Sanitation Device on board. All installed Marine Sanitation Devices must be USCG-certified. USCG-certified devices are so labeled except for some holding tanks, which are certified by definition under Section 312 of the CWA (33 U.S.C. § 1322).

Under CWA Section 403 (33 U.S.C. § 1343), any discharge to the territorial seas (3 miles) or beyond also must comply with the Ocean Discharge Criteria established under CWA Section 403.

Section 404 of the CWA establishes a permit program to regulate the discharge of dredged or fill material into waters of the U.S., including wetlands. Section 404 requires a permit before dredged or fill material may be discharged into waters of the U.S., unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities) (USEPA, 2022d).

Under Section 401 of the CWA, a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the U.S. unless a Section 401 water quality certification is issued, or certification is waived. States and authorized tribes where the discharge would originate are generally responsible for issuing water quality certifications. In cases where a state or tribe does not have authority, the USEPA is responsible for issuing certification (33 U.S.C. § 1341) (USEPA, 2022e).

CWA Section 311 pertains to cleanup and removal of oil and/or hazardous substance discharges into navigable waters, adjoining shorelines, or certain other areas. Section 311(c)(1)(A) requires the President to ensure effective and immediate removal of a discharge by, for example, directing all federal, state, and private actions to remove a discharge or mitigate or prevent a substantial threat of a discharge (USEPA, 2023a).

The proposed action complies with the CWA through the permit process, ensuring permittees have an acceptable plan for addressing vessel discharge. Without a permit, discharge must be limited to discharge incidental to vessel operations such as approved marine sanitation device effluent, cooling water, and engine exhaust. Within Special Preservation Areas or the Midway Atoll Special Management Area, discharge is limited to “vessel engine cooling water, weather deck runoff, and vessel engine exhaust.” The exceptions to this activity must also be conducted in accordance with other applicable federal statutes and regulations. Sanctuary designation also confers the powers of the NMSA, which allow for emergency action and cost recovery in the event of damage or potential damage to sanctuary resources, such as with a vessel grounding in which fuel, oil, or other fluid or debris may be released.

Vessel Incidental Discharge Act (Title IX of the Frank LoBiondo Coast Guard Authorization Act of 2018, Pub. L. 115-282)

On December 4, 2018, the President signed into law the "Vessel Incidental Discharge Act" (VIDA) (Title IX of the Frank LoBiondo Coast Guard Authorization Act of 2018). The VIDA restructures how EPA and the U.S. Coast Guard (USCG) regulate incidental discharges, primarily from commercial vessels, into waters of the United States and the contiguous zone. Specifically, the VIDA requires EPA to develop new national standards of performance for commercial vessel discharges and the USCG to develop corresponding implementing regulations.

On October 26, 2020, EPA's Notice of Proposed Rulemaking for the VIDA was published in the Federal Register for public comment. A Supplemental Notice of Proposed Rulemaking followed on October 18, 2023. The proposed rule would reduce the environmental impact of discharges, such as ballast water, that are incidental to the normal operation of commercial vessels. When finalized, this new rule will streamline the current patchwork of federal, state, and local requirements that apply to the commercial vessel community and better protect our nation's waters.

The following interim requirements continue to apply until EPA publishes final standards and the USCG publishes corresponding implementing regulations:

- For large commercial vessels (≥ 79 feet in length), except fishing vessels: The existing vessel discharge requirements established through the EPA 2013 Vessel General Permit

(VGP) and the USCG ballast water regulations, and any applicable state and local government requirements.

- For small vessels (<79 feet in length) and fishing vessels of any size: The existing discharge requirements for ballast water only established through the EPA 2013 VGP and the USCG ballast water regulations, and any applicable state and local government requirements.

Prior to the VIDA, the USEPA regulated incidental discharges from commercial vessels under the NPDES Permit Program, primarily through two NPDES general permits: the Vessel General Permit and the Small Vessel General Permit (USEPA, 2022f).

Title I of the Marine Protection, Research, and Sanctuaries Act (MPRSA), also known as the Ocean Dumping Act, t, 33 U.S.C. §§ 1401 *et seq.*

The MPRSA, also known as the Ocean Dumping Act, prohibits dumping into marine waters material that would unreasonably degrade or endanger human health or the marine environment. Ocean dumping cannot occur unless a permit is issued under the MPRSA. The USEPA is the permitting agency for the ocean disposal of all materials except dredged material. In the case of ocean disposal of dredged material, the decision to issue a permit is made by the USACE, using the USEPA's environmental criteria and subject to USEPA's concurrence (USEPA, 2022g).

Oil Pollution Act (OPA) of 1990, 33 U.S.C. § 2701 *et seq.*

The OPA of 1990 streamlined and strengthened the USEPA's ability to prevent and respond to catastrophic oil spills. A trust fund financed by a tax on oil is available to clean up spills when the responsible party is incapable or unwilling to do so. The OPA requires oil storage facilities and vessels to submit to the federal government plans detailing how they will respond to large discharges. The USEPA has published regulations for aboveground storage facilities; the USCG has done so for oil tankers. The OPA also requires the development of Area Contingency Plans to prepare and plan for oil spill response on a regional scale (USEPA, 2022h). See Section 4.6.2 of the final EIS for more information.

MARPOL Annex I Regulations for the Prevention of Pollution by Oil

Annex I of MARPOL, the International Convention for the Prevention of Pollution from Ships, addresses pollution of the marine environment by oil pollution from ships. It details discharge requirements for prevention of pollution by oil and oily materials (IMO, 2019b).

MARPOL Annex IV Regulations for the Prevention of Pollution by Sewage from Ships

Annex IV of MARPOL, Prevention of Pollution by Sewage from Ships, contains a set of regulations regarding the discharge of sewage into the sea from ships, including: regulations regarding the ships' equipment, systems for the control of sewage discharge, the provision of port reception facilities for sewage, and requirements for survey and certification. The regulations in Annex IV prohibit the discharge of sewage into the sea within a specified distance from the nearest land, unless otherwise provided, since it is generally considered that bacterial

processes in the ocean are capable of processing raw sewage (IMO, 2019b). Proposed regulations either prohibit or regulate this discharge throughout the proposed sanctuary.

MARPOL Annex V Regulations for the Prevention of Pollution by Garbage from Ships

The Act to Prevent Pollution from Ships (33 U.S.C. § 1901 *et seq.*) implements provisions of the International Convention for the Prevention of Pollution from Ships (MARPOL), including Annex V, which regulates prevention of pollution by garbage from ships. The discharge of solid wastes in United States waters is regulated under the Act to Prevent Pollution from Ships, as amended by the Marine Plastic Pollution Research and Control Act of 1987, and the Clean Water Act. Under these laws, the disposal of plastics is prohibited in all waters, and other garbage, including paper, glass, rags, metal, and similar materials, is prohibited within 14 miles (12 nm) from shore (unless macerated). Garbage ground to pieces under an inch can be discharged beyond 3 nm from shore (IMO, 2019c). Proposed regulations either prohibit or regulate this discharge throughout the proposed sanctuary.

Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*

The CZMA provides incentives for coastal states to develop and implement coastal area management programs. Among other things, the CZMA requires states that participate in the National Coastal Zone Management Program (CZMP) to develop coastal nonpoint pollution control programs. Appendix C provides a summary of ONMS' consultation with the State of Hawai'i Office of Planning CZMP. **NOAA has concluded the CZMA consultation process and documented all compliance steps in the final EIS, Appendix C.**

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675, as amended

CERCLA addresses cleanup of hazardous substances and mandates liability for environmental cleanup on those who release hazardous substances into the environment. In conjunction with the CWA, it requires preparation of a National Contingency Plan for responding to oil or hazardous substances release. The EPA placed Tern Island on the Federal Agency Hazardous Waste Compliance Docket in 2004 due to legacy military waste and associated hazardous substances buried on the island. EPA and USFWS completed a CERCLA Preliminary Assessment (PA) of Tern Island in 2014, confirming that polychlorinated biphenyls (PCBs), lead, hydrocarbons, dioxins/furans, and heavy metals from onsite buried military wastes have been released in sensitive marine and terrestrial environments based on elevated levels of PCBs in monk seals inhabiting the area. In 2019, EPA completed a removal assessment for hazardous substances on the island. Data from the report demonstrated elevated concentrations of metals, PCBs and polycyclic aromatic hydrocarbons in soil, groundwater, and surface water in the vicinity of the legacy "Bulky Dump" and the southeastern corner of the island. EPA is coordinating with USFWS to conduct a removal action of these hazardous substances to mitigate impacts from the Bulky Dump (exposed during Hurricane Walaka) and other isolated areas of concern. At this time, Tern Island has not been included on the National Priorities List.

Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*

RCRA addresses hazardous waste management, establishing duties and responsibilities for hazardous waste generators, transporters, handlers, and disposers. RCRA requires that vessels that generate or transport hazardous waste offload these wastes at treatment or disposal facilities or outside of the territorial waters of the United States.

Marine Debris Act 33 U.S.C. § 1951 *et seq.*

The Marine Debris Act, signed into law in 2006 and amended in 2012, 2018, and 2020, established a Marine Debris Program within NOAA to identify, determine sources of, assess, prevent, reduce, and remove marine debris and address adverse impacts on the U.S. economy, the marine environment, and navigation safety. The Marine Debris Act also directs NOAA to provide national and regional coordination to assist states, tribes, and regional organizations in the process of addressing marine debris, and to undertake outreach and education activities for the public and other stakeholders on sources of marine debris, threats associated with marine debris, and approaches to identifying and addressing marine debris. NOAA has had an established marine debris program for Papahānaumokuākea since 1996, including a recent update to the [Marine Debris Action Plan](#). The impact of marine debris on Papahānaumokuākea resources continues to be a primary threat, and annual clean-ups currently continue through a partnership with NOAA and the Papahānaumokuākea Marine Debris Project (PMDP). Between 1996 and 2018, NOAA removed 923 metric tons of marine debris from Papahānaumokuākea, including 74 metric tons of marine debris from shallow coral reef and shoreline environments in 2018. From 2020 to 2023, PMDP removed an additional [228 metric tons of debris](#).

State Authorities

Conservation District, Chapter 183C, Hawaii Revised Statutes

HRS Chapter 183C establishes the State's authority over submerged lands, including those of Papahānaumokuākea. The State Board of Land and Natural Resources provides a public process for review and determination of all permits requested for land uses within a conservation district. The rules for this program are presented in Hawaii Administrative Rules, Title 13, Chapter 5. This requirement will continue in the same manner under the proposed action.

Water Pollution, Chapter 342D, Hawaii Revised Statutes

The Hawai'i State Department of Health implements regulations governing water quality in the State (HAR Chapter 11-54), including ensuring water quality standards are met. Chapter 11-55 includes water pollution laws and regulations, and issuing NPDES permits for point-source discharge under the authority of the CWA. The State also has Ballast Water Management rules (HAR Chapter 1-76) which complement federal regulations to prevent the introduction of invasive species through vessel ballast waters.

Biological Environment (EIS Section 4.4)

There are numerous federal and state laws and regulations providing protection of biological resources in the study area. An overview of some of the primary regulations and regulating agencies are summarized below (note, the following does not comprise a comprehensive list).

Federal Authorities

Endangered Species Act (ESA), 16 U.S.C. § 1531 et seq.

The Endangered Species Act (ESA) of 1973, as amended, provides for the conservation of species that are endangered or threatened throughout all or a significant portion of their range, and the conservation of the ecosystems on which they depend. The ESA directs all federal agencies to work to conserve endangered and threatened species and to use their authorities to further the purposes of the act. NMFS works with USFWS to manage ESA listed species. Generally, NMFS manages marine species, while USFWS manages land and freshwater species. A species is considered endangered if it is in danger of extinction throughout all or a significant portion of its range. A species is considered threatened if it is likely to become an endangered species within the foreseeable future. When listing a species as threatened or endangered, NMFS or USFWS also designates critical habitat for the species to the maximum extent prudent and determinable (16 U.S.C. § 1533(a)(3)). Section 4.4 of the EIS provides information on threatened and endangered species in the project area. Chapter 5 of the EIS analyzes the potential impacts of the designation (and not individual management activities or permitted actions) to these species. Appendix C provides a summary of the ESA Section 7 consultation process with NMFS and the USFWS.

Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. § 1801 et seq.

Under the MSA, the U.S. claimed sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the U.S. EEZ (within 230 mi [200 nm] of the shoreline). The MSA established a procedure for authorizing foreign fishing, and prohibited unauthorized foreign fishing within the U.S. EEZ.

The MSA also established national standards for fishery conservation and management within the U.S. EEZ, and created eight Regional Fishery Management Councils composed of state officials with fishery management responsibility, the regional administrators of NMFS, and individuals appointed by the Secretary of Commerce who are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. The Councils are responsible for preparing and amending fishery management plans for each fishery under their authority that requires conservation and management.

Fishery management plans (FMPs) describe the fisheries and contain necessary and appropriate conservation and management measures, applicable to foreign vessels in U.S. waters and fishing by U.S. vessels. The plans are submitted to the Secretary of Commerce, who has delegated to NOAA approval of the plans. If approved, NMFS promulgates implementing regulations. NMFS may prepare Secretarial FMPs if the appropriate Council fails to develop such a plan.

The Fishery Ecosystem Plan for the Hawaiian Archipelago (WPFMC, 2009a) and the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region (WPFMC, 2009b) cover the proposed action area and were prepared by NMFS and the Western Pacific Fishery Management Council (WPFMC) to comply with Section 303(a)(7) of the MSA to:

- Describe and identify EFH for the fishery;
- Designate Habitat Areas of Particular Concern (HAPC);
- Minimize to the extent practicable the adverse effects of fishing on EFH; and
- Identify other actions to encourage the conservation and enhancement of EFH.

EFH is broadly defined by depth in the Western Pacific Region as described in Section 4.3 of the EIS. No HAPC has been designated in the proposed action area and commercial fishing is prohibited throughout the action area by 50 CFR 404 and Presidential Proclamation 9478.

Fish and Wildlife Coordination Act and Implementing Regulations, 16 U.S.C. § 661 et seq.

Any federal agency that proposes to control or modify any body of water must first consult with the USFWS or NMFS, as appropriate, and with the head of the appropriate state agency exercising administration over the wildlife resources of the affected state. The USACE has a memorandum of understanding with the USFWS to provide a coordination act report to assist in planning efforts.

Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361 et seq.

The MMPA, enacted by Congress on October 21, 1972, establishes a national policy to prevent marine mammal species and population stocks from declining beyond the point where they cease to be significant functioning elements of the ecosystems of which they are a part. The MMPA, as amended, prohibits, with certain exceptions, the “take” of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. The MMPA defines “take” as: “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal” (16 U.S.C. § 1362(13)). Harassment means any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment) (16 U.S.C. § 1362).

Section 101(a)(5)(A-D) of the MMPA provides a mechanism for allowing, upon request, the “incidental,” but not intentional, taking, of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing or directed research on marine mammals) within a specified geographic region. The NMFS Office of Protected Resources processes applications for incidental takes of small numbers of marine mammals. Authorization for incidental takes may be granted if NMFS finds that the taking would be of small numbers, have no more than a “negligible impact” on those marine mammal species or stocks, and not have an “unmitigable adverse impact” on the availability of the species or stock for “subsistence” uses. NMFS issuance of an incidental take authorization also requires NMFS to make determinations under NEPA and section 7 of the ESA.

Migratory Bird Treaty Act of 1918, as amended, 16 U.S.C. § 703 et seq.

The Migratory Bird Treaty Act of 1918 (MBTA) implements the U.S.’s commitment to bilateral treaties, or conventions, with Great Britain, Canada, Japan, Russia, and Mexico for the

protection of shared migratory bird resources. The MBTA establishes that it is unlawful to pursue, hunt, take, capture, kill or sell migratory birds unless authorized by a permit issued by USFWS. Take is defined in regulations as: “pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect” (50 CFR § 10.12). The statute does not discriminate between live or dead birds, and gives full protection to any bird parts including feathers, eggs and nests. The MBTA protects over 800 species of birds that occur in the U.S., and the list of migratory bird species protected by the MBTA is set forth in 50 CFR § 10.13. Of these migratory bird species protected under the MBTA, 21 species of seabirds nest on the islets within Papahānaumokuākea, while an additional 47 species of shorebirds may be found transiting, resting, or foraging within the study area. NOAA has determined that the proposed action would not cause the take of any migratory bird species protected under the MBTA, as detailed in Appendix C: Consultations.

Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANCPA), 16 U.S.C. § 4701 et seq.

NANCPA mandates ballast water management for vessels entering the Great Lakes. This law was reauthorized as the National Invasive Species Act of 1996 (NISA 96; Pub. L. 104-332), which strengthened the 1990 law and required the development of voluntary ballast management guidelines for all other ships entering U.S. waters. The law also requires all vessels that enter U.S. territorial waters (with certain exemptions) to manage ballast water according to prescribed measures. NISA 96 also required the USCG to evaluate the effectiveness of the voluntary ballast management program three years after implementation. In 2004, voluntary guidelines were determined to be ineffective, and thus USCG initiated mandatory ballast management for all ships entering U.S. waters from outside the U.S. EEZ.

Under current management, permitted vessels undergo hull inspections, rodent inspections and adhere to strict cleaning protocols for personal gear and equipment. The Monument has a technical Invasive Algal Working Group, and NOAA conducts ongoing invasive species surveys.

USCG Ballast Water Management Regulation

Linked to the National Invasive Species Act of 1996, the USCG established the rule, “Standards for Living Organisms in Ships’ Ballast Water Discharged in U.S. Waters” (77 FR 17253), which is codified at 33 CFR Part 151 and 46 CFR Part 162. The final rule became effective on June 21, 2012. The rule prohibits all vessels with ballast tanks to discharge untreated ballast water into U.S. waters. Ships must also manage their ballast water by following treatment methods and good practices.

Executive Order 13112—Invasive Species, February 3, 1999 (64 FR 6183)

E.O. 13112 tasked executive departments and agencies to take steps to prevent the introduction and spread of invasive species, and to support efforts to eradicate and control invasive species that are established. E.O. 13112 also tasked the Department of the Interior with establishing an Invasive Species Advisory Committee. President Biden’s E.O. 14048 (2021) reestablished the Invasive Species Advisory Committee. The proposed action would support the agency in meeting the mandates of E.O. 13112 to prevent the introduction and spread of invasive species because it would be prohibited to introduce or otherwise release from within or into the proposed

sanctuary an introduced species. Invasive species are discussed in sections 4.2.7 and 5.2.3 of the EIS and introducing or otherwise releasing an introduced species from within or into the sanctuary is prohibited in the proposed rule.

State Authorities

Fishing in the Northwestern Hawaiian Islands, Title 12, Section 188-37, Hawaii Revised Statutes

The Board of Land and Natural Resources may issue permits for extractive activities in the Northwestern Hawaiian Islands. This state permit is part of the rules for the Northwestern Hawaiian Islands Marine Refuge and built into the current joint permitting process for the Monument.

Northwestern Hawaiian Islands Marine Refuge, Title 13, Ch. 60.5, Hawaii Administrative Rules (2005)

The Northwestern Hawaiian Islands Marine Refuge, established in 2005, includes the waters extending three miles seaward of any coastline from Nihoa to Hōlanikū (Kure Atoll), excluding Midway Atoll. Refuge rules prohibit access without a permit, and regulate extractive activities through the permit. These rules are built into the current Papahānaumokuākea permit approval process and will continue in the same manner under the proposed action.

Rules Regulating Wildlife Sanctuaries, Title 13, Ch. 126, Hawaii Administrative Rules

Hawaii Revised Statutes Title 12, Section 183D-4, provides that the Department of Land and Natural Resources may establish wildlife sanctuaries such as the Kure Atoll State Wildlife Sanctuary. The rules established to conserve, manage, and protect the indigenous wildlife of Hawai‘i and their habitats in sanctuaries are presented in Hawaii Administrative Rule Title 13, Chapter 126. The Kure Atoll State Wildlife Sanctuary was established in 1981. Green Island and Sand Island are closed wildlife sanctuaries meaning that entry is prohibited unless authorized by permit. This permit is built into the current Papahānaumokuākea permit approval process and will continue in the same manner under the proposed action.

Cultural Heritage and Maritime Heritage Resources (EIS Section 4.5)

Cultural and historical resources are regulated through numerous federal and state laws, as summarized below. Depending on the resources identified, the following authorities could apply within the study area.

Federal Authorities

National Historic Preservation Act of 1996, 54 U.S.C. § 300101 et seq.

Cultural and historical resources on state and federal lands are protected primarily through the National Historic Preservation Act (NHPA) (16 U.S.C. § 300101 *et seq.*) of 1966 and its implementing regulations (found at 36 CFR Part 800). Section 106 of the NHPA requires federal

agencies to identify and evaluate the effects of their actions on properties listed in or eligible for listing in the National Register of Historic Places (NRHP). Consultation with the State Historic Preservation Officer (SHPO), Native American tribes Tribal Historic Preservation Officer (THPO), the Advisory Council for Historic Preservation, and other interested parties is part of the regulatory process. The intent of the process is to require the federal agency, in consultation with other affected parties, to make an informed decision as to the effect its actions would have on something that may be important to our heritage. To be protected under the NHPA, a property must meet specific criteria of significance established under the NHPA's regulations at 36 CFR Part 60.

According to NHPA (36 CFR Part 800), the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility, in consultation with the SHPO/THPO and any Indian tribe that attaches religious and cultural significance to identified properties, and guided by the Secretary's Standards and Guidelines for Evaluation. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

Regarding assessment of adverse effects, NHPA (36 CFR § 800.5) states that the agency official shall apply criteria of adverse effects to historic properties within the area of potential effects, in consultation with the SHPO/THPO and any Indian tribe that attaches religious and cultural significance to identified historic properties. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public. A summary of the consultation process is provided in Appendix C. **NOAA's Finding of No Historic Properties Affected for the Proposed Papahānaumokuākea National Marine Sanctuary Designation is included in Appendix C.**

Archaeological Resources Protection Act of 1979, as amended, 16 U.S.C. § 470 aa-mm

The Archaeological Resources Protection Act governs the excavation of archaeological sites on federal and Indian lands in the United States, and the removal and disposition of archaeological collections from those sites. The Archaeological Resources Protection Act was enacted "to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979." This act also imposes criminal penalties for unauthorized excavations.

Native American Graves Protection and Repatriation Act of 1990, as amended, 25 U.S.C. § 3001 et seq.

This act requires federal agencies to identify and inventory possible Native American, native Alaskan, or native Hawaiian human remains, burial goods, or cultural items in their collections

and to make them available for repatriation to affiliated tribes or lineal descendants. The act also establishes procedures for handling and disposing of such remains, burial goods, or cultural items discovered on federal lands.

The ongoing protection of Papahānaumokuākea’s cultural heritage is demonstrated through a series of management actions, including the development of Mai Ka Pō Mai, a collaborative management framework that guides co-trustee agencies towards integrating traditional Hawaiian knowledge systems, values, and practices into all areas of management. These and other existing management measures ensure compliance with this Act.

National Marine Sanctuaries Act, Section 301(b)(7) (16 U.S.C. § 1431(b)(7))

Section 301(b)(7) of the National Marine Sanctuaries Act authorizes NOAA to “Develop and implement coordinated plans” with various government entities. In 2000, Executive Order 13158: Marine Protected Areas reaffirmed this by stating each federal agency whose actions affect the natural or cultural resources that are protected by an MPA shall identify such actions. To the extent permitted by law and to the maximum extent practicable, each federal agency, in taking such actions, shall avoid harm to the natural and cultural resources that are protected by an MPA.

Abandoned Shipwreck Act of 1987, 43 U.S.C. § 2101 et seq.

The Abandoned Shipwrecks Act is meant to protect historic shipwrecks in U.S. waters from treasure hunters and unauthorized salvagers by transferring the title of the wreck to the U.S. state whose waters it lies in. This Act covers non-military vessels, including whalers, sampans, and fishing vessels. Shipwrecks in federal waters remain under the jurisdiction of the federal government.

Sunken Military Craft Act of 2004, 10 U.S.C. § 113 et seq.

The primary purpose of the Sunken Military Craft Act of 2004 (SMCA) is to preserve and protect from unauthorized disturbance all sunken military craft that are owned by the United States government, as well as foreign sunken military craft that lie within U.S. waters. This act asserts federal ownership over sunken military craft, regardless of their location. A number of federal agencies, such as the U.S. Navy and the U.S. Coast Guard, have jurisdiction and management over sunken military craft, including statutory authority to conduct and permit specific activities. The Act provides that no person shall engage in or attempt to engage in any activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft, except — (1) as authorized by a permit under this title by the Secretary concerned; (2) as authorized by regulations issued under this title; or (3) as otherwise authorized by law.

Antiquities Act of 1906, 54 U.S.C. § 320301 et seq.

In addition to being the authority that designated Papahānaumokuākea Marine National Monument (discussed above), this act requires a permit to excavate or remove any historic objects or antiquities from federal lands, and grants the President the authority to designate as national monuments landmarks of historic or scientific importance. The permit provisions of the Antiquities Act are generally enforced through the NHPA process.

Historic Sites, Buildings, Objects and Antiquities Act of 1935, 54 U.S.C. § 3201 et seq.

This act establishes the national policy of preserving historic sites, buildings, and objects of national significance and gives the Secretary of the Interior the power to make historic surveys and document, evaluate, acquire, and preserve archaeological and historic sites across the country. This act provided the authority behind the establishment of the National Historic Landmarks and Historic American Buildings Survey programs.

Archaeological and Historic Preservation Act (AHPA) of 1974

The AHPA applies to all federal agencies, requiring them to preserve historic and archeological objects and materials that would otherwise be lost or destroyed as a result of their projects or licensed activities or programs. The AHPA built upon the Historic Sites Act of 1935, which established historic preservation to be national policy. The act established permanent institutions and created a clearly defined process for historic preservation in the United States. Historic structures that would be affected by federal projects—or by work that was federally funded—now had to be documented to standards issued by the Secretary of the Interior. This act provides similar protections of the NHPA.

Preserve America Executive Order

This E.O. directs federal agencies to advance the protection, enhancement, and contemporary use of federal historic properties and to promote partnerships for the preservation and use of historic properties, particularly through heritage tourism.

State Authorities

Historic Preservation, Title 1, Chapter 6E, Hawaii Revised Statutes,

The Hawai'i Historic Preservation Program is managed by the Department of Land and Natural Resources State Historic Preservation Division. The program requires review of projects that may impact a historic site.

State Historic Preservation Division Rules, Title 13, Chapters 275-284, Hawaii Administrative Rules

This section of the HAR covers rules governing the Hawai'i Historic Preservation Program including historic preservation, archaeological site development, preservation, practices, surveys, reports, data, agency reviews, and other aspects of the program.

Socioeconomic Resources, Human Uses, and Environmental Justice (EIS Section 4.6)

Federal Authorities

Executive Order (E.O.) 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations and Executive Order (E.O.)

14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

E.O. 12898 and E.O. 14096 direct federal agencies to identify and address disproportionately high and adverse effects of their actions on human health and the environment of communities with environmental justice concerns. The analysis of environmental justice issues associated with the proposed action are presented in Chapter 5.

Executive Order 14008: Tackling the Climate Crisis at Home and Abroad

In 2021, President Biden signed E.O. 14008 reaffirming E.O. 12898, stating in Sec. 219 that agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related, and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts. In addition, Sec. 220 of E.O. 14008 called for the creation of a White House Environmental Justice Interagency Council (Interagency Council) within the Executive Office of the President.

Executive Order 13045, Protection of Children from Environmental Health or Safety Risks

In April 1997, President Clinton signed EO 13045, Protection of Children from Environmental Health Risks and Safety Risks. This EO requires federal agencies to identify, assess, and address disproportionate environmental health and safety risks to children from federal actions.

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Appendix F: Summary of Scoping Input on Notice of Intent and EIS Preparation Notice, and State of Hawai‘i Responses to Public Scoping Comments

F.1. Public Participation

Public involvement is a key component of both the NEPA and HEPA processes. Public input is formalized in a public scoping process and in prescribed public review/comment periods. Figure F.1 depicts the stages of public involvement in the HEPA/NEPA environmental processes, with opportunities for public input highlighted in yellow. HEPA and NEPA public involvement processes for this EIS are running concurrently to meet the requirements for both regulations.

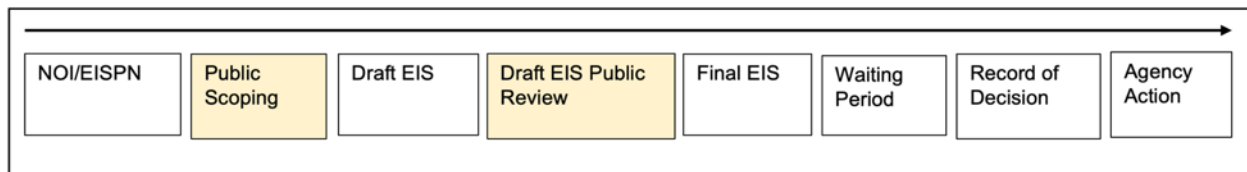


Figure F.1. NEPA/HEPA public participation process and opportunities for public input (yellow)

Notice of Intent/EIS Preparation Notice

Publication of an NOI in the Federal Register alerts the public of an agency’s intent to prepare an EIS and initiates the NEPA 30-day public scoping period. The NOI for this EIS was published on November 19, 2021 with a public comment period extending through January 31, 2022 (86 FR 64904).

In accordance with HAR Section 11-200.1-23, publication of the HEPA EIS Preparation Notice (EISPN) in the State Office of Environmental Quality Control (now Environmental Review Program) bi-monthly publication, The Environmental Notice, alerts the public of the applicant’s intent to prepare an EIS and initiates the HEPA 30-day public comment period. Notice of the HEPA EISPN availability was published in The Environmental Notice on December 8, 2021 with a public comment period extending through January 31, 2022. As required by HAR § 11-200.1-5(e)(4)(B), copies of the EISPN were submitted to the Hawai‘i State Library (Hawai‘i Document Center), Hilo Public Library, Lahaina Public Library, and Lihue Public Library.

Both of these public notifications included information on the public scoping meetings and how to participate in them. Additional information was provided via press releases, list-serve announcement, the Papahānaumokuākea Marine National Monument website, and the NOAA Office of National Marine Sanctuaries website.

Public consultation on effects of an action on historic properties is required in accordance with the National Historic Preservation Act (NHPA) Section 106, and HRS Chapter 343-2 requires an environmental assessment of cultural resources (Cultural Impacts Assessment or CIA) in determining the significance of a proposed project. These two processes were conducted in tandem with the HEPA/NEPA processes, and a CIA was prepared as outlined by HAR §11-200-10 and 16 through 18.

F.2. Public Scoping Summary

The purpose of a public scoping process is to help identify reasonable alternatives and potential impacts and to obtain input from the community regarding key issues of concern and resources to be addressed or analyzed through the EIS process. In this regard, it helps to define the “scope” of issues and analyses in the EIS. The intent of a scoping process is to reach out early and engage a broad range of stakeholders with the purpose of informing and requesting input. Methods to solicit public input during the scoping process for this EIS included notification, publication of project information, and invitations to participate in scoping at various stakeholder meetings and presentations.

NOAA invited federal, State, and local agencies; Native Hawaiian organizations; and the public to participate in the scoping process. Written comments were accepted throughout the public scoping period using two methods:

1. through the federal eRulemaking portal at <https://www.regulations.gov>;
2. sent in a hard copy letter via U.S. Postal Service.

Four public meetings were jointly held by NOAA and the State of Hawai‘i to gather input on the proposed sanctuary designation for Papahānaumokuākea. Public input on a variety of topics were specifically sought, including: proposed sanctuary boundaries; resources to protect; potential socio-economic, cultural, and biological impacts of concern; potential management measures, and regulations, but all input was accepted and recorded.

Due to the continuing COVID-19 threat, public scoping meetings were held virtually via Zoom. Based on the regulatory needs of the Monument agencies for recordkeeping, the meetings were moderated and recorded by a third-party provider. Meetings consisted of an informational presentation followed by an oral public comment period. All meetings were recorded as required by the State of Hawai‘i and transcribed. Transcripts are available upon request from NOAA.

A total of 143 people attended the virtual meetings, including agency representatives, with approximately 111 members of the public (based on non-governmental email addresses).

December 8, 2021 at 6:00PM HST – 52 participants

December 11, 2021 at 12:00PM HST – 28 participants

December 14, 2021 at 6:00PM HST – 30 participants

December 16, 2021 at 3:00PM HST – 33 participants

The virtual meetings were co-hosted by the National Oceanic and Atmospheric Administration (NOAA) and the State of Hawai‘i in cooperation with the U.S. Fish and Wildlife Service (USFWS) and the Office of Hawaiian Affairs (OHA). The meetings were conducted through a web-hosted video-conference platform to allow participants to see speakers, view prepared slides, and record the meeting. The presentation provided a background on the NWHI, the significance of this area to Kānaka ‘Ōiwi culture as well as important flora and fauna. An overview of the Proposed Action was given. Participants could pre-register to submit an oral comment at the meeting, but an opportunity to submit a comment without registering was also made available at the end of each meeting. Per HAR Section 11-200.1-23(d), the original

recordings were submitted as audio files with the draft EIS to the Environmental Review Program and are available from its online EA/EIS library. The transcripts for all oral comments are provided in Section 4. Written comments were accepted throughout the scoping period and are provided in Section 3. A list of all those that provided both written and oral comments during scoping is included in Table F.2.

Summary of Oral Public Input Received, By Topic

Only a few attendees chose to provide oral public comments during each virtual meeting. A total of 9 individuals, all Hawai'i residents, provided comments. Comments mainly addressed the areas of resource protection, sanctuary boundaries, and fishery management. Additionally, two-thirds of speakers emphasized the importance of Native Hawaiian participation, and/or practices and/or perspectives. A summary of the oral public comments received can be found in Table F.1.

Table F.1. Summary of oral public input received (issues and recommendations)

Topic	Issue or Recommendation	# of references to topic
Sanctuary Boundary	<ul style="list-style-type: none"> • Include all of the Monument and MEA in the sanctuary. Area should be viewed and managed as one place - this is important biologically and culturally. • Consider Native Hawaiian perspective when zoning. • Honor past agreements with small fishers, regarding the footprint of a sanctuary, especially near Kaua'i 	3
Resource Protection	<ul style="list-style-type: none"> • Resources of PMNM are fragile and exceptional. • Protection is essential to sustain native systems and wildlife. • A sanctuary would provide strong, lasting protections. • Life on earth depends on healthy oceans and ecosystems, so we need to protect them. • Not sure what we are protecting the resources from. 	6
Fishery Management	<ul style="list-style-type: none"> • Protect the fishing rights that had been established during 2016 expansion for fisher families in nearby islands. • Honor past agreements with small fishers. • Long-term sustainability is needed. • More fishery protection is needed. • Grant Native Hawaiian fishermen access to fishery if it is monitored and regulated. • Fish have been depleted at alarming rates. • Previous mismanagement of fisheries has negatively impacted the NWHI. We inherit the impacts of commercialism. • Fishers are constantly getting bombarded with fishing restrictions. Too many regulations on the little guy. • NOAA should honor past agreements made with small fishers regarding the footprint of a sanctuary, especially near the island of Kaua'i. 	8
Native Hawaiian Values, Practices and Contributions	<ul style="list-style-type: none"> • Voices of Native Hawaiians must be an integral part of the socio-economic conversations. • Look to, acknowledge, and/or build on the contributions of Native Hawaiians to the present PMNM management regime. 	4

N=9. Some participants provided input in multiple areas. Therefore, the number of references exceeds the number of participants.

Summary of Written Public Scoping Input Received, By Topic

A total of 73 written comment submissions were received during the scoping period. The team identified nine topics under which to categorize the comment submissions:

- 1) Economic/budget
- 2) Enforcement
- 3) Sanctuary Boundary
- 4) Threats
- 5) Fishery Management
- 6) NHPA 106 Properties
- 7) Native Hawaiian Values, Practices, and Management
- 8) Sanctuary Regulations
- 9) Resource Protections

The number of times each category was mentioned can be seen in Figure F.2. A single commenter could provide input in multiple categories, therefore there is a larger number of category tallies than total comments.

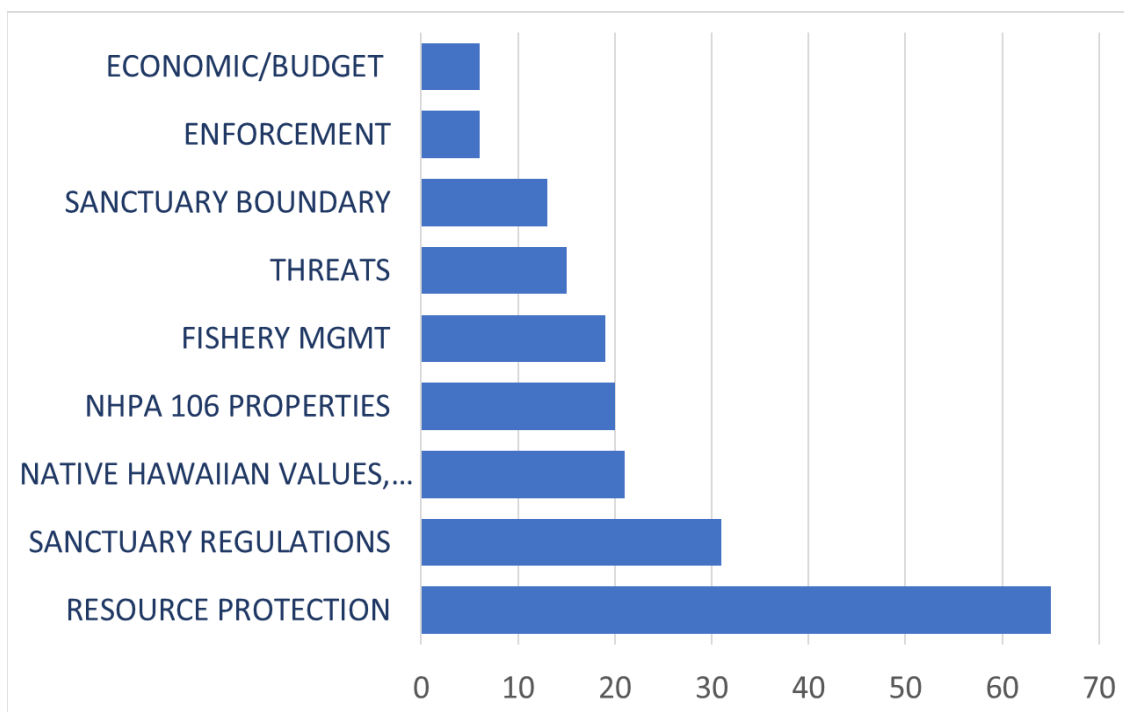


Figure F.2. Categories of written public comment submissions and number of references

Summary of Attitudinal Data Regarding Sanctuary Designation

Of the 82 total comments, 76% of comments were “pro-sanctuary” designation, 4% were against sanctuary designation and 20% did not definitively mention a pro or con attitude (see Figure F.3).

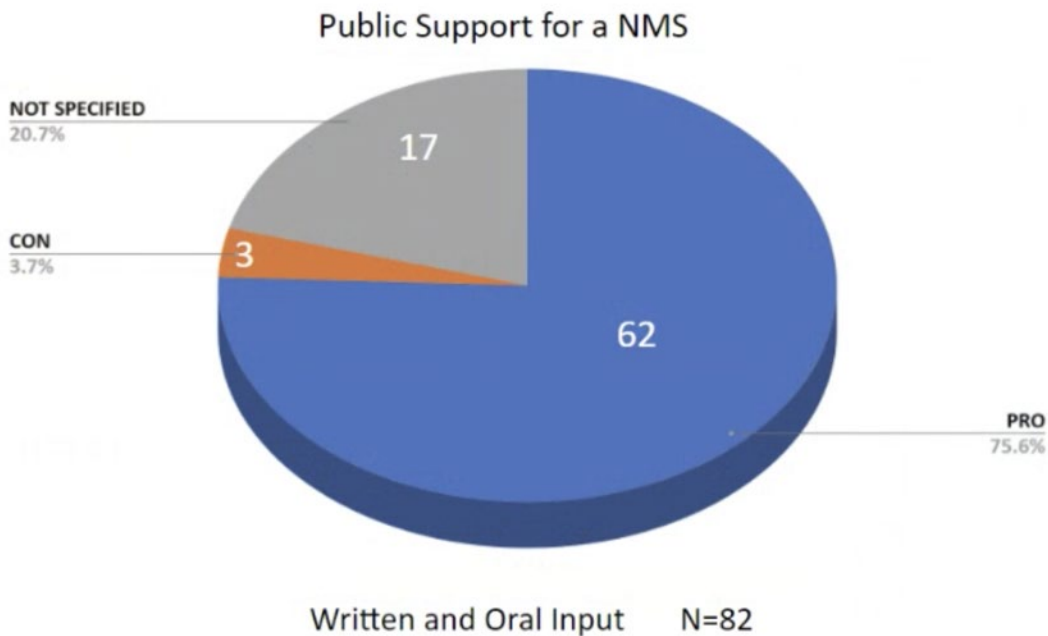


Figure F.3. Number and percentage of commenters who expressed positive or negative support of sanctuary designation

Summary of Comments by Geographic Location

The majority of the public comments were received from the continental United States (49) and Hawaii (19). Written public comments are available to view at the Regulations.gov website and transcripts of oral comments are available by request.

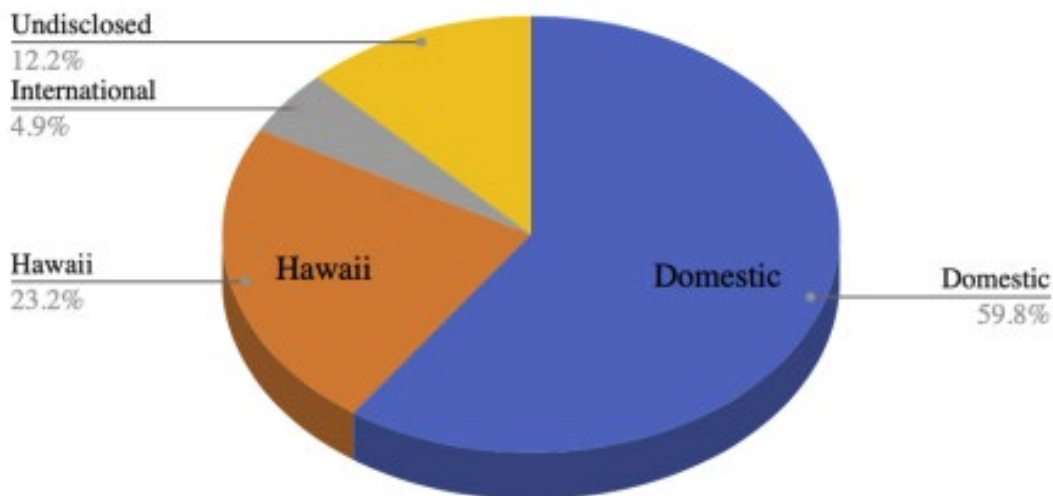


Figure F.4. Summary of public input: Origin of written and oral comments, N=82

Summary of State of Hawai'i Review of Substantive Comments Regarding Sanctuary Designation

All 82 written and oral communications were reviewed for substantive content and subsequently assigned to one or more subject categories. In determining whether a comment was substantive, the agency reviewers considered "... the validity, significance and relevance of the comment to the scope, analysis or process of the EIS (HAR Section 11-200.2-26[a])." For this EIS, comments that help refine the Proposed Action or alternatives; help inform the development of the EIS; or identify specific resource analyses to be conducted in the EIS were considered substantive. Statements considered to not be substantive were general comments with no specific information, such as those that stated preferences for or against the Proposed Action. A total of 51 comments were deemed substantive. From there, substantive comments were placed into one of four categories pertaining to the development of the draft EIS:

- 1) Purpose and Need
- 2) Alternatives
- 3) Affected Environment
- 4) Environmental Consequences

Section F.3 includes all scoping comments received (both written and oral) and Section F.4 provides responses to all substantive comments under the category headings listed above.

Table F.2. List of parties who submitted scoping comments

Parties	Provided Written Comment	Provided Oral Comment
Federal Agencies		
EPA	x	x
U.S. Navy	x	
Organizations		
Surfrider Foundation	x	x
The Pew Charitable Trusts (x2)	x	
National Marine Sanctuary Foundation (and partners)	x	
Ocean Sanctuaries	x	
Earth Island Shark Stewards	x	
Center for Sport Fishing Policy	x	
International Marine Mammal Project of Earth Island Institute	x	
Marine Mammal Commission	x	
The Deep Ocean Stewardship Initiative	x	
Cruise Lines International Association	x	
American Sportfishing	x	
Mystic Aquarium	x	
Creation Justice Ministries	x	
Defenders of Wildlife	x	
Northwest Hawaiian Islands Coral Reef Ecosystem Advisory Council (RAC) (X2)	x	
Center for Marine Conservation	x	
Individuals		
Michelle Johnston	x	
Callan Fromm	x	
John Pechin	x	
Constance Lombard	x	

Parties	Provided Written Comment	Provided Oral Comment
Rick V. Macys	X	
Anonymous	X	
Karie Wakat	X	
Dave Treichel	X	
Beth Orcutt	X	
Katherine Weeks	X	
Cory H.	X	
Maureen Kellman	X	
Christopher Kelley	X	
Linda M.B. Paul	X	
Anonymous	X	
Michele Paularena	X	
Nancy Fleming	X	
Diane Kastel (x4)	X	
J. Thew	X	
Jennifer Valentine	X	
Daphne Alden	X	
Denise Martini	X	
Anonymous	X	
Gregory Gordon	X	
Vic Bostock	X	
Scott Wolland	X	
Risa Mandell	X	
Julie Nagase Miller	X	
Stephanie Shorter	X	
J. Miller	X	
Jacqui Smith-Bates	X	
Neil Finlay	X	
Maria Gritsch	X	
Joe Smith	X	
Warren TenHouten	X	
Nancy Meehan	X	
Kelly Eigler	X	
Carol Jagiello	X	
Georgia Braithwaite	X	
Kristina Dutton	X	
Brad Nahill	X	
Susan Fleming	X	
Anonymous	X	
Elizabeth McCloskey	X	
Sarah Millisen	X	
Nancy Fleming	X	
Dinah Bear and Lois Schiffer	X	
Victor Carmichael	X	
Klayton Kubo		X
Devin Silva		X
Kenton Geer		X
Kolomona Kaho'ohalahala		X
Doug Fetterly		X
Tammy Harp		X
Brian Bowen		X

F.3. Scoping Comments

The following are written or transcribed comments received from parties listed in Table F.2.

F.3.1 Written Comments

Written comments were received via regulations.gov. Most of the comments received were submitted as form-generated text, while a few comments were submitted as attached letters. Written comments submitted as form-generated text are included in Section F.3.1.1, and written comments submitted as attachments are reproduced as received in Section F.3.1.2. No comments were received via the U.S. Postal Service.

F.3.1.1 Summary of Form-Generated Comments Submitted via Regulations.gov

Table F.3 contains the comments generated via the *regulations.gov* fillable form. Comments submitted as separate documents (i.e. attached, in Regulations.gov) are reproduced in section F.3.1.2.

Table F.3. Summary of Comments Received as Form-Generated Text via Regulations.gov

Name	Comment
Michelle Johnston	I fully support NOAA's Office of National Marine Sanctuaries initiation to consider designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. This designation would add the conservation benefits and permanency of a national marine sanctuary to safeguard resources in the marine portions of the monument, particularly the coral reef habitat, highly endangered Hawaiian monk seal, and threatened green turtles.
Callan Fromm	The wildlife I've seen during the Nautilus expedition's dives in the Monument have been absolutely jaw-dropping, and it's been so incredible to see so much seabed that's almost totally free of human debris. I've added some screenshots of a few of the amazing things from just one hour of watching tonight, November 28th, 2021, and they honestly don't capture the crispness of the video. There have been anglerfish, starfish, fuzzy pink lobsters, double-headed sponges covered in crinoids like living versions of the fossils I found as a kid in Indiana, and just so, so many beautiful corals-- I had no idea corals came in so many shapes and colours! Please give this area even greater protection under the law to better defend this sacred ground and deep-sea wonderland of life.
John Pechin	I support designation as a national marine sanctuary the original Papahā naumokuāfl kea Marine National Monument and the Monument Expansion Area (collectively "Papahāfl naumokuāfl kea" or "Monument"). The designation as a national marine sanctuary would strengthen and increase the long term protections already existing in the monument, In addition the designation would enhance existing authorities and the regulatory and enforcement framework. The scoping study should include a section on means of funding sources to support the monument over the long term. Please consider a voluntary tax provision similar to state of Minnesota Non Game Wildlife Fund. Sincerely, John H. Pechin
Constance Lombard	Watching EV Nautilus' livestream exploring the Papahānaumokuākea Marine National Monument has inspired an interest in marine life, for me and thousands of other people across the world. Papahānaumokuākea is an example of a diverse and culturally significant ecosystem that currently has a massive engagement with the public. This shows that people care about marine life, and its preservation and protection. Providing Papahānaumokuākea Marine National Monument with additional legal protection means that an important cultural legacy will be respected and that human impact to the monument will be limited. In a time where climate change and pollution are destroying marine ecosystems around the world, for example parts of the Great Barrier Reef here in Australia, it is important that we save what we can.
Rick V. Macys	To Whom it May Concern, I believe we should, as a civilized society, do whatever we have at our disposal to care for all animal life, and to live in harmony with nature as best as we can. To protect wildlife areas is akin to protecting life in general. We should always take care of the animals, wherever they may dwell. I am all for the added protections. Thank you!

Name	Comment
Anonymous	I am 100% in support of a marine sanctuary at Papahānaumokuākea, but a Native Hawaiian must be in charge of it. Despite making up such a small amount of the population, indigenous peoples make up the largest numbers of the worlds' conservationists, and someone with ancestral knowledge of the land and waters should be the one to oversee a sanctuary there.
Anonymous	While the Papahānaumokuākea Marine National Monument is currently closed to tourism, tourism's impact on the marine environment can not be forgotten when protecting these species. Hawaii had 10 million visitors in 2019 alone and with that, marine life is significantly impacted. This sanctuary needs to have protections in place from tourist activities that could potentially harm marine habitats and ecosystems like wake activities and scuba diving. These impacts need to be evaluated and accounted for. Currently, since there are no visitors, there are virtual tours and other places suggested to visit and these may need to stay permanently in place in order to protect the marine life around the monument. Further, the NOAA must also take into account climate change and the effects it has on the marine environment within what is now the Papahānaumokuākea Marine National Monument, especially with regard to ocean acidification, when completing this EIS. Across the world, climate change and its correlated sea level rise, water acidification, and rise in surface temperatures have been well documented and Papahānaumokuākea is no exception. As humans continue to release carbon dioxide into the atmosphere, the ocean will be forced to absorb higher and higher levels of it. This means corals will become bleached ,reefs slowly killed, and organisms relying on carbonate based skeletons and shells will be weakened, if not killed. Although these effects are already ongoing in the national monument, they are projected to continually worsen this decade. In preparation of this EIS, the NOAA should account for climate change and the continued need to understand its causes and impacts. This will ensure the ability to better plan for the future of the vast ecosystems and wildlife in Papahānaumokuākea, such as its reef system. Finally, ocean pollution is becoming an increasing concern and one that is especially alarming to the Papahānaumokuākea Marine National Monument. The North Pacific Subtropical Gyre surrounds the Hawaiian Islands, and the National Monument specifically, circulating pollution through currents of the North Pacific. Even though the islands are the most remote island chain in the world, they act as a filter, slowly collecting pieces of marine debris on their reefs and beaches. This collection is seriously endangering the marine life in the National Monument. The EIS needs to evaluate both the impacts of designating part of the Papahānaumokuākea Marine National Monument a marine sanctuary and how pollution would continue to affect the National Monument in the event the sanctuary is not designated. The regulations under the new sanctuary should be more restrictive on the allowances of plastic in its zone than the current National Monument, because the amount of plastic being circulated by the Subtropical Gyre is ever-increasing. In the event No Action is initiated, the decision needs to be supported by accurate findings as to why designating a sanctuary would not succeed in removing plastic debris from the National Monument.
Karie Wakat	As a resident of Hawaii Island, I fully support designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary under the National Marine Sanctuaries Act. I see everyday the need to protect our ocean, and the creatures that live in/on it.
Dave Treichel	I would like to say that the Papahānaumokuākea Marine National Monument needs to be expanded from the east end. So that it will include more area and including that one area that is divided then. Thanks -Dave

Name	Comment
Beth Orcutt	<p>I am writing in full support of the consideration of designating the marine parts of the Papahānaumokuākea Marine National Monument (PMNM) as a National Marine Sanctuary. As the largest current fully protected marine protected area, sanctuary status would strengthen these protections into the future. Such strengthening is important to achieve sustainable development goals to ensure a healthy ocean.</p> <p>The current PMNM management structure is a model for shared governance with local Indigenous communities, with the involvement of the Office of Hawaiian Affairs as a co-trustee. I highly encourage maintaining and strengthening this shared governance model in the consideration of sanctuary status. Studies have documented that local Indigenous communities are the best stewards of marine protection because of their framework of the responsibility for reciprocal caring for sacred non-human kin, which increases the likelihood of success of Papahānaumokuākea in achieving sanctuary goals. The vision and guidance provided in "Mai Ka Pō Mai" (https://www.oha.org/maikapomai/), reflecting the Native Hawaiian perspective on incorporating traditional concepts and cultural traditions into management of this area considered sacred by Native Hawaiian culture, is a welcome tool for moving this vision forward.</p> <p>I look forward to the preparation of the attendant Environmental Impact Assessment (EIA) of sanctuary designation. As a deep-sea marine scientist, I recently had the great privilege to participate in a deep-sea exploration expedition of the Ocean Exploration Trust within the boundaries of the PMNM (https://nautiluslive.org/cruise/na134). On this expedition, we documented diverse and distinct communities of deep-sea corals, sponges, and fishes within the Voyager Seamount range south of Kapou/Lisianski Island and Kamole/Laysan Island. Some of these seamounts exist outside the current monument boundary. We observed that different communities existed on the seamount flanks, but more exploration is needed to determine if these differences are due to predominant current direction versus seamount flank orientation, water depth, oxygen and temperature conditions, overlying productivity in the upper ocean, or other factors. The information generated during this expedition may be helpful to managers when preparing the EIA. If our scientific expertise can be of any use during this process, please do not hesitate to contact us.</p> <p>Dr. Beth N. Orcutt, Senior Research Scientist, Bigelow Laboratory for Ocean Sciences, Maine</p>
Katherine Weeks	<p>I am an official volunteer for NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary during the winter months. I am also familiar, as a layperson, with the value of deep sea corals such as those that have been found off the reefs at the Papahānaumokuākea National Monument. The islands, atolls, and reefs that make up this archipelago are very important not only for the corals that line the walls of the sea mounts, but also for turtle nests of the local turtles such as the Green Sea Turtle (aka Honu to the native Hawaiians), Ridley's, and the Hawkbill, as well as resting places for birds and sea mammals. This area needs to be protected for the future of our planet's ecosystem. Please make this area a new National Marine Sanctuary.</p>
Cory H	<p>I support sanctuary designation, but only if the purpose and regulations provide environmental protections that are as strong, or stronger, than existing monument proclamations. For example, the prohibited activities provisions could designate Papahānaumokuākea as a limited access reserve that requires a permit for entry. Those permits should include restrictions as strong, or stronger, than those imposed for monument entry.</p>
Maureen Kellman	<p>I have never been to Hawaii, yet I have a personal interest in seeing PAPAHAUMOKUAKEA as a National Marine Monument. You see, I taught fourth graders for twenty years. All of them learned that there is really one ocean and that it plays a critical role in the health of the whole planet. So I join with everyone, especially Hawaiians, who support this designation which will contribute to protecting the area.</p>

Christopher Kelley	<p>I am writing in support of a sanctuary designation for Papahānaumokuākea Marine National Monument (PMNM). I have been involved in various deep water research projects inside PMNM starting in 2001, with my most latest visit being this past fall in 2021. Over the years, we have made numerous new discoveries that warrant the additional protection a sanctuary designation would provide including numerous potential new species and spectacular high density communities many of which living on the type of substrate and at the depth that deep sea mining will likely occur in the future. PMNM, while its original intent may have been to protect terrestrial and shallow water species such as sea birds, monk seals, top predators, and turtles, is also providing very important protection to deep water species and communities that will be threatened in the future by mining activities.</p> <p>PMNM is also providing protection from deep sea fishing that used to take place before it became a monument. Deepwater bottomfishing is a very active fishery in the Main Hawaiian Islands (MHI) and has experienced various levels of stock depletion over the years. PMNM is forming a critical function as a recruitment source for this fishery. It's no fishing regulations are not only providing protection and sustainability for bottomfish in the monument itself, it is helping the Bottomfish fishery in the main islands by its proximity and by providing a nearby source of bottomfish larvae that no doubt is already helping the replenishment of depleted stocks in the MHI.</p> <p>There is one absolutely critical site for this fishery in Hawaii, which is Middle Bank. Unfortunately, the original monument boundary was drawn in a manner that bisects this bank, with the northwest part being inside PMNM whereas the rest of the bank remains outside. Bottomfishers are very actively fishing this bank, probably because of its proximity to the monument boundary. At least two commercially valuable species, onaga and opakapaka, are no doubt moving in and out across the boundary. Ehu and Gindai would not be and kalekale may or may not be. The monuments side of the bank at least offers a "TimeOut" or temporary refuge for the mobile species.</p> <p>But this is not enough because of the importance of this bank and also because fishermen may be fishing inside PMNM here since activity on Middle Bank is extremely difficult to monitor. As a result, I strongly urge that during the sanctuary designation process, the monument boundary be expanded southward to enclose Middle Bank entirely. If this happens, then a significant buffer will be created between the monument and the closest island, Niihau. If the monument were to extend entirely over the bank, then no Bottomfisher should ever be even close to the monument, which seems like it would make it more enforceable. Another argument comes from Ana Vaz's PhD research modeling larval transport between the MHI and PMNM. Her model revealed that Middle Bank is crucial to the connectivity between the MHI and PMNM. Closing Middle Bank entirely to fishing would not make fishers happy. However, Kaula Rock does not play anywhere near such an important role for the bottomfish fishery and therefore one idea is to make an agreement with the state and bottomfishers whereby the Kaula Rock Restricted Fishing Area be removed as an exchange for expanding the monument over Middle Bank. Fishermen as well as the state would only benefit from this deal since it would be providing a protected recruitment source to the MHI for this fishery. If Middle Bank were fished down and if Ana was correct, this could be a real problem. Recruitment sources further north in the monument would not be as effective in proving recruits simply due to distance and current flow.</p> <p>In 2017, a single Okeanos Explorer ROV dive was conducted on Middle Bank just outside of the boundary. The dive site was no doubt on a fishing site since it was a little cone feature. It was an amazing dive with precious corals, new species of black corals, a new fish that no one has yet to identify, and a conger eel condominium on the summit. We did not see any bottomfish species, which is alarming. Furthermore, the corals we saw are clearly vulnerable to damage from anchors and weights from bottom fishers. This is not the main reason for extending the boundary but rather just adds an additional argument.</p> <p>Please seriously consider supporting the expansion of the monument boundary to include Middle Bank for the reasons described above. While this may make the sanctuary designation process more contentious, if successful, it could provide a</p>
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Name	Comment
	<p>significant benefit to both the monument and the Hawaiian Islands as a whole.</p> <p>Christopher Kelley Affiliate Research Faculty Department of Oceanography University of Hawaii</p>
Surfrider Foundation	<p>As the Regional Manager of the Hawai'i Chapters of the Surfrider Foundation, I am writing to you in strong support to designate Papahānaumokuākea as a national marine sanctuary under the National Marine Sanctuaries Act. Hawai'i has four local chapters as part of our national non-profit network, which works with grass-roots activists everyday to protect the world's beaches, oceans, and waves. In all, Surfrider operates 85 chapters, 30 youth clubs, and reaches over a quarter million members, supporters, and activists.</p> <p>In Hawai'i, as you know, the ocean is life, and the ocean is the very soul of those who call these remote islands home. Surfrider Foundation's four Hawai'i Chapters are some of the most active in our network and each year we work with the Hawai'i State Legislature and our City and County Councils to bring about progressive environmental policy shifts that will protect this public trust resource for generations into the future.</p> <p>In addition, the current PMNM management structure is a model for shared governance with local Indigenous communities, with the involvement of the Office of Hawaiian Affairs as a co-trustee. I highly encourage maintaining and strengthening this shared governance model in the consideration of sanctuary status. Studies have documented that local Indigenous communities are the best stewards of marine protection because of their framework of the responsibility for reciprocal caring for sacred non-human kin, which increases the likelihood of success of Papahānaumokuākea in achieving sanctuary goals.</p> <p>On behalf of the Surfrider Foundation's Hawai'i Chapters, we urge you to take action to designate Papahānaumokuākea as a national marine sanctuary under the National Marine Sanctuaries Act. This additional layer of protection is important to permanently safeguard resources in the marine portions of the monument.</p> <p>Mahalo for your leadership and for the time, energy, and consideration of such an important issue for the future of our oceans.</p> <p>Sincerely,</p> <p>Lauren Blickley Hawai'i Regional Manager Surfrider Foundation LBlickley@surfrider.org 808-280-4736</p>
Anonymous	<p>I fully support the national marine sanctuary designation for Papahānaumokuākea. This is yet another place threatened by climate collapse, and all efforts to preserve it should be undertaken.</p>

Name	Comment
Michele Paularena	I am in favor of designating Papahānaumokuākea as a National Marine Sanctuary as it will give that pristine area the protection it so richly deserves. The Hawaiian cultural sites, the World War II sites, the marine life and the birds that nest there are definitely worth protecting.
Nancy Fleming	<p>Papahānaumokuākea Marine National Monument is the largest contiguous fully-protected conservation area under the U.S. flag, encompassing an area of 582,578 square miles of the Pacific Ocean. These waters host the highly endangered Hawaiian monk seal, threatened green turtles, several species of sharks and several species found nowhere else on earth. The large reef systems and protected waters in the monument are significant contributors to the biological diversity of the ocean.</p> <p>The sanctuary designation process will not change the area's status as a marine national monument. However, it will add the protections of a national marine sanctuary to the monument's waters. We must act now to protect the natural resources and habitat of this extraordinary area.</p>
Diane Kastel	<p>Our family's objective is to save sharks from overfishing, and, by protecting where they live, including the critical, habitat and ecosystem, all, species depend upon! Supporting the creation of NO fishing zones, in the Pacific, leading in developing, and, monitoring, behavior in "California Marine Protected Areas", and, supporting the expansion of the boundaries of our "National Marine Sanctuary" in the "Greater Farallones National Marine Sanctuary" in 2015, have been a major, focus.</p> <p>In the, next, three years, we have our sights on increasing, marine, protection, in US waters, through the creation of, two, new "National Marine Sanctuaries": one in California with the "Chumash Heritage National Marine Sanctuary", and, one, in Hawaii, with the creation of the "Papahānaumokuākea National Marine Sanctuary".</p> <p>Creating these, two, new "National Marine Sanctuaries", with NOAA", and, stakeholders, in US waters, are, major, goals towards achieving the global 30% by 2030 goals protecting our oceans!</p> <p>In January the "United Nations Convention on Biological Diversity" released its 'zero draft', text, proposal for a, post-2020, global, biodiversity framework. Featured, in the text, is a target to protect at least 30% of the planet — land, and, sea — by 2030. The, draft, text is a, proposed, framing for a, 10-year, strategy to halt, and, reverse, species decline, and, restore, ecosystem, services that are critical to, humanity's, survival. Included, in the draft, is retaining, all, intact, ecosystems with a, strong, linkage to, nature-based, climate mitigation.</p> <p>Dr. Enric Sala, "Explorer in Residence" at "National Geographic", and, co-author of the "Global Deal for Nature", recommends 30 percent of Earth to be, formally, protected, and, an, additional, 20 percent designated as, climate, stabilization areas: "We cannot continue, just, writing the obituary of the ocean".</p> <p>On October 7, 2020, California Governor, Gavin Newsom, ordered the state to create a, new, "California Biodiversity Collaborative", and, conserve 30 percent of its land, and, coastal, waters, by 2030. This program aligns with the, international, "30 by 30" goal shared by the "United Nations Convention on Biological Diversity", the "International Union for Conservation of Nature", and, many of the world's, most prominent, conservation, scientists.</p>
J Thew	We support any and all national marine sanctuary designations.

Name	Comment
Diane Kastel	<p>On November 19th, "NOAA" initiated the process to designate portions of the Papahānaumokuākea Marine National Monument" as a, national, marine sanctuary. This designation would build on, existing, management by adding, conservation, benefits, and, enhancing, long-term, protection of these areas.</p> <p>"NOAA"'s "Office of National Marine Sanctuaries" is initiating the process to consider designating, marine, portions of "Papahānaumokuākea Marine National Monument" as a, national, marine sanctuary. This designation would add the conservation benefits, and, permanency, of a, "National, Marine Sanctuary" to safeguard resources in the, marine, portions of the monument.</p> <p>"Papahānaumokuākea Marine National Monument" is the, largest, contiguous, fully-protected, conservation area, under the U.S. flag, encompassing an area of 582,578 square miles of the Pacific Ocean, This is an area larger than, all, the country's, National Parks combined. These waters host the, highly, endangered Hawaiian monk seal, threatened, green turtles, several, species of sharks, and, several, species found nowhere else on earth. The large, reef systems, and, protected, waters, in the monument, are, significant, contributors to the, biological, diversity of the ocean.</p> <p>The, sanctuary, designation process will not change the area's status as a Marine National Monument. However, it will add the protections of a "National Marine Sanctuary" to the Monument's waters. The, co-management, structure that is a hallmark of "Papahānaumokuākea Marine National Monument" will continue, and, the process to designate a National Marine Sanctuary" will be conducted, in concert, with the monument's, co-managing, agencies.</p> <p>The spiritual, and, cultural, associations, of the Papahānaumokuākea, by Native Hawaiians will be a, foundational, element in the management of these, sacred, waters.</p>
Jennifer Valentine	<p>NOAA's Office of National Marine Sanctuaries is initiating the process to consider designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. This designation would add the conservation benefits and permanency of a national marine sanctuary to safeguard resources in the marine portions of the monument. Please designate it as a sanctuary</p>
Daphne Alden	<p>Papahānaumokuākea Marine National Monument is the largest contiguous fully-protected conservation area under the U.S. flag, encompassing an area of 582,578 square miles of the Pacific Ocean, This is an area larger than all the country's national parks combined. These waters host the highly endangered Hawaiian monk seal, threatened green turtles, several species of sharks and several species found nowhere else on earth. The large reef systems and protected waters in the monument are significant contributors to the biological diversity of the ocean. Please vote to designate this area as a national marine sanctuary. This designation would add the conservation benefits and permanency of a national marine sanctuary to safeguard resources and marine life.</p>
Denise Martini	<p>The sanctuary designation process does not change the area's status as a marine national monument. It would add the protections of a national marine sanctuary to the monument's waters.</p>
Anonymous	<p>I support the designation of Papahanaumokuakea as a National Marine Sanctuary, and support completely closing it off to commercial and recreational fishing in order to protect the sea life within it, but urge you to keep it open in a limited capacity to recreational scuba divers that dive with guides that hold proper permits. Having a limited number of experienced recreational divers in a marine sanctuary can help in managing the danger of invasive species, disposal of "ghost nets" and other discarded fishing equipment that inevitably drift into the area and threaten marine life, and even help to generate data for researchers on sightings of species of interest, much more than if the area is completely closed to visitors.</p>

Name	Comment
Gordon Gregory	I 100% support this attempt to protect our oceans for future generations. Please approve this proposal.
Vic Bostock	<p>Papahānaumokuākea Marine National Monument is the largest contiguous fully-protected conservation area under the U.S. flag, encompassing an area of 582,578 square miles of the Pacific Ocean, This is an area larger than all the country's national parks combined. These waters host the highly endangered Hawaiian monk seal, threatened green turtles, several species of sharks and several species found nowhere else on earth. The large reef systems and protected waters in the monument are significant contributors to the biological diversity of the ocean.</p> <p>The sanctuary designation process will not change the area's status as a marine national monument. However, it will add the protections of a national marine sanctuary to the monument's waters. The co-management structure that is a hallmark of Papahānaumokuākea Marine National Monument will continue, and the process to designate a national marine sanctuary will be conducted in concert with the monument's co-managing agencies.</p>
Scott Wolland	<p>NOAA, I am writing to show my support of a new designation for parts of the Papahānaumokuākea Marine National Monument as a national marine sanctuary. It is critical that we increase conservation benefits in this vital area and enhance long-term protection of these areas through the NMS Designation. Please hold a hearing to discuss this opportunity. Sincerely,</p>
Risa Mandell	Marine megafauna like sharks, marine mammals, and sea turtles, need large areas of healthy habitat to safely forage and successfully reproduce. Help us achieve our national goals of 30% ocean protection by 2030 to help protect endangered sharks and rays. Marine protected areas buffer against climate change, and provide important habitat for marine species important to ocean and human health. As a US citizen, I urge you to protect endangered sharks and rays.
Julie Nagase Miller	Hawaii and it'd surrounding areas are rare gems that need to be aggressively protected! Papahānaumokuākea Marine National Monument should be awarded national marine sanctuary status!
Stephanie Shorter	Please protect our ocean ecosystems and wildlife! I request that you support the National Oceanographic and Atmospheric Administration's (NOAA) proposed designation of new National Marine Sanctuaries in California and Hawaiian waters. Thank you.
Julie Miller	30% of the ocean by 2030 is the very minimal goal we should have. Our planet needs protection!
Jacqui Smith-Bates	I am writing to support the National Oceanographic and Atmospheric Administration's (NOAA) proposed designation of new National Marine Sanctuaries in California and Hawaiian waters. According to the MPA Atlas by the Marine Conservation Institute, 7.7% of the ocean is protected and of that, only 2.8% is fully or highly protected from fishing. We have a long way to meet the UN and national goals of protecting 30% of our oceans, but we have the opportunity to help achieve this now. Marine megafauna like sharks, marine mammals, and sea turtles, need large areas of healthy habitat to safely forage and successfully reproduce. Marine sanctuaries are crucial to a healthy ocean ecosystem, which is a key component of supporting life on earth.

Name	Comment
Diane Kastel	<p>The, principal goal of the 16 U.S. national marine sanctuaries is to protect places with, special, natural, cultural, or, historical significance. Marine Protected Areas buffer against climate change, and, provide, important, habitat for, marine, species important to ocean and, human, health. Marine megafauna like sharks, marine mammals, and, sea turtles, need, large, areas of, healthy, habitat to, safely, forage and, successfully, reproduce. We want to help to achieve our, national, goals of 30% ocean protection, by 2030, to help protect, endangered, sharks and rays.</p> <p>As part of the, global, initiative to protect 30% of our oceans under Marine Protected Areas by 2030 (30x30), "Shark Stewards" is working to support the "National Oceanographic and Atmospheric Administration" 's (NOAA), proposed, designation of new, "National Marine Sanctuaries" in California and Hawaiian waters. According to the "MPA Atlas" by the "Marine Conservation Institute, 7.7% of the ocean is protected, and, of that, only 2.8% is, fully, or, highly, protected from fishing. We have a, long, way to meet the UN, and, national, goals of protecting 30% of our oceans, but, today, we have the opportunity to help achieve this! In California, 16% of our state, waters are under ecosystem-connected, well-managed, and, well- studied, Marine Protected Areas, including, four, federally managed national marine sanctuaries. We, now, have the opportunity to increase protection in two sensitive, and, biodiverse, regions, in US waters, also, protecting, culturally, significant Native American, and, Hawaiian areas.</p>
International Marine Mammal Project of Earth Island Institute	<p>We submitted comments by mistake to this online form for the Chumash Heritage National Marine Sanctuary. We are in favor of the proposed establishment of a National Marine Sanctuary within the boundaries of the Papahānaumokuākea Marine National Monument, and encourage NOAA to proceed with the development of the Environmental Impact Statement. Thank you.</p>
Neil Finlay	<p>While in my younger days I spend over forty years, and a large amount of money learning and studying sharks at my expense, dealing with other Countries you find most are trying to reach a goal in Conservation, some are restricted due to Government intervention, I found in my Travels Education is major factor, teaching the youth, Children of Today and the Future will help towards the preservation of our Oceans</p> <p>Today there is a bigger push from all walks of live World Wide to protect the Planet and the Oceans, Governments all over the World have to come on board to help save this Planet, problem is the rich are not getting involved and the poor are struggling, commonly known as a attitude problem, setting out protection area is a great Idea, who will provide the protection and cost, we need a commitment from the United Nations and sanctioned by the Big Countries to pay and implement it, start with a world ban on long line fishing, Ban on Shark finning, and that will be the best start to help protect our Oceans</p>
Ocean Sanctuaries	<p>Only 2% of the world's oceans are unprotected by MPAs, so please, we need more of this type of legal protection.</p>

<p>Maria Gritsch</p>	<p>I strongly support designating parts of the Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment. Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site. Coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. The Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.</p> <p>The National Marine Sanctuaries Act established the National Marine Sanctuary System to protect areas of the marine environment that have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities. The monument is an area of national significance that merits this protection in addition to the protections provided by the Antiquities Act.</p> <p>It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts should include integrating traditional Hawaiian knowledge systems, values, and practices into management. We oppose any regulatory or management measures that would decrease the current level of protection within the Monument and Monument Expansion Area.</p> <p>Scoping is a critical early step in the EIS process. It sets the boundaries of the analysis, helps to identify information sources, and helps to focus alternatives and identify issues to address within the EIS. A comprehensive scoping process is essential for identifying the “reasonable range” of alternatives in the EIS to address the purpose and need of proposed agency action.</p> <p>Papahānaumokuākea Marine National Monument is unique. The Monument is one of the few intact, large-scale predator-dominated reef ecosystems left in the world. It is home to more than 7,000 marine species. The islands and atolls—Kure (Hōlanikū), Midway (Kuaihelani), Pearl and Hermes (Manawai), Lisianski (Kapou), Laysan (Kamole), Maro Reef (Kamokuokamohoali’i), Gardner Pinnacles (‘Ōnū nui and ‘Ōnū iki), French Frigate Shoals (Lalo), Mokumanamana, and Nihoa—provide breeding areas for Hawaiian monk seals and four species of sea turtles, nesting sites for more than 14 million seabirds, and more than 5,000 square miles of coral reefs. This is the only known marine area where all resident species are endemic.</p> <p>At least 23 species protected under the US Endangered Species Act inhabit the Monument, two national wildlife refuges, and two state-protected areas within its boundaries. For example, Papahānaumokuākea provides nearly the entire Hawaiian nesting habitat for the threatened green turtle. On the undisturbed beaches, the turtles come ashore to bask in daylight, a behavior not seen in most other parts of the world.</p> <p>The Monument provides critical foraging habitats for marine species and birds. Laysan albatross, Black-footed albatross, Bonin petrels, shearwaters, petrels, tropicbirds, Short-tailed albatross, and other seabird species forage in the Monument, along with five species of protected sea turtles. Twenty-four species of whales and dolphins have been sighted in the Monument. Three species are threatened or endangered: sperm whales, fin whales, and sei whales. Acoustic evidence also shows that endangered blue whales visit the area and may migrate past the Hawaiian Islands twice a year. Sharks, including tiger sharks and Galapagos sharks, are key species in the Monument’s ecosystems</p> <p>Thank you for the opportunity to comment on the proposed sanctuary designation. We look forward to working with NOAA to enhance and strengthen protections for the Monument.</p>
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Name	Comment
Joe Smith	<p>In California, 16% of our state waters are under ecosystem-connected, well-managed and well-studied marine protected areas, including four federally managed national marine sanctuaries. We now have the opportunity to increase protection in two sensitive and biodiverse regions in US waters, also protecting culturally significant Native American and Hawaiian areas.</p> <p>The principal goal of the 16 U.S. national marine sanctuaries is to protect places with special natural, cultural, or historical significance. Marine protected areas buffer against climate change, and provide important habitat for marine species important to ocean and human health. please protect our oceans and wildlifel.</p>

Warren TenHouten	<p>I absolutely support designating parts of the Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment. Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site. Coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. The Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.</p> <p>The National Marine Sanctuaries Act established the National Marine Sanctuary System to protect areas of the marine environment that have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities. The monument is an area of national significance that merits this protection in addition to the protections provided by the Antiquities Act.</p> <p>It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts should include integrating traditional Hawaiian knowledge systems, values, and practices into management. We oppose any regulatory or management measures that would decrease the current level of protection within the Monument and Monument Expansion Area.</p> <p>Scoping is a critical early step in the EIS process. It sets the boundaries of the analysis, helps to identify information sources, and helps to focus alternatives and identify issues to address within the EIS. A comprehensive scoping process is essential for identifying the “reasonable range” of alternatives in the EIS to address the purpose and need of proposed agency action.</p> <p>Papahānaumokuākea Marine National Monument is unique. The Monument is one of the few intact, large-scale predator-dominated reef ecosystems left in the world. It is home to more than 7,000 marine species. The islands and atolls—Kure (Hōlanikū), Midway (Kuaihelani), Pearl and Hermes (Manawai), Lisianski (Kapou), Laysan (Kamole), Maro Reef (Kamokuokamohoali’i), Gardner Pinnacles (‘Ōnū nui and ‘Ōnū iki), French Frigate Shoals (Lalo), Mokumanamana, and Nihoa—provide breeding areas for Hawaiian monk seals and four species of sea turtles, nesting sites for more than 14 million seabirds, and more than 5,000 square miles of coral reefs. This is the only known marine area where all resident species are endemic.</p> <p>At least 23 species protected under the US Endangered Species Act inhabit the Monument, two national wildlife refuges, and two state-protected areas within its boundaries. For example, Papahānaumokuākea provides nearly the entire Hawaiian nesting habitat for the threatened green turtle. On the undisturbed beaches, the turtles come ashore to bask in daylight, a behavior not seen in most other parts of the world.</p> <p>The Monument provides critical foraging habitats for marine species and birds. Laysan albatross, Black-footed albatross, Bonin petrels, shearwaters, petrels, tropicbirds, Short-tailed albatross, and other seabird species forage in the Monument, along with five species of protected sea turtles. Twenty-four species of whales and dolphins have been sighted in the Monument. Three species are threatened or endangered: sperm whales, fin whales, and sei whales. Acoustic evidence also shows that endangered blue whales visit the area and may migrate past the Hawaiian Islands twice a year. Sharks, including tiger sharks and Galapagos sharks, are key species in the Monument’s ecosystems</p> <p>Thank you for the opportunity to comment on the proposed sanctuary designation. We look forward to working with NOAA to enhance and strengthen protections for the Monument.</p>
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Name	Comment
Nancy Meehan	We need to protect our ocean & waters. Between pollution & bombs being dropped in the waters, it's hard to believe anything left. Off shore drilling needs to end as well as pipelines. Water is life! Sealife & river life are important! Protect it!
Kelly Eigler	Sharks are the wolves of the sea and as top level predators, are responsible for an entire food chain. More over, they have significant research value as live, not dead subjects. They are in trouble almost worldwide and our country can set a positive example of conservation leadership by enacting proactive and protective legislation. We need to help this vulnerable and mysterious species to survive with all our legal might. Thank you.
Carol Jagiello	Sanctuary designation free from fishing is vital to ensure protection.
The Pew Charitable Trusts	<p>On behalf of The Pew Charitable Trusts, we thank you for the opportunity to submit comments on the “Notice of Intent To Conduct Scoping and To Prepare an Environmental Impact Statement for the Proposed Designation of a National Marine Sanctuary Within Papahānaumokuākea Marine National Monument.”</p> <p>As home to more than 7,000 species, a quarter of which are endemic, Papahānaumokuākea safeguards key ecosystems and provides protection for a range of rare species such as threatened green turtles, endangered Hawaiian monk seals, and false killer whales, as well as 14 million seabirds representing 22 species. Given the site’s vital biological importance, we support designating Papahānaumokuākea Marine National Monument as a national marine sanctuary provided it maintains its status as highly/fully protected. Furthermore, we do not support future management that would allow industrial fishing – which would be a step backwards.</p> <p>Sanctuary designation provides an opportunity to further integrate indigenous knowledge systems, values, and practices into the area’s management. Papahānaumokuākea is a place of honor and a deeply sacred space for Native Hawaiians, who maintain strong cultural ties to the land and sea and believe in the importance of managing the islands and waters inextricably connected to one another. As such, we urge relevant agencies to work with the Native Hawaiian Cultural Working Group, OHA, and the Native Hawaiian community throughout the sanctuary designation process and include the Mai Ka Pō Mai framework into the designation document, management plan, and regulations.</p> <p>Additionally, we call for the sanctuary designation process to take measures to ensure that there is adequate funding in place for ongoing management. Staff and budget capacity have been found to be the strongest predictors of conservation impact and the most important factors in explaining fish responses to MPA protection. MPAs with adequate capacity have shown ecological benefits that are 2.9 times greater than those with inadequate capacity (David Gill et al.,2017). According to a recent report by the Center for American Progress, many MPAs lack sufficient funding. Both staffing and financial resources should be carefully considered throughout the sanctuary designation process to ensure desired outcomes are effectively met.</p> <p>We appreciate the opportunity to comment on the proposed sanctuary designation, and we look forward to working with NOAA to support continued protections for the Monument.</p>
Georgia Braithwaite	Please set aside 30% of our oceans as protected areas.

Name	Comment
Kristina Dutton	Marine megafauna like sharks, marine mammals, and sea turtles, need large areas of healthy habitat to safely forage and successfully reproduce. Please adopt NOAA's proposal to designate two National Marine Sanctuaries in California and Hawaiian waters. I am a resident of Marin County, CA, and the Greater Farallones and Cordell Bank are an immeasurable gift to our coast, our economy, our health, and the global ecosystem that relies on ocean health and productivity. We need to protect our oceans and meet the UN and national goal to reserve 30% of our waters for marine sanctuaries.
Shark Stewards	We need to protect these areas for future generations as they have an abundance of ocean habitats and creatures that rely on it for their survival.
Brad Nahill	I strongly support increased protections for Papahānaumokuākea Marine National Monument including inclusion of as much of an area of the monument as possible to be designated as a National Marine Sanctuary. This monument is incredibly unique in US waters.
Susan Fleming	Our Sanctuaries and monuments need our support, and additional funding for NOAA to study, protect and manage these important marine areas.
Anonymous	I have been viewing the Nautilus expeditions for several years and am in amazement of all the beautiful underwater locations. The expedition of the Papahānaumokuākea Marine National Monument was especially exciting to see. Please consider expanding this wonderful marine monument and give it the national marine sanctuary protection it deserves, to keep it safe for our future generations. We need to do something now to help add additional protection to this beautiful marine location.
Elizabeth McCloskey	The Papahanamokakea Marine National Monument is an extremely vital area for the protection of ocean life, especially the Hawaiian monk seal, which is critically endangered. The designation of this Monument as a marine sanctuary would build on existing management by adding conservation benefits and enhancing long-term protection of this area. I fully support this designation and look forward to reviewing the EIS.
Sarah Milsen	I have been fortunate enough to see Papahanaumokuakea National Marine Monument in person, and help clean it up on the last NOAA Marine Debris mission in the fall of 2021. I support the proposal to work towards PNMM becoming a National Marine Sanctuary. It is an extremely rare, fragile place with very endangered animals and must be protected as an utmost priority. Thank you.
Diane Kastel	Marine megafauna, like sharks, marine mammals, and, sea turtles, need, large, areas of ,healthy, habitat to, safely, forage, and, successfully, reproduce. We must achieve our, national, goals of 30% ocean protection, by 2030, to help protect, endangered, sharks and rays!
Nancy Fleming	We now have the opportunity to increase protection in two sensitive and biodiverse regions in US waters, also protecting culturally significant Native American and Hawaiian areas. We must protect these vulnerable areas now. Please act in a responsible manner to ensure the viability of species that reside in these waters.

Name	Comment
Victor Carmichael	Surfing for over 50 years and traveling all over the world pursuing waves, I, too, at times have feared sharks especially locally here in Northern California which is in an area known as the 'Red Triangle' due to an abundance of Great Whites. But I also have respected their existence and right to live. They are an alpha predator in a complex food chain. Through exaggerated fear and overfishing (for their prized dorsal fins) they are being seriously reduced in numbers and many species are endangered. I support public hearings by NOAA to address the problem.



F.3.1.2 Summary of Comments Submitted as Separate Documents (Letters)

Comments submitted as separate documents are reproduced below. These documents were received as attachments in [regulations.gov](https://www.regulations.gov).

31 January 2022
 Office of National Marine Sanctuaries
 National Oceanic and Atmospheric Administration
 86 FR 64904

**CRUISE LINES INTERNATIONAL ASSOCIATION (CLIA) COMMENTS ON NOAA’S
 NOTICE OF INTENT TO CONDUCT SCOPING AND TO PREPARE AN
 ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED DESIGNATION
 OF A NATIONAL MARINE SANCTUARY WITHIN PAPAĀNAUMOKUĀKEA
 MARINE NATIONAL MONUMENT**

Thank you for the opportunity to comment on the Notice of Intent to Conduct Scoping and to Prepare an Environmental Impact Statement for the Proposed Designation of a National Marine Sanctuary within Papahānaumokuākea Marine National Monument and provide the following comments for consideration:

CLIA Members recommend that the National Marine Sanctuary designation apply to the original boundary of the Papahānaumokuākea Marine National Monument, and not to the 2016 expanded boundary. The expanded boundary encompasses the exclusive economic zone and discharge restrictions applied to this substantial area would have far reaching operational impacts, including ships in transit. If, however, the expanded boundary is designated a National Marine Sanctuary, CLIA Members recommend that the applicable discharge restrictions only apply to the original boundary, not the 2016 expanded boundary, maintaining the discharge restrictions per 50 CFR § 404 that are currently applied in the Papahānaumokuākea Marine National Monument.

CLIA Members welcome the National Marine Sanctuary designation given that the prohibited and regulated activities in the area are similar to the restrictions in other existing National Marine Sanctuaries, detailed in 15 CFR § 922, such as approved marine sanitation device effluent, cooling water, etc. Members also recommend that the list of discharges currently restricted in the Papahānaumokuākea Marine National Monument presently under 50 CFR § 404 correlate to the waste stream restrictions under the proposed National Marine Sanctuary.

Thank you for the opportunity to comment on the Proposed Designation of a National Marine Sanctuary within Papahānaumokuākea Marine National Monument. CLIA is available to discuss these comments with you should you have any follow up questions. The CLIA point of contact is Maureen Hayes, Technical Advisor, Maritime Policy. Phone: (202)-705-8464. Email: Mhayes@cruising.org

Sincerely,

Maureen Hayes

Maureen Hayes
 Technical Advisor, Maritime Policy

Cruise Lines International Association (CLIA)

Cruise Lines International Association (CLIA) is the world's largest cruise industry trade association, providing a unified voice and leading authority of the global cruise community. The association has 15 offices globally with representation in North and South America, Europe, Asia, and Australasia. CLIA supports policies and practices that foster a safe, secure, healthy, and sustainable cruise ship environment for the more than 30 million passengers who typically cruise annually and is dedicated to promoting the cruise travel experience. The CLIA Community is comprised of the world's most prestigious ocean, river, and specialty cruise lines; a highly trained and certified travel agent community; and cruise line suppliers and partners, including ports & destinations, ship development, suppliers, and business services. The organization's mission is to be the unified global organization that helps its members succeed by advocating, educating, and promoting for the common interests of the cruise community.

cruising.org

1201 F Street N.W. Ste. 250 | Washington, D.C., 20004 | U.S.A | 202-759-6760





January 31, 2022

PMNM-Sanctuary Designation
NOAA/ONMS
1845 Wasp Blvd., Bldg 176
Honolulu, HI 96818

Re: NOAA-NOS-2021-0114, National Marine Sanctuary Designation for
Papahānaumokuākea Marine National Monument

To NOAA's Office of National Marine Sanctuaries,

Thank you for the opportunity to comment on NOAA-NOS-2021-0114, National Marine Sanctuary Designation for Papahānaumokuākea Marine National Monument. The American Sportfishing Association represents the sportfishing industry and the recreational fishing community. Our over 900 members include manufacturers, retailers and allied organizations that comprise the \$125 billion recreational fishing economy. We provide a unified voice for the industry and anglers when emerging laws and policies could significantly affect business or sportfishing itself. Accordingly, we seek to ensure recreational fishing access to our nation's marine sanctuaries.

As you are aware, commercial fishing is prohibited in the entire Papahānaumokuākea Marine National Monument. In the Monument Expansion Area, non-commercial (e.g., recreational) fishing may be allowed through a permit. However, there are currently no regulations or a permitting process in place to allow non-commercial fishing in this area.

As NOAA prepares a draft environmental impact statement (DEIS) for the sanctuary designation process, we urge the agency to include consideration of regulations or a permitting process to allow non-commercial fishing, not only in the Monument Expansion Area, but throughout the entire Papahānaumokuākea Marine National Monument.

Through Proclamation 9478¹, which established the Monument Expansion area, President Barack Obama stated that non-commercial fishing would be permitted. Given the compatibility between recreational fishing and conservation, and that recreational fishing is allowed in nearly all National Marine Sanctuary waters, we believe it is warranted to revisit the prohibition on recreational fishing in the original Monument boundaries as well. Allowing recreational fishing throughout Papahānaumokuākea would help this action more fully achieve the goals of the

¹ [Proclamation No. 9478](#), DCPD-201600535 (2016)

Biden Administration's America the Beautiful initiative, particularly the recommendation to, "Increase Access for Outdoor Recreation."² We therefore urge that such considerations be included in the DEIS.

Sincerely,



Mike Leonard
Vice President of Government Affairs

² [Report: Conserving and Restoring America the Beautiful 2021](#) (May 2021)

January 31, 2022

Mr. John Armor, Director
Office of National Marine Sanctuaries
National Ocean Service
National Oceanic and Atmospheric Administration

Dear Mr. Armor:

We are responding to the National Oceanic and Atmospheric Administration's (NOAA) Notice of Intent (NOI) of November 19, 2021, in which NOAA seeks public scoping comments regarding the draft environmental impact statement (DEIS) being prepared for the consideration of designating the marine components of the Papahānaumokuākea Marine National Monument as a national marine sanctuary.¹ We understand, of course, that Presidential Proclamation 9478 directs the Secretary of Commerce **to consider initiating** the process to designate components of the Monument as a National Marine Sanctuary. Further, the Conference Report for the Appropriations Act of 2021 directs NOAA to initiate that process "to supplement and complement, rather than supplant, existing authorities."² In contrast, in NOAA's NOI, it appears that NOAA is seeking scoping comment on what should be in the Environmental Impact Statement that would inform *what a designation as a Sanctuary should look like*, rather than *whether* a designation of the marine areas of the Monument as a Sanctuary is appropriate and warranted. NOAA clearly has the discretion to decide whether to finalize a sanctuary designation. We set forth below some basic background points and then an analysis that the exact question at issue must be clarified in the purpose and need statement and appropriate alternatives must be analyzed.

I. Background points:

- A. In general, Monuments established under the Antiquities Act are more protective of designated objects than Sanctuaries designated under the National Marine Sanctuaries Act. The Antiquities Act specifies: "Sec. 2. That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected" (emphasis added).³

¹ 86 Fed. Reg. 64904 (November 19, 2021).

² Report on Fiscal Year 2021 Commerce, Justice, Science, and related agencies appropriations, <https://www.govinfo.gov/content/pkg/CREC-2020-12-21/pdf/CREC-2020-12-21-house-bk3.pdf> p. H7926

³ Recodified without substantive change at 54 U.S.C. § 320301(a) & (b).

In contrast, the National Marine Sanctuaries Act (NMSA) provides:

“STANDARDS.—The Secretary may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary determines that—

- (1) the designation will fulfill the purposes and policies of this chapter;
- (2) the area is of special national significance due to—
 - (A) its conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities;
 - (B) the communities of living marine resources it harbors; or
 - (C) its resource or human-use values;
- (3) existing State and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;
- (4) designation of the area as a national marine sanctuary will facilitate the objectives stated in paragraph (3); and
- (5) the area is of a size and nature that will permit comprehensive and coordinated conservation and management.”⁴

In addition, under NMSA, a series of factors and consultations are required that turn the act into more of a multiple-use statute. In implementing NMSA, NOAA has permitted a fair amount of commercial activity in the Sanctuaries, including commercial fishing.⁵ Several reports are helpful in evaluating the comparison between Monument proclamations and Sanctuary designations.⁶

B. Under the Justice Department’s Office of Legal Counsel memoranda, Monuments must be managed at least in part by a component of the Department of the Interior --several Monuments are managed jointly or primarily by a non-Interior agency; Sanctuaries are managed under the Sanctuaries Act by NOAA. The Office of Legal Counsel in the US Department of Justice issued an Opinion in the year 2000 about establishment of monuments in the ocean that has useful information.⁷

⁴ 16 U.S.C. § 1433(a).

⁵ See, e.g. Monterey Bay National Marine Sanctuary, https://sanctuaries.noaa.gov/science/socioeconomic/montereybay/comm_fishing.html

⁶ Report on commercial activities in National Marine Sanctuaries –NOAA emphasis: <https://sanctuaries.noaa.gov/science/socioeconomic/factsheets/national-system.html>

NAPA study includes commercial activities: <https://napawash.org/academy-studies/national-marine-sanctuaries-program-the-first-fifty-years-and-the-next-fifty-years>

CAP report: <https://www.americanprogress.org/article/to-protect-30-percent-of-the-ocean-the-united-states-must-invest-in-the-national-marine-sanctuaries-program/>

⁷ https://www.justice.gov/sites/default/files/olc/opinions/2000/09/31/op-olc-v024-p0183_0.pdf

- C. The Monument in question is currently managed under a 2008 Management Plan that is five volumes long.⁸ The specified federal and state trustee agencies have not yet updated that plan despite the Expansion Proclamation of 2016 and the 2017 Memorandum of Agreement.
- D. As set forth in more detail below, the 2006 Proclamation specified that the Monument includes but does not affect the management of the five existing management units in the same area. Indeed the NOAA website notes: “The Monument comprises several previously existing federal conservation areas, including the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial, Hawaiian Islands National Wildlife Refuge, Northwestern Hawaiian Islands Marine Refuge, and the State Wildlife Sanctuary at Kure Atoll.”⁹
- E. A significant component of protection specified in the original and the expansion Proclamations for the Monument is the provision prohibiting commercial fishing (with a five-year phase out for two species) and providing for recreational and Native Hawaiian traditional fishing under specific regulation.

II. Comments on the Scoping Process:

A. The Purpose and Need Statement Must Be Revised.

As noted in the background information above, NOAA is responding to Conference Report direction to **initiate** the marine sanctuary designation process; nevertheless, NOAA retains full discretion regarding whether ultimately to make that designation. The current statement of purpose and need begins by providing that the “purpose of the designation is to fulfill the purpose and policies of . . . the National Marine Sanctuaries Act”.¹⁰ This sentence inappropriately assumes that a sanctuary will be designated and demonstrates circular reasoning; that is, NOAA assumes it is going to designate a Sanctuary and therefore must comply with the Sanctuaries Act.

However, many of the other needs identified in the NOI could be achieved through existing Monument or other existing protections without sanctuary designation. For example, nothing in NOAA’s notice explains why the current management regime under the Monument and other land management units cannot “safeguard natural and cultural values of the marine environment of the Monument”, “strengthen the existing interagency management regulations”, require interagency consultation for federal agency action that is likely to adversely impact Monument resources, or enhance the joint permitting system for activities in the Monument expansion area. The “needs” to authorize NOAA to assess civil penalties,

⁸ <https://www.papahanaumokuakea.gov/new-about/management/> This link outlines the current management arrangements and includes the 2008 Plan.

⁹ <https://www.fisheries.noaa.gov/pacific-islands/habitat-conservation/papahanaumokuakea-marine-national-monument>

¹⁰ 86 Fed. Reg. at 64905.

prohibit destruction or loss of natural resources and provide natural resource damage assessment authorities should be reframed to an issue of how the resources can best be protected utilizing legal authority available to any of the Monument co-trustees.

There is another identified need that is to “augment existing authorities [cites omitted] to provide additional regulatory and non-regulatory tools for management and protection of Monument resources”. The scoping notice does not specify what the additional tools are, or why they are needed. That NOAA appears to have pre-decided the question whether of designation of a Sanctuary is appropriate is made further evident by the accompanying FAQ’s and memo, linked here.¹¹

Preferably, NOAA should republish the scoping notice with a statement that does not prejudice the designation of a marine sanctuary and with a designation of needs that does not prejudice it either. Such a statement would be legally proper¹² and would provide more appropriate opportunity for public input, better information for the decision-maker, and a more effective evaluation of environmental and management choices for protection. Indeed, NOAA’s NEPA Manual provides: “The purpose and need statement, however, cannot be so arbitrarily narrow that it preordains the outcome of the NEPA analysis.”¹³ In the event NOAA decides not to republish, the agency must insure that the purpose and need statement in the draft EIS (DEIS), including the specification of needs, reflects an intent to evaluate and then determine whether the current designations and protections without a Sanctuary or an added Sanctuary designation most effectively provides the means to protect and manage the resources in the marine areas of the existing Monument.

III. Additional Scoping Comments for the Draft Environmental Impact Statement

A. Alternatives

NOAA’s most important responsibility in this DEIS is to identify and analyze the effects of two types of reasonable alternatives: 1) reasonable alternatives to its current proposed action of designating a marine sanctuary and 2) reasonable alternatives within the context of designating a marine sanctuary. As discussed in this memo, it is not at all evident what additional

¹¹ <https://sanctuaries.noaa.gov/papahanaumokuakea/> (see especially section “How to Comment” and <https://sanctuaries.noaa.gov/papahanaumokuakea/faqs.html>) See also Fact Sheet linked at the first item and FAQs.

¹² Federal courts have held that some purpose and need statements inappropriately narrow the range of alternatives, thus biasing the identification of reasonable alternatives. “An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency’s power would accomplish the goals of the agency’s action and the EIS would become a foreordained formality” *Friends of Southeast’s Future v. Morrison*, 153 F.3d 1059, 1066 (9th Cir. 1998), cited in for *National Parks & Conservation Association v. Kaiser Eagle Mountain*, 606 F.3d 1058, 1070 (9th Cir. 2010), cert. denied, March 28, 2011. As a result of this unreasonably narrow purpose and need statement, the BLM necessarily considered an unreasonably narrow range of alternatives.”

¹³ NOAA’s Companion Manual for NEPA compliance, <https://www.noaa.gov/sites/default/files/2021-10/NOAA-HQ-2016-0145%20NAO%202016-6A%20Companion%20Manual.pdf>, p. 9.

protection would be afforded by a marine sanctuary designation. It is, however, clear, that a marine sanctuary designation without some additional permanent legal protection provides a new opening for commercial fishing. The DEIS must set forth a robust discussion of the effects of the legal status quo – that is, the Monument with no Sanctuary designation (formally known as the “no action alternative”) and provide a detailed comparison between the protections today and what would be added and diminished by marine sanctuary designation.¹⁴

As to the first type of alternative, it must be stressed that what is called the “no action” alternative does not mean that everything will stay the same if, for example, a Sanctuary is ultimately not designated. As discussed herein, the Monument Management Plan needs to be updated, the pertinent Monument 2008 regulations can and should be modified and extended, other implementing guidance and institutional arrangements can be developed. Thus, the EIS must contain, and NOAA must engage in far more extensive development of information, analysis, and legal analysis before the agency decides whether to move forward with a Sanctuary designation for the marine areas of the Monument as it now stands or might be modified through a new management plan, new regulations, or an additional Presidential Proclamation. Further, neither the decisionmaker, the co-trustees, nor anyone who cares about this ecologically significant area that is of such unique importance to Native Hawaiians would be well-served without such analyses.

As to the alternatives within the context of a potential designation of a marine sanctuary, the DEIS must analyze alternatives that would meet the reformulated “need” of ensuring lasting protections consistent with existing Monument Proclamations and regulations. Factors that are essential in a sanctuary designation to help assure that protections under the Proclamations as they now exist will remain include:

1. Preserving existing Monument protections.

The Federal Register Notice, in the first bullet under the “need” for designation, makes clear that a goal is to preserve the protections in the existing Monument proclamations. Those protections include a prohibition on all commercial fishing that was put in place after a phase out period for certain stocks and significant payments to the small number of affected commercial fishermen.¹⁵ Currently those protections are assured under the Monument proclamations and any Sanctuary designation must be consistent with or more protective than those requirements.

However, both the Notice and the supporting NOAA Materials linked above assume with no analysis that a Sanctuary designation could assure the current protections in the Paphānumokuākea Monument even if a future President seeks to weaken them, as President

¹⁴ See, *Ctr for Bio.Diversity v. Dept. of Interior* 623 F.3d 633, 642-43 (9th Cir. 2010); see also, *Pit River Tribe v. U.S. Forest Service*, 469 F.3d 768, 786 (9th Cir. 2006).

¹⁵ See 74 Fed. Reg. 47119 (September 15 2009): <https://www.govinfo.gov/content/pkg/FR-2009-09-15/pdf/E9-22181.pdf>

Trump did by proclaiming the end of a ban on commercial fishing in the Northeast Canyons and Seamounts Marine National Monument.¹⁶

This purpose of maintaining permanently the protections in the current Paphānaumokuākea Proclamations is important and worthy; however, how a Sanctuary designation would achieve it is unspecified. If, for example, a future President issues a proclamation like President Trump did to allow commercial fishing, a provision in a Sanctuary designation that it be operated consistent with the Monument Proclamations could simply follow that weakening. If the Sanctuary designation specifies that protections will be no less than what is in the Proclamations of 2006, 2007, and 2016, could the Sanctuary designation and regulations be amended by either the Western Pacific Fishery Management Council (WESPAC) or the Secretary of Commerce to weaken them consistent with the then-Presidential action? Under the Sanctuaries Act, after certain consultations a Sanctuary designation may be modified in the same way it is initially issued.¹⁷

As part of its analysis, NOAA should evaluate what provisions can be or must be included in the Sanctuary designation to actually “ensure” that commercial fishing can never be allowed in the Sanctuary, and whether those are more protective than the current Monument protections would be in the face of a Presidential or Secretarial or WESPAC action to weaken them. A similar analysis is essential for each of the protections for the current Monument proclamations that prior Presidents found necessary.

2. Analyzing other “needs” specified in the Federal Register notice.

For each of these reformulated needs, NOAA should evaluate how the need is met by the Monument proclamation, how it could be met by a management plan and/or regulations for the Monument (now or as amended), and how or whether it would be met if a Sanctuary designation were added. For example, one of the “needs” is to “safeguard natural and cultural values of the marine environment of the Monument.” A management structure has been established for the Monument, but the most recent Management Plan is from 2008, before the Expansion. Would updating that Plan, incorporating the recently prepared Mai Ka Pō Mai guidance document released by the co-trustees,¹⁸ be as effective or more effective at safeguarding the natural and cultures values of the Monument than overlaying a Sanctuary designation would be? The DEIS should be analytic and specific about this evaluation, and if the Sanctuary designation is found to be more effective, the analysis should be clear how and why it would be.

¹⁶ That Presidential action was challenged in court, defended by the government, then mooted without decision when President Biden reinstated the original prohibition on commercial fishing (that included a phase-out for two species) imposed by President Obama when he established the Monument. *Conservation Law Foundation v. Biden*, Case No. 1:20-cv-01589-JEB (D.C.). Dismissed by request of the plaintiffs, Nov. 11, 2021.

¹⁷ 16 U.S.C. § 1434(b)(2).

¹⁸ <https://www.oha.org/news/new-guidance-document-to-integrate-native-hawaiian-culture-into-management-of-papahānaumokuākea/> (June 21, 2021).

Another example: the “needs” specify that a purpose of the Sanctuary designation is to “authorize NOAA to assess civil penalties for violations of sanctuary regulations or permits and to enforce provisions of the NMSA.” In addition to the prejudgment and circularity of this “need”, the real question that the DEIS and related documents must evaluate is what legal authorities there are for enforcing protections in the area by any of the co-trustees, what agency coordination there is or may be to use them, and how much are the agencies using them with what level of cooperation. Since use of the authorities may depend on issuance of regulations, what Monument regulations have been issued, what will be issued, and what is the schedule? The “need” to authorize NOAA to enforce the provisions of the Marine Sanctuaries Act should be reformulated to analyze how resources can be protected by using the authorities of any of the co-trustees. For example, if the Fish & Wildlife Service has effective authority to cite and penalize a person destroying Monument resources, how is providing additional authority to NOAA to enforce for the same resources as a Sanctuary more protective? If NOAA already has authority to enforce fisheries violations under the Magnuson-Stevens Act once long overdue Monument regulations are issued, what additional protection for fisheries are provided by a Sanctuary designation?¹⁹ What is the schedule for issuing Magnuson Act regulations for protection and how would that be improved or delayed by a schedule for Sanctuary designation?

Finally, the notice cites the “need” to enhance existing authorities under the Antiquities Act and Presidential Proclamations to provide regulatory and non-regulatory tools for management and protection of marine resources” as a reason for designating a Sanctuary. Instead, this should be part of the evaluation, discussed above, of what tools there are available throughout the federal and state governments to protect these resources, and how they can be used cooperatively. The 2016 Proclamation specifies a long list of authorities for that purpose, and it is not evident that those authorities “need” to be enhanced without an evaluation of how they are being used now, to what protective effect, as well as how they could be used if the Management Plan and regulations were updated. These are, of course, examples and all of the needs should be evaluated in light of all co-trustees’ authorities and responsibilities.

3. Management issues.

The NOI in Section IV specifies that NOAA will develop among other documents a draft Sanctuary Management Plan. In addition, one of the “needs” specified for Sanctuary designation is to “strengthen the existing interagency management regulations (50 CFR 404).” In the DEIS, NOAA must evaluate the existing management arrangements and how adding a layer of Sanctuary designation would or could enhance or detract from implementation of those arrangements. For example, the existing Monument regulations referenced are issued jointly by the Fish and Wildlife Service (DOI) and NOAA (Department of Commerce). They date generally from 2006.²⁰ Nothing prohibits the agencies from moving forward with amendments

¹⁹ We note that the current Monument regulations are based in part on the Magnuson-Stevens Act, 16 U.S.C. § 1801 *et seq.*

²⁰ 71 FR 51134 (August 29, 2006); 50 C.F.R. Part 404.

to these regulations that would include the Monument Expansion of 2016. Yet, more than five years after the expansion, no regulations have been issued for the expanded marine portion of the Monument and no final revised Management Plan has been developed. An evaluation of how a Sanctuary designation would complement those existing and updated (when they are in fact updated) regulations is essential, including an analysis of how a designation that provides for Sanctuary management by NOAA would interact and intersect with the process of updating the Monument regulations. Such an analysis should include the roles for the U.S. Fish and Wildlife Service, State of Hawaii, and the Office of Hawaiian Affairs (OHA) in issuing any regulations. Further, the evaluation must include an analysis of how and whether having some component, but not all, of the Monument designated as a Sanctuary will make management and regulation effective and efficient or less effective and efficient.

Additionally, the Sanctuaries Act requires as part of the designation process that NOAA develop a management plan for the Sanctuary. That plan and its implementation must be evaluated every 5 years.²¹ NOAA should evaluate how the Sanctuaries management plan and the Monument management plan will intersect and how these duties to update both the Monument and Sanctuary plans—if there is a sanctuary designation—will be made compatible and complementary.

4. Use of resources.

Much time and attention has been given to developing management arrangements for the Monument including the Monument Expansion. They are set forth most recently in the Management Agreement of 2017.²² Any evaluation of whether a Sanctuary designation would be useful must consider whether agency resources could be better used in developing an updated management plan, and developing cooperative arrangements for implementing that plan. For example, how are the managing agencies cooperating in enforcing existing regulations? What is the record of protection of the resources? What would be the most effective way to arrange for development of effective scientific analysis of the area? For evaluating how protections are working in the area? For considering and implementing improved protections for the resources? And, importantly, what is the best use of always scarce agency resources: promulgating a new Monument management plan and Monument regulations to cover the expanded area or spending the time and effort to launch another new planning process and regulations for a Sanctuary?

5. Complexities for the public and regulators.

Under the current Monument proclamations, the Monument with expansion encompasses several management areas. The Monument covers marine areas, areas that overlay the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway Atoll National Wildlife Refuge; areas that overly the Battle of Midway National Memorial; and areas that

²¹ 16 U.S.C. § 1304(e).

²² *Supra* at fn. 4.

overlay the Hawaiian Islands National Wildlife Refuge. While four entities are involved in management of the entire Monument, each of these included areas falls under specific management authority. Providing an additional layer—a Sanctuary—for some, but not all, of the Monument—provides an additional complexity. Any analysis of whether Sanctuary designation is useful or effective for protection must evaluate complexity and how it affects protection of the relevant resources (objects in the Monument). Additionally, it should consider how an additional management unit with a planning process and regulations will affect public involvement in the various management units within the Monument.

6. Complexities of Sanctuary designation.

The process for designating a National Marine Sanctuary is complex. The statute specifies a series of factors to be taken into account and consultations required. These include, as some of the factors, evaluation of “(H) the negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development; and (I) the socioeconomic effects of sanctuary designation.”²³ Consultation must include any Regional Fishery Management Council under the Magnuson-Stevens Act, in this case WESPAC, which vigorously opposed the original Monument, the expanded Monument and the bans on commercial fishing.²⁴ Indeed, a WESPAC advisory committee member recently stated that, “Turning this monument into a sanctuary gives the council another crack at developing fishery regulations.”²⁵

These complexities, and whether in light of them, Sanctuary designation would be more or less protective of the Monument resources, is an essential component of the environmental analysis in the DEIS and related documents evaluating whether Sanctuary designation is useful or appropriate. For example, the provision in the Sanctuaries Act that permits the Secretary of Commerce to override the Regional Fishery Management Council (Sanctuaries Act at 304(a)(5)) should be considered in the DEIS analysis, including its history and potential use if Monument protections were weakened.

B. Protective Provisions to Evaluate in the DEIS

We recommend that the following provisions be considered in the context of a proposed Sanctuary:

-A provision to ban commercial fishing permanently. To truly increase protection of Monument resources, commercial fishing must remain prohibited as it now is under the Proclamations, even if a future President seeks to permit it under a revised Proclamation. The Sanctuary description and record would have to make clear how essential this

²³ 16 U.S.C. § 1433 (b)(1)(H) and (I).

²⁴ 16 U.S.C. §1433(b)(2)(D).

²⁵ “A New Marine Sanctuary Proposal May Not Be What It Seems”, November 22, 2021, available at: <https://www.civilbeat.org/2021/11/a-new-marine-sanctuary-proposal-may-not-be-what-it-seems/>

protection is to the purposes of the Sanctuary and how it must never be changed even if the Monument recognized in the Sanctuary designation is modified. It is important to note that under the NMSA, the terms of designation may be modified in the same way as the designation is made.²⁶ Therefore commitment to the goal of complete and permanent ban on commercial fishing in the Sanctuary is essential, but how to lock in this protection even if the Monument is modified requires thoughtful legal analysis set forth in the DEIS.

-A provision specifying a fixed “reasonable time” for the Regional Fishery Management Council to issue regulations, so that if the Council does not act within a fixed number of days (“a reasonable period”) to develop regulations barring all commercial fishing and restricting recreational fishing in the same manner as within the Monument, the Secretary will act under Sec.304 (a)(5) of the Act. While the Act does not provide for mandatory Secretarial action, a provision requiring action within a certain time period appears consistent with the goals and purposes of the Act.

-A provision setting forth each and every prohibition for any person and each and every regulated activity for any person with the understanding, evident from the proclamations, that those prohibitions apply to any persons including those working for federal or state agencies except as specified in the Proclamations for the Armed Forces, the U.S. Coast Guard, and in emergency situations. The Sanctuaries Act provides that if another agency is proposing to take an action that will destroy, cause the loss of, or injure a sanctuary resource, there is a process for consultation and mitigation.²⁷ NMSA, Section 304 (d). The Monument protections are for most agency workers and officials stronger and more protective than these Sanctuary Act negotiation provisions. The DEIS should identify this problem and how, under a Sanctuary designation, the stronger standards would pertain and be implemented to be as protective as the Proclamation provisions.

-A provision broadening representation for an Advisory Council. The Sanctuaries Act provides that the Secretary may establish Sanctuary Advisory Councils that are exempt from the Federal Advisory Committee Act.²⁸ These Councils are generally comprised of people in the geographic area of the Sanctuary. Section 315(b) of the Act provides:

“MEMBERSHIP.—Members of the Advisory Councils may be appointed from among—
(1) persons employed by Federal or State agencies with expertise in management of natural resources;
(2) members of relevant Regional Fishery Management Councils established under section 1852 of this title; and
(3) representatives of local user groups, conservation and other public interest

²⁶ 16 U.S.C. §1434(b)(2).

²⁷ 16 U.S.C. § 1434(d).

²⁸ 16 U.S.C. § 1445A.

organizations, scientific organizations, educational organizations, or others interested in the protection and multiple use management of sanctuary resources.”

Because of the national and indeed international importance of this protected area, and to underscore the point that these are resources that belong to everyone in the nation, any Sanctuary designation here should specify that Advisory Council members must include nationally knowledgeable and appropriate people. NOAA should consider whether it wants to include a member of WESPAC given its strong stance for commercial fishing and against the Monument that bans commercial fishing.

-A provision addressing permits. The Sanctuaries Act, at Section 310, permits NOAA to issue permits so long as they are consistent with the purposes for which the sanctuary was designated and for protection of sanctuary resources. To assure protections as effective as those in the Proclamations, any Sanctuary designation should incorporate not only the prohibitions and regulated activity designations noted above, but indeed provide in the designating document each of the prohibitions and restrictions in each of the Proclamations with an analysis, including a sound legal analysis, of how they are supported by the NMSA and how they will remain a permanent part of any Sanctuary designation.


Finally, any evaluation of how the current Monument proclamation protections are or are not as protective as adding a Sanctuary overlay and how protections under any Sanctuary designation are lawfully maintained permanently requires a careful and accurate legal analysis. The material NOAA has placed on its website related to this potential Sanctuary designation has legal mistakes and misstatements. For example, in the Q&A section related to commenting on the Federal Register notice there is the following:

“Q: How does sanctuary designation provide a more stable framework and additional protection?”

A: The sanctuary designation process includes significant opportunities for public involvement and procedural steps including environmental review under National Environmental Policy Act and rulemaking under the Administrative Procedure Act. Designation can augment and strengthen existing protections for Papahānaumokuākea ecosystems, living resources, and cultural and maritime heritage resources through the addition of sanctuary regulations. National Marine Sanctuaries Act authorities and regulations would enhance resource protection, increase regulatory compliance, ensure enforceability of protections, provide natural resource damage assessment authorities, and provide for interagency consultation.”²⁹

The implication that development of Monument regulations and management plans does not provide the opportunity for public input, does not provide for public notice and comment, and does not provide for NEPA analysis is simply legally wrong. Moreover, there is absolutely no legal explanation or analysis for the assertions that a sanctuary designation would “enhance resource protection, increase regulatory compliance, ensure enforceability of protections,

²⁹ <https://sanctuaries.noaa.gov/papahanaumokuakea/faqs.html>



provide natural resource damage assessment authorities, and provide for interagency consultation.” Simply stating something does not make it fact. However, these repeated assertions may persuade commentators that such assertions are valid. Throughout the process of considering whether Sanctuary designation is appropriate or helpful, it is essential that NOAA and its co-trustee cooperating agencies have accurate legal analysis and support for the information and reasoning it uses in the DEIS.

Sincerely,

Dinah Bear³⁰

Lois Schiffer³¹

³⁰ Environmental attorney; General Counsel, Council on Environmental Quality, Executive Office of the President (1983-1993; 1995-2007) (Deputy General Counsel, 1981-1983).

³¹ Environmental attorney; General Counsel, NOAA (2010-2017); Assistant Attorney General, Environment and Natural Resources Division, U.S. Dept. of Justice (1994-2001).



CREATION JUSTICE MINISTRIES

Justice for God's planet and God's people.

Subject: Scoping period for Papahānaumokuākea Marine National Monument

Document #: 2021-25207

Federal Register #: 86 FR 64904

Creation Justice Ministries represents the creation care and environmental justice policies of 38 major Christian denominations and communions throughout the United States to protect and restore God's Creation.

Creation Justice Ministries educates, equips and mobilizes Christian communions/denominations, congregations and individuals to protect, restore, and rightly share God's creation.

Based on the priorities of its members, with a particular concern for the vulnerable and marginalized, we provide collaborative opportunities to build ecumenical community, guide people of faith and faith communities towards eco-justice transformations, and raise a collective witness in the public arena echoing Christ's call for just relationships among all of creation.

As Christians, we support designating Papahānaumokuākea Marine National Monument (MNM) as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. By changing the status of Papahānaumokuākea from a Marine National Monument to a National Marine Sanctuary, higher protections for the monument would be put in place. Within the bounds of Papahānaumokuākea MNM reside coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. This Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.

A Sanctuary status would not only protect the incredible biodiversity listed above, but would also preserve the incredible cultural and genealogical ties that Native Hawaiians have with this sacred space. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment.

CSP Center for Sportfishing Policy

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Costa del Mar
Jason Schratwieser
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International Game Fish
Association
Bill Shedd
Chairman
AFTCO
Ben Speciale
President
Yamaha Marine

January 31, 2022

PMNM-Sanctuary Designation
NOAA/ONMS
1845 Wasp Blvd., Bldg 176
Honolulu, HI 96818

To NOAA's Office of National Marine Sanctuaries,

On behalf of the Center for Sportfishing Policy, thank you for the opportunity to comment on the Proposed Designation of a National Marine Sanctuary within Papahānaumokuākea Marine National Monument (Document ID NOAA-NOS-2021-0114). As part of the scoping and environmental impact statement process, we strongly urge NOAA to allow and promote recreational fishing (non-commercial fishing) in the Monument Expansion Area as well as the entire Papahānaumokuākea Marine National Monument.

We believe recreational anglers were wrongfully locked out of the Papahānaumokuākea Marine National Monument at its initial designation. And even though President Obama allowed recreational fishing in the expanded area, a permitting process has never been put into place. Recreational fishing has proven to be a compatible use in national marine sanctuaries and marine national monuments throughout America's oceans.

Therefore, we ask NOAA to follow President Obama's proclamation 9478 permitting recreational fishing as a regulated activity within the Monument Expansion Area – "non-commercial fishing, provided that the fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably."

Furthermore, allowing recreational fishing throughout the monument would also achieve President Biden's goal of increasing access for outdoor recreation while also meeting conservation objectives.

Again, we appreciate the opportunity to comment on this process.

Sincerely,



Jefferson Angers
President



CREATION JUSTICE MINISTRIES

Justice for God's planet and God's people.

Subject: Scoping period for Papahānaumokuākea Marine National Monument

Document #: 2021-25207

Federal Register #: 86 FR 64904


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As Christians, we support designating Papahānaumokuākea Marine National Monument (MNM) as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. By changing the status of Papahānaumokuākea from a Marine National Monument to a National Marine Sanctuary, higher protections for the monument would be put in place. Within the bounds of Papahānaumokuākea MNM reside coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. This Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.

A Sanctuary status would not only protect the incredible biodiversity listed above, but would also preserve the incredible cultural and genealogical ties that Native Hawaiians have with this sacred space. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment.




We believe that living in right relationship with God's creation means advocating for the best protections possible for each of God's creatures. We also acknowledge that Indigenous peoples have been caring for this land for centuries longer than us. As such, we turn to Indigenous peoples for their guidance and knowledge in caring for Papahānaumokuākea Marine National Monument.

In an effort to preserve and protect all those listed above, we support;

- The scoping and environmental impact statement process.
- The NOAA proposed, spatial extension of the monument's current boundaries to include all the waters, submerged lands, and living and non-living resources within these areas. The shoreward boundary should extend to the mean high tide.
- Management measures for the sanctuary and any additional regulations that should be added under the National Marine Sanctuary Act (NMSA) to protect Monument Resources.

It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts need to include integrating traditional Hawaiian knowledge systems, values, and practices into management.

We support this scoping and environmental impact study period and urge NOAA to move forward with the designation of Papahānaumokuākea as a National Marine Sanctuary.



As the organizers of a global coalition of deep-sea experts, the Executive Committee of the Deep Ocean Stewardship Initiative (DOSI) is thankful for this opportunity to comment on topics that should be addressed in NOAA's draft EIS of designating marine portions of Papahānaumokuākea Marine National Monument as a National Marine Sanctuary. We would like to offer input from a deep-sea perspective regarding several of the themes on which NOAA has requested comments.

The location, nature, and value of ecosystems, species, and resources that would be protected by a sanctuary:


While shallow environments tend to be the most visible beneficiaries of protection, diverse ecosystems in the deep sea (commonly defined as the part of the ocean below a depth of 200 meters that is too dark to support photosynthesis) are widespread in the current monument. The most recent proof of this is the [exploration cruise conducted in the area](#) by Ocean Exploration Trust, NOAA, and other partners in 2021. That cruise discovered astoundingly rich and diverse deep-sea communities of sponges and corals, along with the creatures those communities support, on the Voyager Seamounts south of Kapou. Significant deep-sea biodiversity was also found during NOAA Ocean Exploration's CAPSTONE campaign [expeditions in 2016](#) and previous Ocean Exploration Trust [exploration expedition in 2018](#). Along with "pure" deep-sea environments, shallow reefs often continue into deeper water, with a high level of connectivity and interdependence between their shallow and deep parts.

While impressive, deep-sea environments like these are exceptionally fragile. Organisms in the deep tend to grow very slowly because of limited food and cold temperatures, which makes the deep sea slow to recover from any human-caused damage or disturbance. Deep-sea species are also especially vulnerable to climate change; because their environment usually changes very little compared to shallow water, warming, acidification or deoxygenation of the deep can be devastating.

Protected area regulations and monitoring plans worldwide often fail to account for deep-sea environments and their particular needs in a world affected by climate change, which can leave these environments vulnerable to harm. NOAA should therefore consider the particular impact of sanctuary designation, and any change in regulation that comes with it, on the rich, deep-sea ecosystems in the area.

The potential socioeconomic, cultural, and biological impacts of sanctuary designation:

In providing more streamlined and politically durable protection of marine portions of Papahānaumokuākea than the current Marine National Monument, sanctuary designation may have a positive impact on the deep-sea life in the area. Deep-sea environments globally are at



increasing risk of damage from deep-seabed mining, bottom trawling, and other uses. Creating a National Marine Sanctuary in the area with regulations that disallow such activities would ensure local deep-sea life remains protected. Sanctuary designation would not protect the deep-sea environment from climate change, but in many cases reduction of other risks is believed to help ocean species survive its effects.

This continued protection may have socioeconomic and cultural benefits. Deep-sea research, which is currently allowed by permit in the Monument, provides valuable contributions to many branches of science. These include the [development of new materials](#), [medical research](#), and the [study of climate change](#). The deep sea also holds cultural and aesthetic value for many, with this archipelago in particular being the sacred wahi kupuna of the Native Hawaiian people. NOAA should consider the value that the deep-sea portions of Papahānaumokuākea provide in these areas and the corresponding benefits of improved protection. At the same time, NOAA should consider the risks that any future changes to sanctuary regulations could pose to deep-sea environments and their uses.

Spatial extent of the sanctuary and boundary alternatives NOAA should consider:


As Dr. Beth Orcutt stated in her comment, [a 2021 research cruise](#) conducted by Ocean Exploration Trust and partners found diverse deep-sea communities on seamounts outside of the current Monument boundaries. NOAA's EIS should consider the benefits of expanding the area of a future Sanctuary to include these deep-sea communities, and others in the Pacific Remote Islands Marine National Monument, while also considering the impacts of this action on local people and current human activities in the area.

Important management measures for the sanctuary:

Future management of a National Marine Sanctuary in marine portions of Papahānaumokuākea should take the following recommendations into account:

1. Design management measures for deep-sea and mesophotic environments within the Sanctuary so that the particular needs of these communities are accounted for, avoiding regulatory gaps.
2. Ensure that monitoring plans for the Sanctuary include plans for monitoring of deep-sea environments. Effective use of ROVs and AUVs can help inform management measures.
3. Due to a limited ability to monitor changes and apply adaptive management in the deep sea, especially across such a wide area, apply the precautionary principle to any activities under consideration in deep portions of the future Sanctuary.

Thank you once again for the opportunity to comment in advance of this important decision for Papahānaumokuākea.



Sincerely,

The Executive Committee of the Deep Ocean Stewardship Initiative (DOSI):
Maria Baker, Lisa Levin, Elva Escobar, Kristina Gjerde, Harriet Harden-Davies, Diva Amon, and
Brandon Gertz

With assistance from DOSI members Erik Cordes, Megan Cook, and Bobbi-Jo Dobush



National Headquarters

1130 17th Street, N.W. | Washington, D.C. 20036-4604 | tel 202.682.9400 | fax 202.682.1331
www.defenders.org

Submitted electronically via regulations.gov

January 31, 2022

Ms. Athline Clark
Superintendent
Papahānaumokuākea Marine National Monument and UNESCO World Heritage Site
1845 Wasp Blvd, Building 176
Honolulu, HI 96818

Re: Public Comment for the Proposed Designation of a National Marine Sanctuary within
Papahānaumokuākea Marine National Monument, NOAA-NOS-2021-0114

Dear Superintendent Clark:

Defenders of Wildlife (“Defenders”) respectfully submits the following comments on the proposed designation of a national marine sanctuary within the Papahānaumokuākea Marine National Monument. Defenders of Wildlife is a national non-profit conservation organization dedicated to conserving and restoring native species and the habitats on which they depend. Defenders is deeply involved in the conservation of marine species and ocean habitats, including the protection and recovery of species that occur in U.S. waters in the Pacific Ocean. We submit these comments on behalf of nearly 2.2 million members and supporters nationwide.

Papahānaumokuākea Marine National Monument is located in the Pacific Ocean, encompassing 582,578 square miles and is the “largest contiguous fully protected conservation area under the U.S. flag.”¹ The Monument protects shallow water habitats that are essential for several species of birds, marine mammals, fish, and coral.² Many of the species found within the Monument are endemic and not found anywhere else in the world. As many as twenty-three species protected under the Endangered Species Act can be found within the boundaries of the Monument. Among them are the threatened green sea turtle, whose nesting habitat is within the Monument, and the endangered Hawaiian monk seal, which is found only in Hawai‘i.

In addition to protecting wildlife, the Monument is a natural and cultural World Heritage Site and protects places, including areas located on the islands of Nihoa and Mokumanamana, of cultural significance to Native Hawaiians.³ The island of Mokumanamana has the highest number of sacred sites in the Hawaiian Archipelago and “has spiritual significance in Hawaiian cosmology”.⁴

¹ National Oceanic and Atmospheric Administration. “About Papahānaumokuākea.” *About Papahānaumokuākea* | *Papahānaumokuākea*, 7 Aug. 2019, <https://www.papahanaumokuakea.gov/new-about/>.

² *Id.*

³ *Id.*

⁴ *Id.*

Defenders supports the designation of portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. The sanctuary designation will provide added protections to highly productive ecosystems that are necessary for biological diversity and the overall health of the oceans. Considering the number of ESA-protected species found within the Monument, the agencies involved have a responsibility under section 7(a)(2) of the ESA to avoid jeopardizing the existence of any listed species. But the agencies also have a responsibility under section 7(1)(a) of the ESA, which states that all federal agencies – including the ones involved in management of the Monument – are required to use their authorities to conserve threatened and endangered species, defined as recovering species to the point where they no longer need the protections of the ESA.⁵ The agencies can meet this obligation by ensuring strong protections for those species within the Monument. Likewise, a national marine sanctuary designation will advance the conservation purposes of other federal statutes, including the Marine Mammal Protection Act, Migratory Bird Treaty Act, and Magnuson-Stevens Fishery Conservation and Management Act.

Papahānaumokuākea is also extremely important for Native Hawaiians and added protections will ensure that the waters there will be accessible for future generations. Currently, Papahānaumokuākea is co-managed with four co-trustees and seven co-managing agencies including the Office of Hawaiian Affairs that represents local indigenous communities.⁶ We support this continued shared governance for the marine sanctuary as many sites within the Monument are sacred to Native Hawaiians and efforts to further protect them should incorporate traditional ecological knowledge as well as shared management with Native Hawaiians.

Thank you for the opportunity to submit these comments.

Sincerely,

Monique Paul
Conservation Law Coordinator
Defenders of Wildlife
mpaul@defenders.org
202-772-0251

⁵ 16 U.S.C. §§ 1536(a)(1), 1532(3) (defining “conserve”).

⁶ National Oceanic and Atmospheric Administration. “About Papahānaumokuākea.” *About Papahānaumokuākea* | *Papahānaumokuākea*, 7 Aug. 2019, <https://www.papahanaumokuakea.gov/new-about/>.

The Department of the Navy (DON) appreciates the opportunity to provide comments on the National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) notice of intent to prepare a draft environmental impact statement (EIS) to consider designating marine portions of the Papahānaumokuākea Marine National Monument (PMNM) as a national marine sanctuary. We look forward to working with NOAA, the U.S. Fish and Wildlife Service (FWS), the State of Hawaii, and the Office of Hawaiian Affairs during the designation process and request to be a cooperating agency for this EIS.

The Pacific region is an area of great strategic importance and focus for national defense and specifically for the DON. DON seeks to preserve the ability to conduct military activities in the Pacific as needed to support Navy and Marine Corps readiness and support U.S. national security initiatives. DON requests to be a cooperating agency in order to provide special expertise on potential Navy and Marine Corps equities that may be relevant to the sanctuary designation and management process.

DON requests that the sanctuary designation process be consistent with the spirit and intent of the two Proclamations that established PMNM, directing that the management of this area not restrict or unduly burden the activities and exercises of the Armed Forces. A portion of PMNM overlaps with the Navy's temporary operating area within the Hawaii Range Complex; and training and testing activities that could occur within the PMNM include training by individual ships transiting to and from the Western Pacific on deployment or occasional positioning of ships supporting testing or other events outside of the Monument. Types of events can be in the air, at the surface, or sub-surface. The Navy previously considered the effects of training and testing in and around the Monument in its 2018 Hawaii and Southern California Training and Testing Environmental Impact Statement and earlier analysis around the Hawaiian Islands. Activities conducted in this area are performed in compliance with applicable environmental laws.

During the sanctuary designation process, consistent with the language in the Proclamation, the Navy requests that ONMS work with the Department of Defense (DoD), through the United States Navy, under the Sunken Military Craft Act regarding the protection of sunken craft which are under the DoD's jurisdiction.

DON also requests the sanctuary designation process consider the rights, freedoms, and lawful uses of the sea recognized in customary international law. The proclamations establishing the PMNM are explicit that the designation shall be applied in accordance with international law, and include several statements about the applicability of management provisions to specific entities (e.g., foreign flag vessels, sovereign warships). DON recommends that the sanctuary incorporate the U.S. Armed Forces and emergency and law enforcement activities provisions of the proclamations, as well as the provisions that are in accordance with international law. Any permit system for research should include coordination with the Department of State regarding U.S. Marine Scientific Research policy, and consider appropriate boundaries for the protection and management of cultural resources outside of the contiguous zone and consistency with international law.

We look forward to working with NOAA, FWS, the State of Hawaii, and the Office of Hawaiian Affairs to facilitate the Sanctuary designation while ensuring Navy equities are considered. The Department of the Navy point of contact is: Matt Senska, Office of the Deputy Assistant Secretary of the Navy (Environment & Mission Readiness), matthew.c.senska.crv@us.navy.mil.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

January 31, 2022

Athline Clark
NOAA Superintendent
Papahānaumokuākea Marine National Monument
Attn: PMNM-Sanctuary Designation
1845 Wasp Boulevard, Bldg 176
Honolulu, Hawaii 96818

Subject: Scoping Comments for the Draft Environmental Impact Statement for the National Marine Sanctuary Designation for Papahānaumokuākea Marine National Monument, Honolulu County, Hawaii (docket # NOAA-NOS-2021-0114)

Dear Athline Clark:

The U.S. Environmental Protection Agency has reviewed the National Oceanic and Atmospheric Administration's Notice of Intent to prepare a Draft Environmental Impact Statement for the National Marine Sanctuary Designation for Papahānaumokuākea Marine National Monument (Papahānaumokuākea Marine Sanctuary). Our review and comments are provided pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The National Oceanic and Atmospheric Administration is preparing an Environmental Impact Statement to consider and disclose the anticipated environmental effects of designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. The Monument is administered jointly by four Co-Trustees—the Secretary of Commerce through the NOAA, the Secretary of the Interior through the U.S. Fish and Wildlife Service (USFWS), the State of Hawaii through the Governor and the Office of Hawaiian Affairs. The Monument Co-Trustees currently operate the Monument guided by a 2008 Monument Management Plan for Papahānaumokuākea and the residential Proclamations designating the Monument. Papahānaumokuākea Marine National Monument is one of the largest protected areas in the world. The original Papahānaumokuākea Marine National Monument and the Monument Expansion Area located around the Northwestern Hawaiian Islands, were established under the Antiquities Act through, respectively, Presidential Proclamation 8031 of June 15, 2006, as amended by Proclamation 8112 of February 28, 2007; and Proclamation 9478 of August 26, 2016. Proclamation 9478 expanded the Monument by an additional 442,781 square miles from 139,793 square miles to a total 582,574 square miles and directed NOAA to initiate the process to designate Papahānaumokuākea Marine National Monument as a National Marine Sanctuary.

The EPA offers the following scoping recommendations to NOAA to consider when preparing the Draft EIS, including impacts to biological resources, water quality for coral reef protection, water quality impairments from trash, legacy hazardous waste cleanup at Tern Island, and air quality. These issues are discussed further in the attached detailed comments. The EPA appreciates the Papahānaumokuākea Marine Sanctuary analysis utilizes best available science. Additionally, the EPA appreciates

opportunities to participate in future review periods issued for updates to the overarching Monument Management Plan.

The EPA appreciates the opportunity to comment on the preparation of the Draft EIS. Once it is released for public review, please provide an electronic copy to me at zellinger.andrew@epa.gov. If you have any questions, please feel free to contact me at (415) 972-3093 or by email.

Sincerely,

/s/

**ANDREW
ZELLINGER** Digitally signed by
ANDREW ZELLINGER
Date: 2022.01.31
17:19:56 -08'00'

Andrew Zellinger
Environmental Review Branch

Enclosure: EPA's Detailed Comments

U.S. EPA DETAILED COMMENTS ON THE SCOPING NOTICE FOR THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE NATIONAL MARINE SANCTUARY DESIGNATION FOR PAPAĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT, HONOLULU COUNTY, HAWAII – JANUARY 31, 2022

Purpose and Need

In the Draft EIS, clearly identify the underlying purpose and need to which NOAA is responding in proposing the alternatives (40 CFR 1502.13). The *purpose* of the proposed action is typically the specific objectives of the activity, while the *need* for the proposed action may be to eliminate a broader underlying problem or take advantage of an opportunity. The purpose and need should be a clear, objective statement of the rationale for the proposed project.

Range of Alternatives

All reasonable alternatives that fulfill the proposed action’s purpose and need should be evaluated in detail. A robust range of alternatives will include options for avoiding significant environmental impacts.

The environmental impacts of the proposed action and alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public (40 CFR 1502.14). The potential environmental impacts of each alternative should be quantified to the greatest extent possible (e.g., acres of habitat impacted; change in water quality).

Baseline Environmental Conditions

When evaluating project effects, we recommend using existing environmental conditions as the baseline for comparing impacts across all alternatives, including the no-action alternative. This provides an important frame of reference for quantifying and/or characterizing magnitudes of effects and understanding each alternative’s impacts and potential benefits. This is particularly important when there are environmental protections in place that are based on current conditions, such as total maximum daily loads (TMDLs) for impaired waterbodies. It can also be useful, although often less certain, to compare alternatives against a no action baseline that includes reasonably foreseeable future conditions. The EPA recommends that the NEPA analysis compare and present impacts to resources against the existing conditions baseline using a consistent method to measure project impacts for all alternatives. By utilizing existing environmental conditions as a baseline, future changes to environmental resources can be more accurately measured for all alternatives, including the No Action alternative. We recommend that NOAA consider the following when defining baseline conditions:

- Verifying that historical data (e.g., data 5 years or older) are representative of current conditions.
- Including resources directly impacted by the project footprint within the geographic scope of analysis, as well as the resources indirectly (or secondarily) impacted by the project. These indirectly impacted areas may include streams, wetlands, and aquatic, riparian, and meadow ecosystems.

Biological Resources

The document should identify all petitioned and listed threatened and endangered species and critical habitat that might occur within the project area. We recommend that NOAA quantify which species or critical habitat might be directly, indirectly, or cumulatively affected by each alternative. The EPA recommends engaging the U.S. Fish and Wildlife Service as early in the analysis as possible to ensure that the proposed alternatives account for the following:

- Impacts to special-status pieces found in the project area including the Hawaiian Monk seal, and green turtles;
- Migratory Bird Treaty Act compliance; and
- Protection from invasive species.

Clean Water Act

List of Impaired Waters under Clean Water Act, Section 303(d)

EPA added Tern Island to the 303(d) list based on a review of data and information that the Center for Biological Diversity provided to the State of Hawaii for its 2018 Integrated Report. EPA determined that waters around Tern Island are not meeting Hawaii's water quality standards for trash based on this review.

States are required to develop a Total Maximum Daily Load for every pollutant/waterbody combination that are on its 303(d) list. States assign a priority ranking to waterbodies/pollutants on the list for TMDL development. Tern Island trash is currently listed as a low priority for TMDL development on Hawaii's list. It is possible for a waterbody to come off the 303(d) list without a TMDL if other restoration activities occur and new data and information show the waterbody is meeting water quality standards. We recommend that NOAA consider strategies focused on minimizing trash and marine debris in the waters around Tern Island throughout the Marine Sanctuary designation and management process.

Improving Water Quality to Protect Coral Reefs

EPA protects coral reefs by implementing Clean Water Act programs that protect water quality in watersheds and coastal zones of coral reef areas. EPA also supports efforts to monitor and assess the condition of U.S. coral reefs and conducts research into the causes of coral reef deterioration. EPA is developing tools to help adapt coral reefs to better handle changing conditions.¹ Much of EPA's work to protect coral reefs is conducted in partnership with other federal agencies, states, and territories. For example, EPA is an active member of the interagency U.S. Coral Reef Task Force.² EPA is currently developing an evidence map identifying and organizing existing literature evaluating the impact of water quality stressors on coral reef habitats.

Legacy Hazardous Waste Cleanup at Tern Island

Tern Island is a US Fish and Wildlife Service Refuge within the Papahānaumokuākea Marine National Monument. It served as a US Naval Air Facility and Refueling Station during WWII before serving as a US Coast Guard Long-Range Navigation Station from 1952-1979, after which it was transferred to FWS. Today it is recognized as a World Heritage Site and an increasingly important terrestrial location for several threatened and endangered species and 18 species of nesting seabirds. Tern Island was placed on the Federal Agency Hazardous Waste Compliance Docket in 2004. Legacy military waste and associated hazardous substances remain buried on the island.

In 2012, EPA was petitioned by the CBD to conduct a CERCLA Preliminary Assessment (PA) of the Northwestern Hawaiian Islands, with a focus on the source and impact of plastic pollution on sensitive species. CBD agreed to EPA conducting a scaled down PA of Tern Island, which EPA completed in partnership with FWS in in 2014. The PA confirmed that releases of hazardous substances--such as PCBs, lead, hydrocarbons, dioxins/furans, and heavy metals from onsite buried military wastes--have occurred in sensitive marine and terrestrial environments and further action is needed.

¹ <https://www.epa.gov/coral-reefs/what-epa-doing-protect-coral-reefs>

² EPA coral reef contact information: <https://www.epa.gov/coral-reefs/forms/contact-us-about-coral-reefs>

In 2019, EPA completed a removal assessment for hazardous substances on the island. Data from the report demonstrated elevated concentrations of metals, PCBs and PAHs in soil, groundwater, and surface water in the vicinity of the legacy “Bulky Dump” and the SE corner of the island. On November 9, 2021, CBD sent EPA a letter seeking an update on EPA’s investigations at Tern Island, noting the September 2014 PA “indicated that further evaluation was warranted at Tern Island.”

Proposed Next Steps

EPA (in consultation with FWS) proposes to conduct a removal action on an emergency basis to mitigate threats posed by hazardous substances which remain unaddressed. FWS and DOI staff and solicitors met with EPA recently to discuss coordination on a proposed hazardous substances removal action. The proposed action would abate hazardous substance impacts due to the Bulky Dump (exposed during Hurricane Walaka) and other isolated areas of concern. The action decouples the emergency action from the larger effort to restore the island, including the construction of a seawall to shore up the eroding dump area.

Air Quality

General Conformity

EPA’s General Conformity Rule, established under Section 176(c)(4) of the Clean Air Act, provides a specific process for ensuring that federal actions do not interfere with a state’s plans to attain or maintain NAAQS. For any criteria pollutants in the air basin of the project area where the air quality status is in nonattainment or attainment – maintenance,³ complete a general conformity applicability analysis (i.e., a comparison of direct and indirect emissions for each alternative with *de minimis* thresholds of 40 CFR 93.153). We recommend including a draft general conformity determination in the Draft EIS to fulfill the public participation requirements of 40 CFR 93.156.

Consultation with Tribal Governments

Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments” (November 6, 2000) was issued to establish regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the United States government-to-government relationships with Indian Tribes. In the Draft EIS, describe the process and outcome of government-to-government consultation between NOAA and each of the tribal governments within the project area, issues that were raised (if any), and how those issues were addressed in the selection of the proposed alternative. As a general resource, the EPA recommends the document *Tribal Consultation: Best Practices in Historic Preservation*, published by the National Association of Tribal Historic Preservation Officers.⁴

National Historic Preservation Act and Executive Order 13007

Consultation for tribal cultural resources is required under Section 103 of the National Historic Preservation Act (NHPA). Historic properties under the NHPA are properties that are included in the National Register of Historic Places (NRHP) or that meet the criteria for the National Register. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, to consult with the appropriate State Historic Preservation Office/Tribal Historic Preservation Office (SHPO/THPO). Under NEPA, any impacts to tribal, cultural, or other treaty resources must be discussed. Section 106 of the NHPA requires that federal agencies consider the effects of their actions on cultural resources, following regulation in 36 CFR 800.

³ Maintenance areas redesignated to attainment more than twenty years in the past are no longer required to comply with general conformity.

⁴ See http://www.nathpo.org/PDF/Tribal_Consultation.pdf

Executive Order 13007 “Indian Sacred Sites” (May 24, 1996) requires federal land managing agencies to accommodate access to, and ceremonial use of, Indian sacred sites by Indian religious practitioners, and to avoid adversely affecting the physical integrity, accessibility, or use of sacred sites. It is important to note that a sacred site may not meet the National Register criteria for a historic property and that, conversely, a historic property may not meet the criteria for a sacred site. It is also important to note that sacred sites may not be identified solely in consulting with tribes located within geographic proximity of the project. Tribes located outside of the project area may also have religiously significant ties to lands within the project area and should, therefore, be included in the consultation process.

The EPA recommends that the Draft EIS address the existence of Native Hawaiian sacred sites in the project area. Explain how the proposed action would address Executive Order 13007, distinguish it from Section 106 of the NHPA, and discuss how NOAA would ensure that the proposed action would avoid adversely affecting the physical integrity, accessibility, or use of sacred sites. Provide a summary of all coordination with Native Hawaiians and with the SHPO/THPO, including identification of NRHP eligible sites and development of a Cultural Resource Management Plan.

Environmental Justice


Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (February 11, 1994) and the “Memorandum of Understanding on Environmental Justice and Executive Order 12898,” released on August 4, 2011, direct federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity to participate in the decision-making process. CEQ guidance clarifies the terms low-income and minority population, which includes Native Americans, and describes the factors to consider when evaluating disproportionately high and adverse human health effects.

The EPA⁵ recommends that the Draft EIS include an evaluation of environmental justice populations within the geographic scope of the project area. If such populations exist, describe how the proposed action would address the potential for disproportionate adverse impacts to minority and low-income populations, and the approaches used to foster public participation and coordination with these populations. The EPA recommends the following for development of the EJ analysis:

- Consider *Promising Practices for EJ Methodologies in NEPA Reviews* when developing the EJ section of the EIS.
- Include a description of the area of potential impact used for the environmental justice impact analysis and provide the source of demographic information.
- Consider using EPA’s Environmental Justice screening and Mapping Tool EJScreen⁶
- Disclose whether the project will result in a disproportionate and adverse impact on minority or low-income populations.
- Discuss potential mitigation measures for any anticipated adverse impacts to community members that could result from the project.
- Include opportunities for incorporating public input to promote context sensitive design, especially in minority and low-income communities.

⁵ See *Promising Practices for EJ Methodologies in NEPA Reviews*, May 2016
https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf

⁶ <https://ejscreen.epa.gov/mapper/>

- 
- Document the process used for community involvement and communication, including all measures to specifically involve to low-income and minority communities. Include an analysis of results achieved by reaching out to these populations.
 - Identify any specific actions proposed by NOAA to reduce emissions from the project, including use of low or zero-emissions construction equipment, and inclusion of alternative fuel and green technology infrastructure. Include an estimate of the air quality benefits and reduced adverse health effects that would result from each mitigation measure proposed. Identify any specific mitigation measures considered for sensitive populations (e.g., schools, daycare facilities, hospitals, senior centers, etc.).

Linda M. B. Paul Esq.
A Limited Liability Law Corporation

815 Pahumele Place
Kailua, HI 96734
E-mail: linpaul@aloha.net

Phone: 808-262-6859
Mobil: 808-347-8825

To: John Armor, Director of the Office of National Marine Sanctuaries
c/o PMNM-Sanctuary Designation, NOAA/ONMS
1845 Wasp Blvd., Bldg 176, Honolulu, HI 96818

From: Linda M.B. Paul


RE: Public Comment on National Marine Sanctuary Designation for the Northwestern Hawaiian Islands.

Aloha John,

As a member of the public I would like to offer the following comments on the designation of a National Marine Sanctuary in the Northwestern Hawaiian Islands.

I support the establishment of a National Marine Sanctuary in the Northwestern Hawaiian Islands as a means of improving the legal protections currently in place to preserve the endemic wildlife and ecosystems of this unique, remote and important marine area. In addition to complying with President William J. Clinton's Executive Order 13178 of December 4, 2000, which is still in effect, designating a NWHI National Marine Sanctuary will provide NOAA with the authorization under the National Marine Sanctuaries Act to carry out the following necessary management actions that it currently has no authority to take:

- a. Assess civil penalties for violations of Monument regulations and for damages to NWHI resources that occur due to actions within the sanctuary and actions from outside sanctuary boundaries. Some amount of any penalties collected will help fund resource protection efforts.
- b. Access Natural Resource Damage Assessment funds to recover costs associated with responding to and remediating the destruction, loss or injury (or potential destruction, loss or injury) to sanctuary resources.
- c. Enter directly into agreements with other agencies. Currently the Monument must go through the Pacific Island Region for all MOAs, MOUs, etc.
- d. Establish a mechanism to charge fees for commercial Special Ocean Use permits. This includes charging for permitting staff time, cost of vessel hull inspections, cost of providing Resource Monitors, etc. The revenue from these fees will stay with the site. The sanctuary implementation language can also provide that the Monument's current joint permitting system will continue.
- e. Establish a Sanctuary Advisory Council regulated by the NMSA that can provide consensus advice to sanctuary managers as representatives of various community constituencies.




Like many other marine areas Hawaii's coral reef ecosystems are being increasingly impacted by a whole host of threats including ocean warming, climate change, coral bleaching, sea level rise, habitat degradation and destruction, disease, invasive species and pollution, which includes marine debris, oil and chemical spills, sediment runoff, plastics, etc. Studies show that large marine protected areas (MPAs) increase biodiversity, abundance and the size and productivity of species, as well as protecting the structure and function of ecosystems.

I also think the boundaries of a NWHI NMS should include all waters and marine habitat out to 200 nautical miles from the baseline of the U.S. territorial sea for all marine areas northwest of the Main Hawaiian Islands and include the State Marine Refuge and all of the undersea volcano referred to on nautical charts a "Middle Bank". Middle Bank rises up to 60 meters below the water's surface and is a critically important biodiversity connectivity bridge between the Main Hawaiian Islands and the Northwestern Hawaiian Islands. Larvae from both these areas move in both directions. Middle Bank is also essential habitat for humpback whales. Recent research has determined that this species use it for feeding, breeding and navigation. It is also an important foraging area for the highly endangered monk seal.

Research also indicates that networks of fully protected reserves linked ecologically through currents are much more likely to work than a single isolated MPA. Networks provide insurance against catastrophic events such as oil spills, typhoons, ocean warming and acidification, invasive species, and population collapse due to overharvesting. Large and replicate MPAs maximize effectiveness and help mitigate damage from catastrophic events such as hurricanes by protecting similar habitats and biotic communities along the entire length of an archipelago.

Middle Bank is much closer to Nihoa, the first island in the Northwestern island chain, and is separated from Kauai in the Main Hawaiian islands by a very deep moat, providing a significant buffer from the impacts of over harvesting in the Main islands. Any regulations short of total closure will be very difficult to enforce due to the distance. Most of the older fishermen that used to fish Middle Bank have retired. According to a former State Division of Aquatic Resources staffer a skilled fisherman employing new fishing technology and a larger boat can easily fish out Middle Bank in two years. It's a natural boundary line and including it in the new Sanctuary is a once-in-a-lifetime opportunity to protect it as a biodiversity reserve and nursery area for fish stocks, which will benefit fishermen in the long run due to the spillover effect. Larval spillover helps replenish the ocean beyond a protected area; larvae dispersal distances of 20-50 kms or more are not uncommon. Protecting Middle Bank is consistent with the vision, mission, principles and goals of the Monument and those recommended for the new NWHI NMS by the NWHICRER Advisory Council.



Regarding a name for a National Marine Sanctuary in the NWHI, I don't support giving it the same name as the Papahānaumokuākea Marine National Monument. The Monument is its own thing and was established under a different and far weaker statute, which is likely to be amended to prevent using it in the future to protect large marine areas. It's important that the public, and Congress, do not confuse the Monument with the Sanctuary. I personally prefer giving the Sanctuary by its own unique and readily recognizable place name, namely the *Northwestern Hawaiian Islands National Marine Sanctuary*.

Thank you for the opportunity to submit comments on this important matter.

Linda M. B. Paul



MARINE MAMMAL COMMISSION

31 January 2022

Ms. Athlene Clark, NOAA Superintendent
Papahānaumokuākea Marine National Monument
1845 Wasp Blvd., Building 176
Honolulu, HI 96818

ATTN: PMNM-Sanctuary Designation

Dear Ms. Clark:

On 19 November 2021, the National Oceanic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries (ONMS) published in the *Federal Register* a Notice of Intent (86 Fed. Reg. 64904) to prepare a draft environmental impact statement (DEIS) and hold public scoping meetings to consider designating the marine portions of the Papahānaumokuākea Marine National Monument as a National Marine Sanctuary (NMS). That notice indicated that NOAA is working in cooperation with the U.S. Fish and Wildlife Service, the State of Hawai'i, and the Office of Hawaiian Affairs on the possible sanctuary designation and that "the DEIS will evaluate a reasonable range of alternatives that could include different options for management goals or actions, sanctuary regulations, and potential boundaries." NOAA is inviting comments on the scope of issues to be considered in the DEIS and their significance. The DEIS is expected to inform NOAA's decision on the sanctuary designation and development of a draft sanctuary management plan, proposed sanctuary regulations, and proposed terms of designation.

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors, has reviewed the *Federal Register* notice and other relevant documents and offers herein its comments and recommendations. The Commission's primary concern with a sanctuary designation is how it would affect marine mammals that occupy or travel through the Northwestern Hawaiian Islands and surrounding waters (NWHI), and the ecosystems that support those species. The Commission is especially interested in the impacts of potentially permitted human activities on Hawaiian monk seals (*Neomonachus schauinslandi*), the NWHI insular stock of false killer whales (*Pseudorca crassidens*), insular populations of other odontocetes, and the Central North Pacific stock of humpback whales (*Megaptera novaeangliae*) that winters in the Hawaiian Islands.

Background

Threats to Marine Mammals

Because human activities in the Monument are currently limited to research, education, Native Hawaiian practices, and a small number of recreational trips to historical sites at Midway Atoll, current threats to marine mammals associated with those activities are being managed. However, the sanctuary designation process creates the potential for long-prohibited fishing to be

4340 East-West Highway • Room 700 • Bethesda, MD 20814-4498 • T: 301.504.0087 • F:
301.504.0099
www.mmc.gov

permitted again, and the Commission considers fishing to be a significant threat to a number of marine mammals. In addition, there are at least two longstanding and ongoing significant human-caused threats to marine mammals in the Monument. First, large quantities of marine debris, including derelict fishing gear, can be found in Monument waters. Most of this debris comes from outside the Hawaiian Archipelago (Boland & Donohue 2003). Entanglement of endangered monk seals, especially young animals, is one of the largest sources of injury and mortality for the population in the NWHI. Second, global warming and its secondary and tertiary impacts (e.g., sea level rise, prey impacts) are potential threats to marine mammals in the Monument. The monk seal population relies on a relatively small amount of low-lying island habitat for giving birth, nursing young, and resting. Significant loss and degradation of this critical terrestrial habitat have already occurred and this is expected to continue, representing a threat to the persistence of monk seals in most of the NWHI (Baker et al. 2006, Reynolds et al. 2012, Baker et al. 2020).

Two dozen species of marine mammals are found in the NWHI. Because of the remoteness of the islands, we know relatively little about most of the species or stocks, with the exception of the endangered Hawaiian monk seals, which have been studied intensively for decades. Because the islands are largely uninhabited by humans, the number of threats to these species and stocks from human activities is low compared to archipelagoes with or near large population centers. As elsewhere in the nation and the world, fishing poses the greatest threat to most species and stocks of marine mammals in the NWHI. Almost all fishing is currently prohibited in the Monument, but fishing was a concern in the past and could be again should regulations change. We know from scientific studies and data gathered in the Main Hawaiian Islands and elsewhere where the same or similar species occur that cetaceans and monk seals are at considerable risk from a variety of fishing gear types. In the Hawaiian Islands, fisheries that pose the greatest threat include those that deploy various types of hook and line gear (e.g., long lines, short lines, bottom hook and line, trolling lures), gill nets, and trap gear. The deep-set long-line fishery is known to kill or seriously injure substantial numbers of odontocetes, and is especially a problem for the pelagic stock of false killer whales (Carretta et al. 2021). In recent decades, bycatch of pelagic false killer whales within the U.S. Exclusive Economic Zone (EEZ) has often exceeded NMFS's sustainability reference point, the potential biological removal level (PBR). If long-line fishing were to be allowed within Monument waters, then it certainly would pose a significant threat to the insular population of false killer whales that occurs there, and possibly to other insular populations of odontocetes (e.g., pantropical spotted (*Stenella attenuata*) and spinner (*Stenella longirostris*) dolphins) (Baird et al. 2015). In the early 1990's, monk seal injuries in the NWHI resulted from interactions with the longline fleet (Nitta and Henderson 1993). If once again permitted in the NWHI, bottomfish hook and line gear has the potential to hook, snag or entangle cetaceans and monk seals. A wide variety of gear types is used in fisheries in near-shore waters of the MHI, many of which are known to cause in hookings and entanglements of small cetaceans and monk seals. If such gear types were allowed to be used in the NWHI, they would pose a similar threat to the same species. Finally, elsewhere in the world, entanglement in gill nets and the buoy lines of trap gear is known to be a significant source of mortality for large whales, and the same could be true if certain types of these gears were allowed beyond the coral reefs in the NWHI.

Protection of Marine Mammals in the NWHI

Early Fisheries Management Measures—In response to hookings and injuries of monk seals and other species, NMFS prohibited long-line fishing within 50 nm of the NWHI in 1991.¹ Commercial lobster fishing, which began in the NWHI in 1983, experienced declining catch rates over the next two decades, prompting the Western Pacific Fishery Management Council (WesPac) and NMFS to close the fishery temporarily several times in the 1990s. Apparently in response to a lawsuit brought by several environmental organizations and a recommendation from the Commission, NMFS set the annual harvest limit to zero for the 2000 season, and continued that policy through 2006, when the fishery closure was made permanent by a presidential proclamation (see below).

*Executive Order 13178*²— President Clinton issued E.O. 13178 on 4 December 2000, (subsequently amended by E.O. 13196)³ creating the Northwest Hawaiian Islands Coral Reef Ecosystem Reserve (the Reserve) under the authority of the NMSA (16 U.S.C. § 1431 et seq.). Section 3 of E.O. 13178 defined the Reserve to “include submerged lands and waters of the Northwestern Hawaiian Islands, extending approximately 1,200 nautical miles (nm) long and 100nm wide.” Section 2 stated that the Reserve’s purpose was “to ensure the comprehensive, strong, and lasting protection of the coral reef ecosystem and related marine resources and species (resources) of the Northwestern Hawaiian Islands.” The Reserve’s management principles, established in section 4, and its management plan, in section 5(b), provided for:

- “The long-term conservation and protection of the coral reef ecosystem and related marine resources and species of the Northwestern Hawaiian Islands in their natural character” as the Reserve’s principal purpose;
- Using “available science and applying a precautionary approach with resource protection favored when there is a lack of information regarding any given activity, to the extent not contrary to law;”
- “The restoration or remediation of any degraded or injured resources of the Reserve;”
- The “enforcement and surveillance” of the Reserve’s regulations;
- The “identification of potential tourism, recreational, and commercial activities within the Reserve and actions necessary to ensure that these activities do not degrade the Reserve’s resources or diminish the Reserve’s natural character;” and
- Promulgation of “any regulations, in addition to the conservation measures and Reserve Preservation Areas established under [E.O. 13178], that the Secretary determines are necessary to manage the Reserve...”

Of particular interest to the Commission are the Reserve’s fishing regulations. The E.O. allowed commercial and recreational fishing to continue at levels no greater than were occurring in

¹ 50 C.F.R. § 665.806(a)(1)

² <https://www.federalregister.gov/documents/2000/12/07/00-31313/northwestern-hawaiian-islands-coral-reef-ecosystem-reserve>

³ <https://www.federalregister.gov/documents/2001/01/23/01-2214/final-northwestern-hawaiian-islands-coral-reef-ecosystem-reserve>

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December 2000 (E.O. 13178 Section 7), except in the Reserve Preservation Areas established in Section 8 of the E.O., within which all fishing was prohibited.

*Presidential Proclamation 8031*⁴—President George W. Bush issued this proclamation on 15 June 2006 and a subsequent amendment later that year,⁵ using his authority under the Antiquities Act⁶ to establish the Papahānaumokuākea Marine National Monument (PMNM or the Monument).⁷ Presidential Proclamation 8031 required the Secretary of Commerce, in consultation with the Secretary of the Interior and the State of Hawaii, to develop a management plan for the Monument that would “preserve the marine area of the Northwestern Hawaiian Islands and certain lands as necessary for the care and management of the historic and scientific objects therein.” The PMNM management plan was based on a management plan then being developed for a prospective NMS in the NWHI. The proclamation prohibited a number of activities within the Monument, including:

- “Exploring for, developing, or producing oil, gas, or minerals”;
- “Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving monument resource;” and
- “Possessing fishing gear except when stowed and not available for immediate use during passage without interruption through the monument.”

The proclamation set the lobster harvest limit within the Monument to zero, but allowed commercial fishing for bottom and pelagic species to continue, subject to harvest limits and other requirements, for a five-year period, after which all commercial fishing would be prohibited. The Monument’s fishing prohibitions superseded the Reserve provisions that had allowed limited fishing indefinitely. The proclamation also allowed the Secretary to issue permits for other activities regulated by the proclamation, such as research, education, Native Hawaiian practices, and those that “will assist in the conservation of the monument, provided that the activity meets certain requirements,” including that:

- “The activity can be conducted with adequate safeguards for the resources and ecological integrity of the monument;”
- “The activity will be conducted in a manner compatible with the management direction of this proclamation, considering the extent to which the conduct of the activity may diminish or enhance monument resources, qualities, and ecological integrity, any indirect, secondary, or cumulative effects of the activity, and the duration of such effects;”
- “There is no practicable alternative to conducting the activity within the monument;”
and

⁴ <https://www.federalregister.gov/documents/2006/06/26/06-5725/establishment-of-the-northwestern-hawaiian-islands-marine-national-monument>

⁵ <https://www.govinfo.gov/content/pkg/WCPD-2007-03-05/pdf/WCPD-2007-03-05-Pg237-2.pdf>

⁶ 16 U.S.C. § 1431 et seq.

⁷ The boundaries of the Monument are defined by a map included with the proclamation (71 Fed. Reg. 36453)

- “The end value of the activity outweighs its adverse impacts on monument resources, qualities, and ecological integrity.”

*Presidential Proclamation 9478*⁸—President Obama issued this proclamation on 25 August 2016, expanding the PMNM from the boundaries established in 2006 “to the extent of the seaward limit of the ... U.S. EEZ.” Proclamation 9478 relied on the authority of the Antiquities Act and noted that the extended waters contain “objects of historic and scientific interest.” This proclamation specifically referenced the area’s “biological resources,” “75 seamounts,” “unique biodiversity,” and value as a “sacred cultural, physical, and spiritual place for the Native Hawaiian community.” Further, the proclamation recognized that 24 species of marine mammals are found within the expanded area, several of which are endangered, and that the Hawaiian monk seal forages well beyond the original boundaries in demersal habitats almost 2,000 feet deep, and therefore, would receive protection throughout its foraging range.

Proclamation 9478 preserved all of the protections created under Presidential Proclamations 8031 and 8112, required the Secretary of Commerce to “consider initiating the process under the National Marine Sanctuaries Act...to designate the [expanded monument]...as a National Marine Sanctuary to supplement and complement existing authorities,” and established that the “Monument Expansion shall be the dominant reservation.” Importantly, the proclamation clarified one portion of Proclamation 8031, stating that “the Secretaries may permit...non-commercial fishing, provided that the fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably.”

Sanctuary Designation Process

As explained by ONMS in the *Federal Register* notice, “the primary objective of the NMSA is to protect the resources of the National Marine Sanctuary System, including biological and cultural resources, such as coral reefs, marine animals, archaeological sites, historic structures and historic shipwrecks.” The notice further states that “any proposed sanctuary regulations would be separate from, but supplementary and complementary to, existing Monument regulations and management provisions from the establishing executive order and proclamations.”

An important element in designating most sanctuaries is the inclusion of effective regulations specifying whether and what fishing activities are permitted. Section 305(a)(5) of the NMSA provides the opportunity for the appropriate Regional Fishery Management Council to prepare draft regulations pertaining to fishing within the proposed NMS. The NMSA states that “regulations prepared by a Council...shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council’s action fails to fulfill the purposes and this chapter and the goals and objectives of the proposed designation.” Further, the Act states that “in preparing draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 301(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation.” In the case where a council’s draft regulations are rejected by the Secretary, the Secretary is required to prepare fishing regulations for the sanctuary. However, in this case, the

⁸ <https://www.federalregister.gov/documents/2016/08/31/2016-21138/papahānaumokuāmaui-marine-national-monument-expansio>

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Presidential Proclamations establishing the pre-existing PMNM, with which the sanctuary is expected to overlap, already address fishery issues in this area.

A 19 November 2021 letter from ONMS to WesPac describes the section 305(a)(5) consultation process and clarifies that, in this specific instance:

- “The goals and objectives of the sanctuary designation..., together with the purposes and policies of the National Marine Sanctuaries Act, as well as the existing Presidential Proclamations 8031, 8112, and 9478 specific to Papahānaumokuākea Marine National Monument, are the benchmarks against which the Council’s action shall ultimately be measured;”
- “For the area designated by Proclamation 8031, NOAA believes the current Magnuson-Stevens Fishery Conservation and Management Act regulations under 50 CFR 404 are consistent with both the relevant provisions of Proclamations 8031 and 8112 and the goals and objectives for the proposed sanctuary. However, in order to rely on Magnuson-Stevens Fishery Conservation and Management Act authority for sanctuary purposes within the Monument Expansion Area designated by Proclamation 9478, **NOAA recommends the Council propose regulations for the Monument Expansion Area that are consistent with both the fishing provisions of Proclamation 9478, and the goals and objectives of the proposed sanctuary**” (emphasis added).

In the documents described above, NOAA identifies the following elements, among others, as necessary components of this sanctuary designation:

- “develop objectives and actions that ensure lasting protections consistent with the existing Monument proclamations and regulations;”
- “safeguard natural and cultural values of the marine environment of the Monument;”
- “authorize NOAA to assess civil penalties for violations of sanctuary regulations or permits and to enforce provisions of the NMSA;”
- “prohibit destruction or loss of sanctuary resources and provide natural resource damage assessment authorities for loss of or injury to any sanctuary resource;”
- “require interagency consultation for any Federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource;”
- “augment existing authorities under the Antiquities Act; Presidential Proclamations 8031, 8112 and 9478; Executive Order 13178; and 50 CFR 404 to provide additional regulatory and non-regulatory tools for management and protection of Monument resources.”

Summary of Existing Protections

The PMNM and the Reserve already are subject to a variety of protections under Executive Orders, Presidential Proclamations, and related documents. Key provisions are:

- Ensure strong, comprehensive conservation and protection of the coral reef ecosystem and related marine resources and species in their natural character (E.O. 13196)
- Ensure that degraded or injured resources are restored or remediated, and that ongoing permitted activities do not degrade Reserve resources (E.O. 13196)
- Prevent the actual or attempted removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging of any living or nonliving Monument resource (Proclamation 8031)
- Ensure that permitted activities are subject to adequate safeguards, are compatible with provisions of applicable proclamations, consider the extent to which the activity may diminish or enhance Monument resources, have a value that outweighs any adverse impacts, and lack a practicable alternative (Proclamation 8031).

The *Federal Register* notice and other documents provided by NOAA indicate that these protections will form the foundation for any additional protections and regulatory or non-regulatory tools to be established pursuant to a sanctuary designation and that any new protections will augment the existing authorities. Key new provisions being considered by NOAA include:

- Ensuring lasting protections that safeguard the Monument’s natural and cultural values and that are consistent with the Monument’s existing proclamations and regulations;
- Prohibiting the destruction or loss of sanctuary resources;
- Requiring interagency consultation for any Federal action likely to destroy or injure any Sanctuary resource.

Further, NOAA’s Papahānaumokuākea NMS web page⁹ states that: “Sanctuary designation will provide another layer of protection to continue honoring this place and **will not diminish any existing protections**” (emphasis added). Further, the web page states: “Designation...would **strengthen and increase the long term protections** already existing in the monument, **but cannot diminish them**” (emphasis added). An infographic available on the page adds that: “National marine sanctuary designation would **add the conservation benefits** to the marine areas of Papahānaumokuākea Marine National Monument by providing a stable regulatory framework and **additional protections** to safeguard living, cultural, and maritime heritage resources” (emphasis added).

Recommendations

The Commission supports the Reserve and Monument goals, objectives and regulations. The Commission also supports NOAA’s intention to supplement, complement, strengthen and add to these protections through designation of the Papahānaumokuākea NMS. Moreover, from the Commission’s perspective, the proposed sanctuary designation should adhere tightly to the principles identified by NOAA and the Reserve’s and Monument’s existing protections, which, relative to marine mammals and their ecosystems, should, at a minimum:

⁹ <https://sanctuaries.noaa.gov/papahanaumokuakea/>

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- Provide long-term, strong, comprehensive protections from anthropogenic threats;
- Prohibit any activity that would remove, injure or kill marine mammals, except as specifically authorized by a permit; and
- Allow for the issuance of permits for extractive activities or those with potentially adverse impacts only if the applicant, using the precautionary approach, demonstrates to NOAA's satisfaction that the proposed activities are compatible with Sanctuary and Monument goals and regulations, and will have only a negligible impact on sanctuary resources, including marine mammals.

Accordingly, the Commission recommends that these principles be reflected in the alternatives in the DEIS.

The Commission recommends that the DEIS alternatives, draft sanctuary designation and draft regulations explicitly 1) re-affirm that protections provided by the Monument and the Reserve will not be diminished, and 2) describe in detail how existing protections will be strengthened, increased and added to under those alternatives. In particular, the Commission recommends that the DEIS's preferred alternative permanently prohibit all commercial or recreational fishing in Sanctuary waters. As long as sustenance and traditional (subsistence) fishing by Native Hawaiians is accurately monitored, assessed and capped at minimal levels, those forms of fishing should not pose a serious threat to the NWHI marine environment or deplete resources important to marine mammals. As such, the alternatives in the DEIS should include their perpetuation.

The Commission notes that WesPac, at a recent Council meeting,¹⁰ expressed interest in exploring the potential for 'customary exchange' fishing to be permitted in the Sanctuary, and therefore in the Monument. The Commission believes that this practice would be contrary to the goals of the Sanctuary and the Monument, and Monument regulations. 'Customary exchange' is defined in the Magnuson-Stevens Act as:

"The non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for goods, and/or services for cultural, social, or religious reasons. Customary exchange may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, fuel, or food, that may be necessary to participate in fisheries in the western Pacific."

Given this definition, which would allow exchange of fish for goods or services 'customary exchange' does not differ substantively from commercial fishing, which includes not only selling fish, but barter and trade.¹¹ In addition, monetary reimbursements arguably involve, or could involve, commercial aspects. If the DEIS considers alternatives that would allow fishing for purposes of customary exchange, it should explain whether and how this would be consistent with fishing limits applicable to the Monument, examine closely distinctions between commercial fishing

¹⁰ <https://www.wpcouncil.org/press-release-fishery-management-council-recommends-a-new-%ef%bb%bfus-strategy-in-the-pacific-islands-with-the-wcpfc-9-december-2021/>

¹¹ The Magnuson-Stevens Act defines 'commercial fishing' as: "fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade."

and customary exchange and consider limitations (e.g., gear restrictions) to minimize impacts on marine mammals and other Sanctuary resources.

The Commission recognizes that NOAA, in designating a national marine sanctuary within the PMNM, is in part seeking to:

- “provide a more stable regulatory framework and additional protections to safeguard living, cultural, and maritime heritage resources;”
- “develop objectives and actions that ensure lasting protections consistent with the existing Monument proclamations and regulations;” and
- “augment existing authorities...to provide additional regulatory and non-regulatory tools for management and protection of Monument resources.”

A national marine sanctuary arguably provides secure and lasting protections because, once designated, an act of Congress is needed to reverse it. However, applicable prohibitions and protections can be amended through periodic rulemaking. It remains an open question as to whether a marine national monument designation made under the Antiquities Act by Presidential Proclamation can be reversed or significantly downsized by a later President and subsequent Executive Order. Thus, there is some risk that the protections afforded the NWHI as a marine national monument could disappear or be curtailed through executive fiat. This being the case, the protections afforded via a sanctuary designation, even if duplicative of those applicable to the Monument, are necessary. For this reason, NOAA, in designating a Papahānaumokuākea NMS, should look beyond a designation that is merely “separate from, but supplementary and complementary to, existing Monument regulations and management provisions.” Those regulations and management provisions should independently protect the area’s resources at least at the existing level should those provided through national monument status be reduced or lost.

Although not necessarily the case, a marine national monument created by proclamation often is more restrictive in terms of what activities are and are not allowed than would be expected through a sanctuary designation. National marine sanctuaries generally allow multiple uses, including, routinely, the extraction of resources. In contrast, almost all forms of resource extraction and potentially destructive human activities are prohibited in the PMNM. Further, the NMSA explicitly invites the appropriate fishery management council to play a major role in developing fishing regulations. As such, it is not surprising that most national marine sanctuaries allow at least some commercial and recreational fishing, and several are not subject to any sanctuary-specific fishing restrictions. During reviews that led to designation and expansion of the PMNM in 2006 and 2016, WesPac recommended that fishing be allowed in those areas. Moreover, on several occasions since 2006, WesPac has advocated that PMNM fishing prohibitions be removed. Thus, unless specifically tailored to reinforce the precedent established by the Monument with respect to fishing, it is not clear that an independently generated sanctuary designation would provide the same level of protection against impacts from fishing as do the PMNM provisions.

The Commission is pleased that NOAA has advised WesPac that any draft fishing regulations it develops should be “consistent with both the fishing provisions of Proclamation 9478, and the goals and objectives of the proposed sanctuary.” However, given the desirability of bolstering the Monument’s protections and uncertainty surrounding the durability of those

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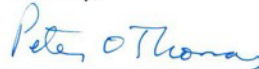
protections, the Commission recommends that NOAA, in developing the draft sanctuary designation and its regulations provide, at a minimum, the same levels of protections to marine resources, including fishery resources and marine mammals, as are afforded by the Monument.

The NWHI are subject to a range of threats beyond those that would come with renewed fishing in the Sanctuary. The Commission supports NOAA in the protections it has implemented against those threats, and for its intention to strengthen and add to those protections with the proposed sanctuary designation. The Commission recommends that NOAA, in its DEIS, provide a range of options for effectively addressing the threats posed to marine mammals and their ecosystems in the NWHI from marine debris and global warming.

Finally, in commenting on and generally supporting the proposal to designate the marine portions of the Papahānaumokuākea Marine National Monument as a National Marine Sanctuary (NMS), the Commission notes that there are other possible sanctuary designations under consideration around the United States. ONMS should consider giving higher priority to designating other areas nominated as sanctuaries (e.g., the St. George Unangan Heritage National Marine Sanctuary and the Chumash Heritage National Marine Sanctuary)¹² that currently lack any site-specific protections, before focusing on Papahānaumokuākea, which already is rather well-protected as a monument and reserve, and which is likely to receive only incremental benefits from the overlay of a sanctuary designation.

We hope these comments and recommendations are helpful. Please contact me if you have questions.

Sincerely,




Peter O. Thomas, Ph.D.,
Executive Director

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¹² The Commission's comment/recommendation letters on these two proposals will be posted to its web site soon.



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January 31, 2021

Mr. John Armor, Director
Office of National Marine Fisheries
National Ocean Service
National Oceanic and Atmospheric Administration

Dear Mr. Armor:


I am responding to the National Oceanic and Atmospheric Administration's proposal regarding establishing a proposed national marine sanctuary within the Papahānaumokuākea National Marine Monument. I am the President Emeritus of the Center for Marine Conservation (CMC). CMC has been renamed by the Board of Directors as the "Ocean Conservancy".

During my tenure with CMC we developed a robust program of work to support NOAA's marine sanctuary program, including for designations, appropriations, and general support for NOAA's program of work for the management of these important marine places under its administration. Recognizing marine sanctuaries were essentially designed to be multiple use management areas, our efforts to designate these areas resulted in establishing authority for improved management of these important sites for multiple purposes, including regarding commercial fisheries.

The Papahānaumokuākea National Marine Monument is a different management regime from the sanctuary designation in that it establishes a level of protection that prohibits commercial fishing. As noted by the NOAA website, the Papahānaumokuākea Marine National Monument is the single largest fully protected marine conservation area in the United States, and one of the largest marine protected areas in the world. It is in fact the largest area in the world for maintaining marine habitat without significant human impact.

As such, it is an invaluable marine protected area for not only protecting a marine ecosystem, but for conducting research on a major large marine ecosystem unimpacted by extractive fishery activities. It would seem that the Papahānaumokuākea National Marine Monument, as currently protected and potential additional protections to be gained through additional regulation and management plan updates, is an irreplaceable research site for assessing the impacts of global change in the marine environment.

In the November 19 Federal Register, NOAA gives notice that it will conduct scoping and prepare an Environmental Impact Statement for proposing designation of a National Marine Sanctuary within the existing National Monument. The notice indicates that the scoping process



will include securing information on possible draft fishing regulations for the Sanctuary in the Monument in which commercial fishing is currently prohibited.

In providing public information on the proposal, the Office of National Marine Sanctuaries indicates: the “National marine sanctuary designation would add conservation benefits to the marine areas of the Papahānaumokuākea Marine Management Monument by providing a stable regulatory framework and additional protections to safeguard living, cultural, and maritime heritage resources.” In an additional public statement, the Office notes “The designation would add conservation benefits and permanency of a national marine sanctuary to safeguard resources in the marine portions of the monument.” “The sanctuary designation process does not change the area’s status as a marine national monument. It would add the protections of a national marine sanctuary to the monument’s waters.”

In these and other public statements, NOAA suggests deficiencies in current existing legal authority for maintaining the protection and management of the Monument. The solution proposed is an overlapping or replacement of legal authority for managing the Monument that already exists. However, NOAA does not indicate any specific problems with the existing management regime in which there are deficiencies in authority needed for protection of what is now arguably the most comprehensively protected large marine area on the planet.

The problem seems to be that no commercial fishing is allowed in this world-class marine protected area. No other deficiencies are identified that are needed to be corrected to improve on the current protective management regime for the Monument – for which NOAA already shares management of the regime with other appropriate Federal management authorities.

I appreciate that commercial fishing interests would like to revisit and reopen the Monument to commercial fishing. By overlaying the “Sanctuary” management regime for the current Monument, the door is opened to new commercial fishing that would not otherwise be allowed. Is this not correct? The DEIS needs to analyze this issue in detail.

If there are substantive deficiencies in the management regime of the Monument currently that need to be corrected with increased legal authority for that protected area, these needs to be clearly indicated so the available alternatives for a course correction can be identified.

As currently presented, NOAA does not appear to be clearly forthcoming that the underlying purpose of the proposed action is to open up this world class marine protected area to commercial fishing at the expense and values of the current Monument regime.

Sincerely,

Roger E. McManus

President Emeritus for The Center for Marine Conservation



MYSTIC AQUARIUM

55 Coogan Boulevard
Mystic, CT 06355
P 860 572 5955
F 860 572 5969
W mysticaquarium.org

January 30, 2022

Ms. Athline Clark, Superintendent
Papahānaumokuākea Marine National Monument and UNESCO World Heritage Site
1845 Wasp Blvd, Building 176
Honolulu, HI 96818

Re: Docket NOAA-NOS-2021-0114

Dear Superintendent Clark,


We strongly support NOAA initiating the designation process for Papahānaumokuākea Marine National Monument as a National Marine Sanctuary, including preparation and release of draft designation documents, and developing alternatives for the DEIS. Per the request for specific comments in the referenced Federal Register Notice, we offer the following while recognizing that the stated need for designation is to “[d]evelop objectives and actions that ensure lasting protections consistent with the existing Monument proclamations and regulations.”

The sanctuary boundaries should mirror the current Monument boundaries, including the area originally designated in Presidential Proclamation 8041 of June 15, 2006 and Proclamation 9478 of August 26, 2016. The sanctuary should include all the waters, submerged lands, and living and non-living resources within these areas. The shoreward boundary should extend to the line of mean high tide. Alternatives that encompass a larger region (e.g., to the southeast) could enhance resource protection while not diminishing protections dictated in the Monument proclamations.

Management measures should maintain or enhance existing resource protections, increase regulatory compliance, ensure enforceability, and provide natural resources damage assessment authorities and interagency coordination of activities as provided in the National Marine Sanctuaries Act. The Presidential Proclamations for the Monument include prohibited activities which NOAA should incorporate into the sanctuary designation document, management plan, and regulations. Further, Presidential Proclamation 9478 provided a framework for managing the Monument Expansion Area, and NOAA should codify those protections in the designation document, regulations, and management plan. Integrating traditional Hawaiian knowledge systems, values, and practices into management, consistent with the provisions of the Proclamations, should be sustained.

Regional fisheries and fishery management plans are clearly managed under Magnuson authorities. As part of the Monument and sanctuary management plan processes, fishery management plans will need to be amended (by the Western Pacific Fishery Management Council) or by Secretarial action, to be consistent with protections directed by the Presidential Proclamation. While some discussions in the public arena suggest the sanctuary designation process opens a blank page to revisit fishery management of the area, proposing any alternatives that would decrease the current level of protection within the Monument and Monument Expansion Area would defy the logic of stated goals of the designation process. We oppose any such alternatives for future consideration.

The mission of Mystic Aquarium is to inspire people to care for and protect our ocean planet through conservation, education and research.



We support the Office of National Marine Sanctuaries in overlaying Sanctuary authorities to this Monument for "... continued or enhanced long-term protection of the Monument's natural, cultural and historic resources; improved planning and coordination of research, monitoring, and management actions; reducing disturbance of special status species; reducing threats and stressors to Monument resources; and minimal disturbance during research or restoration actions."

Thank you, in advance, for your consideration. We would be happy to discuss any of these issues with you in the future.

Sincerely,



Katie Cubina
Sr. VP for Mission Programs

January 31, 2022

Ms. Athline Clark
Superintendent
Papahānaumokuākea Marine National Monument and UNESCO World Heritage Site
1845 Wasp Blvd, Building 176
Honolulu, HI 96818

Re: NOAA-NOS-2021-0114

Dear Superintendent Clark,

We strongly support designating Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment.

Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site. It preserves sacred places, stories, artifacts, and strong Polynesian cultural ties to the land and seas, dating back more than a thousand years.

Coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. The Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.

The National Marine Sanctuaries Act established the National Marine Sanctuary System to protect areas of the marine environment that have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities. The monument is an area of national significance that merits this protection in addition to the protections provided by the Antiquities Act. *It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts should include integrating traditional Hawaiian knowledge systems, values, and practices into management. We oppose any regulatory or management measures that would decrease the current level of protection within the Monument and Monument Expansion Area.*

In this letter, the terms "Papahānaumokuākea Marine National Monument" and "Monument" mean both the original Monument's boundaries and the Monument Expansion Area.

- **The role of scoping in the Environmental Impact Statement process.**

Scoping is a critical early step in the EIS process. It sets the boundaries of the analysis, helps to identify information sources, and helps to focus alternatives and identify issues to address within the EIS. A comprehensive scoping process is essential for identifying the "reasonable

range” of alternatives in the EIS to address the purpose and need of proposed agency action. Each reasonable alternative must be rigorously explored and objectively evaluated, and each alternative considered in detail so that reviewers may evaluate their comparative merits. NOAA has an obligation under NEPA to compare the protections currently in place with the complexities of managing a national marine sanctuary. The environmental impact statement should comprehensively explain the current protections and compare them to what would be changed by a sanctuary designation.


- **The spatial extent of the proposed sanctuary and boundary alternatives.**

The existing boundaries of Papahānaumokuākea Marine National Monument cover 582,578 square miles. We recommend that NOAA's preferred alternative for the sanctuary's boundaries follow the current Monument boundaries, including the Monument area originally designated in Presidential Proclamation 8041 of June 15, 2006, and the Monument Expansion Area as specified in Presidential Proclamation 9478 of August 26, 2016. The sanctuary should include all the waters, submerged lands, and living and non-living resources within these areas. The shoreward boundary should extend to the mean high tide.

- **The location, nature, and value of the resources to protect by a sanctuary.**

In 1999, President William J. Clinton established the Northwestern Hawaiian Island Coral Reef Ecosystem Reserve by Executive Order 13178. In 2006, President George W. Bush established Papahānaumokuākea Marine National Monument by Presidential Proclamation 8031. The proclamation included the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway National Wildlife Refuge, the Hawaiian Islands National Wildlife Refuge, and the Battle of Midway National Memorial. In 2010, UNESCO designated the monument as a mixed World Heritage site for its natural and cultural significance. In 2016, President Barak Obama expanded the monument to protect historic and scientific interest objects, geological and biological resources part of a highly pristine deep-sea and open ocean ecosystem, and an area of cultural significance to the Native Hawaiian community. The monument has significant living and non-living resources, cultural and natural seascapes, and geological features which deserve protection through sanctuary designation.

Papahānaumokuākea Marine National Monument is unique. The Monument is one of the few intact, large-scale predator-dominated reef ecosystems left in the world. It is home to more than 7,000 marine species. The islands and atolls—Kure (Hōlanikū), Midway (Kuaihelani), Pearl and Hermes (Manawai), Lisianski (Kapou), Laysan (Kamole), Maro Reef (Kamokuokamohoali'i), Gardner Pinnacles ('Ōnū nui and 'Ōnū ikī), French Frigate Shoals (Lalo), Mokumanamana, and Nihoa—provide breeding areas for Hawaiian monk seals and four species of sea turtles, nesting sites for more than 14 million seabirds, and more than 5,000 square miles of coral reefs. Because this region is remote—nearly 3,000 miles from the nearest continent—life forms evolved here that exist nowhere else on earth. Researchers working in Papahānaumokuākea Marine National Monument continue to encounter new species: since 2000, scientists have discovered scores of new species of fish, coral, invertebrates, and even algae. Remarkably, on a 2015 expedition, scientists from NOAA and other institutions found that some deep reefs in Papahānaumokuākea were inhabited only by endemic species. This is the only known marine area where all resident species are endemic.



At least 23 species protected under the US Endangered Species Act inhabit the Monument, two national wildlife refuges, and two state-protected areas within its boundaries. For example, Papahānaumokuākea provides nearly the entire Hawaiian nesting habitat for the threatened green turtle. On the undisturbed beaches, the turtles come ashore to bask in daylight, a behavior not seen in most other parts of the world.

Critical geological features include seamounts and a non-volcanic ridge that extends southwest towards the Johnston Atoll, which are biodiverse hotspots that provide habitat for deep-sea species. Seamounts, ridges, and other undersea topographic features enable marine organisms to range throughout the Hawaiian Archipelago and between Hawaii and other archipelagoes. Further, these features are home to species unknown to humans, with possible implications for research, medicine, and other uses.

The Monument provides critical foraging habitats for marine species and birds. Laysan albatross, Black-footed albatross, Bonin petrels, shearwaters, petrels, tropicbirds, Short-tailed albatross, and other seabird species forage in the Monument, along with five species of protected sea turtles. Twenty-four species of whales and dolphins have been sighted in the Monument. Three species are threatened or endangered: sperm whales, fin whales, and sei whales. Acoustic evidence also shows that endangered blue whales visit the area and may migrate past the Hawaiian Islands twice a year. Sharks, including tiger sharks and Galapagos sharks, are key species in the Monument's ecosystems

Native Hawaiians regard the Monument's atolls, islands, and waters as sacred places from which all life springs and ancestral spirits return after death. The Native Hawaiian belief systems regarding this genealogical relationship inform a set of responsibilities, rights, and privileges that Hawaiian people inherited to honor and protect their ancestors. The Kumulipo describes the Hawaiian universe as comprising two realms, Pō and Ao. Ke ala polohiwa a Kāne (the dark shining path of Kāne), also known as the Tropic of Cancer, is considered the border between Pō and Ao. The island of Mokamanamana is located on this boundary and is the center of convergence between the two realms; the island sits near the entrance of Papahānaumokuākea Marine National Monument, as only the second island in the northwestern part of the chain. The Monument's name commemorates the union of Papahānaumoku and Wākea, the divine parents of the island chain, the taro plant, and the Hawaiian people. Some islands have several names: one or more Hawaiian names that highlight a natural feature such as an abundance of sharks or a sacred quality ascribed to the place in traditional teachings, and an English name that often commemorates a historic shipwreck nearby.

Long-distance voyaging and wayfinding is a unique and valuable traditional practice that the Native Hawaiian community developed and advanced. Wayfinding relies on celestial, biological, and natural signs, such as winds, waves, currents, and the presence of birds and marine life. The Monument's open ocean ecosystem and its natural resources continue to be important in the Hawaiian Archipelago's cultural voyaging seascape and training ground for new generations of wayfinders.

Shipwrecks and aircraft in the Monument are of great historical interest and importance. The Monument is the final resting place of thousands of people lost during World War II battles. The submerged sites and scattered artifacts tell the stories of sailors and navigators who

ventured throughout the Pacific. Interpretation of these shipwreck sites and the broader maritime heritage of Papahānaumokuākea Monument further our understanding of our connection to this place and our role in protecting its natural and cultural resources.

The sanctuary designation should protect all living, non-living, cultural, and maritime resources of the Monument and the cultural and natural seascapes of which they are an integral part.

- **Management measures for the sanctuary and any additional regulations that should be added under the NMSA to protect Monument Resources.**


Overall - Resource protection is the highest priority of the Monument, and the designation document, management plan, and regulations must be consistent with this priority. The sanctuary designation must augment and strengthen existing resource protections, increase regulatory compliance, ensure enforceability, and provide natural resources damage assessment authorities and interagency coordination of activities as provided in the National Marine Sanctuaries Act.

Presidential Proclamations 8031 and 9478 include prohibited activities which NOAA should incorporate into the sanctuary designation document, management plan, and regulations. Further, Presidential Proclamation 9478 provided a framework for managing the Monument Expansion Area, and NOAA should codify those protections in the designation document, regulations, and management plan.

Integration of Native Hawaiian cultural values and principles - "*Mai Ka Pō Mai* is a collaborative management framework intended to guide the Monument's co-trustees integration of traditional knowledge systems, values, and practices into management. Based on Hawaiian cosmology and worldview, the framework includes five management domains, four of the management domains are referred to as Kūkulu, and the central management domain is the Ho'oku'i. We strongly urge NOAA to embrace the framework and work with the Native Hawaiian Cultural Working Group, OHA, and the Native Hawaiian community to include the *Mai Ka Pō Mai* framework into the designation document, management plan, and regulations.

Fishing - The Magnuson-Stevens Fishery Conservation and Management Act (MSA) is the primary law that governs marine fisheries management in US federal waters. Its objectives are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable seafood supply. ONMS Director John Armor's letter of November 19, 2021, to Chairperson Soliai of the Western Pacific Regional Fishery Management Council stated that the MSA is the appropriate statute for managing fisheries within the proposed sanctuary. *We strongly disagree and urge NOAA to adopt a joint regulatory approach at a minimum.*

As mentioned above, the cultural and natural landscape of Papahānaumokuākea, their services, and the living and non-living resources in the Monument deserve protection under the sanctuary designation. Fish species are a critical part of the landscape, and their management must be part of the ecosystem. The National Marine Sanctuaries Act is the only ecosystem-based act that can achieve this goal through regulation. *The ONMS regulations should be in addition to MSA regulations and not a backstop.*



Should ONMS choose not to regulate fisheries under the NMSA (a point we strongly disagree with), then the Secretary of Commerce must ensure the proposed regulations from the Western Pacific Fishery Management Council are consistent with Executive Order 13178 and Presidential Proclamations 8031 and 9478. If they are not, the Secretary of Commerce must reject the draft regulations.

Maritime Transportation - In 2008, the International Maritime Organization (IMO) designated the Monument a "Particularly Sensitive Sea Area." The Monument Management Board put additional domestic measures and best practices into place to protect the original Monument area. We recommend that the IMO designation applies to the Monument Expansion Area. Further, as part of the sanctuary designation process, ONMS should determine if additional regulatory and management controls are necessary.

Thank you for the opportunity to comment on the proposed sanctuary designation. We look forward to working with NOAA to enhance and strengthen protections for the Monument.

National Marine Sanctuary Foundation
Azul
Brown Girl Surf
Center for Biological Diversity
Creation Justice Ministries
EarthEcho International
Earthjustice
Environment America
Friends of the Earth
GreenLatinos
Greenpeace USA
Healthy Ocean Coalition
Inland Ocean Coalition
League of Conservation Voters
Marine Conservation Institute
National Ocean Protection Coalition
National Parks Conservation Association
Oceana
Ocean Conservation Research
Ocean Defenders Alliance
Ocean Preservation Society
Only One
Patagonia
SeaLegacy
Shark Stewards
Sol Kaho'ohalahala
Surfrider Foundation
The Ocean Project
Tribal Trust Foundation
Virginia Aquarium & Marine Science Center
WILD COAST
WILD Foundation

NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM RESERVE
RESERVE ADVISORY COUNCIL

Non-Government (Voting)

William Ailā, Jr. (Chair)
State of Hawai'i
Linda Paul (Vice Chair)
Conservation
Rick Gaffney (Secretary)
Recreational Fishing
Pelika Andrade
Native Hawaiian
Edward Halealoha Ayau
Native Hawaiian
Judith Cucco
Citizen-at-Large
Mark Hixon
Research
Bonnie Kahapea-Tanner
Education
Solomon Pili Kaho'ohalahala
Native Hawaiian Elder
Richard Lee
Ocean-Related Tourism
Audrey Newman
Conservation
Donald Schug
Research
William Walsh
Research

Government (Non-Voting)

Athline Clark
Papahānaumokuākea MNM
Allen Tom
HIHW NMS
Brandon Jim On
NOAA-OLE
Maile Norman
U.S. Coast Guard
Janice Fukawa
U.S. Department of Defense
Joshua DeMello
WESPAC
Brian Neilson
State of Hawai'i
Jared Underwood
U.S. Fish & Wildlife Service
Malia Chow
NOAA Fisheries PIRO
Dan Polhemus
U.S. Fish & Wildlife Service
Na'u Kamali'i
Office of Hawaiian Affairs

January 19, 2022

Mr. John Armor, Director
NOAA-Office of National Marine Sanctuaries
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910

c/o Athline Clark, Superintendent
Papahānaumokuākea Marine National Monument
NOAA/DKIRC/NOS/ONMS/PMNM
1845 Wasp Boulevard, Building 176
Honolulu, HI 96818

RE: RAC Response to Federal Register 86 FR 64904: NOAA's Notice of Intent to Conduct Scoping and to Prepare an EIS for the Proposed Designation of a National Marine Sanctuary within Papahānaumokuākea Marine National Monument.

Aloha mai Director Armor,

On December 9, 2020, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC) sent a letter to the Office of National Marine Sanctuaries (ONMS) requesting NOAA to move forward with the designation of a National Marine Sanctuary in the Northwestern Hawaiian Islands pursuant to President William J. Clinton's Executive Order (EO) 13178 of December 4, 2000, (Federal Register/Vol.65, No. 236/Thursday, December 7, 2000/Presidential Documents). We are pleased that ONMS has initiated the process and would like to reaffirm that ONMS has the full support of the RAC in proceeding with the process of sanctuary designation. Over the past few months, two RAC subcommittees have been working to formulate a set of recommendations for the public scoping phase of the sanctuary designation process.

The RAC offers the following recommendations on sanctuary designation for the management plan's framework and content. These recommendations are focused mainly on the subcommittee review of the 2008 Monument Management Plan. The recommendations are summarized as follows:

General Recommendations:

- In all sanctuary and management plan documents, consider the use of 'PMNM' vs. 'NWHI.'
- Ensure Mai Ka Pō Mai guidance is considered in the revision process.

Vision Statement:

The 2008 Monument Management Plan vision statement is:

"To forever protect and perpetuate ecosystem health and diversity and Native Hawaiian cultural significance of Papahānaumokuākea."

- The RAC recommends revisiting the vision statement for clarity and impact.

Examples for consideration include:

- a. That the vast coral reefs, diverse ecosystems and historical, cultural and natural resources of the Northwestern Hawaiian Islands - unique in the world - be preserved and protected forever.
- b. To forever protect and perpetuate the rich diversity, ecosystem health, and Native Hawaiian cultural resources of Papahānaumokuākea.

Mission Statement

The 2008 Monument Management Plan mission statement is:

"Carry out seamless integrated management to ensure ecological integrity and achieve strong, long-term protection and perpetuation of NWHI ecosystems, Native Hawaiian culture and heritage resources for current and future generations."

- The RAC recommends retaining this mission statement as-is.

Management Plan Principles

The RAC recommends minor revisions to six of the existing principles, and proposes an additional principle, as follows:

Principle 1. *"Management actions are consistent with the mission and vision."*

- The RAC recommends keeping this principle as is.

Principle 2. *"Management actions recognize the resources of Papahānaumokuākea are administered by the Co-Trustees for the benefit of present and future generations."*

- The RAC recommends revising Principle 2 to clarify the meaning of 'benefit'.

Principle 3. *"Management actions affirm Papahānaumokuākea and its resources are important, unique and irreplaceable."*

- The RAC recommends keeping this principle as is.

Principle 4. *"Management actions honor the significance of the region for Native Hawaiians."*

- The RAC recommends incorporating reference from Mai Ka Pō Mai.

Principle 5. *"Management actions honor the historic importance of the region."*

- The RAC recommends keeping this principle as is.

Principle 6. *"Management actions incorporate best practices, scientific principles, traditional knowledge and an adaptive management approach."*

- The RAC recommends keeping this principle as is.

Principle 7. *“Management actions err on the side of protection when there is uncertainty in available information on the impacts of an activity.”*

- The RAC recommends keeping this principle as is.

Principle 8. *“Management actions enhance public appreciation of the unique character and environment of the Northwestern Hawaiian Islands.”*

- The RAC recommends incorporating additional language to the effect of, ‘bringing the place to the people instead of the people to the place.’

Principle 9. *“Management actions authorize only uses consistent with Presidential Proclamation 8031 and applicable laws.”*

- The RAC recommends updating Principle 9 to include reference to new Presidential Proclamations and laws.

Principle 10. *“Management actions coordinate with federal, state and local governments, Native Hawaiians, relevant organizations and the public.”*

- The RAC recommends keeping this principle as is.

Principle 11. *“Management actions carry out effective outreach, monitoring, & enforcement to promote compliance.”*

- The RAC recommends revising the ending of this principle as follows: ... to promote management effectiveness and compliance.

NEW Principle 12. Co-management Principle

- The RAC recommends that a new co-management principle be developed that highlights the cooperative multi-agency aspect of PMNM management.

Management Plan Goals

The RAC recommends minor revisions to two of the goals, and proposes two new goals, as follows:

Goal 1. *“Protect, preserve, maintain, and where appropriate restore the physical environment and the natural biological communities and their associated biodiversity, habitats, populations, native species, and ecological integrity.”*

- The RAC recommends keeping this goal as is.

Goal 2. *“Support, promote, and coordinate research, characterization and monitoring that increase understanding of the NWHI, improve management decision making, and are consistent with conservation and protection.”*

- The RAC recommends revising Goal 2 to incorporate ‘cumulative impact assessment.’

Goal 3. *“Manage and only allow human activities consistent with Proclamation 8031 to maintain ecological integrity and prevent or minimize negative impacts for long-term protection.”*

- The RAC recommends updating Goal 3 to reflect ‘applicable proclamations and laws.’

Goal 4. *“Provide for cooperative conservation including community involvement that achieves effective Monument operations and integrated management.”*

- The RAC recommends keeping this goal as is.

Goal 5. *“Enhance public understanding, appreciation, and support for protection of the natural, cultural and historic resources.”*

- The RAC recommends keeping this goal as is.

Goal 6. *“Support Native Hawaiian practices consistent with long-term conservation and protection.”*

- The RAC recommends keeping this goal as is.

Goal 7. *“Identify, interpret, and protect Monument historic and cultural resources.”*

- The RAC recommends keeping this goal as is.

Goal 8. *“Offer visitor opportunities at Midway Atoll to discover and appreciate the wildlife and beauty of the NWHI, enhance conservation and honor its unique human history.”*

- The RAC recommends keeping this goal as is.

NEW Goal 9. Threats

- The RAC supports a goal recognizing and addressing threats: climate change, marine debris, invasive species, maritime transportation, and others.

NEW Goal 10. Evaluation and Adaptive Management

- The RAC supports a goal that supports evaluation and adaptive management as described in the 2008 Monument Management Plan.

Mahalo for the opportunity to provide initial input. The RAC looks forward to assisting NOAA in moving forward with the sanctuary designation process for Papahānaumokuākea Marine National Monument.

Sincerely,



William Ailā Jr., Chair

NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM RESERVE
RESERVE ADVISORY COUNCIL

Non-Government (Voting)

William Ailá, Jr. (Chair)
State of Hawaii
Linda Paul (Vice Chair)
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Rick Gaffney (Secretary)
Recreational Fishing
Pelika Andrade
Native Hawaiian
Edward Halealoha Ayau
Native Hawaiian
Judith Cucco
Citizen-at-Large
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Research
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Education
Solomon Pili Kaho ohalahala
Native Hawaiian Elder
Richard Lee
Ocean-Related Tourism
Audrey Newman
Conservation
Donald Schug
Research
William Walsh
Research
Government (Non-Voting)
Athline Clark
Papahānaumokuākea MNM
Allen Tom
HIHW NMS
Brandon Jim On
NOAA-OLE
Maile Norman
U.S. Coast Guard
Janice Fukawa
U.S. Department of Defense
Joshua DeMello
WESPAC
Brian Neilson
State of Hawaii
Jared Underwood
U.S. Fish & Wildlife Service
Malia Chow
NOAA Fisheries PIRO
Dan Polhemus
U.S. Fish & Wildlife Service
Na'u Kamali'i
Office of Hawaiian Affairs

January 28, 2022

John Armor, Director
NOAA-Office of National Marine Sanctuaries
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910

c/o Athline Clark, Superintendent
Papahānaumokuākea Marine National Monument
NOAA/DKIRC/NOS/ONMS/PMNM
1845 Wasp Boulevard, Building 176
Honolulu, HI 96818


Re: Additional RAC scoping recommendations for the proposed National Marine Sanctuary for Papahānaumokuākea Marine National Monument.

Aloha mai Director Armor,

The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (NWHICRER) Advisory Council (RAC) wishes to provide additional recommendations for a proposed national marine sanctuary. These recommendations extend and supplement those recommendations provided by the RAC in our January 19, 2022 letter. The new recommendations consist of six potential boundary options to be considered for analysis in the sanctuary environmental impact statement (EIS), and two recommendations aimed at increasing protections within the Monument and the proposed national marine sanctuary.

These recommendations were drafted by the RAC's Planning, Evaluation, and Sanctuary Designation Subcommittee, with input from the Research Subcommittee and were thoroughly discussed and deliberated before being forwarded to the greater RAC for consideration at its January 12th meeting.

After focused discussions, the RAC achieved its desired outcome of consensus to put forward most of the items. However, approval of one proposed boundary option that included Middle Bank was controversial and was not achieved by consensus; instead it was approved based on a majority vote of council members present at the meeting.



RAC Recommendations on Sanctuary Boundaries and Related Items

1. The RAC recommends that the following six boundary alternatives be considered in the EIS,


The boundary options A-E were agreed upon by RAC consensus.


- A. No action (no sanctuary, no boundary);
- B. Only the original Monument area waters; no state waters; and not Midway;
- C. Original Monument area waters; state waters; and not Midway;
- D. Original Monument area waters; state waters; Monument Expansion Area (MEA); and not Midway.
- E. Any combination of B-D above that is inclusive of Midway marine waters;
- F. Original Monument area; state waters; MEA; not Midway; and some larger portion of Middle Bank, that is, incorporate an area that is presently outside of the eastern PMNM boundary.

Diverse perspectives were shared in the RAC's discussion of boundary option F. Proponents mainly cited biological reasons for incorporating Middle Bank within a sanctuary. Dissenting opinions tended to focus more on socio-cultural and political aspects, including some they felt had the potential to derail a sanctuary process and that there were promises made to some of the Kauai fishermen during expansion that needed to be considered. Since the RAC did not achieve consensus on this item, a roll-call vote was taken. The inclusion of this boundary option as a recommendation to ONMS was approved based on a majority vote of 5:4

- 2. The RAC unanimously recommends that the biological, cultural & historic significance of each option be explored and documented by the Co-Trustees and appropriate partners, to develop clear recommendations for effective management of important resources.
- 3. The RAC unanimously recommends that sanctuary planning examine opportunities for comprehensive management inclusive of Midway Atoll due to its connections as a critical part of the ecosystem and its cultural connection to the archipelago; and explore the feasibility of including Midway waters in the new sanctuary.

The council is an advisory body to the Reserve/NOAA Monument superintendent. The opinions and findings of this document do not necessarily reflect the position of the Reserve, the Monument, or the National Oceanic and Atmospheric Administration.






Mahalo for the opportunity to provide this additional input on a sanctuary designation for Papahānaumokuākea Marine National Monument. Do not hesitate to contact us if you have questions.

Sincerely,



William Ailā Jr., Chair

The council is an advisory body to the Reserve/NOAA Monument superintendent. The opinions and findings of this document do not necessarily reflect the position of the Reserve, the Monument, or the National Oceanic and Atmospheric Administration .





January 30, 2022

Ms. Athline Clark
Superintendent
Papahānaumokuākea Marine National Monument and UNESCO World Heritage Site
1845 Wasp Blvd, Building 176
Honolulu, HI 96818

Re: NOAA-NOS-2021-0114

Dear Superintendent Clark,

Re: NOAA-NOS-2021-0114

In behalf of Sharks Stewards, a non profit shark and marine conservation organization based in California and Hawai'i, we strongly support designating Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment.


Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site and preserves sacred places, stories, artifacts, and strong Polynesian cultural ties to the land and seas, dating back more than a thousand years.

The island system supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.

It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts should include integrating traditional Hawaiian knowledge systems, values, and practices into management. We oppose any regulatory or management measures that would decrease the current level of protection within the Monument and Monument Expansion Area.

- **The spatial extent of the proposed sanctuary and boundary alternatives.**

The existing boundaries of Papahānaumokuākea Marine National Monument cover 582,578 square miles. We recommend that NOAA's preferred alternative for the sanctuary's boundaries follow the current Monument boundaries, including the Monument area originally designated in Presidential Proclamation 8041 of June 15, 2006, and the Monument Expansion Area as specified in Presidential



Proclamation 9478 of August 26, 2016. The sanctuary should include all the waters, submerged lands, and living and non-living resources within these areas. The shoreward boundary should extend to the mean high tide.

- **The location, nature, and value of the resources to protect by a sanctuary.**

The Papahānaumokuākea Marine National Monument provides breeding areas for Hawaiian monk seals and four species of sea turtles, nesting sites for more than 14 million seabirds, and more than 5,000 square miles of coral reefs. Because this region is remote—nearly 3,000 miles from the nearest continent—life forms evolved here that exist nowhere else on earth. The Monument is one of the few intact, large-scale predator-dominated reef ecosystems left in the world. Researchers working in Papahānaumokuākea Marine National Monument continue to encounter new species: since 2000, scientists have discovered scores of new species of fish, coral, invertebrates, and even algae. The monument has significant living and non-living resources, cultural and natural seascapes, and geological features which deserve protection through sanctuary designation.

At least 23 species protected under the US Endangered Species Act inhabit the Monument, two national wildlife refuges, and two state-protected areas within its boundaries including endangered monk seals and green sea turtles.

The Monument provides critical foraging habitats for marine species and birds, including endangered Laysan albatross, Black-footed albatross, Bonin petrels and other seabird species that forage in the Monument. Three species of whales are threatened or endangered: sperm whales, fin whales, and sei whales, along with five species of protected sea turtles been sighted in the Monument. Sharks, including tiger sharks and Galapagos sharks, are key species in the Monument's ecosystems.

Native Hawaiians regard the Monument's atolls, islands, and waters as sacred places from which all life springs and ancestral spirits return after death. The Native Hawaiian belief systems regarding this genealogical relationship inform a set of responsibilities, rights, and privileges that Hawaiian people inherited to honor and protect their ancestors. Some islands have several names: one or more Hawaiian names that highlight a natural feature such as an abundance of sharks or a sacred quality ascribed to the place in traditional teachings, and an English name that often commemorates a historic shipwreck nearby.

Long-distance voyaging and wayfinding is a unique and valuable traditional practice that the Native Hawaiian community developed and advanced. Wayfinding relies on celestial, biological, and natural signs, such as winds, waves, currents, and the presence of birds and marine life. The Monument's open ocean ecosystem and its natural resources continue to be important in the Hawaiian Archipelago's cultural voyaging seascape and training ground for new generations of wayfinders.

Shipwrecks and aircraft in the Monument are of great historical interest and importance. The Monument is the final resting place of thousands of people lost during World War II battles. The submerged sites and scattered artifacts tell the stories of sailors and navigators who ventured throughout the Pacific. Interpretation of these shipwreck sites and the broader maritime heritage of Papahānaumokuākea Monument further our understanding of our connection to this place and our role in protecting its natural and cultural resources.

The sanctuary designation should protect all living, non-living, cultural, and maritime resources of the Monument and the cultural and natural seascapes of which they are an integral part.

- **Management measures for the sanctuary and any additional regulations that should be added under the NMSA to protect Monument Resources.**

Overall - Resource protection is the highest priority of the Monument, and the designation document, management plan, and regulations must be consistent with this priority. The sanctuary designation must augment and strengthen existing resource protections, increase regulatory compliance, ensure enforceability, and provide natural resources damage assessment authorities and interagency coordination of activities as provided in the National Marine Sanctuaries Act.

Presidential Proclamations 8031 and 9478 include prohibited activities which NOAA should incorporate into the sanctuary designation document, management plan, and regulations. Further, Presidential Proclamation 9478 provided a framework for managing the Monument Expansion Area, and NOAA should codify those protections in the designation document, regulations, and management plan.


Integration of Native Hawaiian cultural values and principles – "*Mai Ka Pō Mai* is a collaborative management framework intended to guide the Monument's co-trustees integration of traditional knowledge systems, values, and practices into management. Based on Hawaiian cosmology and worldview, the framework includes five management domains, four of the management domains are referred to as Kūkulu, and the central management domain is the Ho'oku'i. We strongly urge NOAA to embrace the framework and work with the Native Hawaiian Cultural Working Group, OHA, and the Native Hawaiian community to include the *Mai Ka Pō Mai* framework into the designation document, management plan, and regulations.

Fishing - The Magnuson–Stevens Fishery Conservation and Management Act (MSA) is the primary law that governs marine fisheries management in US federal waters. Its objectives are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable seafood supply. ONMS Director John Armor's letter of November 19, 2021, to Chairperson Soliai of the Western Pacific Regional Fishery Management Council stated that the MSA is the appropriate statute for managing fisheries within the proposed sanctuary. *We strongly disagree and urge NOAA to adopt a joint regulatory approach at a minimum.*

As mentioned above, the cultural and natural landscape of Papahānaumokuākea, their services, and the living and non-living resources in the Monument deserve protection under the sanctuary designation. Fish species are a critical part of the landscape, and their management must be part of the ecosystem. The National Marine Sanctuaries Act is the only ecosystem-based act that can achieve this goal through regulation. *The ONMS regulations should be in addition to MSA regulations and not a backstop.*

Should ONMS choose not to regulate fisheries under the NMSA (a point we strongly disagree with), then the Secretary of Commerce must ensure the proposed regulations from the Western Pacific Fishery Management Council are consistent with Executive Order 13178 and Presidential Proclamations 8031 and 9478. If they are not, the Secretary of Commerce must reject the draft regulations.

Maritime Transportation - In 2008, the International Maritime Organization (IMO) designated the Monument a "Particularly Sensitive Sea Area." The Monument Management Board put additional



domestic measures and best practices into place to protect the original Monument area. We recommend that the IMO designation applies to the Monument Expansion Area. Further, as part of the sanctuary designation process, ONMS should determine if additional regulatory and management controls are necessary.

Thank you for the opportunity to comment on the proposed sanctuary designation. We look forward to working with NOAA to enhance and strengthen protections for the Monument.

Sincerely,

David McGuire,, Director
Shark Stewards

F.3.2 Oral Comments

The text below may contain errors, as it is taken from auto-generated transcripts, and has not been reviewed by the speakers.

U.S. Environmental Protection Agency (EPA) (via Andrew Zellinger)- December 16, 2021 Meeting

“Hi, thank you for the opportunity to comment. I appreciate the opportunity to work with you throughout the planning process. I represent US EPA Region 9 based in San Francisco.

I don't have any other formal comments at this time, just wanted to make myself available if you have any questions for the kinds of resources that we work on. Our focuses include environmental justice, air, and water quality, and I'll be here throughout the process.”

Surfrider Foundation Hawaii Region (via Kaitlyn Jacobs)- December 8, 2021 Meeting

“Hi everyone, my name is Kaitlyn Jacobs, and I am here on behalf of the Surfrider Foundation Hawaii region. I'm just going to keep it short here we're in the initial stages still but at Surfrider, we definitely support this movement from monument to sanctuary, especially because of the additional protections and benefits, while still maintaining the co-management structure.

We're really excited to be involved as an organization in the designation process and follow along with the management plans, as everything moves forward. So I would love to thank you guys for all your hard work on this and we're really excited to keep moving forward.”

Godfrey Akaka- December 8, 2021 Meeting

“I'm, I live, I reside on Molokai. I represent the Native Hawaiian Gathering Rights Association

I am native Hawaiian And I guess, I had a question, is it possible for somebody to give me just a brief is it possible for me to ask a question and then I can continue comment. Hello?... I'm trying to, I'm trying to get more information regarding this one thing that I failed to hear from William Ailā was what you guys trying to protect. The area from I never catch that, you know I heard need to protect, but from what Protect them from what. We are in the State of Hawaii, we are getting constantly bombarded by your fishing restrictions, constantly to the point where people are just participating and making rules, just because. There's no science behind it, no data behind it. And then, even when data is provided, it's used against a fisherman. So if you use fish, if you eat fish, consider where the impacts that is being made when whenever you close off one area, but I'm just curious to know, what is this area being protected from? So at this time, we cannot support this, this proposal. And I think hopefully, somebody can get back with me with that answer in the discussion. Mahalo.”

Klayton Kubo- December 8, 2021 Meeting

“Okay, so at this point in time, I don't know if I can support this measure I need way more information and about six or seven years ago, we had an agreement Yes, again I want to reiterate, we had an agreement That the monument was not going to get closer to the island

and county of Kaua‘i Nor does, it’s going to encompass the two weather buoys that is out there to the northwest of the island of Kaua‘i. So please remember that agreement and that is why the expansion did not come closer to county of Kaua‘i nor Ka‘ula Rock, nor [unintelligible], nor [unintelligible]. And I want to reiterate, please remember that. Because let's put it this way: Why is the monk seal coming from the northwest Hawaiian Islands, why were they relocated to the main Hawaiian Islands? If it is a monument up there, some protected area to begin with, so that is what I don't understand, why is it that the calculation of monk seals that NOAA wanna bring is looking like 500 in the main Hawaiian Islands. And that, I cannot understand that one there. Unless if Malia or Jeff Walters, or Athline Clark, you guys can give me the answers. Athline, you know my phone number. Malia, you know my phone number. I don't know if Jeff is on but it's all good, so just remember the agreement that was made six or seven years ago. Please remember that. A year, I've been hearing talk about encompassing the whole middle banks in between [unintelligible] and the county of Kaua‘i. I don't know if that is true, but remember again, the agreement that was made six or seven years ago, and Athline, you know what I'm talking about. That's all I'd like to say for now. I might you know come on to some other meetings, and I might have more to say later on. Thank you very much for your time, mahalo nui, again, Klayton Kubo. [Hawaiian language] aloha.”

Devin Silva- December 8, 2021 Meeting

“Just to start I do make, you know, a substantial part of my livelihood off commercial fishing so that's where I'm coming from and I'm, thank you Godfrey for your last comment

in support of the fishermen but uh I was just wondering what is happening what are we looking at as far as like Godfrey said, science and what are we protecting it from? My vision, would be to grant us, you know, Hawaiian fishermen not to get into the issue of the foreign crews out of Oahu allow us to respectfully provide to our communities through you know regulation and monitored fishery I don't see why, if it's monitored and regulated, why we can't provide to our community. I've worked in the, also in the air cargo industry for like five or five years, and I see thousands of pounds of fish being brought into Hawaii and you do have to look at where your fish is coming from. You know it's coming from factories, is being processed with copper oxide, which is another issue when we can provide fresh fish here through regulation, that's sustainable. So, I mean, I'll leave it at that, hopefully that's something that you guys can consider when you're closing off this section of the ocean to us. Thank you.”

Kenton Geer- December 8, 2021 Meeting

“I'm good, I unfortunately missed part of, the beginning part of the meeting here, but this has been a subject that has, you know, getting passed around, and I know that it concerns a lot of people in different walks of the industry. I'm personally concerned with the expansion, because of, there's two weather buoys that could potentially encompass up to the northwest

that at in the past had been part of our fishing grounds. And what I worry about is that I have watched historically that nothing ever comes back, aside from I can think of one time in history of maybe giving a little bit of Kona crab quota back like years after the, most of the fleet that was doing it. It's pretty much gone. I have historically watched that when you take

something away it just never comes back, and I just watched more and more and more regulations get put on the little guy in Hawaii while the lobbyists and Wespac and the bigger groups continue you know, really advocating for bigger boats that have vessels and the capability to go other places, as you encroach further and further into the Hawaiian Islands, you're, you're basically going after the people that don't have an option and that's what I'm concerned about, especially if you're talking about up towards middle bank, Kaua'i. You know those guys, everyone, mostly smaller range boats, have boats that are designed purposely for what they have. As you talk about taking away fishing grounds from people, you're literally taking away full livelihoods, with no, there's no talk of reimbursement and stuff because our State fisheries for the most part, you've never had a good bailout because it's not Federally regulated. So the problem is, is that you guys continue to take away, but you're not offering anything back to the people that you're taking the jobs from. And I would just really like to emphasize that although oftentimes monuments, have the best, you know, feel good story in mind, the reality is often the people that are doing the least amount of damage or no damage at all, are the people who become the sacrificial lambs on this. And I will just really ask that they, you know, you try to remember the rules, or the agreements that have come up with in the past, and try and honor, particularly the smaller boat fleet because those are the people that you're going to hurt the most so that's all I have to say. Thank you."

Kolomona Kaho'ohalahala- December 11, 2021 Meeting

"Aloha kakou.

I am here and I, in my capacity as an individual who's residing on the island of Lanai, and so I would like to make my comments as a native Hawaiian and thank you for this opportunity. I registered but did not expect to make the comment, so I'm happy for this opportunity. I'm,

the one thing that I would like to speak to is this idea of the boundaries that are potential for the sanctuary designation, and it's clear that in the map that was displayed earlier by the superintendent that there are two specific boundaries, one which was the 2006

boundaries which created the monument designations that I believe at 50 miles of from the land outward to sea, and the the second was the monument expansion boundaries of 2016

which go out to the 200-mile boundaries. But I would like to comment that it would be in my opinion as a native Hawaiian that separating the authority within a sanctuary that would be within the 50-mile and not include the expanded area of 200 miles would not be how I would view the connection between the people, the place, the culture, and the resources. That all of this area should be, continue to be viewed as one place, and if we're going to be managing this place, then we should not try to separate and divide any more than we have been divided in many other instances, so I would hope that moving forward, that the view of the newly proposed sanctuary designation would be inclusive of the 50 to the 200-mile expansion boundaries, and at the same time protecting the fishing rights that had been established by the expanded boundary areas in 2016 for those fisher families that have, access the area close to Papahānaumokuākea

and keep that intact, but again I want to emphasize that as a native Hawaiian, we view all things as interrelated, and if we're going to be managing an area of this kind of magnitude in

the sanctuary, then I would want to ensure that we could continue to view the sanctuary as a single unit that integrates not only the resources within these boundaries, but also with the people and the place as related and not separated because of political jurisdictions or authorities. But if we're truly going to help to support a native Hawaiian perspective to be inclusive, in the, not only the co-management through the Office of Hawaiian affairs, but also in our view of how ecosystems are managed, then I would like us to consider not separating this but keeping it intact and then I think when we advance and move forward with that kind of designation

that's all inclusive, it will help us to understand best the interrelationship between what matters for any particular time or any particular issues that may arise in the future, and that we give it a total comprehensive view from a native Hawaiian perspective that is inclusive of all things, and not just separate and divide into individual components which make it impossible to try and find the true relationships and perhaps even finding better solutions if they were considered separate individual and divided in terms of authority. So that is my hope is that we will continue to view it in that manner. So I thank you for this opportunity. As I said, I had not expected to speak but I'm hoping that this will be helpful in this process so mahalo. Thank you."

Doug Fetterly- December 14, 2021 Meeting

"Papahānaumokuākea stands as a beacon of hope, one that must continue to be protected if we have any chance of saving the dwindling numbers of sea life, along with the integrity of the ocean itself, if not human life. A mere 7% of ocean waters have some degree of protection, while extraction of fish for one has accelerated and at an unsustainable read, one that regeneration of the fish populations cannot keep up with. Fishing methods have advanced far beyond those of recent decades. We are mistaken if we think we can continue business as usual. We must all come together and give serious thought to what we leave or don't leave for future generations, we ask ourselves, will we be the cause of continued extinctions? I stand behind Papahānaumokuākea becoming to protect marine sanctuary with no loss of the protections and boundaries put forth in the Monument. I also recognize that the voices of the native Hawaiians, the lifelong stewards of conservation here in the islands, must be an integral part of the associated economic, socioeconomic, and cultural consultations and considerations moving forward, and we must contribute to, not detract from, the goal of protecting 30% of the world's ocean by 2030. Without question life as we know it depends on healthy oceans and ecosystems. Mahalo."

Tammy Harp- December 16, 2022 Meeting

"I'll just say some few lines, and I'll probably write in more than I want to speak.

I like the supplement and compliment, because I was, I was very leery about the you know slacking of protections up there, you know, over the years and those who know me know that I really was you know troubled by you know, seeing it, not seeing it become less you know

protected up, though, but anyway um I just wanted to say that previous management of fisheries have negatively impacted the NWHI, which is the monument but to you know I'll say NWHI

marine resource through mismanagement. And also too that you know I am unsure sure why the long-line permits weren't subjected to the use it or lose it quota set by the Fishers Council for the bottom fisheries and not for the long-line fishers. This is like around nine, late 1990s and as for now, that's pretty much you know, give kitty time for justify why they want to come and fish in there, but you know nowadays, there's talk about harvesting of Honu for consumption and

you know I never was privileged to eat Honu growing up. It's because we had other things we ate. And mostly the Honu went for commercial like, the sale to restaurants and for home consumption, too, but it was like unregulated and everything just went downhill for true mismanagement, and so that's not a concern about the, I want protection because we get the,

honu you know they can travel far from up there, it can take them six days to get from FFS, oh I forgot the Hawaii name right now and French Frigate Shoals shows down to Maalaea, took only 6 days for that Honu, so you know, we know that they're traveling back and forth and

you know, so when the time comes to make the decision to harvest for home consumption

see which that is not in the language, everything is noncommercial, subsistence, sustenance, all those words but nothing says home consumption. But meanwhile, with the, you know, throughout the whole marine resource language, there you know there's some stuff missing. But anyway um and then we see long-term sustainability talking, you know that kind of stuff, which is good, but then we forget about the long time, the old time, long time families that resides still in the same places of you know, for generations and and, and we hardly have any say in know, in management of turtle, the resource actually crashed [Hawaiian language] actually not really [Hawaiian language] but in a sense, it is because we have to know, you know, is this, I call them if the meek is to inherit the earth, you know it's like we inherit the failure of commercialism because they drained us out. They like took our ecosystem, our juvenile habitat away from us because of overfishing for black coral and things like that so yeah. Sorry about getting off track, but I can't help but go back to the 'Au 'au Channel. But my love for that place is just as much as I do under the Monument or the NWHI. And you know Uncle Buzzy, he epitomizes who we are, you know, we have this innate ability to try to fix what we kind of like damaged, you know and,

I'm glad that he came into our lives because he made me more aware of you know what is really happening out there, especially like in fisheries, but anyway, yes, I am for the supplement and compliment and I And I really, you know and there's this one thing that really gets me. I don't mind all the high resolution you know pictures and things that go on up there in the water up in the Monument. But I am dismayed and disappointed in seeing those things happening in the 'Au 'au Channel, and it's been like 20 years since I had expressed my concern about things like that and I felt that time you know, in the front of the coral reef task force, that they brought more damage to the place and so Isaac, my husband, he mentioned that at that same meeting ..., and he said oh look in under my mom, mother's dress, and I thought what is that? What's he saying, And then, on the way home, after all that meetings, went home and coming over towards Lahaina, I looked over and looked at our channel, and I thought, and I yelled out they made it, made her naked. So yeah you know I, you know it's like, science is good for some stuff and science is good for you know, and sometimes they're not good, because they

get so overzealous and excited that they're exposing more than what the people actually really want exposed and that's one hang up for me about you know the bad part of science

And now okay, so I guess I did enough preaching. So I wish everybody a safe holiday season, and I'll go and submit my written testimony. Mahalo.”

[second comment- same meeting]

...Aloha again, I just wanted to just leave a quote that Isaac had said in front of the coral reef task force. ‘One thousand years of knowledge is better than one hundred years of assumptions’, and you know, the room roared and a lot of scientists were in there and the room roared in laughter because everybody knew that was the truth so anyway, again mahalo and pleasant evening to you folks.”

Brian Bowen- December 16, 2021 Meeting

“My name is Brian Bowen B-R-I-A-N B-O-W-E-N And I work as a marine biologist for the University of Hawaii, but today I speak as a private citizen. And I want to say that that there's a universal consensus among scientists that the northwest Hawaiian Islands, not only is it desirable to be protected it must be protected, and the reasons are so many. I'm talking about Laysan albatross. They nest almost exclusively in the northwest Hawaiian Islands. If that area isn't protected, they could be gone. The Green turtle, Honu, nest almost exclusively at French Frigate Shoals. If that area isn't protected, they're gone. And the other thing that scientists know is that the, is the lesson of Uncle Buzzy Agard, that the area is relatively fragile. There was a gold rush in the lobster fishery 40, 50 years ago that provided a great livelihood for some fishermen, fisher persons, but by 40 years ago, it was fished out And in 2021, 30, 40 years later it hasn't recovered. The lobsters are still scarce there, so not only is it a precious place, a necessary place for our endemic Hawaiian wildlife, it's a fragile place that deserves the fullest protection we can give it. That's all, thank you.”

F.4. Response to Scoping Comments

This section provides responses from the State of Hawai‘i and NOAA to substantive comments received on the NOI and EISPN during the public comment period. As discussed in Section F.2, comments were considered substantive if they pertained directly to the development of the EIS.

Statements considered to not be substantive were general comments with no specific information, such as those that stated preferences for or against the Proposed Action. Those comments are not further addressed here.

A total of 51 comments were deemed substantive and were subsequently placed into 1 of 4 categories pertaining to the development of the draft EIS:

- 1) Purpose and Need
- 2) Alternatives
- 3) Affected Environment
- 4) Environmental Consequences

Multiple people commented on each of the topics and those who commented on each topic are listed below the heading. The responses to the substantive comments raised is provided under each topic.

F.4.1 Purpose and Need for the Proposed Action

Response to comments received from: Dinah Bear and Lois Schiffer

DLNR would like to clarify that this EIS review process is for the initiation of a *potential* national marine sanctuary designation and that the analysis, public scoping, and consultation done through both the HEPA and NEPA processes will inform State and federal decision makers whether a sanctuary *should* be designated in this area. The assumption has not been made that a sanctuary will certainly be designated. The scoping and EIS review process will include analyses on whether a sanctuary should be designated in this area as well as what the potential alternatives for the sanctuary and its management would be. DLNR and NOAA acknowledge that it is possible the language used within the EISPN may have been vague or unclear in this regard and will edit any future public information documents to better elucidate the intent of the EIS.

Additionally, DLNR and NOAA acknowledge the request to explicate and clarify the needs which will be achieved through potential sanctuary protections (through the National Marine Sanctuaries Act) which cannot be achieved through the existing Monument Proclamation (Antiquities Act) including tools for management and protection. DLNR and NOAA will address these requests that purpose and need statements of the EIS include the specification of needs and reflect an intent to evaluate and determine whether an added sanctuary designation supplements and complements the existing protections.

F.4.2. Alternatives to the Proposed Action

Response to comments received from Shark Stewards, Marine Mammal Commission, Center for Marine Conservation, Cruise Line Industry, the U.S. Navy, the American Sportfishing Association, National Marine Sanctuary Foundation (and partners) Deep Ocean Stewardship Initiative, Mystic Aquarium, Dave Treichel, Linda M.B. Paul, NWHI Coral Reef Ecosystem Reserve Advisory Council (RAC), Dinah Bear and Lois Schiffer, Center for Sportfishing Policy, Sol Kaho'ohalahala:

An EIS analyzes potential impacts from implementation of the Proposed Action via a range of reasonable alternatives. This EIS will include reasonable alternatives to both the Proposed Action of designating a national marine sanctuary, and reasonable alternatives within the context of designating a national marine sanctuary. There will be a robust discussion of protections associated with a sanctuary designation, and whether they will replicate or differ from the current Monument protections. This includes the effects of a “no action” (legal status quo) alternative versus the range of protections which may be afforded by a marine sanctuary designation.

Some of the resources which will be considered when analyzing the range of environmental protection needs and alternatives include but are not limited to marine mammals and protected species, sustainability and accessibility of fisheries, coral reefs, deep sea environments, and

living and non-living Native Hawaiian cultural and maritime cultural resources. Additional economic, sociological, ecological and cultural topics to be analyzed include but are not limited to discharge restrictions within potential sanctuary boundaries, the spatial extent of the proposed sanctuary and various boundary alternatives, permitting, national defense and Armed Forces activities, and potential IMO designation in the proposed sanctuary.

As part of the 304(a)(5) process, NOAA will assess whether fishing regulations proposed by the Western Pacific Fishery Management Council for the sanctuary are consistent with Executive Order 13178 and Presidential Proclamations 8031 and 9478 and with the goals and objectives of the proposed sanctuary.

F.4.3 Affected Environment

Response to comments received from Christopher Kelley, Marine Mammal Commission, Shark Stewards, EPA, Linda M.B. Paul, and U.S. Navy:

The Agencies knowledge and put great importance on the fact that Papahānaumokuākea is a place of sacred cultural, historical, cosmological, and ecological resources including threatened and endangered wildlife species, high-density marine communities on substrates at all depths, fish and other marine life and reef communities, sunken military aircraft and various other World War II heritage and artifacts, Native Hawaiian traditional areas and artifacts, and more. Many of these are subject to a host of threats including ocean warming, climate change, invasive species, and marine pollution. DLNR acknowledges the various comments that highlighted their importance and that suggested the protections would be maintained and/or enhanced with the designation of a national marine sanctuary. The draft EIS will describe the significance of the affected environment as well as the threats to resources.


F.4.4 Environmental Consequences of the Proposed Action

Response to comments received from Anonymous, EPA, Deep Ocean Stewardship Initiative, Marine Mammal Commission, Dinah Bear and Lois Schiffer, and Michele Paularena.

The draft EIS analysis will describe how the environment within proposed sanctuary waters may be impacted directly, indirectly, or cumulatively by the Proposed Action.

Information received through consultation with co-managing agencies cultural practitioners scientists and others regarding potential impacts of proposed action will be taken into account Actions that would be taken to mitigate or reduce any adverse impacts discovered will be described within the draft EIS and final EIS, and specific cultural impacts will be closely evaluated and described within the Cultural Impact Assessment (CIA) and through the National Historic Preservation Act Section 106 process.

The various provisions, resources and consequences of the Proposed Action that have been suggested from commenters has been acknowledged and will be considered though the HEPA/NEPA draft EIS process include but are not limited to broadening representation for an Advisory Council, and addressing permits. DLNR will recommend that NOAA consider strategies within a sanctuary management plan that include ensuring adherence to the Clean Air Act, Clean Water Act, and other applicable acts, and an evaluation of environmental justice



populations within the scope of the project area. The protection of any sunken military aircraft in the project area and the rights, freedoms, and lawful uses of the sea recognized in customary international law also will be addressed in the draft EIS.



Appendix G:

Heritage and Historic Resources Supplemental Information

This appendix presents **information on heritage and historic resources in Papahānaumokuākea and** a summary of known maritime heritage resources within the proposed sanctuary. This information is supplementary to the environmental impact statement and provides documentation of the substantial resources that will benefit from the proposed sanctuary.

The National Oceanic and Atmospheric Administration (NOAA) Maritime Heritage Program, created in 2002, is an initiative of the Office of National Marine Sanctuaries. The program focuses on maritime heritage resources within the National Marine Sanctuary System, and also promotes maritime heritage appreciation throughout the entire nation.

NOAA is legally responsible for the management of maritime heritage resources within sanctuary boundaries. Congress directs NOAA, through the National Marine Sanctuaries Act, to comply with the Federal Archaeological Program, a collection of laws and regulations that pertain to the protection of historical and archaeological properties on federal and federally managed lands. These resources also are impacted by natural factors such as storms, currents and corrosion. Therefore, responsible, informed decisions must be made on how to manage these resources for the enjoyment and appreciation of current and future generations. Maritime heritage resources, unlike living resources, are nonrenewable, so it is especially important that we protect these important links to our past.

Background on Maritime Heritage Resources within Papahānaumokuākea

Papahānaumokuākea not only features unique natural ecosystems, the area possesses important cultural, historical, and archaeological significance as well. The Hawaiian Archipelago's history consists of hundreds of years of intensive maritime activity, resulting in shipwrecks and other types of maritime heritage resources across Papahānaumokuākea.

Responsibilities under the National Historic Preservation Act of 1966

When federal agencies propose undertakings that may affect the cultural landscape, the potential impacts to these values must be taken into consideration. The National Historic Preservation Act of 1966 (NHPA), specifically NHPA Section 106, is one part of this process. Section 106 review requires federal agencies to consider the effects of their undertakings on certain cultural, historical, and archaeological resources which the Act defines as “historic properties.”²

Historic properties as defined by the NHPA means any prehistoric or historic districts, sites, buildings, structures, or objects included in, or eligible for, inclusion in the National Register of Historic Places maintained by the Secretary of Interior. The term includes properties of traditional religious and cultural importance to Native Hawaiian Organizations and that may be

² Under NHPA, all ONMS sites are responsible for known “historic properties.” ONMS sites may also have maritime heritage resources that may not meet the definition of NHPA “historic properties.”

eligible for listing in the National Register of Historic Places. As part of sanctuary designation, these values are also considered within the framework of the National Environmental Policy Act (e.g., within the environmental impact statement, management plan, and the State's Cultural Impact Assessment).

Historic properties as defined by NHPA also include historical and archaeological resources that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and exhibit one or more criteria:

- That are associated with events that have made a significant contribution to the broad patterns of our history;
- That are associated with the lives of persons significant in our past;
- That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- That have yielded, or may be likely to yield, information important in prehistory or history.

Management activities conducted in support of maritime heritage protection

NOAA, the State of Hawai'i, and the U.S. Fish and Wildlife Service share statutory responsibility to inventory, evaluate, and protect these resources, guided by the NHPA and other preservation laws. Archaeological survey within Papahānaumokuākea was begun during the Northwestern Hawaiian Islands Coral Reef Assessment and Monitoring Program research expedition in 2002 and continued opportunistically through 2018. In addition to the terrestrial archaeological resources of the atolls and islands, there are more than 60 reported vessel losses in the historic record, and hundreds of sunken naval aircraft lost within the monument's currently existing marine boundaries. NOAA's Maritime Heritage Program maintains the database on these maritime heritage resources within the monument.

This section acknowledges the cultural significance of Papahānaumokuākea and, additionally, provides a brief summary of the subset of currently known (discovered/located) maritime heritage shipwreck and aircraft resources within the marine environment of Papahānaumokuākea. **A map showing approximate locations of known maritime heritage properties is presented as Figure G.1.**

Whaling Vessels

Western whaling activities represent a global industrial pursuit, one which brought European and American voyagers into the Pacific in the late 18th/early 19th centuries. Whaling was often the context for cultural contacts with the foreigners. At the peak of historic whaling activity, hundreds of whaling vessels called in Hawai'i annually. Ships not only needed provisions, they needed crews; whaling captains constantly needed to recruit for labor. Hawaiians quickly adapted the skills necessary to sail and work these foreign vessels, and many young Hawaiian

men found employment on board whalers, venturing again for the first time in hundreds of years beyond the waters of the Hawaiian Kingdom.

The wrecks of whaling vessels can preserve aspects of ship construction and fitting out for the voyage, the tools and whale craft of the 19th century, and evidence of the wrecking event and subsequent rescue and salvage itself. Certain individuals, such as carpenter James Robinson, had an important influence on the history of the islands (opening the first modern shipyard) following the dual shipwrecks of the British whalers *Pearl* and *Hermes* in 1822. There are ten recorded losses of British and American whaling vessels in Papahānaumokuākea, five of which have been located by NOAA and assessed (Table G.1). These whaler wrecks are scattered archaeological sites composed generally of heavy ceramics and iron/copper artifacts (e.g., bricks, anchors, try pots, ballast, cannon, hull sheathing); the wooden structure having deteriorated long ago, subject to powerful shallow water surf, surge, and storm effects. The predominantly low integrity ratings for all sites reflect the dynamic environment of Papahānaumokuākea. The whaler *Two Brothers*, discovered in 2008, is now listed on the National Register of Historic Places.

Table G.1. Known Whaling Vessels within Papahānaumokuākea

Site Name (whalers)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
Parker	Kure	1842	arch site	TBD	406-ton American whaling ship; built New Bedford	ship's equipment elements (windlass, anchors, rigging, ship's bell); whalecraft (blubber hook, tryworks bricks)	low; scattered artifact site	Discovered 2003; survey complete in 2006; site plan, cruise report, web content, digital images
Gledstanes	Kure	1837	arch site	TBD	428-ton British whaling ship; built 1827 Leith, Scotland	ship's equipment elements (ballast, anchor, cannon)	low; scattered artifact site	Discovered/surveyed 2008; site plan, cruise report, web content, digital images
Pearl	Pearl and Hermes	1822	arch site	eligible (D)	British whaling vessel	ship structure (keel/keelson); ship's equipment elements (anchors, rigging, fasteners, cannon, grinding wheel, pintle/gudgeon); whalecraft (tryworks bricks, trypots)	medium; confined scatter site	Discovered 2005; surveyed 2006-2007; site plan, cruise report, web content, digital images
Hermes	Pearl and Hermes	1822	arch site	eligible (D)	British whaling vessel	ship's equipment elements (anchors, rigging, fasteners, cannon; whalecraft (tryworks bricks, trypots)	medium; scattered arch site	Discovered 2005; surveyed 2006-2007; site plan, cruise report, web content, digital images
Two Brothers	French Frigate Shoals	1823	arch site	listed NRHP (A, B, D)	217-ton whaling ship out of Nantucket, Captain George Pollard Jr.	ship's equipment elements (rigging, anchors, cast iron cooking pots, ceramics, and glass); whalecraft (blubber hooks, lances, try pots, tryworks bricks, harpoon tips)	low; large arch scatter site	Discovered 2008; site plan, cruise report, web content, digital images; possible associated site east of original location discovered 2021

Merchantmen

Even after they had been placed on Western charts, the low islands and atolls of the Hawaiian Archipelago (without navigational aids) presented hazardous obstacles for commercial vessels transiting the Pacific (Table G.2). Ships that strayed off course and fell prey to these shallow and unseen reefs included iconic Pacific lumber schooners and iron-hulled square-rigged tall ships of a bygone age. Wooden sailing vessels like *Carrollton* and *Churchill* are archaeological sites of scattered iron and steel artifacts and features (e.g., anchors, windlass, ship's pumps, chain), while iron and steel-hulled ships like *Dunnottar Castle*, *Quartette*, and *Mission San Miguel*, have greater site integrity, exhibiting more complete site structure. Even relatively modern ships like *Mission San Miguel*, a former 500-foot WWII T2 tanker, are subject to the forces of nature. The steel ship's aft section lies crushed on its side, the ship's forward section broken and lost altogether.

Table G.2. Known Merchant Vessels within Papahānaumokuākea

Site Name (merchants)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
Carrollton	Midway	1906	arch site	not eligible	1450-ton American sailing bark; built Bath, Maine 1872	ship's equipment elements (windlass, aux boiler, ship's pump, hawse pipes, rigging, pintle/gudgeon, anchors, anchor chain, fasteners)	low; scattered artifact site	Surveyed 2003; site plan; site photographs; historical docs
Dunnottar Castle	Kure	1886	arch site	eligible (D)	1750-ton British iron-hulled tall ship; built Glasgow 1874	hull sections, deck machinery, anchors, cargo (coal blocks), mast sections, rigging	high; large area major site, hull portions, features, artifacts	Discovered 2006, survey 2007 and 2008; site plan, cruise report, web content, digital images
Churchill	French Frigate Shoals	1917	arch site	TBD	four-masted wooden merchant lumber schooner built	deck machinery, ships pumps, hawse pipes, wire rigging, fasteners, blocks	medium; large arch scatter site	Surveyed 2007; site plan, cruise report, web content, digital images
Quartette	Pearl and Hermes	1952	arch site	TBD	former WWII Liberty ship built	major engine shaft propeller features and large steel hull/cargo mast sections	high; arch confined scatter site both inside/outside reef crest	Surveyed 2002, follow up 2006; GPS survey started 2007, survey outside reef 2008; site photographs; historical photographs; historical docs
USNS Mission San Miguel	Maro Reef	1957	structure	TBD	523-foot WWII T2 tanker built	gun tubs, cargo masts	medium; intact stern on port side; mangled midships area	site photographs; ship plans; historic photographs; salvage and assessment docs

Fishing/Miscellaneous Vessels

Fishing in the Northwestern atolls has a long and varied history, from Native Hawaiians making regular canoe trips to Holaniku for turtles and seabirds and traditional resources, to Western sailing ship exploits in the area in the 19th century for seals, reef fish, turtles, sharks, birds, pearl oysters, and sea cucumbers. The history of some of these shipwrecks remains unknown, but the types of propulsion make it very likely that some were long-range fishing sampans.

Known fishing vessels within Papahānaumokuākea are listed at Table G.3. Distinctive Hawaiian fishing sampans, a local hybrid of original Japanese traditional watercraft design with modernized diesel engines, are historically associated with Hawaii's commercial tuna fishery, centered at Kewalo Basin on O'ahu, and Hawaiian Tuna Packers Ltd. established in 1916.

Table G.3. Known Fishing and Miscellaneous Vessels within Papahānaumokuākea

Site Name (fishing vessels)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/Record
<i>Mimi</i>	Pearl and Hermes	1989	arch site	not eligible	possible fishing vessel	engine component	low; single object	2006
"Oshima" wreck	Pearl and Hermes	UNK	arch site	not eligible	possible fishing sampan	engine house cover and stack; engine, anchors, hawse pipes	low; partial structure and discrete features	Surveyed 2006-2007; site plan, cruise report, web content, digital images
<i>Kaiyo Maru</i>	Laysan	1959	arch site	not eligible	possible fishing sampan	bow structure on beach	low; partial hull	2005
steel bow wreck site	Kure	UNK	structure	not eligible	modern (fishing) vessel?	cabin house	low; partial hull	assessed 2002
<i>Hoei Maru</i>	Kure	1976	structure	not eligible	diesel powered steel fishing vessel	bow structure (ashore)	low; bow and stern sections intact	assessed 2002
sailing vessel	Pearl and Hermes	UNK	object	not eligible	modern sloop	fiberglass hull/cabin	medium; intact hull portion	assessed 2002
motorized vessel	Pearl and Hermes	UNK	arch site	not eligible	possible fishing sampan	single engine block	low; single object	2002; 2005 site photographs;
<i>Paradise Queen-II</i>	Kure	1998	object	not eligible	longline steel fishing vessel	single deck	low; partial structure	assessed 2002

Sunken Military Craft

The military's activities within the Northwestern atolls dates back to the survey of the Civil War-era sloop-of-war USS *Lackawanna* at Midway Atoll in 1867, and extends through the closure of Midway Naval Air Station in 1993. Information on known sunken military craft is presented in Table G. 4. Sunken military craft range in time from USS *Saginaw* lost at Kure Atoll in 1870 to a Sikorsky helicopter of more recent years. However, the significance of World War II and the Battle of Midway overshadow resources associated with other periods.

The bulk of wartime preparations took place in the main Hawaiian Islands, but the strategic location of Midway and the other islands and atolls within Papahānaumokuākea was clear. Tern Island at French Frigate Shoals was developed as a staging point for flights. French Frigate Shoals had been used before World War II for seaplane maneuvers, and the shoals were a staging point for two Japanese seaplane attack/reconnaissance patrols between December 1941 and June 1942. Construction of the landing strip on Tern Island began in July 1942, but by late 1942, expendable wing tanks became available, making the intermediate staging at French Frigate Shoals unnecessary.

Midway had previously been an important stop for PanAmerican transpacific commercial flights. Initial naval plans included support for one squadron of seaplanes at the atoll. War-construction PNAB contract work began at Midway in March 1940. Three runways and two hangars were constructed on Eastern Island. Sand Island featured seaplane ramps and hangar, ordnance, radio, engine, and repair shops, communication facilities, a naval hospital, and housing. Following the Battle of Midway, plans for Midway intensified. By the spring of 1943 Midway's role was changed from a defensive to an offensive base, and construction of a major submarine base was begun. By 1944, three 471-foot piers, a 769-foot tender pier, and an ARD wharf had been completed.

The Battle of Midway, June 4–7 1942, was one of the major watershed moments of World War II and a significant historical factor in the designation of the marine national monument in 2006. The monument's expansion in 2016 likely encompasses the many Japanese and American vessels and aircraft lost in the conflict. American losses totaled one fleet carrier (USS *Yorktown*) and one destroyer (USS *Hammann*) sunk, along with approximately 150 aircraft and 307 casualties. Japanese losses totaled four fleet carriers (IJN *Kaga*, *Akagi*, *Hiryu*, *Soryu*) and one heavy cruiser (IJN *Mikuma*) sunk, along with approximately 248 aircraft and 3,057 casualties. USS *Yorktown* was discovered and recorded by Robert Ballard/National Geographic in 1998. IJN *Kaga* and *Akagi* were discovered and recorded by Rob Kraft/Vulcan Inc. in 2019. In September 2023, a collaborative joint-agency expedition, including the Ocean Exploration Trust and NOAA's Office of Ocean Exploration and Naval History and Heritage Command, returned to the area and conducted a non-invasive survey of USS *Yorktown*, IJN *Kaga* and IJN *Akagi*. Data from the survey are currently being interpreted. Note: the NRHP status of sunken military craft (Table G.4 and G.5 below) represent ONMS recommendations at this time; formal evaluations have not been completed.

Table G.4. Known Sunken Military Craft within Papahānaumokuākea

Site Name (military)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS) ³	Description	Defining Features	Site Integrity	Survey Date(s)/Record
USS <i>Macaw</i>	Midway	1944	structure	eligible (A, D)	Naval submarine rescue/salvage vessel built	salvage machinery, naval auxiliary fittings, anchors	high; large area major site, hull portions, features, artifacts	Surveyed 2003; site plan; site photographs; site mosaic; salvage docs; historical docs; monograph published 2022
LCVP landing craft	Midway	UNK	structure	not eligible	naval amphibious craft	ramp	medium; intact	assessed 2002
navy water barge	Midway	UNK	structure	not eligible	ferro-concrete barge	ferro-concrete construction	medium; intact	assessed 2002, 2005
navy barge	Midway	UNK	structure	not eligible	steel barge	hull	medium; intact	assessed 2002, 2007
navy landing craft	French Frigate Shoals	UNK	structure	not eligible	inverted LC	ramp	medium; relatively intact	Noted 2002
IJN <i>Akagi</i>	Midway	1942	structure	eligible (A, D)	Japanese Amagi-class battlecruiser converted to WWII aircraft carrier	hull, flight deck, gunnery, primary flight control, aircraft, assoc aircraft in vicinity (presumably)	high; intact vessel	Vulcan Inc. video and survey data 2019; joint agency survey 2023
IJN <i>Kaga</i>	Midway	1942	structure	eligible A, D)	Japanese Amagi-class battlecruiser converted to WWII aircraft carrier	hull, flight deck, gunnery, primary flight control, aircraft, assoc aircraft in vicinity (presumably)	high; intact vessel	Vulcan Inc. video and survey data 2019; joint agency survey 2023

³ ONMS preliminary assessment of eligibility, sites have not been formally evaluated

Site Name (military)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS) ³	Description	Defining Features	Site Integrity	Survey Date(s)/Record
USS <i>Saginaw</i>	Kure	1870	arch site	eligible (A, B, D)	508-ton U.S. Civil War-era Navy steam sloop; built Mare Island 1859	boiler face, anchors, cannon, engine components, rigging components	medium; large scattered artifact site	Survey complete in 2006; site plan, cruise report, web content, digital images, historical documents, 2010 monograph published University Press of Florida
USS <i>Yorktown</i>	Midway	1942	structure	eligible A, D)	Yorktown-class aircraft carrier	hull, flight deck, gunnery, primary flight control,	high; intact vessel	video and survey data 1998; joint agency survey 2023

Naval Aircraft

It would be difficult to overemphasize the impact of naval aviation on Hawai‘i and in the Pacific. Hawai‘i evolved very quickly from a few small seaplane bases to six major naval air stations operating during World War II, not to mention the aviation training activities conducted from aircraft carriers in Hawaiian waters. Naval aviation exercises in the Northwestern Hawaiian Islands began in the early 1930s, and activity at French Frigate Shoal and Midway Atoll increased during wartime preparations. Losses during the Battle of Midway June 4–7, 1942, and subsequent intensive aviation activities at Midway during subsequent decades, have added to the submerged aircraft resource.

The wrecks of naval aircraft are a specific subset of archaeological resources. Even though mass produced in great numbers, with interchangeable engines and components, submerged aircraft wreck sites are still capable of revealing details of aircraft construction, modifications over time, and even use by aircrews. Like sunken military vessels, submerged aircraft may be war graves as well. Sunken aircraft can exhibit evidence of water ditching and emergency escape, engine failure, or combat loss events that led to the crash. Except for heavier features like machine guns, rotary engines, and landing gear, naval aircraft are relatively fragile (composed of lightweight aluminum skin). Aircraft which ditched in “low impact” events and lost in deep waters are often amazingly intact on the seafloor. However, aircraft which crashed in “high impact” events or sunk in shallow waters are impacted by surf and surge and a very scattered archaeological sites, sometimes consisting only of a few landing gear components, or propeller, or single machine gun. **A summary of known sunken naval aircraft is presented in Table G.5.**

Table G.5. Known Naval Aircraft within Papahānaumokuākea

Site Name (aircraft)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS) ⁴	Description	Defining Features	Site Integrity	Survey Date(s)/Record
F4U-1 Corsair	Kure	1945	object	TBD	single-seat navy fighter aircraft		low; partial feature	survey complete in 2008
Sikorsky helicopter	Kure	UNK	arch site	not eligible	partial rotor and engine elements	engine part	low; feature partially buried	Noted in 2008
F4U Corsair	Midway	UNK	structure	TBD	single-seat navy fighter aircraft	wing/landing gear design	low; wing/partial fuselage only (inverted); engine nearby	Surveyed 2002, 2007; site plan, cruise report, web content, digital images
P-40K Warhawk	Midway	1943	arch site	not eligible	single-seat army fighter aircraft		low; few artifacts	Surveyed 2014;
F2A Brewster Buffalo	Midway		arch site	not eligible	single-seat navy fighter aircraft	landing gear	low; only partial landing gear	Surveyed 2015; cruise report, web content, digital images

⁴ ONMS preliminary assessment of eligibility, sites have not been formally evaluated

Miscellaneous Features

Flotsam and jetsam have deposited numerous items on the seafloor. Debris which has drifted into the PMNM or been left randomly behind (e.g., timbers from elsewhere, isolated anchors, fishing gear, discarded materials) is to be expected and, while included in research records, is without context and generally not associated with archaeological sites or historic resources. The exceptions to this are those artifacts that may be evidence of more complex properties or wreck sites, and artifacts associated with specific locations (context), such as multiple anchors within a known historic anchorage (Table G.6). Anchors in particular are multifunctional and tend to be used and reused once being lost or abandoned by a ship (for moorings, navigational markers, stored on reefs for later use, etc.).

Table G.6. Miscellaneous Features within Papahānaumokuākea

Site Name (misc features)	Atoll Location	Year Lost	Property Type	NRHP status and criteria (ONMS)	Description	Defining Features	Site Integrity	Survey Date(s)/ Record
3 anchors near landing site	Laysan	UNK	features	not eligible		historic iron admiralty-style anchors in context	low; features	2002
2 anchors and debris	Laysan	UNK	features	not eligible	possible wreck site	historic iron admiralty-style anchors in context	low; features	2002
anchor in Welles Harbor lagoon anchorage	Midway	UNK	object	TBD		historic iron admiralty-style anchor in context	low; features	2003

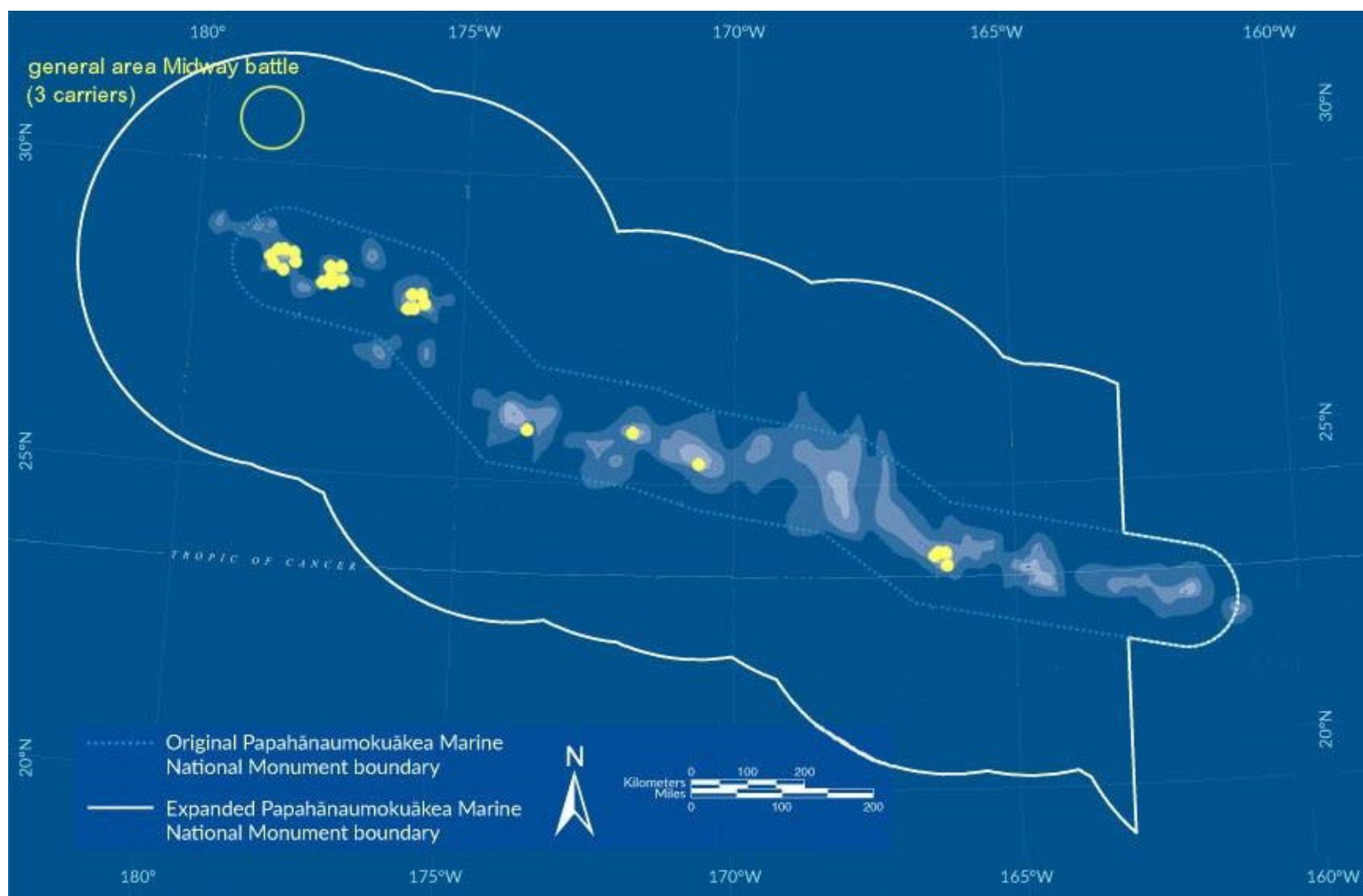


Figure G.1. Known maritime heritage properties within the Action Area, 2022 (ONMS Maritime Heritage Program)



Appendix H: Agencies, Organizations, and Persons Consulted⁵ in Preparing the EIS

Name	Affiliation
Elected Officials	
David Ige	Governor of Hawai'i
Josh Green	Governor of Hawai'i
Brian Schatz	U.S. Senator
Ed Case	U.S. Representative
Government Agencies	
Department of Land and Natural Resources, Office of the Chair	State of Hawai'i
Department of Land and Natural Resources, Division of Aquatic Resources	State of Hawai'i
Department of Land and Natural Resources, Division of Forestry and Wildlife	State of Hawai'i
Department of Land and Natural Resources, State Historic Preservation Division	State of Hawai'i
Department of Land and Natural Resources, Office of Conservation and Coastal Lands	State of Hawai'i
Office of Planning and Sustainable Development, Environmental Review Program	State of Hawai'i
Department of Accounting and General Services, Land Survey Division	State of Hawai'i
Department of Education, Office of Hawaiian Education	State of Hawai'i
Office of Planning and Sustainable Development, Hawai'i Coastal Zone Management Program	State of Hawai'i
Office of Hawaiian Affairs*	State of Hawai'i, and Native Hawaiian Organization
Environmental Protection Agency, Region 9	Federal
U.S. Fish and Wildlife Service*	Federal
U.S. Fish and Wildlife Service, Environmental Services	Federal
U.S. Fish and Wildlife Service, National Wildlife Refuges	Federal
U.S. Fish and Wildlife Service, Pacific Islands	Federal
NOAA Fisheries, Pacific Islands Regional Office	Federal
Advisory Council on Historic Preservation	Federal

⁵ Consulted parties include federal and state agencies, subject matter experts and other individuals who provided relevant information for the EIS and appendices. Many of the above parties participated in the federal and state historic preservation consultation process and the state cultural impact assessment and legal analysis processes.

Name	Affiliation
U.S. Department of Defense*	Federal
U.S. Department of the Navy, Cultural Resources Team	Federal
U.S. Department of the Navy, Naval History and Heritage Command	Federal
U.S. Department of the Navy, Chief of Naval Operations Office, Infrastructure, Posture and Environmental Planning Branch	Federal
Western Pacific Regional Fishery Management Council	Federal
Organizations/Groups/Individuals	
Papahānaumokuākea Native Hawaiian Cultural Working Group	Native Hawaiian Organization
‘Āina Momona	Native Hawaiian Organization
Daughters of Hawai‘i	Native Hawaiian Organization
Hale Halawai ‘Ohana o Hanalei	Native Hawaiian Organization
Kai Palaoa	Native Hawaiian Organization
Society for Hawaiian Archaeology	Native Hawaiian Organization
Kanehunamoku Voyaging Academy	Native Hawaiian Organization
‘Ohana Hāpai	Native Hawaiian Organization
‘Ohana Kahaunaele	Native Hawaiian Organization
‘Ohana Ayau	Native Hawaiian Organization
Nā Maka Onaona	Native Hawaiian Organization
Kiamanu Project - Nā Kia‘i Nihokū	Native Hawaiian Organization
Mālama Manō	Native Hawaiian Organization
Moana ‘Ohana	Native Hawaiian Organization
Lawai‘a Pono	Native Hawaiian Organization
Mauliola Endowment	Native Hawaiian Organization
Pi‘ihonua Hawaiian Homestead Community Association/Sovereign Council of Hawaiian Homestead Associations	Native Hawaiian Organization
Mauna Kea Anaina Hou	Native Hawaiian Organization
Tokyo University of Marine Science and Technology	Organization
Tokai University School of Humanities	Organization
Honolulu Community College	Organization
Pacific Agricultural Land Management Systems	Organization
International Midway Memorial Foundation	Organization
NWHI Coral Ecosystem Reserve Advisory Council	Group

Name	Affiliation
Isaac Harp	Individual
Tammy Harp	Individual
Lineal Descendant	Individual

*Cooperating Agency

Appendix I: EIS Distribution List

Name	Affiliation
Elected Officials	
Natural Resources Committee	U.S. House of Representatives
Committee on Commerce, Science, and Transportation	U.S. Senate
David Ige	Governor of Hawai'i
Josh Green	Governor of Hawai'i
Brian Schatz	U.S. Senator
Ed Case	U.S. Representative
Government Agencies	
Department of Land and Natural Resources, Office of the Chair	State of Hawai'i
Department of Land and Natural Resources, Division of Aquatic Resources	State of Hawai'i
Department of Land and Natural Resources, Division of Forestry and Wildlife	State of Hawai'i
Department of Land and Natural Resources, Division of Historic Preservation	State of Hawai'i
Office of Planning and Sustainable Development, Environmental Review Program	State of Hawai'i
Department of Education, Office of Hawaiian Education	State of Hawai'i
Office of Hawaiian Affairs	State of Hawai'i, Native Hawaiian Organization
U.S. Environmental Protection Agency, Region 9	Federal
U.S. Fish and Wildlife Service, Environmental Services	Federal
U.S. Fish and Wildlife Service, National Wildlife Refuges	Federal
U.S. Fish and Wildlife Service, Pacific Islands	Federal
NOAA Fisheries, Pacific Islands Regional Office	Federal
U.S. Department of Defense	Federal
U.S. Department of the Navy	Federal
U.S. Department of the Navy, Cultural Resources Team	Federal
U.S. Department of the Navy, Naval History and Heritage Command	Federal
Advisory Council on Historic Preservation	Federal
U.S. Department of State	Federal

Name	Affiliation
U.S. Department of Transportation	Federal
U.S. Department of the Interior	Federal
U.S Army Corps of Engineers	Federal
U.S. Geological Survey	Federal
U.S. Coast Guard	Federal
Organizations/Groups/Individuals	
‘Āina Momona	Native Hawaiian Organization
Mauliola Endowment	Native Hawaiian Organization
Na Maka Onaona	Native Hawaiian Organization
Kai Palaoa	Native Hawaiian Organization
Mauna Kea Anaina Hou	Native Hawaiian Organization
Mālama Manō	Native Hawaiian Organization
Moana ‘Ohana	Native Hawaiian Organization
Lawai‘a Pono	Native Hawaiian Organization
Kiamanu Project - Nā Kaia‘i Nihokū	Native Hawaiian Organization
Kānehūnāmoku Voyaging Academy	Native Hawaiian Organization
Kua ‘āina Ulu ‘Auamo	Native Hawaiian Organization
Daughters of Hawaii	Native Hawaiian Organization
Pacific Agricultural Land Management Systems	Native Hawaiian Organization
Papahānaumokuākea Native Hawaiian Cultural Working Group	Native Hawaiian Organization
Hale Halawai ‘Ohana O Hanalei	Native Hawaiian Organization
Piihonua Hawaiian Homestead Community Association/Sovereign Council of Hawaiian Homestead Associations	Native Hawaiian Organization
‘Ohana Hāpai	Native Hawaiian Organization
‘Ohana Kahaunaele	Native Hawaiian Organization
‘Ohana Ayau	Native Hawaiian Organization
Honolulu Community College	Organization

Name	Affiliation
Society for Hawaiian Archaeology	Organization
International Midway Memorial Foundation	Organization
Tokai University, School of Humanities	Organization
Tokyo University of Marine Science and Technology	Organization
NWHI Coral Ecosystem Reserve Advisory Council	Group
Shad Kane	Individual
Isaac Harp	Individual
Tammy Harp	Individual
Brad Wong	Individual
Kepo'o Keli'ipa'akaua	Individual
Devin Forrest	Individual
Lei Wann	Individual

Appendix J: List of Document Preparers

NOAA Office of National Marine Sanctuaries

Papahānaumokuākea Marine National Monument Staff

Eric Roberts, MPA, Monument Superintendent – Technical Review

Phillip Howard, M.S., Permits Coordinator (13 years of experience) – Permitting and Regulatory Text, Technical and Editorial Review

Alyssa Miller, Ph.D., Environmental Planner (20+ years of experience) – Management Plan Text, Technical and Editorial Review

Kevin Kelly – Regulatory Compliance Specialist (20+ years of experience). EIS Text, Technical and Editorial Review

Kanoe Morishige – EIS Cultural Resources and Management Plan Text, Technical Review

Kalani Quiocho – Technical Review

Jesi Quan Bautista – Misc. Text and Review

Catherine Tanaka – Misc. Text and Review

Brian Hauk – Invasive Species and Monument Logistics Text

Hans Van Tilberg, Ph.D. – Maritime Heritage and NHPA Section 106 Text

Randy Kosaki, Ph.D. – Biological Resources Text

NOAA ONMS Headquarters

Ellie Roberts, MPA, Policy Analyst (9 years of experience) – EIS Text, Regulatory Text, Technical and Editorial Review

Giselle Samonte – Socioeconomics Text and Review

Danielle Schwarzmann – Socioeconomics Text and Review

Bethany Henneman – Legal Review

Rachel Morris – Legal Review

Seth Sykora-Bodie – Regulatory Text, Technical Review

Wilamena Harback – Environmental Compliance Review

Tony Reyer – Maps and GIS, Technical Review

William Hoffman, RPA – NHPA Section 106 Text

State of Hawai‘i

Department of Land and Natural Resources

Dawn N. S. Chang, esq. Chairperson – Technical Review

Department of Land and Natural Resources – Division of Aquatic Resources

Ryan Okano, Ph.D. Program Manager – Technical and Editorial Review

Kelli Ann Kobayashi, Legal Research Specialist – State Laws Text, Technical and Editorial Review

Nicholas Keali‘i Sagum – Legal Technical Review

Jesse Boord – Fishery Technical Review

Mimi Olry – Marine Mammal Technical Review

Bryan Ishida – Biological Technical Review

Heather Ylitalo – Ward – Biological Technical Review

Russell Sparks – Biological Technical Review

Kimberly Fuller – Biological Technical Review

Troy Sakihara – Biological Technical Review

Kristen Kelly – Education Technical Review

Adam Wong – Education Technical Review



NATIONAL MARINE
SANCTUARIES

AMERICA'S UNDERWATER TREASURES



Papahānaumokuākea National Marine Sanctuary

Final Environmental Impact Statement Appendix K: Public Comment and Response



U.S. Department of Commerce
Gina Raimondo, Secretary

National Oceanic and Atmospheric Administration
Richard W. Spinrad, Ph.D., Under Secretary of Commerce for Oceans and Atmosphere and
NOAA Administrator

National Ocean Service
Nicole LeBoeuf, Assistant Administrator

Office of National Marine Sanctuaries
John Armor, Director



**NATIONAL
MARINE
SANCTUARIES**


Cover Photos: NOAA diver investigates whaling shipwreck; native fish swim on a coral reef; Hawaiian voyaging canoe sails in Papahānaumokuākea; Hawaiian monk seal and ulua swim over the seafloor. Photos: NOAA

Recommended Citation: National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries. 2024. Papahānaumokuākea National Marine Sanctuary Final Environmental Impact Statement Appendix K: Public Comment and Response. Silver Spring, MD.

Terms, Abbreviations, and Acronyms

A note on terminology: The term Papahānaumokuākea, when used alone, refers to the place, also historically known as the Northwestern Hawaiian Islands, including the land and all waters to 200 nmi from shore. Papahānaumokuākea Marine National Monument or PMNM refers to the area designated as a monument via Presidential Proclamations 8031 and 8112, extending 50 nmi from all islands and emergent lands of the Northwestern Hawaiian Islands. The Papahānaumokuākea Marine National Monument Expansion Area or MEA refers to waters from 50 to 200 nmi designated as a monument in 2016 by Presidential Proclamation 9478. PMNM and the MEA are referred to collectively as the “Monument.” When describing the action alternatives, the term “Outer Sanctuary Zone” is used to describe the area of the sanctuary that is coextensive with the MEA.

BMP	Best Management Practice
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CIA	Cultural Impact Assessment
Co-trustees	Term used in this document to refer to the State of Hawai‘i, the U.S. Department of Commerce, the U.S. Department of the Interior, and the Office of Hawaiian Affairs
CWG	Papahānaumokuākea Native Hawaiian Cultural Working Group
CZMA	Coastal Zone Management
DLNR	Hawai‘i Department of Land and Natural Resources
EEZ	Exclusive Economic Zone
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
ERP	State of Hawai‘i Environmental Review Program
ESA	Endangered Species Act
HAR	Hawaii Administrative Rules
HEPA	Hawaii Environmental Policy Act
HRS	Hawaii Revised Statutes
IMO	International Maritime Organization
MEA	Papahānaumokuākea Marine National Monument Expansion Area
MMB	Monument Management Board
Monument	Term used in this document to refer to the PMNM and MEA collectively
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NCCOS	National Centers for Coastal and Ocean Sciences



NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
nmi	nautical miles
NMSA	National Marine Sanctuary Act
NOAA	National Oceanic and Atmospheric Administration
NWHI	Northwestern Hawaiian Islands
NWR	National Wildlife Refuge
NWRSAA	National Wildlife Refuge System Administration Act
OHA	Office of Hawaiian Affairs
OLE	Office of Law Enforcement
ONMS	Office of National Marine Sanctuaries
PMNM	Papahānaumokuākea Marine National Monument (Original Area)
PSSA	Particularly Sensitive Sea Area
RAC	Reserve Advisory Council
Reserve	Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve
SHPD	State of Hawai‘i Historic Preservation Division
SMCA	Sunken Military Craft Act
State	State of Hawai‘i
USFWS	U.S. Fish and Wildlife Service
USCG	U.S. Coast Guard
VMS	Vessel Monitoring System
WPRFMC	Western Pacific Regional Fishery Management Council



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Response to Comments

Introduction and Summary

NOAA and the State of Hawai‘i acknowledge and appreciate all 13,934 comments regarding the proposed Papahānaumokuākea National Marine Sanctuary. NOAA and the State of Hawai‘i (State) consolidated public comments from the draft environmental impact statement, draft sanctuary management plan, and Notice of Proposed Rulemaking, and collectively responded to those comments here and in the final rule. This appendix was prepared in compliance with National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) and Hawai‘i Revised Statutes (HRS) §343, and Hawai‘i Administrative Rules (HAR) §11-200.1-27. Responses, including an acknowledgement of who provided the comment, are provided for all substantive comments.

In Appendix K1 of the final environmental impact statement (EIS), in accordance with Hawaii Administrative Rules, Chapter 11-200.1-27, copies of all written and oral comments received on the draft EIS can be found. Appendix K1 can be accessed on the Papahānaumokuākea [webpage](#).

Comment Overview

NOAA and the State of Hawai‘i received 488 written comments, 61 oral comments, and 13,385 form letters, totaling 13,934 public comments received on the draft designation documents. Comments were collected during a 68-day public comment period from March 1 to May 7, 2024, via 1) electronic entries on the regulations.gov website; 2) postal mail; and 3) oral testimony at two virtual and nine in-person public meetings on O‘ahu, Kaua‘i, Hawai‘i Island, Maui, and Moloka‘i. All comments, including meeting transcripts, are publicly accessible as posted at regulations.gov (docket #NOAA-NOS-2021-0114). For more information on the public comment process, see final EIS Section 1.3.2.

Public comments were reviewed by NOAA and the State of Hawai‘i and organized into 12 categories (sections A to L), resulting in 137 summarized substantive comments presented in this appendix. Most comments focused on sanctuary access, permitting, prohibitions, enforcement, Kānaka ‘Ōiwi (Native Hawaiian) cultural integration, Indigenous rights, fishing regulations, fishery management, co-management, interagency cooperation, sanctuary exemptions, community participation, purpose and need for a sanctuary, boundaries and alternatives, resource protection, education and outreach, Sanctuary Advisory Council, and administration and funding. Overall, strong support was expressed for designation of the proposed sanctuary and Alternative 1 (Agency-Preferred Alternative).

NOAA and the State’s responses to comments address substantive issues and concerns raised by members of the public, government agencies, stakeholder groups, non-profit organizations, and Kānaka ‘Ōiwi community groups. All substantive comments were considered by NOAA and the State and, where appropriate, modifications were made to the final EIS, sanctuary management plan, and sanctuary rule. The responses to comments throughout this appendix reference numerous changes that were made between the draft and final documents to address issues raised in public comments. The final EIS Section 1.5 outlines changes that were made to the draft designation documents, subsequent to the public comment period. Copies of all written comments, and a transcript of oral comments can be found in Appendix K1.

A. General Support and Opposition of Sanctuary Designation

(This section addresses broad comments of support or opposition to the designation that are not associated with a specific proposal, alternative, or area of analysis.)

A.1 Comment: The majority of comments NOAA received supported the proposed sanctuary designation, including Alternative 1 (Agency-Preferred Alternative), and encouraged NOAA to proceed with the designation process. Commenters who support the designation cited reasons including:

- Additional regulations, protections, enforcement, and programmatic and legal benefits for Papahānaumokuākea under the National Marine Sanctuaries Act
- Enhancing long-term protections for biological, cultural, and historical resources
- Comprehensive and coordinated management of the marine areas of Papahānaumokuākea
- Preserving Native Hawaiian culture, traditional practices, sacredness of waters, and connections to place for current and future generations
- Safeguarding marine biodiversity; coral reefs, pelagic, and deep-ocean ecosystems; and endemic, threatened, and endangered species
- Regulating, mitigating, or preventing threats such as invasive species, overfishing, illegal fishing, deep-sea mining, military activities, pollution, oil spills, marine debris, erosion, and climate change
- Additional sources of funding to support operations, research, emergency response, citizen science, education, and outreach
- Opportunities for recreation and tourism

Response: NOAA agrees that these are some of the main benefits of designating the marine areas of the Monument as a national marine sanctuary. NOAA notes that many of these comments specifically indicate a preference for Alternative 1, and NOAA has considered this in carrying Alternative 1 forward in the final EIS as the final Agency-Preferred Alternative.

A.2 Comment: A minority of commenters expressed opposition to sanctuary designation, citing concerns that designating a sanctuary:

- Is an overreach by the federal government
- Is an act of colonialism and/or infringes on the rights of Indigenous Peoples
- Would come at a cost to Native Hawaiian, American Samoan, and/or Pacific Islander well-being, including loss of the ability to practice cultural traditions and connections to ocean resources
- Would limit access to the ocean and resources for food, livelihood, and cultural sustenance, and limit Indigenous rights and their ability to freely fish in local waters
- Would decrease the amount of fishing waters across the Pacific
- Would lead to overfishing
- Adds unnecessary layers of bureaucracy, as the existing Monument management and protections are extensive and sufficient for the area, and that if new protections/management is needed, these should be enacted through the Monument

- Would relinquish the Monument title and co-management framework
- Would weaken current protections, and allow the Department of Commerce (DOC) to violate protections, opening the doors to deep-sea mining and recreational tourism, and taking away human and financial resources needed to manage the area
- Would be redundant of current management of the Monument, and therefore unnecessary. Some commenters also expressed that they felt current Monument management to be poor, or that current management capacity is lacking; and that a sanctuary would not improve this.

Commenters: Jesse Rosario, Ramon Tebuteb, Namele Naipo-Arsiga, Nana-Honua Manuel, Samuel Meleisea, Archie Soliai, Hawaii Longline Association, Rikki Torres-Pestana, Nalani Minton, Claire Iloprizi, Nā Iwi Kūpuna, Nahshon Lealofi, American Samoa Veterans, Lino Tenirio, Mike Fleming, Nonu TuiSamoa, Gil Kualii, Kaleo Cravalho, Native Hawaiian Gathering Rights Association, Abraham Albilado, Molly Lutcavage, Michael Gawel, Shannon Cummings, Louis Solaita, Jason Pritchard, Timothy Teleso, Klayton Kubo, Noah, Western Pacific Fishery Management Council, Ramon Tebuteb, Hawaii Longline Association, Charlie Blaney, Mary Shanahan-Reitz, Tuna2Oceans LLC and AhiHubKauai, Hawaii Goes Fishing, Charlie Blaney, Mary Shanahan-Reitz, Tammy Harp, Cha Smith, Northwestern Hawaiian Islands Hui, Pua‘āinahau Foundation, Hawai‘i Wildlife Fund, Malu ‘Aina, Life of the Land, Hālau Nā Mamo o Pu‘uanahulu, Malama Makua, Isaac Harp, Dr. Pualani Kanahahele Kanaka‘ole, and anonymous commenter(s)

Response: Through the public sanctuary designation process, and from public input received during scoping and the proposed designation stage, NOAA has determined that this proposed action responds to the need to address threats to and discrepancies in management of nationally significant resources. NOAA has also determined that the current management regime would benefit from additional regulatory tools, as well as the first set of implementing regulations for the Monument Expansion Area (MEA). Chapter 2 of the final EIS and Section I.B of the final rule preamble describes the purpose and need for the sanctuary.

NOAA respects the views of the commenters, including those who expressed concern that a sanctuary designation is an overreach by the federal government; is an act of colonialism; would impact the livelihood of Pacific Islanders; and/or would limit Indigenous rights. NOAA seeks to support the rights of Kānaka ‘Ōiwi and Pacific Islanders, and to support biocultural conservation and restoration work by growing collective kuleana and affirming respect and reciprocity for the place and people. The sanctuary management plan (final EIS Appendix A) objectives include managing the area as a sacred site consistent with Kānaka ‘Ōiwi traditional knowledge, management concepts, and principles articulated within [Mai Ka Pō Mai](#). Kānaka ‘Ōiwi culture is foundational in the co-management legacy of Papahānaumokuākea (see final EIS, sections 1.2.4 and 4.5.1), and the designation aims to ensure ecological integrity and achieve strong, long-term protection and perpetuation of Northwestern Hawaiian Island ecosystems, Kānaka ‘Ōiwi culture, and maritime heritage resources for current and future generations. Native Hawaiian access would continue under sanctuary designation. See also the responses to comments C.1, C.2, and E.7.

Regarding commenters who expressed concerns with the impact of sanctuary designation on the existing Monument, existing regulations, and or existing management of the area, see also the responses to E.1 and E.2. Regarding commenters who expressed concerns with the impact of sanctuary designation on fishing, see also the comments D.1, D.3, and D.5. NOAA also recognizes that some comments raise concerns that are outside the scope of this designation, including the ongoing process to designate a proposed national marine sanctuary in the Pacific Remote Islands. The underlying concerns of these comments were still considered in the context of Papahānaumokuākea National Marine Sanctuary.

NOAA also received other comments of concern regarding the sanctuary designation. Responses to specific points of concern and opposition are addressed in the following sections:

- Section B: Access, Permitting, Prohibitions, and Enforcement
- Section C: Native Hawaiian, Indigenous Rights, and Cultural Integration
- Section D: Fishing Regulations and Fishery Management
- Section E: Co-Management and Interagency Cooperation
- Section F: Exemptions
- Section G: Consultations and Community Participation in Sanctuary Designation
- Section H: Purpose and Need for Sanctuary Designation
- Section I: Boundaries
- Section J: Description and Analysis of Alternative
- Section K: Sanctuary Administration and Funding, Resource Protection, Education and Outreach, Partnerships, and Sanctuary Advisory Council
- Section L: Other Editorial Changes, Including Technical Edits

B. Sanctuary Access, Permitting, Prohibitions, and Enforcement

Access

B.1 Comment: Commenters expressed opposition to for-profit activities in the sanctuary. One commenter recommended that no human activity should be allowed in the sanctuary.

Commenters: ‘Alaea, Tammy Harp, Tina Marzan, Noelle C.

Response: The sanctuary regulations were drafted to supplement and complement existing management of the area. The existing Monument management regime allows for some for-profit activities such as professional film-making, and activities such as wildlife management, research, and Native Hawaiian practices. All are subject to permitting requirements. Consistent with the existing management of the area, NOAA would allow for regulated access to the sanctuary for these types of activities. As in the Monument, in order to receive a permit for a regulated activity, a number of findings criteria would need to be met, including that the proposed activity would be conducted consistent with the primary objective of protection of sanctuary resources.

B.2 Comment: Commenters expressed concern regarding access to Papahānaumokuākea, noting that the area can currently only be experienced by a select group of scientists, Native Hawaiian cultural practitioners, and wealthy individuals.

Commenters: ‘Alaea, Gil Kualii, Mahina Kapulani

Response: The sanctuary regulations and permit categories were drafted to supplement and complement existing management of the area. Consistent with the presidential proclamations designating the PMNM and MEA, and the Monument implementing regulations at 50 CFR part 404, NOAA would allow for regulated access. Anyone may apply for a permit to access the sanctuary. There are six categories of permitted activities: research, recreation, education, Native Hawaiian practices, conservation and management, and special use. In addition, a vessel may pass without interruption through the sanctuary without requiring a permit as long as the vessel does not stop or engage in prohibited activities within the sanctuary.

Additionally, the sanctuary management plan describes strategies to engage and support diverse communities who care for Papahānaumokuākea, including Indigenous and underserved communities. NOAA recognizes the constraints imposed by the vastness and remote nature of the proposed sanctuary (nearly 300 miles at its closest point from the main Hawaiian Islands), and therefore strives to provide education and outreach that brings the place to the people. Through the Mokupāpapa Discovery Center and collaborations with other interpretive centers, organizations, business agencies, and others, NOAA has expanded a network serving both local, regional, and international audiences.

B.3 Comment: Commenters provided recommendations that permits be easy to acquire through a streamlined process to minimize barriers and reduce redundant reviews under various authorities and regulations. One commenter suggested that the process to acquire a sanctuary/Monument Native Hawaiian practices permit, specifically, should be prioritized and streamlined.

Commenters: Friends of Midway Atoll National Wildlife Refuge, Carl Grundstrom, and anonymous commenter(s)

Response: The Monument joint permitting process has been in place and permits have been issued by the co-trustees since 2007. The proposed sanctuary includes a permitting system modeled after the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by Monument co-trustees. See final EIS Section 3.3.1 for an updated description of the proposed permitting process. Through sanctuary designation, NOAA strives to conduct seamless, integrated management, such that sanctuary permits, including Native Hawaiian practices permits, would go through the same streamlined process as currently exists for the Monument.

B.4 Comment: Commenters expressed concerns regarding activities that take place in the Northwestern Hawaiian Islands under claims of innocent passage, and requested that all activities in the area of the proposed sanctuary comply with the United Nations Convention on

the Law of the Sea, which the U.S. recognizes as customary international law, and applicable international treaties.

Commenters: Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, Linda Paul

Response: In the preamble of the proposed rule, NOAA specified that the proposed access and ship reporting regulations would be applied in accordance with generally recognized principles of international law, in accordance with sections 305(a) and 307(k) of the National Marine Sanctuaries Act (NMSA) and the NMSA Regulations of General Applicability at 15 CFR 922.1(b). That is, no regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States unless in accordance with generally recognized principles of international law. In accordance with 15 CFR 922.1(b), NOAA has long interpreted the text of NMSA Section 305(a) as encompassing international law, including customary international law.

In the preamble of the final rule, NOAA has clarified its intention that all regulations would be applied in accordance with generally recognized principles of international law, as well as in accordance with treaties, conventions, and other agreements to which the United States is a party.

B.5 Comment: A commenter provided a recommendation that the International Maritime Organization's (IMO) designation of the Monument as a Particularly Sensitive Sea Area (PSSA) apply to the MEA. The commenter also recommended that NOAA should determine, as part of the sanctuary designation process, if additional regulatory and management controls are necessary.

Commenters: Shark Stewards

Response: The IMO process for designating an area as a PSSA is outside the scope of this action. If the U.S. Government determines at a future time that designation of some or all of the Monument as a PSSA is warranted, the IMO process would remain available. Through sanctuary designation, NOAA would implement the ship reporting system (CORAL SHIPREP), which was adopted by the IMO as an associated protective measure to the designation of the Monument as a PSSA. The ship reporting system's reporting area extends outward 10 nautical miles from the PSSA boundary, as designated by the IMO, and therefore includes some portions of the MEA waters. After thorough analysis, NOAA concluded that additional regulatory measures are not necessary at this time, beyond the sanctuary regulations for ship reporting, access, and prohibited or otherwise regulated activities. Section IV.F of the final rule preamble provides details of the ship reporting system.

B.6 Comment: Commenters expressed support of access for recreational activities, including snorkeling and scuba diving; and allowing opportunities for the public to interact with Papahānaumokuākea in a safe and responsible manner. Commenters stated that allowing access for recreational activities may lead to increased awareness and support for the National Marine Sanctuary System. Commenters also provided recommendations for regulating recreational activities.

Other commenters expressed concern for the potential negative impacts to resources from allowing visitation, recreation, and tourism activities in the sanctuary, specifically Midway Atoll. A few commenters opposed recreational access to the sanctuary, noting that access should be limited to research and conservation activities and/or to the Midway Atoll Special Management Area.

Commenters expressing support for access for recreation: Ann Bell, Carl Grundstrom, Lee Oliver, Jane Jacobsmeyer, Myra Dehestani, Jonluke O'Cain, Maggie MacMullen

Commenters expressing concern or opposition for access for recreation: Andrea Eshelman, Namele Naipo-Arsiga, and anonymous commenter(s)

Response: For the sanctuary, consistent with existing regulations for PMNM, recreational activity would be defined as activities conducted for personal enjoyment that do not result in the extraction of sanctuary resources and that do not involve a fee-for-service transaction. This includes, but is not limited to, wildlife viewing, scuba diving, snorkeling, and boating. Recreation can provide significant educational opportunities, build constituencies, and provide assistance to natural resource managers. However, these activities can also lead to wildlife disturbance, habitat degradation, and pollution. It is a goal of the Monument to prevent, avoid, or minimize negative human impacts associated with recreation by allowing access only for those activities that do not threaten the natural character or biological integrity of the Monument or Native Hawaiian cultural, historic, or maritime heritage resources.

Midway Atoll Special Management Area is the only area of the Monument where recreational activities are permitted. Thus, while the sanctuary would allow for recreational activities via a permit, permits would only be issued for the Midway Atoll Special Management Area within the sanctuary, in coordination with the Monument Management Board and consistent with permitting for the existing Monument. Consistent with permit criteria for recreational activities within the Monument, recreation permits would not be issued for activities associated with any for-hire operation or for activities that involve extractive use.

B.7 Comment: Commenters expressed support of allowing a fee-for-service transaction for public visitation and recreational activities at Midway Atoll National Wildlife Refuge, and pointed out the existing authority of the U.S. Fish and Wildlife Service (USFWS) to charge fees for public visitation. Commenters requested that the EIS recognize the authority of the USFWS to charge fees for services.

Commenters: Ann Bell, Friends of Midway Atoll National Wildlife Refuge

Response: Consistent with existing permit criteria and regulations for recreational activities within the Monument, recreation permits would not be issued for activities associated with any for-hire operation, and recreational activities are defined as activities conducted for personal enjoyment that do not result in the extraction of sanctuary resources and that do not involve a fee-for-service transaction. However, NOAA acknowledges that the USFWS has the authority to charge fees for services including public visitation (50 CFR Part

25 Subpart E; [Refuge Rules and Policies](#)). Sanctuary designation would not change this authority, and the USFWS would still be able to charge fees for services, including public visitation to Midway Atoll. See also the response to E.3.

The EIS has been revised to acknowledge that the USFWS has the authority to charge fees for services including public visitation. See sections 3.2 and 4.6.2 of the final EIS.

B.8 Comment: Commenters requested that the USFWS consider a visitation program at Midway Atoll; and/or expressed support for recreation and visitation to Midway Atoll. Comments also requested that the final EIS describe the sanctuary permit process for public visitation and recreational activities at Midway Atoll National Wildlife Refuge.

Commenters: Dawn Marie Barraza, Narrissa Spies (Brown), Ken Gill, Ann Bell, Friends of Midway Atoll National Wildlife Refuge

Response: A visitation program to Midway Atoll is outside the scope of this action. NOAA will share these comments with the USFWS, a cooperating agency for this action, who has operated a Visitor Services Program for Midway Atoll. The USFWS' Midway Atoll Comprehensive Master Plan (2022)¹ affirms the goals, objectives, and strategies of the previous 2008 Midway Atoll Visitor Services Plan, and USFWS' intent to implement a Visitor Services Program.

Permitting

B.9 Comment: A commenter suggested that standards for permitting should be strengthened significantly, prioritizing Native Hawaiian practices without opening the door to other types of activities.

Commenters: Council for Native Hawaiian Advancement

Response: Consistent with the presidential proclamations designating PMNM and the MEA, and PMNM implementing regulations at 50 CFR part 404, NOAA would allow for regulated access to the sanctuary. The sanctuary regulations include a permitting system modeled after the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system to ensure continued joint permitting administered by the Monument Management Board (MMB). NOAA has adopted the same permit criteria as currently required for Monument permits, including the additional criteria for Native Hawaiian practices and recreation permits.

For additional information regarding Native Hawaiian practices permitting, see the responses to B.14 and C.1.

B.10 Comment: Commenters recommended that NOAA hold mandatory public hearings for all permit applications, that there should be a permanent public record for all permits granted, and that there should be no multiple-year permits allowed.

¹ USFWS. 2022. Midway Atoll Comprehensive Master Plan. 119 pp.

Commenters: Zahz Hewelen, Alisha Chauhan, Isaac Harp, Cha Smith, Friends Of Midway Atoll National Wildlife Refuge, Northwestern Hawaiian Islands Hui, Pua‘āinahau Foundation Hawai‘i Wildlife Fund, Malu ‘Aina, Life of the Land, Hālau Nā Mamo o Pu‘uanahulu, Malama Makua, Jim Kastner

Response: The sanctuary regulations include a permitting system modeled after the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system to ensure continued joint permitting administered by MMB. Therefore, NOAA intends to continue with the existing public notification process for the Monument, which does not include mandatory public hearings for all permit applicants. Instead, the existing permit system for the Monument includes a [Permit Application Unified Public Notification Policy](#) to engage and inform the public of activities proposed to occur within the Monument. Posting of a permit application does not equate to permit approval. After posting, each application is thoroughly reviewed by the Monument Management Board. Final permitted activities may differ from the proposed activities.

Some of the public notification practices for the existing Monument include:

- Within 10 calendar days of receipt of application, a summary of an applicant’s proposed activities are posted for public viewing.
- Within 40 calendar days of receipt of application, full permit applications are posted for public viewing.
- Permit applications that include proposed activities within the Northwestern Hawaiian Islands State Marine Refuge are also posted to the Board of Land and Natural Resources (BLNR) website for seven days prior to the scheduled BLNR meeting as part of the overall BLNR submittal process. The BLNR hearings and review process are open to the public.

All information provided in the application is reviewed by the Monument co-trustees to evaluate the potential benefits of the activity, determine whether the proposed methods would achieve the proposed results, evaluate any possible detrimental environmental impacts, and determine if issuance of a permit is appropriate. Factored in is a consideration of whether the timeframe of the proposed action is appropriate. Actions occurring within State waters are subject to a maximum permit duration of one year, while multi-year permits may only be issued outside of State waters. Therefore, consistent with existing management, multi-year permits may be granted in areas of the proposed sanctuary that do not overlap with state waters.

Additionally, permits granted are documented within an annual permitted activities report, published by the Monument. Reports for previous years may be viewed on the Permitted Activities Annual Reports [website](#).

B.11 Comment: Commenters recommended that independent cumulative impact assessments be required for all permit applications.

Commenters: Northwestern Hawaiian Islands Hui, Pua‘āinahau Foundation Hawai‘i Wildlife Fund, Malu ‘Aina, Life of the Land, Hālau Nā Mamo o Pu‘uanahulu, Malama Makua, Isaac Harp

Response: Permit decisions are federal actions which are subject to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* In accordance with NEPA, NOAA considers possible cumulative environmental impacts when considering federal actions, including a decision of whether to issue a permit.

B.12 Comment: Commenters expressed concern that a special use permit (SUP) would introduce commercial activities.

Commenters: Jim Kastner

Response: In the Monument, some forms of commercial activity are currently permitted under special ocean use permits. The existing regulations at 50 CFR 404 for PMNM include permit criteria and regulations for special ocean use, which means an activity or use of the Monument that is engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and does not destroy, cause the loss of, or injure Monument resources. This includes ocean-based ecotourism and other activities such as educational and research activities that are engaged in to generate revenue, but does not include commercial fishing.

Likewise, before issuing a SUP in the sanctuary, NOAA would also ensure, among other things, that the requested activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources, and is conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources (16 U.S.C. 1441(c)). NOAA can place conditions on SUPs specific to the activity being permitted. Individual permit applications that would require a SUP are also reviewed with respect to all other pertinent regulations and statutes, including NEPA (42 U.S.C. 4321 *et seq.*), and any required consultations, permits, or authorizations. Accordingly, there are sufficient safeguards in place for any activity proposed for a SUP in the sanctuary, whether of a commercial or non-commercial nature.

In addition, NOAA is not proposing any new SUP categories as part of this designation. In order to do so, NOAA would be required to provide appropriate public notice before identifying a new category of activity subject to a SUP (16 U.S.C. 1441(b)).

B.13 Comment: Commenters asked why the sanctuary permit would not allow for appeals of permit decisions.

Commenters: Narrissa Spies (Brown)

Response: The permitting system for the sanctuary is modeled after the existing Monument permitting system. The permitting system would not supplant the joint permitting system for the Monument, and was developed to ensure a continued joint permitting system administered by the MMB. The existing permit system for the Monument does not include a process to appeal a permit decision. Instead, a permit applicant may seek reconsideration of a permitting decision by filing a new permit application that redresses the issue(s) in the initial application that caused the denial. To ensure consistency with the existing permit system for the Monument, the National Marine Sanctuary Program regulations at 15 CFR 922.37 for appeals of permitting decisions would not apply to

Papahānaumokuākea National Marine Sanctuary. This will ensure that permit application decisions are not made solely by NOAA, but in consideration with the other Monument co-trustees. See the final EIS, Section 3.3.1 and the preamble of the final rule for discussion of appeals of permitting decisions.

B.14 Comment: A commenter stated that the proposed rule’s definition of “Native Hawaiian Practices” provides a solid foundation, but is concerned that “Native Hawaiian” is not defined. The commenter requested that the definition should narrowly reference Indigenous practices and only those practices of the kānaka maoli, who lived and thrived in Hawai‘i prior to European and American arrival.

Commenters: Office of Hawaiian Affairs

Response: NOAA will not define “Native Hawaiian” in the sanctuary regulations because the issuance of Native Hawaiian practices permit is based on evaluating the activity against the permit criteria. To be consistent with the types of activities permitted for the Monument, and allow for an integrated permit process, NOAA would issue Native Hawaiian practices permits based on the same permit review procedures and additional evaluation criteria as the Monument:

- The activity is non-commercial and would not involve the sale of any organism or material collected;
- The purpose and intent of the activity is appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (pono), and demonstrates an understanding of, and background in, the traditional practice and its associated values and protocols;
- The activity benefits the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community;
- The activity supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the Northwestern Hawaiian Islands; and
- Any living sanctuary resource harvested under this permit would be consumed or utilized in the sanctuary.

The permitting system for the sanctuary is modeled after the existing Monument permitting system. The permitting system would not supplant the joint permitting system for the Monument, and was developed to ensure a continued joint permitting system administered by the MMB. The existing permit system for the Monument does not define Native Hawaiian, and instead provides a specific set of findings criteria for a Native Hawaiian practice permit. The criteria for the Monument Native Hawaiian practice permit were developed following a workshop in 2004 facilitated by Kia‘i Kai, a graduate program at the Kamakūokalani Center for Hawaiian Studies at the University of Hawai‘i at Mānoa, collecting input from Native Hawaiian cultural practitioners, fishermen, and others to create criteria for culturally-appropriate activities in Papahānaumokuākea. Presidential Proclamation 8031 subsequently applied these criteria in providing for additional findings for Native Hawaiian practice permits, as did the Monument’s implementing regulations at 50 CFR part 404.

However, while Native Hawaiian will not be defined in the regulations, the final EIS recognizes a definition for the term Native Hawaiian per existing federal law as important background information for the reader. See also the response to C.8

Prohibitions

B.15 Comment: Commenters requested that wind turbine activity, in addition to mining and exploratory activities related to energy development, be prohibited.

Commenters: Office of Hawaiian Affairs, Papahānaumokuākea Native Hawaiian Cultural Working Group, Andy Ku, and anonymous commenter(s)

Response: Consistent with the presidential proclamations establishing the Monument, NOAA would prohibit exploring for, developing, or producing oil, gas, or minerals to protect sanctuary resources. NOAA would also prohibit “any energy development activities” to further the underlying intent of the prohibition on oil, gas, and mineral development by accounting for technological advances in other forms of energy development. This includes, but is not limited to, wind turbines and exploratory mining activity.

B.16 Comment: Commenters requested that submarine activity be prohibited, with several comments specifically requesting prohibitions to military submarine use.

Commenters: Abdine Ouedraogo, Miranda Scarola, Lily Monte, Matthew Murasko, Brandon Mindoro, Mariana Loaiza, Susan Kiskis, Djedi Alliance, Rainbow Warrior Collective, Tiare Ka’ōlelopono, Alisha Chauhan

Response: Access to the sanctuary, and therefore submarine use within the sanctuary, would be prohibited and thus unlawful except under the following circumstances: for emergency response actions, law enforcement activities, and activities and exercises of the Armed Forces; pursuant to a sanctuary permit; and when passing through the sanctuary without interruption. Further, all regulations would be applied in accordance with generally recognized principles of international law, as well as in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law, or applicable treaties, conventions, and other agreements.

The sanctuary regulations allow activities and exercises of the U.S. Armed Forces. This is consistent with the existing management of the Monument, as both Presidential Proclamation 8031 and Presidential Proclamation 9478 provided broad exemptions for activities of the U.S. Armed Forces. However, all activities and exercises of the Armed Forces must be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on sanctuary resources and qualities.

B.17 Comment: Commenters expressed concern regarding the potential spread of invasive species and diseases from vessel transit and biofouling, and requests that the prohibition on introducing invasive species apply to all vessels, including those passing without interruption.

Commenters: Robin Girard, Curtis Mahon

Response: The proposed sanctuary regulations would prohibit introducing or otherwise releasing an introduced species from within or into the sanctuary. The sanctuary regulations would also prohibit discharging or depositing any material or other matter into the sanctuary. These prohibitions are consistent with prohibitions identified in the presidential proclamations establishing the Monument. These prohibitions would apply to all vessels, including those passing without interruption. A vessel may only pass without interruption through the sanctuary without requiring a permit, as long as the vessel does not stop or engage in prohibited activities within the sanctuary.

B.18 Comment: Commenters stated that the provisions of Presidential Proclamation 8031, 50 CFR 404, Executive Order 13178 for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, and the State of Hawai'i Northwestern Islands Marine Refuge should be applied to the sanctuary regulations for the Monument Expansion Area and the full sanctuary, and specifically the prohibitions regarding fishing. Commenters also stated that Presidential Proclamation 9478 is too weak and provides "loopholes."

Commenters: 'Aulani Wilhelm, Isaac Harp, Marine Mammal Commission, Northwestern Hawaiian Islands Hui, Pua'āinahau Foundation, Hawai'i Wildlife Fund, Malu 'Aina, Life of the Land, Hālau Nā Mamo o Pu'uana'hulu, Malama Makua, Shark Stewards, Dave Raney, Jim Kastner, Cha Smith, Stephanie Fried, and anonymous commenter(s)

Response: In drafting the sanctuary regulations, NOAA reviewed the executive orders, presidential proclamations, and regulations that currently guide Monument management. NOAA adopted the management measures from these benchmarks, and, in a few areas, added to those measures to allow for consistency in regulation and management across the sanctuary. The sanctuary regulations are largely consistent with Executive Order 13178, establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). Where the sanctuary regulations do not align with Executive Order 13178, the regulations comply with other applicable law including Presidential Proclamations 8031 and 9478 establishing PMNM and MEA, respectively, which succeeded the 2000 executive order establishing the Reserve. For example, while Executive Order 13178 sets caps on commercial fishing, the sanctuary regulations prohibit commercial fishing across the sanctuary, consistent with the presidential proclamations. In addition, the MEA's location outside the reserve, and other applicable law for that area such as Presidential Proclamation 9478, account for differences in management, including for non-commercial fishing.

NOAA also considered that while the Monument is managed as a unit, several State and federal conservation areas exist within it, where specific authorities apply. For example, the State of Hawai'i has primary responsibility for managing the State waters of the Monument, including the State of Hawai'i Northwestern Islands Marine Refuge. If designated as a sanctuary, these existing authorities would still remain in effect. The State of Hawai'i also served as a cooperating agency for this EIS, allowing consideration and input into the draft documents. Further, as the proposed sanctuary overlaps with State waters, the State would co-manage the sanctuary with NOAA, and the governor of Hawai'i will also review NOAA's designation documents before the sanctuary designation is final.

B.19 Comment: A commenter expressed support for the prohibition on altering the seabed by modification or placement of materials, except for scientific instruments, providing new protections for the limited and sensitive habitats of the Outer Sanctuary Zone. The commenter noted that access through permitting would allow managers to review methodologies and monitor permittees, and that while minimal user contact with the seafloor occurs or is anticipated in the Outer Sanctuary Zone, these resources are rare and extremely vulnerable to disturbance.

Commenters: Papahānaumokuākea Native Hawaiian Cultural Working Group

Response: NOAA agrees. In the MEA, Presidential Proclamation 9478 prohibits this type of activity, except for when conducted for the use of scientific instruments, which is allowed only with a permit, subject to such terms and conditions as the Secretaries of Commerce and Interior deem appropriate. Therefore, in the sanctuary, NOAA is proposing that these activities are prohibited unless conducted pursuant to a sanctuary permit, and in the Outer Sanctuary Zone, such a permit may only be issued for scientific instruments.

B.20 Comment: A commenter expressed concern for the prohibition on anchoring a vessel, noting that for safety reasons, there are some scenarios when a vessel should be able to anchor.

Commenters: Jamie Barlow

Response: Anchoring a vessel is prohibited unless conducted pursuant to a sanctuary permit. While this activity may be permitted via a sanctuary permit, anchoring on living or dead coral may never be permitted. NOAA is proposing to regulate anchoring a vessel for consistency with a regulated activity identified in Presidential Proclamation 8031 for PMNM and because there is the potential for sanctuary resources, other than corals, to be impacted by anchoring. This prohibition is new for the area of the sanctuary that overlaps with the MEA. NOAA recognizes that there may be scenarios where anchoring a vessel is necessary for safety. Consistent with existing management of this area, the prohibitions for the proposed sanctuary, including the prohibitions on anchoring, would not apply to any activity necessary to respond to emergencies that threaten life, property, or the environment, or to activities necessary for law enforcement purposes.

Enforcement

B.21 Comment: Commenters expressed concerns regarding the sufficiency of enforcement in the sanctuary and the need for improved monitoring and enforcement to protect sanctuary resources. Some commenters specifically pointed out the need for increased monitoring of pollution to prevent entanglement of marine life. Suggestions and recommendations included improved or expanded monitoring and surveillance, use of technology to aid enforcement including Automatic Information Service and satellite monitoring, promulgation of strict regulations, dedicated funding, a risk assessment framework for vulnerable ecosystems, and increased collaboration with the National Environmental Satellite, Data, and Information Service and the State of Hawai'i for satellite management. Commenters also requested that enforcement be conducted by traditional vessels or new technologies to eliminate noise pollution that may impact marine life.

Commenters: Maggie MacMullen, Robert Pecoraro, Alisha Chauhan, Abdine Ouedraogo, Helen Raine, Miranda Scarola, Lily Monte, Matthew Murasko, Brandon Mindoro, Mariana Loaiza, Susan Kiskis, Djedi Alliance, Rainbow Warrior Collective, Tiare Ka‘ōlelopono, Susan Olson, Pacific Whale Foundation, Deep Ocean Stewardship Initiative, Madison Young, Jamie Barlow, Roxane Keli‘ikipikāneokolohaka, Isaac Harp, Northwestern Hawaiian Islands Hui, Pua‘āinahau Foundation, Hawai‘i Wildlife Fund, Malu ‘Aina, Life of the Land, Hālau Nā Mamo o Pu‘uanahulu, Malama Makua

Response: With sanctuary designation, the NMSA provides various regulatory tools and authorities for the protection of sanctuary resources. This includes the authority to conduct enforcement activities; assess civil penalties for violations of sanctuary regulations or permits; impose liability for destruction, loss of, or injury to sanctuary resources and provide natural resource damage assessment authorities for destruction, loss of, or injury to any sanctuary resource; and issue emergency response regulations. In addition, consistent with the existing management of the Monument, the sanctuary implements regulations requiring vessel monitoring system units (VMS) for an owner or operator of a vessel that has been issued a permit, as well as a ship reporting system for vessels that pass without interruption through the reporting areas. Both regulatory tools are intended to increase monitoring, in order to assist enforcement activities by the U.S. Coast Guard and NOAA’s Office of Law Enforcement and further the protection of sanctuary resources. Additionally, as described in the sanctuary management plan (final EIS, Appendix A), NOAA would continue to monitor ecosystems and seek out and develop new tools and technologies for resource protection and monitoring (Strategy 1.2, Strategy 2.2, Strategy 2.3); and to work with the existing interagency Law Enforcement Coordination Team to enhance communication and coordination among enforcement personnel in order to facilitate responses to incidents and uphold sanctuary regulations and policies (Strategy 1.9).

NOAA would continue to actively work and advocate inside the ecosystem protection framework established for the Monument, to minimize risks and damages to sanctuary resources. For example, ongoing research aims to identify derelict fishing gear and other marine debris through unique spectral signatures that can be visualized from space to record locations and provide that information back to partners for removal. This technology has the potential to greatly reduce the effort to locate these hazards so that they can be removed from the environment. Some broad risk assessment investigations have been conducted by the Monument co-trustees (e.g., Climate Change Vulnerability Assessment for the Papahānaumokuākea Marine National Monument (Wagner & Polhemus, 2016)²), however, much more remains to be done. Challenges include the vast geographic extent of ecosystems and seasonal access limitations. Conducting such assessments would require substantial time, as well as the participation of all Monument co-trustee agencies.

Regarding reducing noise pollution from vessels to minimize wildlife disturbances, uncrewed surface vehicle (USV) technology is constantly improving and NOAA is exploring

² Wagner, D. & Polhemus, D.A. 2016. Climate Change Vulnerability Assessment for the Papahānaumokuākea Marine National Monument. Marine Sanctuaries Conservation Series ONMS-16-03. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries, Silver Spring, MD. 99 pp.

ways to utilize sail drones and other vessel systems in order to maintain a physical presence in sanctuary waters without having to dedicate staffed assets. These uncrewed platforms can utilize satellites to transmit location, vessel identification, and photographic evidence back to law enforcement officials in order to expand the geographic capacity of their limited resources.

B.22 Comment: Commenters recommended harsh penalties for those who violate the regulations, including requests for permit violators to be banned from receiving future permits.

Commenters: Susan Olson, Mary Shanahan-Reitz, Cha Smith

Response: The NMSA authorizes NOAA to assess civil penalties for violations of provisions of the NMSA, including sanctuary regulations and permits. Each violation of the NMSA, any NMSA regulation, or any permit issued pursuant thereto, is subject to a civil penalty. Each day of a continuing violation constitutes a separate violation. The NMSA has a statutory maximum of \$216,972 per violation, per the December 27, 2023 annual adjustment for inflation (see 88 Federal Register 89300).

Additionally, the NMSA regulations provide a list of findings, in addition to site-specific permit review criteria, which must be made before issuing a permit, such as whether the activity would be compatible with the primary objective of protection of sanctuary resources and qualities. The NMSA regulations also provide for the denial of a permit application based on various determinations, including that the applicant has acted in violation of the terms and conditions of a permit in a sanctuary in which the proposed activity is to take place, or has acted in violation of any sanctuary regulation, or for other good cause.

C. Native Hawaiian, Indigenous Rights, and Cultural Integration

C.1 Comment: Commenters expressed support of Native Hawaiian rights, including statements that access to the sanctuary should be allowed for Native Hawaiians to connect with ancestors and ‘āina and to perpetuate cultural practices based on pilina (relationships), kuleana (responsibilities), and genealogical connections to Papahānaumokuākea. This includes voyaging, which is vital for health, well-being, and in keeping Hawaiian culture and language alive. Commenters also stated that the allowance of Native Hawaiian traditional and customary practices should not be diminished or limited through sanctuary designation.

Commenters: Roxane Keli‘ikipikāneokolohaka, Dan Haifley, Sydney Warren, Andrea Eshelman, Claire Iloprizi, Matthew Murasko, Tiare Ka‘ōlelopono, Mark Giese, Alisha Chauhan, Pacific Whale Foundation, Shark Stewards, Aria, Roberta Hickey, Office of Hawaiian Affairs, Evan McDonnell, Evan Manini, Hoku Cody, Kalama‘ehu Takahashi, Hui o Kuapā, Kaipulaumakaniolono Baker, Lee Oliver, Maggie MacMullen, and anonymous commenter(s)

Response: NOAA recognizes the importance of Native Hawaiians’ access to the proposed sanctuary. Consistent with the presidential proclamations designating PMNM and MEA, NOAA would allow for regulated access to the sanctuary. Access would continue through a

permit process. The sanctuary includes a permitting system modeled after the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by the MMB. The sanctuary has adopted the same permit criteria as currently required for the Monument, including for Native Hawaiian practices permits. See also the response to B.14.

The criteria for the Monument Native Hawaiian practices permit were developed following a workshop in 2004 facilitated by Kia'i Kai, a graduate program at the Kamakakūokalani Center for Hawaiian Studies at the University of Hawai'i at Mānoa, collecting input from Kānaka ʻŌiwi cultural practitioners, fishermen, and others to create criteria for culturally-appropriate activities in Papahānaumokuākea. For more than 20 years, the Papahānaumokuākea Native Hawaiian Cultural Working Group (CWG) has provided guidance and advice. The CWG is a group of Kānaka ʻŌiwi kūpuna (elders), researchers, cultural practitioners, educators, and community members that have deep connections and historical ties to Papahānaumokuākea through a living pilina (relationship), bound by genealogy, cultural protocols, and values building contemporary multi-disciplinary research and practice. Although the group is not a formalized advisory body, the CWG and many of its members have been involved for over two decades since the establishment of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve in 2000, and provide an important Kānaka ʻŌiwi perspective that continues to inform Monument management. Since 2007, there have been 34 Native Hawaiian practices permits issued to perpetuate cultural practices ranging from traditional voyaging navigator apprenticeship and training, Hawaiian-led archaeological and cultural resource research, integrated cultural and scientific ecosystem monitoring, resource gathering including bird feathers/bones, and subsistence harvesting of fish, algae, and invertebrates. The growing number of Native Hawaiian permits submitted and issued provides significant support for and interest in conducting Hawaiian cultural practices, with at least eight ongoing cultural initiatives occurring on 27 separate expeditions.

C.2 Comment: Commenters stated the importance of involving Native Hawaiians and their perspectives in decision making, planning, and promulgation; building partnerships with Native Hawaiian practitioners; and integrating Hawaiian knowledge, values, and practices into management, including Mai Ka Pō Mai.

Commenters: Chelsea Tanimura, Doug Krause, Mahina Kapulani, Roxane Keli'ikipikāneokolohaka, Ashley Wong, Cindy Freitas, Dan Haifley, Sarah Brandt, Dallin Marsh; Naomi Himley, Karyn Bigelow, Kalama'ehu Takahashi, Hoku Cody, Claire Iloprizi, Isaac Harp, Hui o Kuapā, Roberta Hickey, Maggie MacMullen, National Marine Sanctuary Foundation, Blue Nature Alliance, Blue Planet Strategies, Center for American Progress, Conservation International, Creation Justice Ministries, EarthEcho International, Environment America, Friends of the Earth, Friends of the Mariana Trench, Healthy Ocean Coalition, Hispanic Access Foundation, Inland Ocean Coalition, Maritime Museum of San Diego, National Aquarium, National Ocean Protection Coalition, National Parks Conservation Association, National Wildlife Federation, Northern Chumash Bear Clan, Ocean Defenders Alliance, Shark Team One, Shark Stewards, Sustainable Ocean Alliance, The Florida Aquarium, The Ocean Project, Turtle Island Restoration Network, Waitt

Foundation, Waitt Institute, Council for Native Hawaiian Advancement, American Civil Liberties Union of Hawai‘i, ‘Aha Pūnana Leo, Bishop Museum, Boys & Girls Club of Hawai‘i, Hawai‘i Land Trust, ‘Iolani Palace, Kanaeokana, Native Hawaiian Education Council, Papa Ola Lōkahi, Partners in Development Foundation, Pouhana O Nā Wāhine, Kaipulaumakaniolono Baker, Rainbow Warrior Collective, Djedi Alliance, Papahānaumokuākea Native Hawaiian Cultural Working Group, and anonymous commenter(s)

Response: Growing long-lasting partnerships with existing Kānaka ‘Ōiwi community partners, including the CWG, is integral to the co-management of Papahānaumokuākea. This priority is highlighted in the proposed sanctuary management plan under the Kūkulu Ho‘oulu, one of the pillars of co-management, and is reflected overall in the framing of the plan. Additionally, NOAA has a dedicated Native Hawaiian Program Specialist position, which is a current NOAA position for the Monument, would continue after sanctuary designation to further support the building of these partnerships and the integration of Hawaiian knowledge, values, and practices into co-management, through the guidance provided in Mai Ka Pō Mai and in the sanctuary management plan.

C.3 Comment: Commenters expressed support for increases in Native Hawaiian representation on the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC). Commenters also recommended that Native Hawaiians comprise a majority of the council seats, and stated that the current RAC excludes Native Hawaiian perspectives.

Commenters: Roxane Keli‘ikipikāneokolohaka, Evan Hamaoka

Response: Advisory councils are established, and seats are determined, to address the management needs of the individual sanctuary. Seven types of seats are common to most, if not all, advisory councils in the National Marine Sanctuary System: education, research, conservation, citizen-at-large, fishing (and, at some sites, seats specifically for commercial or recreational fishing), tourism, and business/industry. On the RAC, there are three Native Hawaiian representatives with two Native Hawaiian seats and one Native Hawaiian elder seat. Native Hawaiians are encouraged to apply to all seats on the RAC, including seats that represent other focal areas of management. Upon sanctuary designation, NOAA would revisit the existing charter for the RAC and discuss if revisions to the seat allocation for the advisory council are needed.

C.4 Comment: Commenters requested that ONMS and the State of Hawai‘i (State) require staff to engage in ongoing professional development conducted by qualified and credible Native Hawaiians to build foundational understanding of kuana‘ike Hawai‘i, a critical lens needed to properly care for our kūpuna islands.

Commenters: Roxane Keli‘ikipikāneokolohaka

Response: NOAA and the State of Hawai‘i agree that ongoing professional development for staff is essential to build foundational cultural understanding. Many NOAA staff participate in initiatives to facilitate cultural inreach through the Native Hawaiian program specialist position in PMNM.

At the State of Hawai‘i, this sentiment from stakeholders has been recognized for a long time and the State is currently in the process of building its capacity within the Division of Aquatic Resources (DAR). Just in the past few months, the State has made huge strides with the hiring of two new positions dedicated solely to review and development of, among other things, culturally relevant and accurate inreach and outreach activities and materials for DAR. The State is hopeful that this is the beginning of a cultural (re)awakening within DAR that would be a positive step forward towards bridging the cultural divide that has existed for far too long between DAR and Kānaka ‘Ōiwi communities.

Additionally, the following strategies in the sanctuary management plan (final EIS Appendix A) would guide sanctuary management actions:

- Strategy 3.2. Culturally Integrated Management Approach, which calls for programs and initiatives to increase internal cultural capacity and proficiency;
- Strategy 1.5. Native Hawaiian Resource Protection and Conservation, emphasizing biocultural resource protection mechanisms and programs that weave in Native Hawaiian culture as a system of knowledge, values, and practices;
- Strategy 2.7. Native Hawaiian/Cultural Integration, which emphasizes employing multiple knowledge systems, values, and practices in science and research, and employing multi-disciplinary methods; and
- Strategy 5.4. Native Hawaiian Culture and Heritage Education, which calls for educational programs and initiatives that are based on Hawaiian cultural values, concepts, and traditional resource management stewardship.

C.5 Comment: Commenters expressed support for Hawaiian-focused research completed by and with Native Hawaiians and funding to support this initiative.

Commenters: Roxane Keli‘ikipikāneokolohaka

Response: NOAA works closely alongside the co-managing agencies on the Monument Management Board and would continue to discuss funding options to support research led by Kānaka ‘Ōiwi (Native Hawaiians). As described in the sanctuary management plan (final EIS Appendix A), NOAA would work to prioritize Hawaiian-focused research through other practices, including facilitating Kānaka ‘Ōiwi access and research, and supporting partnerships with academic institutions to build upon the opportunities for collaborative research, curriculum development, and mentoring. Specifically, strategies in the Kūkulu 1 Ho‘omana (Resource Protection); Kūkulu 2 Hō‘ike (Research and Monitoring); and Kūkulu 4 Ho‘oulu (Partnerships and Constituent Engagement) speak to these priorities:

- Strategy 2.6, Native Hawaiian/Cultural Research Program, calls for supporting, facilitating, and conducting Kānaka ‘Ōiwi access and research;
- Strategy 1.5, Native Hawaiian Resource Protection and Conservation, calls for biocultural resource protection mechanisms and programs that weave in Native Hawaiian culture as a system of knowledge, values, and practices;
- Strategy 2.7, Native Hawaiian/Cultural Integration, emphasizes employing multiple knowledge systems, values, and practices in science and research, and employing multi-disciplinary methods;

- Strategy 2.8, Native Hawaiian/Cultural Capacity Building, calls for the development and support of research initiatives that focus on next-generation capacity building for leadership succession of Kānaka ʻŌiwi and Pacific Islanders who are severely underrepresented in STEM fields and ocean sciences;
- Strategy 4.3, Academic Partnerships, emphasizes partnerships with academic institutions to build upon the opportunities for collaborative research, curriculum development, and mentoring; and
- Strategy 4.4, Native Hawaiian Partnerships, emphasizes internal and external processes to create diverse, inclusive, and equitable partnerships that enhance our ability to serve Native Hawaiian, underserved, and underrepresented communities.

C.6 Comment: A commenter requested the removal of the word “empower” as it relates to Native Hawaiians in the draft EIS. The commenter emphasized that the use of the term is out of sync with the standards set forth by the Biden Administration in terms of equity and justice.

Commenters: ʻAulani Wilhelm

Response: NOAA and the State of Hawaiʻi agree, and have made revisions to the following sections in the final EIS: 4.5.1 Native Hawaiian Cultural Resources and 4.6.2 Human Uses of the Monument.

C.7 Comment: A commenter expressed concern that the findings of the Cultural Impact Assessment *E Hoi I Ke Au A Kanaloa* were not integrated in the draft EIS and the Western Pacific Regional Fishery Management Council’s (WPRFMC) draft fishing regulations.

Commenters: Narrissa Spies (Brown)

Response: Findings of the Cultural Impact Assessment *E Hoi I Ke Au A Kanaloa* relating to the sanctuary proposal were addressed in Section 2.3.2, and in Chapter 5, of the draft EIS. Additional details have been added to section 5.1.4 of the final EIS.

NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA. Therefore, development and analysis of non-commercial fishing regulations for the MEA is not part of this proposed action and was not analyzed in the draft or final EIS. NOAA and the State encourage commenters to participate in the future public review process for non-commercial fishing regulations in the MEA under the authority of the MSA and any associated NEPA and/or other environmental compliance documentation.

C.8 Comment: A commenter expressed concern that “Native Hawaiian” is not defined. The commenter recommended the following language and definition be adopted and integrated into the final EIS: Native Hawaiian is defined as “any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaiʻi.” The commenter also recommended the incorporation of other self-identification names, including but not limited to Kānaka Maoli, Kānaka ʻŌiwi, and Indigenous Peoples or Indigenous Native Hawaiians.

Commenters: Office of Hawaiian Affairs

Response: In this final EIS, NOAA recognizes a definition for the term Native Hawaiian, as it is commonly defined, per existing federal law as any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai‘i. See Section 1.2.4. Throughout the EIS, NOAA also uses Kānaka ‘Ōiwi and/or Kānaka Maoli as terms that refer to Native Hawaiians.

D. Fishing Regulations and Fishery Management

Commercial Fishing

D.1 Comment: Commenters expressed opposition to any new fishing closures, citing reasons that included:

- Fishing becomes more difficult and expensive for fishermen, including the Hawai‘i longline fishery. The small boat fishing industry will slowly go away.
- No scientific evidence that large marine reserves provide conservation benefits to fish stocks.
- Fishing areas should be managed under Magnuson-Stevens Fishery Conservation and Management Act (MSA), and closures do not support MSA Standard 1: Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.
- Fishing closures do not meet the administration's mandate for equity and justice for underserved communities.
- Fishing closures affect food security and well-being of Native Hawaiians.
- Intergenerational transmission of fishing traditions will be impeded or lost.
- Native Hawaiians should be able to fish for food.
- Sanctuaries and fishing should be able to coexist.

Commenters: Nate Ilaoa, Vincent Silva, Tim Perez, Virjean Etelagi, Shyla Moon, Ray Tulafono, Roy Morioka, Craig Severance, Taulapapa William Sword, Kekoa Seward, Archie Soliai, Gil Kualii, Native Hawaiian Gathering Rights Association, Klayton Kubo, Abraham Albilado, and anonymous commenter(s)

Response: NOAA is not proposing any new fishing closures through sanctuary designation. The sanctuary regulations regarding commercial and non-commercial fishing are consistent with the existing Monument and its management of the area. The presidential proclamations establishing the Monument broadly restrict the harvest of fishery resources by prohibiting removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging any living or nonliving Monument resource, as well as attempts to do the same, except as may be allowed with a permit. Presidential Proclamations 8031 and 9478 further specify prohibitions on commercial fishing and the possession of commercial fishing gear. The presidential proclamations also identify certain types of non-commercial fishing that may be regulated (i.e., allowed pursuant to a permit or incidental to a permitted activity). Presidential Proclamation 8031, for example, authorizes sustenance fishing incidental to an activity permitted in PMNM. Presidential Proclamation 9478, for example, provides that non-commercial fishing is a regulated activity (i.e., allowed only with a permit) in the MEA.

In the sanctuary, NOAA is only proposing fishing regulations that are consistent with Presidential Proclamation 9478 and the existing management of the area. This includes prohibiting commercial fishing and regulating non-commercial fishing pursuant to a sanctuary permit or authorized under the MSA in the Outer Sanctuary Zone. The final rule provides the first set of implementing regulations consistent with directives in Presidential Proclamation 9478, Presidential Proclamation 9478, which has the force of law.

D.2 Comment: Commenters provided suggestions and recommendations that appropriately regulated and monitored commercial fishing, including longline fishing and trolling, should be allowed in the sanctuary, as well as the “small boat community.” One commenter stated that regulated traditional small boat fisheries should have a place. One commenter also inquired whether opportunities/mechanisms for future re-evaluation and allowance of commercial fishing in the sanctuary exist. One commenter also stated that there should be fishing line limits to reduce overfishing.

Commenters: Vincent Silva, Michael Gawel, Native Hawaiian Gathering Rights Association, Jamie Barlow, Roy Morioka, Aitofi Lomu, and anonymous commenter(s)

Response: In the sanctuary, NOAA is only proposing fishing regulations that are consistent with existing applicable law in the Monument. Existing applicable law in the area of the proposed sanctuary prohibits commercial fishing. Presidential Proclamation 8031, and its implementing regulations at 50 CFR part 404, prohibits commercial fishing for bottomfish and associated pelagic species in the Monument after June 15, 2011. Presidential Proclamation 9478 also prohibits commercial fishing in the MEA. Therefore, any consideration of regulations allowing commercial fishing in the sanctuary would not alter existing fishing prohibitions in the area. See the response to D.1 for more detail.

D.3 Comment: Commenters expressed opposition to allowing commercial fishing in Papahānaumokuākea.

Commenters: Abdine Ouedraogo, Tammy Harp, Isaac Harp, National Parks Conservation Association, Birgit Winning, Helen Raine, Namele Naipo-Arsiga, Owen, Hugo, Miranda Scarola, Lily Monte, Mary Shanahan-Reitz, Cruz, Kai, Reign, Ty, ‘Aulani Wilhelm, Native Hawaiian Cultural Working Group, William J. Aila Jr. and Melva N. Aila, Pacific Whale Foundation, Jim Kastner, Cha Smith, Isaac Harp, Stephanie Fried, Dave Raney, Mike Nakachi, Maggie MacMullen, Leah Kocher, and anonymous commenter(s)

Response: For consistency with existing regulations and the presidential proclamations establishing the Monument, NOAA is proposing a sanctuary-wide prohibition on commercial fishing. See also the responses to D.1 and D.2.

D.4 Comment: Commenters requested increased support for monitoring and enforcing fishing prohibitions, and requesting that international fishing vessels be prohibited.

Commenters: American Samoa Veterans, Clayton Ching, Maggie MacMullen

Response: Existing applicable law in the area of the proposed sanctuary prohibits commercial fishing. NOAA and the State agree that monitoring and enforcement of fishing prohibitions is critical to protecting sanctuary resources. NOAA’s Office of Law Enforcement

and the U.S. Coast Guard support enforcement efforts across the National Marine Sanctuary System. To assist in this coordinated effort for Monument enforcement, ONMS facilitates a Monument Law Enforcement Coordination Team which is composed of law enforcement representatives from NOAA, USFWS, U.S. Coast Guard, and Hawai'i Division of Conservation and Resource Enforcement. This group meets regularly to coordinate joint enforcement efforts in the Monument.

The designation of a national marine sanctuary provides the first set of implementing regulations for the directives in Presidential Proclamation 9478, including the prohibition on commercial fishing and regulation on non-commercial fishing. By establishing these new implementing regulations, NOAA would have new tools for enforcement, including the enforcement of fishing regulations. Sanctuary designation imparts a specific set of new benefits afforded by the NMSA, including the authorization to assess civil penalties for violations of the NMSA, including sanctuary regulations and permits.

Additionally, foreign fishing has remained prohibited in U.S. waters since the introduction of the Magnuson-Stevens Fishery Conservation and Management Act of 1976. This prohibition was enacted on February 28, 1977 and remains in effect today with limited exceptions related to international fishery agreements that predated the MSA. There are no such allowances for foreign fishing activities within the U.S. EEZ that surrounds Hawai'i.

Regarding monitoring, see also the responses to B.21 and K.2.

Non-commercial Fishing

D.5 Comment: Commenters expressed opposition to allowing non-commercial fishing and to the exemption (for non-commercial fishing in the MEA) in the proposed sanctuary rule, based upon biological, cultural, or co-management considerations. Out of concern for the proposed exemption of non-commercial fishing permits, one commenter suggested that non-commercial fishing permits should only be rarely granted, and carry strict catch limits.

Commenters: Nicholas Anderson, Birgit Winning, Erica Elona, Helen Raine, Lily Monte, 'Aulani Wilhelm, Northwestern Hawaiian Islands Hui, Pua'āinahau Foundation Hawai'i Wildlife Fund, Malu 'Aina, Life of the Land, Hālau Nā Mamo o Pu'uanahulu, Malama Makua, Narrissa Spies (Brown), Abdine Ouedraogo, Miranda Scarola, Chloe Berridge, Marine Mammal Commission, Jake Ruby, U.S. Fish and Wildlife Service, Papahānaumokuākea Native Hawaiian Cultural Working Group, and anonymous commenter(s)

Response: The presidential proclamations that established the Monument (8031 and 9478) served as benchmarks for drafting regulations for the proposed sanctuary. The presidential proclamations identify certain types of non-commercial fishing that may be regulated (i.e., allowed pursuant to a permit or incidental to a permitted activity). Presidential Proclamation 8031 authorizes sustenance fishing incidental to an activity permitted in PMNM. Presidential Proclamation 9478 provides that non-commercial fishing is a regulated activity (i.e., allowed only with a permit) in the MEA, provided that the fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably. In the sanctuary, NOAA is proposing, for

consistency with the proclamations, that “non-commercial fishing” be prohibited unless conducted pursuant to a sanctuary permit or through an exemption for non-commercial fishing authorized under the MSA in the Outer Sanctuary Zone (the area that overlaps with the MEA).

In response to comments of concern for this exemption, NOAA has made changes to the proposed exemption for non-commercial fishing to ensure that a non-commercial fishing permit authorized under the MSA is only exempt from a limited subset of prohibited or otherwise regulated activities, and that these exempted activities are only conducted as incidental to and necessary to a lawful non-commercial fishing activity. NOAA has also clarified that this narrow exemption from the sanctuary’s permitting requirements is only applicable provided that the fish harvested, either in whole or in part, are neither intended to enter commerce nor enter commerce through sale, barter, or trade and that the resource is managed sustainably, consistent with Presidential Proclamation 9478. Moreover, for the exemption to apply, the fish harvested, either in whole or in part, must not be intended to be sold and shall not be sold for any purposes, including, but not limited to, cost-recovery. Corresponding changes have been made in the final EIS Section 3.3.1.

NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, and will invite the public to provide comments on the proposed non-commercial fishing regulations for the MEA. NOAA and the State encourage commenters to participate in the future public review process for non-commercial fishing regulations in the MEA under the authority of the MSA, including on the issuance of permits and catch limits, as those are outside the scope of this action.

D.6 Comment: Some commenters stated that fishing should not be restricted for Native Hawaiians and Indigenous populations and/or cultural practices. One commenter emphasized that it is culturally important to be able to bring fish home to share with family.

Commenters: Mark Oyama, Clayton Ching, American Samoa Veterans, Archie Soliai, Joe Hamby, Ben Walin, Cruz, Council for Native Hawaiian Advancement, Office of Hawaiian Affairs, Walter Ritte, Maggie MacMullen

Response: Consistent with the existing management of the Monument and the proclamations that established the Monument, NOAA would continue to allow for regulated access to the sanctuary. Kānaka ‘Ōiwi and Indigenous communities may apply for a permit to fish within the sanctuary. In the sanctuary, NOAA is proposing, for consistency with the proclamations that established the Monument, to prohibit “non-commercial fishing” unless conducted pursuant to a sanctuary permit or authorized under the MSA in the Outer Sanctuary Zone. See the response to D.5.

In the Outer Sanctuary Zone (MEA), the sanctuary regulations would not restrict the sharing of fish from non-commercial fishing activities authorized under the MSA.

D.7. Comment: A commenter requested that sustenance fishing be the only form of fishing allowed in the proposed sanctuary; and that there be a requirement that fish caught be consumed within the sanctuary, and not taken outside of the sanctuary. Others requested that sustenance fishing be allowed conditionally. Suggested conditions include by location; by permit

type, and by sustainability criteria: 1) the activity must be “pono;” 2) the activity must benefit the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community; and 3) any resource harvested from the Monument must be consumed in the Monument. Finally, one commenter supported defining sustenance fishing as a Native Hawaiian practice.

Commenters: Pacific Whale Foundation, Papahānaumokuākea Native Hawaiian Cultural Working Group, William J. Aila Jr. and Melva N. Aila, Narrissa Spies (Brown), U.S. Fish and Wildlife Service, and anonymous commenter(s)

Response: Sustenance fishing is currently allowed incidental to an activity permitted in PMNM, pursuant to Presidential Proclamation 8031, and the implementing regulations at 50 CFR part 404. Sustenance fishing was not specifically identified in Presidential Proclamation 9478 governing the MEA, but is considered a form of non-commercial fishing which may be regulated. For consistency in management and permitting, NOAA proposes managing this activity as a term or condition of a general permit or special use permit for the proposed sanctuary, outside of any special preservation area. NOAA’s sanctuary permit would follow the conditions of the existing Monument permitting system, including the considerations that sustenance fishing must be conducted only for the purpose of providing sustenance in support of activities otherwise allowed under an established permit and that the harvested resource must be consumed within the Monument.

In the Outer Sanctuary Zone, other types of non-commercial fishing may be allowed, consistent with the proper care and management of sanctuary resources and monument objects. Sanctuary designation would provide the first set of implementing regulations for many of the directives in Presidential Proclamation 9478, including the regulation of non-commercial fishing in the MEA. Presidential Proclamation 9478 stated that non-commercial fishing may be regulated “provided that the fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably.” Consistent with this proclamation, some forms of non-commercial fishing beyond sustenance fishing may be allowed in the MEA/Outer Sanctuary Zone.

NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, and will invite the public to provide comments on the proposed non-commercial fishing regulations for the MEA. NOAA and the State encourage commenters to participate during that process.

D.8 Comment: Some commenters suggested that only subsistence fishing be allowed in the proposed sanctuary.

Commenters: Robin Girard, Epenesa Jennings, Maggie MacMullen

Response: In State of Hawai‘i waters, extending three miles seaward of any coastline (excluding Midway Atoll), Native Hawaiian subsistence fishing, as defined by the State of Hawai‘i, may be allowed. NOAA acknowledges that the Monument’s managing agencies define sustenance and/or subsistence fishing in different ways. Regardless, in PMNM, all fish caught shall be consumed within the Monument. Within the sanctuary, sustenance fishing would continue to be allowed (outside of the special preservation areas) to provide sustenance in support of activities otherwise allowed under an established permit.

D.9 Comment: Commenters asked why regulations have not been issued for the MEA to manage non-commercial fishing.

Commenters: Roger McManus, Lois Schiffer and Dinah Bear

Response: President Obama issued Presidential Proclamation 9478 on August 31, 2016, which established the MEA. On September 23, 2016, NOAA Fisheries requested that the Western Pacific Regional Fishery Management Council (WPRFMC) develop recommendations to establish fishing regulations under the MSA, including the prohibition on commercial fishing and the regulation of non-commercial fishing within the MEA. However, no further action was taken by the WPRFMC in response to Presidential Proclamation 9478 at that time. NOAA cannot speculate as to why WPRFMC decided not to take action at that time.

NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA to reflect the outcome of the WPRFMC recommendation and the NMSA Section 304(a)(5) process. Appendix C provides further details of this consultation process.

D.10 Comment: Commenters expressed concern regarding the exemption of non-commercial fishing in the MEA, and that the issuance of non-commercial fishing permits will open the door to other types of fishing in Papahānaumokuākea. Commenters also expressed concern that a sanctuary designation would remove existing protections that prohibit various forms of fishing. One commenter recommended removing the exemption of non-commercial fishing to allow for more dialogue with the Native Hawaiian community.

Commenters: Birgit Winning, Kanoë Semas, Mary Shanahan-Reitz, Cha Smith, Narrissa Spies (Brown), 'Aulani Wilhelm, Roberta Hickey, Kaipulaumakaniolono Baker, Isaac Harp, Dave Raney, Marine Mammal Commission, and anonymous commenter(s)

Response: See the responses to D.5 and F.4. Sanctuary designation does not remove any existing protections that prohibit fishing. For consistency with the presidential proclamations establishing the Monument and the regulations at 50 CFR part 404, the sanctuary regulations would authorize limited forms of fishing.

D.11 Comment: Commenters expressed support for allowing recreational fishing, to sustain the community and to allow for cultural and traditional practices. One commenter recommended that recreational fishing be monitored and regulated; that recreational fishers be required to attend courses to receive permits; and that NOAA and the State of Hawai‘i update methods of data collection for recreational fishing. Another commenter suggested imposing fees for recreational fishing. Other commenters requested that NOAA implement measures to prevent recreational fishers from targeting “trophy” fish, and to limit fishing in general, to stem overfishing.

Commenters: Madison Young, Audrey Toves, Riku

Response: In the sanctuary, NOAA is proposing, for consistency with the proclamations, that “non-commercial fishing” be prohibited unless conducted pursuant to a sanctuary permit or, as discussed below, through an exemption for non-commercial fishing authorized

under the MSA in the Outer Sanctuary Zone. The proposed rule adopts the definition of “non-commercial fishing” from the regulations for fisheries in the Western Pacific, which is defined as “fishing that does not meet the definition of commercial fishing in the Magnuson–Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing” (50 CFR 665.12). NOAA would periodically evaluate the effect of non-commercial fishing activities on sanctuary resources. Such evaluations would take into consideration the best scientific information available and evaluate whether additional actions are necessary for the proper care and management of sanctuary resources, including fishery resources, consistent with goals and objectives of the sanctuary.

Any requirements for non-commercial fishing permits authorized by NOAA Fisheries under the MSA are outside the scope of this action. NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, and will invite the public to provide comments on the proposed non-commercial fishing regulations. NOAA and the State encourage commenters to provide input during the public review process for non-commercial fishing in the MEA.

D.12 Comment: A commenter expressed opposition to issuance of permits for recreational fishing in the MEA.

Commenters: ‘Aulani Wilhelm, Cha Smith

Response: Please see the response to D.11. As required by Section 304(a)(5) of the NMSA, NOAA consulted with the WPRFMC to recommend any draft fishing regulations it deemed necessary to implement the sanctuary designation. The WPRFMC determined it was necessary to develop non-commercial fishing regulations, including for recreational fishing, for the area of the proposed sanctuary that overlaps with the MEA.

Western Pacific Regional Fishery Management Council Recommended Regulations

D.13 Comment: Commenters expressed support for non-commercial fishing in the MEA proposed by WPRFMC, including allowing sale and/or cost recovery.

Commenters: Jesse Rosario, Craig Severance, Joe Hamby, Gil Kualii, Native Hawaiian Gathering Rights Association, and anonymous commenter(s)

Response: In accordance with Section 304(a)(5) of the NMSA, NOAA provided the WPRFMC with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA accepted the majority of the WPRFMC’s recommendation, including those parts that were found to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, the WPRFMC’s recommendation providing Native Hawaiian subsistence practices fishing permit applicants the ability to request limited cost recovery by selling their catch failed to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation (see NOAA Response Letter dated on May 31, 2023, in the final EIS Appendix C.1). NOAA is preparing a separate proposed rule under

the MSA to reflect the outcome of the NMSA Section 304(a)(5) consultation process. Appendix C to the final EIS provides further details on this consultation process.

D.14 Comment: Commenters expressed opposition to the annual catch limits proposed by WPRFMC. Several comments expressed concern that it does not align with Native Hawaiian cultural or subsistence practices. One commenter suggested additional involvement from the Native Hawaiian community and the Office of Hawaiian Affairs (OHA) on this matter.

Commenters: Isaac Harp, Tammy Harp, Roxane Keli‘ikipikāneokolohaka, Leimomi Fisher, Nai‘a Ulumaimalu Lewis, Pelikaokamanaio Andrade, William Quinlan, Mina Elison, Linda Elliott, Jill Williams, Lydia Garvey, Calley O'Neill, Megan Dalton, Markus Faigle, Les Welsh, Papahānaumokuākea Native Hawaiian Cultural Working Group, William J. Aila Jr. and Melva N. Aila, Ryze, Christine, Ty, Leah Kocher, Kaipulaumakaniolono Baker, Hui o Kuapā, Narrissa Spies (Brown), Carol Wilcox, Christine, Mike Nakachi, Jim Kastner, Marine Mammal Commission

Response: Any requirements and conditions for non-commercial fishing permits authorized by the MSA are outside the scope of this action. NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, and will invite the public to provide comments on the proposed non-commercial fishing regulations, including the catch limits. NOAA and the State encourage commenters to participate in the future public review process for non-commercial fishing in the MEA.

D.15 Comment: Commenters expressed opposition to any sale, barter, or trade and the cost recovery mechanism proposed by WPRFMC. Comments also expressed concern regarding WPRFMC's definition of "customary exchange" and that it does not align with Native Hawaiian cultural or subsistence practices.

Commenters: Nai'a Ulumaimalu Lewis, Roxane Keli‘ikipikāneokolohaka, Carol Wilcox, Leimomi Fisher, Pelikaokamanaio Andrade, William Quinlan, Mina Elison, Linda Elliott, Jill Williams, Lydia Garvey, Calley O'Neill, Megan Dalton, Markus Faigle, Glenn Metzler, Les Welsh, ‘Aulani Wilhelm, Papahānaumokuākea Native Hawaiian Cultural Working Group, William J. Aila Jr. and Melva N. Aila, Leah Kocher, Hui o Kuapā, Marine Mammal Commission, Tucker, Hawaii Fishing and Boating Association, Expand Papahānaumokuākea Coalition, Isaac Harp, Kaipulaumakaniolono Baker, Marine Mammal Commission, Narrissa Spies (Brown)

Response: NOAA agrees with some aspects of this comment. See the response to D.13 for information on NOAA's consideration of the WPRFMC's recommended fishing regulations, and the response to D.5 for details of the exemption for non-commercial fishing. NOAA has narrowed this exemption, making it only applicable provided that the fish harvested, either in whole or in part, are neither intended to enter commerce nor enter commerce through sale, barter, or trade and that the resource is managed sustainably, consistent with Presidential Proclamation 9478. Moreover, for the exemption to apply, the fish harvested, either in whole or in part, are not intended to be sold and shall not be sold for any purposes, including, but not limited to, cost-recovery. See the final EIS, Section 3.3.1. The WPRFMC's final recommendation ([April 23, 2023](#)) did not include a definition of "customary exchange,"

and NOAA ONMS has not included a definition of customary exchange in the proposed sanctuary regulations.

D.16 Comment: Commenters requested that NOAA reject the proposed non-commercial fishing regulations by NOAA Fisheries and WPRFMC.

Commenters: William J. Aila Jr. and Melva N. Aila, Marine Mammal Commission, Kaipulaumakaniolono Baker, Mike Nakachi, Expand Papahānaumokuākea Coalition, Hawai‘i Fishing & Boating Association, Rick Gaffney, Shark Stewards, and anonymous commenter(s)

Response: NOAA accepted the majority of the WPRFMC’s recommendation as it was found to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, NOAA did reject a portion of the WPRFMC’s recommendation that would have allowed sale of catch under a Native Hawaiian subsistence fishing practices permit, as it was not found to fulfill the goals and objectives of the sanctuary designation. See the response to D.13, as well as Appendix C to the final EIS, for further details of this consultation process.

D.17 Comment: Commenters expressed concern for a portion of the WPRFMC’s recommendation on “research fishing,” and definition that would include “research fishing” as a form of non-commercial fishing.

Commenters: Papahānaumokuākea Native Hawaiian Cultural Working Group, Stephanie Fried

Response: NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, based on the WPRFMC’s recommendations. NOAA and the State encourage commenters to provide additional input, including on research fishing, to the future public review process for non-commercial fishing regulations in the MEA.

D.18 Comment: A commenter expressed concern that while resources in the Monument are a co-management trust responsibility, the proposed fishing regulations for the MEA have been developed without adequate inclusion of the perspectives of the Monument co-managers.

Commenters: U.S. Fish and Wildlife Service, Narrissa (Spies) Brown, Kaipulaumakaniolono Baker

Response: NMSA Section 304(a)(5) required NOAA to consult with the WPRFMC to recommend any draft fishing regulations it deemed necessary to implement the sanctuary designation. The State of Hawai‘i maintains voting seats, and the USFWS maintains non-voting seats on the WPRFMC. The WPRFMC determined it was necessary to develop non-commercial fishing regulations under the MSA, for the area of the proposed sanctuary that overlaps with the MEA. In accordance with the Section 304(a)(5) process, NOAA accepted those parts of the WPRFMC’s recommendation that fulfilled the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation, and rejected those parts that did not. Under the MSA’s rulemaking process, the WPRFMC will transmit

its recommendation to NOAA Fisheries, who will then prepare a proposed rule for non-commercial fishing regulations in the MEA under the MSA.

Analysis of Fishing Effects

D.19 Comment: Commenters expressed concern regarding the separation of the NOAA Fisheries fishing regulations from the sanctuary designation process, which lacks transparency and thorough analysis of potential impacts. Commenters also requested an additional EIS and a public review of the proposed fishing regulations for the MEA. Commenters expressed concern that the proposed fishing regulations were developed in an improper sequence and there was no timeline included. Commenters also stated that impacts of WPRFMC's proposed non-commercial fishing regulations should have been analyzed within the draft EIS.

Commenters: William Quinlan, Mina Elison, Linda Elliot, Jill Williams, Lydia Garvey, Calley O'Neill, Megan Dalton, Papahānaumokuākea Native Hawaiian Cultural Working Group, Pew Charitable Trust, Lois Schiffer and Dinah Bear, Hui o Kuapā, Hawaii Fishing & Boating Association, Expand Papahānaumokuākea Coalition, 'Aulani Wilhelm, Marine Mammal Commission, William Quinlan, Kaipulaumakaniolono Baker, Narrissa Spies (Brown), Office of Hawaiian Affairs, U.S. Fish and Wildlife Service

Response: NOAA acknowledges the confusion regarding the timeline of proposed fishing regulations for the MEA. NOAA Fisheries is responsible for fisheries management under the MSA and is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA. NOAA Fisheries will analyze the environmental impacts of the non-commercial fishing regulations in the MEA under the authority of the MSA in a manner consistent with NEPA. NOAA has made revisions in sections 1.4 and 3.7.2 of the final EIS to clarify this. NOAA and the State encourage commenters to participate in the future public review process for non-commercial fishing regulations in the MEA under the authority of the MSA.

D.20 Comment: Commenters expressed concern regarding the lack of review and analysis of the socioeconomic effects of commercial fishing closures to fisheries, as well as underserved and underrepresented communities. Some commenters requested that the EIS analyze cumulative impacts related to prohibitions on fishing, specifically commercial fishing, and specifically mentioned the effects of the Monument expansion in 2016, the Pacific Remote Islands monument expansion in 2014, the foreseeable future impacts of the proposal to further expand the fishing closures in the Pacific Remote Islands area via a sanctuary designation, and reasonably foreseeable future impacts of high seas fishing closures under the auspices of the [United Nations Agreement on the Conservation and Sustainable Use of Marine Biodiversity of Areas beyond National Jurisdiction](#) (2023). One commenter expressed that the draft EIS makes the assumption that the national monument designation is permanent and thus the proposed sanctuary regulations are only modest additional restrictions, and therefore fails to recognize that any national monument and associated regulations can be eliminated via an executive action.

Commenters: Hawaii Longline Association, Western Pacific Regional Fishery Management Council, Klayton Kubo

Response: In the sanctuary, NOAA is not proposing any new commercial fishing closures. The sanctuary regulations regarding commercial fishing are consistent with the existing Monument and its management of the area. The effects of commercial fishing regulations in the proposed sanctuary are not considered in the final EIS. Commercial fishing has been prohibited in the PMNM since June 15, 2011, in accordance with Presidential Proclamation 8031 and regulations at 50 CFR § 404.10(b)(3). Commercial fishing is prohibited in the MEA in accordance with Presidential Proclamation 9478. These existing restrictions on fishing would not be changed under any of the alternatives, including the No Action Alternative. See Section 1.4 of the final EIS. For the purposes of the analysis, the primary focus is on the impacts caused by the differences between the action alternatives compared to existing management under the No Action Alternative.

Regarding comments requesting that the EIS analyze the cumulative impacts related to prohibitions on commercial fishing, NOAA notes that the temporal scope of the cumulative analysis is from five years prior to the publication of the draft EIS to 10 years after designation. The two prior instances mentioned by the commenter in 2014 and 2016 are outside of this temporal scope. The future instances mentioned by the commenter are outside the geographic scope of the cumulative effects analysis, which were defined as the boundaries of the proposed sanctuary under each action alternative.

NOAA disagrees with the comment suggesting that certain assumptions were or should have been made about the status of Monument designation. The No Action Alternative, consistent with NEPA, describes the baseline or current level of management in the area against which the proposed action and its alternatives may be compared. Likewise, the NEPA analysis compares the impacts of the proposed action and alternatives with the current and expected impacts for the existing management of the area. Changes to the status of a Monument's designation, through executive action, is not within the scope of that analysis.

D.21 Comment: A commenter requested that the final EIS include a discussion on the potential abuse of the non-commercial fishing exemption.

Commenters: Nicolas Anderson

Response: Both NOAA and the State disagree that this analysis is required within the final EIS. NOAA's analysis of the environmental consequences of the alternatives is based on changes to the human environment that are reasonably foreseeable, including direct, indirect, and cumulative effects. The type of discussion identified by the commenter is speculative and outside the scope of this analysis. Please note that in the event of a violation of a provision of the NMSA, or a regulation or permit issued pursuant to the NMSA, NOAA is authorized under the NMSA to assess civil penalties.

D.22 Comment: Commenters requested that ONMS periodically evaluate the effects of fishing activities on sanctuary resources in the portion of Middle Bank currently open to fishing (similarly to how ONMS proposed conducting evaluations of fishing effects in the Outer Sanctuary Zone).

Commenters: Linda Paul, Donald Schug, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly

Response: Although NOAA conducts regular assessments of the condition and trends of national marine sanctuary resources (i.e., condition reports, or, in the case of PMNM, the State of the Monument report), this portion of Middle Bank is outside the boundaries of the Monument and proposed sanctuary. See also the responses to K.14 for information about condition reports and J.22 for information on managing fishing at Middle Bank.

Other Fishing Comments

D.23 Comment: A commenter recommended that any activity relating to the extraction of fish be led by Native Hawaiians.

Commenters: Papahānaumokuākea Native Hawaiian Cultural Working Group

Response: The permitting system and regulations for the sanctuary is modeled after the existing Monument regulations and permitting system. The permitting system would not supplant the joint permitting system for the Monument, and was developed to ensure a continued joint permitting system administered by the MMB. While the presidential proclamations establishing the Monument broadly restrict the harvest of fishery resources, and identify certain types of non-commercial fishing that may be regulated (i.e., allowed pursuant to a permit or incidental to a permitted activity), there are no restrictions as to who may apply for a permit. Sanctuary designation would not change this.

D.24 Comment: Commenters expressed opposition to allowing any form of fishing in the proposed sanctuary. Some associated comments stated opposition to the removal of any wildlife from the proposed sanctuary.

Commenters: Tammy Harp, Valerie Weiss, Erica Elona, Abdine Ouedraogo, Miranda Scarola, Isaac Harp, Matthew Murasko, Brandon Mindoro, Mariana Loaiza, Susan Kiskis, Djedi Alliance, Tiare Ka'ōlelopono, Rainbow Warrior Collective, Alisha Chauhan, Susan Olson, Aloe, Tucker, Jim Kastner, and anonymous commenter(s)

Response: See the response to D.1. The presidential proclamations establishing the Monument broadly restrict the harvest of fishery resources and further specify prohibitions on commercial fishing and identify certain types of non-commercial fishing that may be regulated in the sanctuary, NOAA is only proposing fishing regulations that are consistent with the proclamations and existing management of the area.

D.25 Comment: A commenter requested that, in the event of a natural disaster occurring with severe impacts to the food supply of Hawai'i, the proposed sanctuary should allow for sustenance fishing and sharing of fish with community.

Commenters: Roy Morioka

Response: NOAA cannot speculate about how the NMSA and other authorities may or may not be used in the future scenario described by the commenter. However, in the Outer Sanctuary Zone (MEA), the sanctuary regulations would not restrict the sharing of fish from non-commercial fishing activities authorized under the MSA.

D.26 Comment: A commenter emphasized that new sanctuary regulations should be limited to those relating to the seafloor and islands within the MEA, and/or that the Magnuson Stevens Fishery Conservation and Management Act (MSA) should be used for the management of fisheries in all U.S. waters.

Commenters: Joe Hamby, Taulapapa William Sword

Response: NOAA may regulate fishing under the MSA and the NMSA. See also the response to D.9. While NOAA may regulate fishing under NMSA, and has proposed some fishing regulations for this sanctuary consistent with the existing management of the area, per section 304(a)(5) of the NMSA, NOAA also provided the WPRFMC with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA to reflect the outcome of the NMSA section 304(a)(5) process.

D.27 Comment: A commenter expressed opposition to any prohibitions that may affect existing community-based subsistence fishery areas, and requested that NOAA incorporate language that explicitly includes community- and cultural-based subsistence-based fishing practices as part of protected Native Hawaiian customs and practices.

Commenters: Office of Hawaiian Affairs

Response: Community-based subsistence fishery areas are locally based, legally designated areas in the Main Hawaiian Islands where communities and the state government work together to protect and support traditional Hawaiian fishing practices. To date, there have been no community-based subsistence fishery areas established within Papahānaumokuākea. Since these areas are typically initiated at the local level by communities seeking enhanced protection of their nearshore resources, the future establishment of a community-based subsistence fishery area within Papahānaumokuākea is unlikely. As such, a discussion of such areas is beyond the scope of this action. For a description of how culturally-based subsistence fishing practices are addressed within the sanctuary proposal, please see the response to D.8.

E. Co-Management and Interagency Cooperation

E.1 Comment: Commenters asked how a proposed sanctuary would modify the existing co-management structure for the Monument. Commenters requested articulation of roles of OHA, USFWS, and the State of Hawai'i, specifically who has jurisdiction in which areas, as well as requested that the EIS provide a detailed governance framework and a dispute resolution process for the proposed sanctuary.

Commenters also stated that the draft EIS and/or draft sanctuary management plan did not clearly articulate how the sanctuary would function in coordination with the existing Monument, nor articulate how the Monument co-trustee's authorities could be used to supplement and complement NOAA authorities. One commenter suggested that NOAA provide a graphic depicting the relationship of the proposed sanctuary with existing Monument management. Finally, some commenters questioned if there are deficiencies in the existing

Monument management framework, while one commenter stated that the proposed sanctuary rule has led to confusion over the legitimacy of the Monument co-management framework.

Commenters: Meyer Cummins, Roger McManus, Mary Shanahan-Reitz, Tammy Harp, Namele Naipo-Arsiga, U.S. Fish and Wildlife Service, Friends Of Midway Atoll National Wildlife Refuge, Western Pacific Regional Fishery Management Council, Lois Schiffer and Dinah Bear, Office of Hawaiian Affairs

Response: The existing Monument is jointly administered by the four co-trustees (Department of Commerce, Department of the Interior, State of Hawai‘i, and OHA) through the seven-member Monument Management Board (MMB). ONMS and NOAA Fisheries collaborate to fulfill DOC’s co-trustee responsibilities under the Monument, and ONMS serves on the seven-member MMB. A graphic of the existing management structure is described in the final EIS Section 3.2. Sanctuary designation would not change the existing management structure, and ONMS’ role within the management framework would remain, with the added authority provided by the NMSA. Additional information has been added to the sanctuary management plan in sections 1 (About This Document) and 2 (Cooperative and Coordinated Management) and Acknowledgements to clarify this. NOAA has also made revisions to the description of the No Action Alternative in Section 3.2 of the final EIS to better articulate the existing roles of each Monument co-trustee, including their jurisdiction and authorities that guide their role in managing the Monument. Existing authorities, including management authorities of all Monument co-trustees, would remain in effect under all action alternatives.

As a result of the existing Monument management framework, of which ONMS is a critical part, the final rule and sanctuary management plan have been specifically designed to be consistent with the current management framework, and to allow for seamless operations between the Monument and proposed sanctuary. The proposed sanctuary would supplement and complement existing management of the Monument, and it would not replace or diminish the existing management of the Monument. In accordance with the NMSA, in designating a sanctuary, NOAA determines if existing authorities should be supplemented to ensure coordinated and comprehensive conservation and management of the area.

NOAA has provided additional details clarifying consistency with the management framework in Section 3.3.1 of the final EIS. Specifically, NOAA would work in cooperation with the Monument co-trustees to update the existing memorandum of agreement (MOA) for the Monument with the State of Hawai‘i, Department of the Interior/USFWS, and OHA to reflect the addition of the sanctuary. Further, the existing Monument MOA includes a provision that states that “in the event of the designation of the Monument or any portion of the Monument as a National Marine Sanctuary under the National Marine Sanctuaries Act, nothing herein shall be construed as automatically terminating or otherwise amending this Agreement.”

E.2 Comment: Commenters expressed concerns regarding the exclusion of some of the Monument co-trustee agencies from co-management of the sanctuary. Commenters requested that NOAA co-manage the sanctuary with all of the Monument co-trustees (DOI, OHA, and the State of Hawai‘i), and that NOAA should receive approval from and/or collaborate with the

other co-trustees regarding decision making for the sanctuary. Commenters also requested that a MOA be developed to articulate the governance framework for the sanctuary, and any co-management agreement.

Commenters: Tammy Harp, Papahānaumokuākea Native Hawaiian Cultural Working Group, Aulani Wilhelm, Lois Schiffer and Dinah Bear, Narrissa Spies (Brown), Office of Hawaiian Affairs, Isaac Harp, Stephanie Fried, Jim Kastner, Alisha Chauhan, Meyer Cummins, U.S. Fish and Wildlife Service

Response: NOAA has clarified in the final rule and the final EIS (see final EIS Section 3.3.1, final rule Section IV.D, and sanctuary management plan Section 2) how the sanctuary would be managed in partnership with USFWS and OHA. In the proposed rule, NOAA proposed that the sanctuary would be co-managed with the State of Hawai‘i. Recognition of the State of Hawai‘i as a co-manager was not meant to exclude the other Monument co-trustees, USFWS and OHA. To the contrary, partnerships with other federal and state agencies with overlapping jurisdiction are critical to the success of the National Marine Sanctuary System. In the proposed regulations, NOAA was trying to explain the specific role that states may have in co-managing a sanctuary under the NMSA if all or part of the proposed sanctuary is within the territorial limits of any state. In the final regulations and management plan, NOAA has added new text regarding how NOAA would manage the sanctuary in partnership with the other Monument co-trustees, DOI/USFWS and OHA, as the existing co-management structure of Papahānaumokuākea Marine National Monument is critical to the success of the sanctuary.

NOAA intends to, in cooperation with the Monument co-trustees, update the existing MOA for the Monument between the State of Hawai‘i, Department of the Interior/USFWS, and OHA to reflect the addition of the sanctuary. NOAA is developing an MOU with the USFWS to provide details on using supplemental authority under the NMSA to protect resources where the sanctuary would overlap with national wildlife refuges. Finally, the draft sanctuary management plan was developed in consultation with the State, USFWS, and OHA to explicitly ensure concurrence of plans between the proposed sanctuary and the Monument. Additional language has been added to the sanctuary management plan (Appendix A) to better reflect the goal of cooperative management with the Monument co-trustees.

E.3 Comment: Commenters requested that the final EIS should include a clear description of the permitting system for the proposed sanctuary and how it would relate to the existing Monument permitting system, including how sanctuary permits would be reviewed, approved, and conditioned. Commenters expressed that NOAA should not have sole authority over permitting for activities in the area of the sanctuary and Monument; that only one permitting system should apply to the area; that permits should be approved by all Monument co-trustees; and that the Monument permit process should be amended to include sanctuary permitting.

One commenter expressed concern regarding the proposed special use permit, which allows for fee collection for permit processing. The commenter questioned how this would work alongside the Monument permit process, and asked if NOAA would keep fees internally, or divide fees received equitably amongst Monument co-managers.

Commenters: Friends of Midway Atoll National Wildlife Refuge, U.S. Fish and Wildlife Service, Naia Ulumaimalu Lewis, Papahānaumokuākea Native Hawaiian Cultural Working Group, Aulani Wilhelm, Lois Schiffer and Dinah Bear, Narrissa Spies (Brown), U.S. Fish and Wildlife Service, Ann Bell, Kaipulaumakaniolono Baker

Response: The Monument's joint permitting system has been in place and permits have been issued by the co-trustees since 2007. The unified Monument permitting process includes a unified Monument permit application, instructions, and template (see final EIS Section 3.2). All permitted activities in PMNM are authorized under the issuance of a single Monument permit signed by the USFWS, NOAA, and the State of Hawai'i, in cooperation with the Office of Hawaiian Affairs. The sanctuary permitting system would complement the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by the MMB, which includes ONMS. The proposed permitting system would not supplant the joint permitting system for PMNM. The proposed sanctuary permit categories were designed to provide the same management function and permittee interface as the current Monument permit categories. The sanctuary would adopt the same permit criteria as currently required for Monument permits, including the additional criteria for Native Hawaiian practices and recreation permits. To provide more clarity, NOAA has updated its description of the proposed sanctuary permitting process in the final EIS, Section 3.3.1.

Regulations to issue permits in the MEA have not yet been established. Until a formal permitting process is developed, activities in the MEA have been approved via a Letter of Authorization signed by USFWS. The co-trustees agreed to implement this USFWS process as an interim measure. Sanctuary designation would provide the first set of implementing regulations consistent with directives in Presidential Proclamation 9478, including regulations for permitting, in addition to governing the sanctuary.

Regarding special use permits, NOAA intends for any issuance of special use permits to be done so in coordination with the existing permit process. NOAA points out that while the Monument is jointly administered, some areas are also guided by other specific authorities. For example, USFWS has the authority to charge fees for services including public visitation (50 CFR Part 25 Subpart E) in areas of the Monument that also fall within a national wildlife refuge. If a sanctuary is designated, NOAA's authority to collect fees for special use permits would provide Monument managers with a larger area, beyond the national wildlife refuges, for which permit fees may be collected for specific activities. In accordance with the NMSA, NOAA may recover administrative costs for staff time to review and take action on the permit, and for a fair market value for use of the sanctuary.

While this authority may be used, the collection of fees is not required. Further, NOAA is not proposing any new category of activity subject to a special use permit as part of this designation, and due to the existing regulations for the Monument and the proposed sanctuary, the issuance of special use permits is expected to be limited.

E.4 Comment: Commenters expressed concern regarding the proposed process for permitting non-commercial fishing in the MEA. Commenters specifically stated that any fishing permits should also require a consistency review by the Monument co-managers. Some commenters

suggested that non-commercial fishing in the MEA should be part of a single permitting process for the sanctuary and/or Monument, and not done through a separate process, noting that any permits that authorize resource extraction should be reviewed by the MMB.

Commenters: Papahānaumokuākea Native Hawaiian Cultural Working Group, Narrissa Spies (Brown), ‘Aulani Wilhelm, Kaipulaumakaniolono Baker, U.S. Fish and Wildlife Service

Response: NOAA’s ONMS does not propose to issue non-commercial fishing permits as part of the sanctuary regulations. NOAA only proposes to allow sustenance fishing as a term or condition of a permit, consistent with existing management of the Monument. In response to a recommendation for fishing regulations in the MEA by the WPRFMC, NOAA Fisheries is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, will complete the environmental compliance requirements, and will accept public comment on the proposal. NOAA and the State of Hawai‘i encourage the commenter to review and participate in the future public review process for the proposed rule and any associated NEPA and/or other environmental compliance documentation for non-commercial fishing regulations in the MEA.

E.5 Comment: Commenters expressed concern regarding potential conflicts between the proposed sanctuary permitting process and permitting authorized by the USFWS for the Midway Atoll and Hawaiian Islands National Wildlife Refuges. One commenter stated that the USFWS has an existing process to review and issue permits to regulate use of the national wildlife refuges for research, education, management, and recreation. A commenter suggested the development of a MOU among USFWS, NOAA, and the State of Hawai‘i to clarify the permit process, which should include provisions for dispute resolution and for emergency situations when actions are necessary to protect human health and safety on Midway Atoll.

Commenters also expressed concern regarding the permitting of activities in the MEA, including questioning why NOAA does not recognize DOI’s authority to issue permits in the MEA, and requested that any new permitting in the MEA should be done following agreement with the MMB. Finally, one commenter questioned if the USFWS would need to acquire permits from NOAA for management activities in the national wildlife refuge waters.

Commenters: Friends of Midway Atoll National Wildlife Refuge, Narrissa Spies (Brown), U.S. Fish and Wildlife Service

Response: NOAA has added additional clarification in the final rule and the final EIS (see Section 3.3.1 and Section IV.D in the preamble of the final rule) regarding how the sanctuary would be managed in partnership with other agencies. In addition to co-management with the State, NOAA would manage the sanctuary in partnership with the USFWS and OHA consistent with the management of the Monument. NOAA would work in cooperation with Monument co-trustees to update the memorandum of agreement for the Monument with the State of Hawai‘i, DOI/USFWS, and OHA that reflects the addition of the sanctuary, and specifically addresses how the addition of a sanctuary would supplement and complement, and not supplant, the existing Monument management framework. NOAA and USFWS are developing an agreement to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge

and Hawaiian Islands National Wildlife Refuge, and will consider if provisions are needed for dispute resolution and for emergency situations when actions are necessary to protect human health and safety on Midway Atoll.

Management of the MEA is governed by Presidential Proclamation 9478. Regulations to issue permits in the MEA have not yet been established. Until a formal permitting process is developed, activities in the MEA have been approved via a Letter of Authorization signed by USFWS. The co-trustees agreed to implement this USFWS process as an interim measure. Sanctuary designation would provide the first set of implementing regulations, including regulations for permitting, in the MEA.

E.6 Comment: Commenters requested that NOAA co-manage the sanctuary specifically with the USFWS, and/or that NOAA consult with USFWS for decision making and environmental analysis in the proposed sanctuary. Some commenters also requested that NOAA recognize the authority of the USFWS, that NOAA not supersede the authority of the USFWS, and that NOAA acknowledge that the USFWS has sole authority for certain decisions in the national wildlife refuges. Some commenters expressed concern that the proposed sanctuary would give NOAA and the State of Hawai‘i precedence over USFWS management of refuge waters.

One commenter recommended that a MOA be developed and signed by the Secretaries of Interior and Commerce, and that a 3rd party neutral facilitator be selected to oversee implementation of the MOA. The commenter specified that the MOA should be reviewed and updated, as needed, every five years.

Commenters: Friends of Midway Atoll National Wildlife Refuge, U.S. Fish and Wildlife Service, ‘Aulani Wilhelm, Cha Smith, Ann Bell

Response: NOAA would manage the sanctuary in partnership with the USFWS. Nothing in the establishment of the national marine sanctuary would diminish USFWS’ authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act. Where Papahānaumokuākea National Marine Sanctuary overlays Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge, NOAA would implement the National Marine Sanctuaries Act to provide supplemental authority to protect resources.

In other sanctuary sites when there is jurisdictional overlap between NOAA and USFWS, the agencies have worked to implement their respective authorities in a manner that complements, but does not diminish or interfere with, existing authorities and strengthens existing protections and management. NOAA and USFWS are developing an agreement to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge. Any agreement developed between NOAA and the USFWS would be updated as needed, as determined by the agencies.

E.7 Comment: Commenters requested that NOAA co-manage the sanctuary specifically with the OHA. Commenters emphasized that excluding OHA would be akin to suppressing Native Hawaiian voices and/or usurping the sovereignty of OHA. Commenters requested that NOAA consider temporarily halting sanctuary designation until federal law allows for explicit co-

management structures that include native governing bodies as equal decision-makers, and requested that NOAA work with OHA and the Native Hawaiian community to achieve the ability for Indigenous governing bodies to be eligible to be named as co-managers for marine sanctuaries under the NMSA. One commenter also pointed out that for National Marine Sanctuary of American Samoa, the American Samoa Department of Commerce has been designated as a co-manager to assist NOAA with the administration of the sanctuary, and therefore, OHA should be able to serve as a co-manager of the proposed sanctuary.

Commenters: Chloe Berridge, Council for Native Hawaiian Advancement, Papahānaumokuākea Native Hawaiian Cultural Working Group, ‘Aulani Wilhelm, Ashley Wong, The Pew Charitable Trust, Narrissa Spies (Brown), William J. Aila Jr. and Melva N. Aila, Office of Hawaiian Affairs, Isaac Harp, Ryan King, and anonymous commenter(s)

Response: NOAA would manage the sanctuary in partnership with OHA, consistent with the management of the Monument. The existing co-management structure of the Monument and cooperation with OHA would be critical to the success of the sanctuary. NOAA would work in cooperation with Monument co-trustee to update the Memorandum of Agreement for Promoting Coordinated Management of Papahānaumokuākea Marine National Monument with the State of Hawai‘i, Department of the Interior/USFWS, and OHA that reflects the addition of the proposed sanctuary, and specifically addresses how the addition of a sanctuary would supplement and complement, and not supplant, the existing Monument management framework. Under Monument management, OHA has primary responsibility for representing the interests of the Kānaka ‘Ōiwi community in the perpetuation of Hawaiian cultural resources and practices. Sanctuary designation would not change this, and NOAA intends to consult with OHA on all matters related to the perpetuation of Hawaiian cultural resources and practices.

Pursuant to the NMSA, a “state” as defined under the act, may have a role in co-managing a sanctuary if all or part of the proposed sanctuary is within the territorial limits of any state. For this reason, NOAA has proposed to co-manage the sanctuary with the State of Hawai‘i. In addition, pursuant to the NMSA, the “state” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States. As the NMSA also defines “state” to include American Samoa, they may be a co-manager of National Marine Sanctuary of American Samoa, and the American Samoa Department of Commerce acts as the lead territorial agency.

E.8 Comment: Commenters requested that NOAA co-manage the sanctuary with Native Hawaiians, noting that it is critical for Native Hawaiians to be present, participatory, and empowered in all decision-making aspects regarding Papahānaumokuākea. Commenters requested that Native Hawaiians should direct and oversee plans for the sanctuary, and that NOAA should defer to opinions of Native Hawaiian groups and agencies. Some commenters suggested that management with Native Hawaiians go beyond co-management with OHA.

Commenters: Sarah Brandt, Maribel Ybanez, Council for Native Hawaiian Advancement, American Civil Liberties Union of Hawai‘i, ‘Aha Pūnana Leo, Bishop Museum, Boys & Girls

Club of Hawai‘i, Hawai‘i Land Trust, ‘Iolani Palace, Kanaeokana, Native Hawaiian Education Council, Papa Ola Lōkahi, Partners in Development Foundation, Pouhana O Nā Wāhine, Alisha Chauhan, Roxane Keli‘ikipikāneokolohaka, Ryan King, Ashley Wong, Cindy Freitas, Naomi Himley, and anonymous commenter(s)

Response: See the response to E.7, regarding how NOAA would manage the sanctuary in partnership with OHA, but NOAA also agrees that there are opportunities for co-stewardship with the Kānaka ‘Ōiwi community beyond OHA. NOAA agrees that it is important to have Kānaka ‘Ōiwi expertise in management, including in leadership roles and that growing long-lasting partnerships with existing Kānaka ‘Ōiwi community partners is integral to management of the proposed sanctuary (see the responses to C.2 and K.1).

NOAA has a responsibility to, and takes opportunities to work through equitable partnerships with all Indigenous Peoples. The [Imila-alpa Commitments](#) demonstrate ONMS’ dedication to strengthening partnerships with Indigenous governments, organizations, and communities and ensuring that ONMS’ intentions align with its actions. The commitments also state that ONMS will work to implement White House and NOAA guidance on integrating Indigenous knowledge into processes and approaches.

E.9 Comment: Commenters suggested or requested that the Native Hawaiian Cultural Working Group (CWG) be granted authority in reviewing and approving permits to access Papahānaumokuākea and/or be granted authority to vet the permit applications. Some commenters suggested that the Native Hawaiian Cultural Working Group should be included as a fifth co-trustee of the Monument.

Commenters: Roxane Keli‘ikipikāneokolohaka, Native Hawaiian Cultural Working Group, William J. Aila Jr. and Melva N. Aila, Isaac Harp

Response: For more than 20 years, the CWG, which advises OHA as a co-trustee of the Monument, has provided guidance and an important Native Hawaiian perspective to inform Monument management. The CWG is a group of Kānaka ‘Ōiwi kūpuna (elders), researchers, cultural practitioners, educators, and community members that have deep connections and historical ties to Papahānaumokuākea through a living pilina (relationship) bound by genealogy, cultural protocols, and values building contemporary multi-disciplinary research and practice. The CWG and many of its members have been involved since ONMS created the CWG following the establishment of the Northwest Hawaiian Islands Coral Reef Ecosystem Reserve in 2000. The CWG has a permit subcommittee that reviews Monument permits and provides input to OHA, a Monument co-trustee who also sits on the Monument permit working group. The sanctuary permitting system would complement the existing Monument permitting system, and was developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by the MMB. Therefore, NOAA intends for the CWG to continue to provide advice and guidance on permitting for Papahānaumokuākea.

Consideration of the CWG as a co-trustee of the Monument is outside the scope of the proposed action to designate a national marine sanctuary, because a sanctuary designation would not alter the underlying Monument management structure.

E.10 Comment: Commenters expressed concerns regarding NOAA being the primary manager of the proposed sanctuary, and questioned what role the State of Hawai‘i had in developing the proposed sanctuary. One commenter requested that there be a checks and balance system with the State of Hawai‘i and Native Hawaiian groups when reviewing the objectives, actions, regulations, exceptions, permits, and penalties.

Commenters: Meyer Cummins, Ryan King

Response: The NMSA provides authority for NOAA, among other things, to designate a sanctuary and promulgate regulations implementing the designation. Pursuant to the NMSA, states may choose to have a role in co-managing a sanctuary if all or part of the proposed sanctuary is within the territorial limits of any state. As the sanctuary includes state waters, NOAA would co-manage the proposed sanctuary with the State of Hawai‘i. NOAA establishes the framework for co-management in Section 922.242 of the proposed rule and may update existing agreements or develop additional agreements with the State of Hawai‘i to clarify the terms of co-management. Any future proposed changes to sanctuary regulations or boundaries would be coordinated with the State and subject to public review as mandated by the NMSA and other federal statutes.

The State of Hawai‘i is also in support of the sanctuary proposal. While NOAA was the lead federal agency in the preparation of the EIS, the State of Hawai‘i served as a cooperating agency and co-developed the draft EIS and final EIS, which was also developed in accordance with the Hawai‘i Environmental Policy Act (HEPA, Chapter 343 HRS, HAR Chapter 11-200.1). The State of Hawai‘i also co-developed the sanctuary management plan.

F. Exemptions

F.1 Comment: Some commenters opposed the exemption for “scientific exploration or research activities by or for the Secretary of Commerce or the Secretary of the Interior when the activity occurs in the Outer Sanctuary Zone.” Commenters stated that the exemption may provide a loophole to permit large-scale take/extraction of resources. Commenters felt that the Department of Commerce and the Department of the Interior should still be required to obtain sanctuary permits.

Commenters: Robin Girard, Isaac Harp, Jim Kastner, Northwestern Hawaiian Islands Hui, Pua‘āinahau Foundation, Hawai‘i Wildlife Fund, Malu ‘Aina, Life of the Land, Hālau Nā Mamo o Pu‘uanahulu, Malama Makua, Maka‘ala Ka‘aumoana, Jim Kastner, Stephanie Fried

Response: Presidential Proclamation 9478, which designated the MEA, specifically states that the prohibitions “shall not restrict scientific exploration or research activities by or for the Secretaries and nothing in this proclamation shall be construed to require a permit or other authorization from the other Secretary for their respective scientific activities.” Presidential Proclamation 9478 further highlights the significant scientific value of the MEA and underscores the opportunities for research and discovery to occur in that area, including understanding the impacts of climate change on deep-sea communities and identifying new species. NOAA is exempting scientific exploration or research activities from the sanctuary’s prohibitions and permitting requirements for both the Department of Commerce and the

Department of Interior within the Outer Sanctuary Zone, to be consistent with Presidential Proclamation 9478. However, such activities must still comply with other federal environmental laws such as the NEPA, the Endangered Species Act, the NMSA section 304(d), and the Marine Mammal Protection Act.

F.2 Comment: Commenters requested that Hawaiian-focused research conducted by Hawaiians be prioritized by providing an exemption for these activities.

Commenters: Roxane Keli‘ikipikāneokolohaka

Response: The sanctuary permitting system and the exemptions were modeled after the existing Monument permitting system. The proposed permitting system would not supplant the existing permitting system for the Monument and was developed to ensure a continued joint permitting system administered by the MMB. Therefore, rather than introducing a new exemption, NOAA and the State would work to prioritize Hawaiian-focused research through other practices, as described in the draft sanctuary management plan (final EIS Appendix A), including:

- supporting and facilitating Kānaka ‘Ōiwi (Native Hawaiian) access and research (Strategy 2.6);
- weaving together multiple knowledge systems, values, practices, and methods, in science and research (Strategy 2.7); and
- supporting research initiatives that focus on next-generation capacity building for leadership succession of Kānaka ‘Ōiwi (Native Hawaiian) and Pacific Islanders who are severely underrepresented in STEM and ocean sciences (Strategy 2.8).

F.3 Comment: Some commenters opposed the exemption for the activities and exercises of the U.S. Armed Forces, noting specific concern for military sonar activity.

Commenters: Namele Naipo-Arsiga, Alisha Chauhan, Zahz Hewelen, Susan Olson, Council for Native Hawaiian Advancement, Nā Iwi Kūpuna, Office of Hawaiian Affairs, Claire Iloprizi

Response: The proposed sanctuary regulations and both Presidential Proclamations 8031 and 9478 include a broad exemption to allow activities and exercises of the U.S. Armed Forces, including those carried out by the U.S. Coast Guard. The proposed sanctuary regulations specify that all activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on sanctuary resources and qualities. For any federal agency actions, including actions of the Armed Forces that are likely to destroy, cause the loss of, or injure sanctuary resources, the Armed Forces must comply with the consultation requirements outlined in Section 304(d) of the NMSA, regardless of whether those actions are exempted from the proposed sanctuary’s regulations.

F.4 Comment: Commenters expressed opposition to the exemption for non-commercial fishing activities authorized under the MSA. Commenters stated that non-commercial fishing permit holders should not have exemptions to conduct the otherwise prohibited and regulated activities of the sanctuary and that any non-commercial fishing activities should still require a

separate sanctuary permit. One commenter stated that ONMS should promulgate regulations under the National Marine Sanctuaries Act as a backstop and not rely solely on the Magnuson-Stevens Fishery Conservation and Management Act application. Commenters stated that the exemption for non-commercial fishing is counter to Mai Ka Pō Mai. Commenters also requested that NOAA gather more input from the Native Hawaiian community, including the OHA and the Native Hawaiian Cultural Working Group on this topic.

Commenters: Nicolas Anderson, Narrissa Spies (Brown), Council for Native Hawaiian Advancement, Marine Mammal Commission, Shark Stewards, and anonymous commenter(s)

Response: As required by Section 304(a)(5) of the NMSA, NOAA provided the WPRFMC with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA participated in six public meetings hosted by the WPRFMC on November 1st, 3rd, 4th, 5th, 8th, and 10th of 2022, which were focused on the development of fishing regulations for the area of the proposed sanctuary that overlaps with the MEA. In December 2022, the WPRFMC provided a recommendation for non-commercial fishing regulations for the area of the proposed sanctuary that overlaps with the MEA. NOAA accepted the majority of the WPRFMC's recommendations, as it was found to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. However, the WPRFMC's recommendation to provide Native Hawaiian subsistence practices fishing permit applicants the ability to request limited cost recovery by selling their catch in the permit application process through a statement of need for cost recovery along with expected costs, failed to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation. Additionally, NOAA found that the allowance of "sale" under a Native Hawaiian subsistence practices fishing permit is inconsistent with the State's constitutional protection of Native Hawaiian traditional and customary rights.

Accordingly, the sanctuary regulations proposed that prohibitions in paragraphs (a)(7) through (14) in Section 922.244 would not apply to non-commercial fishing activities in the Outer Sanctuary Zone authorized under the MSA, provided that no sale of harvested fish occurs. In response to comments of concern for this exemption, NOAA has made changes to ensure that a non-commercial fishing permit authorized under the MSA is only exempt from a limited subset of prohibited or otherwise regulated activities that may only be conducted as incidental to and necessary to a lawful non-commercial fishing activity. NOAA has also clarified that this narrow exemption from the sanctuary's permitting requirements is only applicable provided that the fish harvested, either in whole or in part, are neither intended to enter commerce nor enter commerce through sale, barter, or trade and that the resource is managed sustainably, consistent with Presidential Proclamation 9478. Moreover, consistent with the outcome of the NMSA Section 304(a)(5) process, for the exemption to apply, the fish harvested, either in whole or in part, are not intended to be sold and shall not be sold for any purposes, including, but not limited to, cost-recovery. See the final EIS, Section 3.3.1.

NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, and will accept public comment on the proposal. NOAA and the State of Hawai‘i encourage the commenter to participate in the future public review process for the proposed rule and any associated NEPA and/or other environmental compliance documentation for non-commercial fishing regulations in the MEA. Until a public process is conducted, and a final rule is issued for fishing regulations under the authority of the MSA, non-commercial fishing permits would not be issued for the MEA/Outer Sanctuary Zone. Consistent with existing Monument management, the sanctuary may authorize sustenance fishing outside of any special preservation area as a term or condition of any sanctuary permit.

F.5 Comment: Commenters requested a prohibition on mining, and/or stating opposition to mining activities, or any exemption allowing them.

Commenters: Abdine Ouedraogo, Helen Raine, Miranda Scarola, Lily Monte, Matthew Murasko, Mariana Loaiza, Susan Kiskis, Tiare Ka‘ōlelopono, Alisha Chauhan, National Parks Conservation Association, Brandon Mindoro, Djedi Alliance, Rainbow Warrior Collective, Michael Gawel

Response: Consistent with the presidential proclamations establishing the Monument, NOAA would prohibit exploring for, developing, or producing oil, gas, or minerals to protect sanctuary resources. NOAA would also prohibit “any energy development activities” to further the underlying intent of the prohibition on oil, gas, and mineral development by accounting for technological advances in other forms of energy development. Likewise, NOAA is not providing an exemption for mining activities.

F.6 Comment: A commenter stated that scientific or management activities undertaken by the USFWS within the Monument are not subject to any additional sanctuary requirements or authorization from NOAA.

Commenters: U.S. Fish and Wildlife Service

Response: Nothing in the establishment of the national marine sanctuary would diminish USFWS’ authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act. Where Papahānaumokuākea National Marine Sanctuary overlays Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge, NOAA would implement the National Marine Sanctuaries Act to provide supplemental authority to protect resources. In other sanctuary sites when there is jurisdictional overlap between NOAA and USFWS, the agencies have worked to implement their respective authorities in a manner that would complement, but does not diminish or interfere with, existing authorities and would strengthen existing protections and management. NOAA and USFWS are developing an agreement to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge.

The sanctuary permitting system was modeled after the existing Monument permitting system to ensure a single joint permitting system continues to be administered by the MMB.

NOAA has not proposed a separate or additional permit process. In addition, NOAA has not proposed to include authorization authority for the sanctuary. Consistent with Presidential Proclamation 9478, the proposed sanctuary regulations would exempt both the Department of Commerce/NOAA and the Department of the Interior/USFWS from the prohibitions, including the need to obtain a permit or authorization from the Secretary of Commerce in order to conduct scientific exploration or research activities in the MEA. NOAA has clarified the proposed framework for management and permitting in partnership with USFWS and the other Monument managers in the final EIS, Section 3.3.1.

G. Consultations and Community Participation in Sanctuary Designation

G.1 Comment: Some commenters requested an extension of the public comment period and/or additional virtual public meetings. Some commenters expressed concern that there was not adequate public education, engagement, and notification for the public comment period and meetings; that the methods for comment were not accessible for all and/or not an adequate way to gauge support or opposition; and that all communities, specifically the fishing community, were not properly engaged in the comment period. One commenter expressed concern that the public meetings did not allow for agency responses or answers to oral testimony and requested that the NOAA webpage provide responses to frequently asked questions from the public meetings.

Commenters: Lori Buchanen, Nani Kawaa, Alisha Chauhan, Narrissa Spies (Brown), Roberta Hickey, Kaleo Cravalho, Isaac Harp, Molly Lutcavage, David Cabrera, Jerome Jerome, Samuel Meleisea, Nalani Minton, Luwella Leonardi, Kaipulaumakaniolono Baker, and anonymous commenter(s)

Response: Both NOAA and the State disagree. NOAA followed the designation processes and procedures as required pursuant to the NMSA and NEPA, both of which require broad public participation, as well as the Administrative Procedure Act's notice requirements. The public comment period took place over the course of 68 days from March 1 to May 7, 2024. NOAA accepted public comments through the federal eRulemaking Portal and by traditional mail. NOAA also encouraged public comments in both English and 'Ōlelo Hawai'i (Hawaiian language). NOAA and the State held 11 public comment meetings (nine in-person and two virtual). Additionally, prior to the public comment meetings, the State of Hawai'i Division of Aquatic Resources held a virtual public informational meeting to engage the public. NOAA and the State of Hawai'i provided question and answer sessions at the in-person public meetings, prior to and following the formal oral comment portion of the meeting.

NOAA also posted sanctuary designation process information and [FAQs](#) on the ONMS website in response to questions received during public meetings. NOAA believes that it has fairly engaged with and considered input from local communities, Kānaka 'Ōiwi, government, and other stakeholders through extensive consultations, meetings, and discussions about sanctuary designation, and that draft designation documents and process steps have complied with applicable laws and policies, including the NMSA, NEPA, Administrative Procedure Act, and Section 106 of the National Historic Preservation Act. For

more details regarding the public engagement process, see the final EIS, sections 1.3.1 and 1.3.2.

NOAA also specifically engaged with the fishing community and consulted with the WPRFMC as required by Section 304(a)(5) of the NMSA. Through this consultation, NOAA provided the WPRFMC with the opportunity to recommend any draft fishing regulations it deemed necessary to implement the proposed sanctuary designation. NOAA and the State of Hawai‘i also participated in six public meetings hosted by the Council on November 1st, 3rd, 4th, 5th, 8th, and 10th of 2022, which were focused on the development of fishing regulations for the area of the proposed sanctuary that overlaps with the MEA.

G.2 Comment: A commenter expressed concern that the State of Hawai‘i did not fulfill its requirements for publishing and responding to the EIS Preparation Notice (EISPN) and public scoping comments. Specifically:

- According to Hawaii Administrative Rules (HAR), 11-200.1-23(c): Written comments and responses to substantive comments in response to an EISPN shall be included in the draft EIS.
- Per HAR 11-200.1-24(s)(1), the draft EIS shall include “reproductions of all written comments submitted during the consultation period required in section 11-200.1-23.” The draft EIS does not provide reproductions or copies. Rather, comments are “recreated” without original letterheads or formatting.
- According to HAR 11-200.1-24(s)(6), the draft EIS shall include “a representative sample of the consultation request letter.” There is no representative sample consultation letter within the draft EIS.

Commenters: Office of Hawaiian Affairs

Response: The State and federal scoping processes, including comment-gathering, were combined. The State’s EISPN was developed based upon the federal Notice of Intent, and the comments were collected via the web-based regulations.gov system and through a series of joint virtual scoping meetings. NOAA and the State of Hawai‘i provided both the text of written comments and responses to substantive comments in response to the State’s EISPN in Appendix F for the draft EIS and the final EIS. NOAA and the State of Hawai‘i recognize that the commenter has requested to see exact copies of mailed letters or emailed attachments received in response to the State’s EISPN. NOAA and the State of Hawai‘i have updated Appendix F in the final EIS to include exact copies of these comments.

The State of Hawai‘i consulted with parties listed in Appendix H via memoranda and other means, and did not issue a formal consultation request letter, therefore a representative copy of a letter is not included in the draft or final EIS. The State of Hawai‘i also widely distributed public notifications and other information through multiple channels ([flyer](#), [web resources](#), social media) during scoping, to solicit public participation. A joint State-NOAA distribution list for the draft EIS is included within the draft EIS and the final EIS as Appendix I.

G.3 Comment: Some commenters expressed concerns and confusion regarding who served as a cooperating agency for this action, and the role of the cooperating agencies for the

development of the draft EIS, including the opportunities and sequencing for engagement, input, and review from the cooperating agencies in advance of public release.

Commenters: Office of Hawaiian Affairs, Narrissa Spies (Brown), 'Aulani Wilhelm, Lois Schiffer and Dinah Bear

Response: Cooperating agencies for the draft EIS included the USFWS, the State of Hawai‘i, and the Department of the Navy. See the “About this Document” section of the final EIS. NOAA also extended an invitation for the OHA to serve as a cooperating agency in advance of preparation of the draft EIS. OHA did not accept that invitation. However, as a co-trustee of the Monument, OHA was still provided with opportunities to engage and provide input on the sanctuary proposal in advance of the release of the draft EIS, as NOAA developed the sanctuary proposal in coordination with the MMB. In June 2024, NOAA extended another invitation to OHA to serve as a cooperating agency for the preparation of the final EIS. OHA accepted that invitation and is now listed as a cooperating agency in the final EIS (“About this Document”).

In extending cooperating agency invitations, NOAA delineated lead and cooperating agency roles and responsibilities. Cooperating agency responsibilities included: participating in the NEPA process and development of the draft EIS; providing comments on draft sections of the draft EIS and final EIS; and preparing or contributing to any portions of the NEPA analysis relevant to the agency’s special expertise, authorities, jurisdiction by law, or management oversight. Throughout the NEPA process, cooperating agencies predominantly provided background information and considerations for the environmental analysis, reviewed and provided comments on the draft documents, and met with ONMS staff to discuss the sanctuary proposal. Regarding comments that questioned why more cooperating agency staff were not listed as document preparers, Appendix J reflects the roles of the lead federal agency and the state agency, who were primarily responsible for preparing an EIS that meets the requirements of both NEPA and HEPA (42 U.S.C. 4336a; 40 CFR § 1502.18).

H. Purpose and Need for Sanctuary Designation

H.1 Comment: Commenters emphasized that Chapter 2 of the draft EIS, “Purpose and Need for Action” (1) does not provide a compelling argument that a sanctuary is needed to supplement and complement existing authorities; (2) does not provide a legally sufficient justification for designating a national marine sanctuary; and (3) does not address the purpose and need for action in the presentation of the alternatives. Some commenters stated that the proposal lacked goals and objectives, and the proposal did not articulate what is lacking from current Monument management.

Commenters: Klayton Kubo, Roger McManus, Linda Paul, Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, Donald Schug, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly, Alisha Chauhan, and anonymous commenter(s)

Response: Both NOAA and the State disagree with the premise of this comment, and have concluded that the draft designation documents, including the EIS, are legally sufficient. In

Chapter 2, NOAA briefly specified the underlying purpose and need for the proposed action in accordance with NEPA (42 U.S.C. § 4336a(d)). NOAA also documented the anticipated beneficial impacts of the proposed sanctuary in Chapter 5 of the EIS. NOAA has determined that the sanctuary would effectively manage and conserve nationally-significant biological, physical, and cultural resources, among others, consistent with NOAA's mandate under the NMSA. In particular, Chapter 1 and Chapter 4 of the EIS describe the national significance of the resources in the sanctuary area. NOAA's documentation of the affected environment demonstrates the presence of and importance of conserving nationally-significant resources throughout the Agency-Preferred Alternative boundary.

NOAA, consistent with NEPA, also considered how the proposed action and its alternatives meet the purpose and need. NOAA believes that the Agency-Preferred Alternative in the draft EIS, and the Final Agency-Preferred Alternative in the final EIS, best meets the purpose and need for the proposed sanctuary. Specifically, the final EIS provides sufficient detail on how sanctuary designation would provide additional regulatory and non-regulatory tools to supplement and complement existing management of the area, in comparison to other alternatives. The benefits provided by designation also support the State's fulfillment of its legal duties to protect and conserve natural resources outlined in Chapter 2 of the EIS.

H.2 Comment: A commenter recommended that, in describing the purposes and policies of the NMSA, and specifically, 16 U.S.C 1431 (b)(4), NOAA should define "sustainable use" as "to provide enhanced protections for pristine marine waters," and prohibit use of the waters or marine ecosystems.

Commenters: Alisha Chauhan

Response: The NMSA authorizes the Secretary of Commerce to designate national marine sanctuaries that meet the purposes and policies of the NMSA, including 16 U.S.C. 1431(b)(4), which focuses, in part, on the sustainable use of the marine environment. The proposed sanctuary regulations build upon the existing protections for the Northwestern Hawaiian Islands, which provide for both restricted access to the area and responsible use subject to strict permitting terms and conditions. Given this management model, NOAA does not see a need for the proposed sanctuary regulations to define "sustainable use" at this time.

I. Boundaries

I.1 Comment: Some commenters recommended that NOAA select Alternative 3, a boundary which excludes the waters of Midway Atoll and Hawaiian Islands National Wildlife Refuges. Commenters provided several reasons for supporting Alternative 3, including that the USFWS should have sole jurisdiction to manage the national wildlife refuges; that a sanctuary that overlaps with the national wildlife refuges would be inconsistent with presidential proclamations that created the Monument; that a sanctuary that overlaps with the national wildlife refuges would not comply with the National Wildlife Refuge System Administration Act; and that a sanctuary that overlaps with the national wildlife refuges may negatively impact the USFWS management of the national wildlife refuges.

Commenters: Don Palawski, U.S. Fish and Wildlife Service

Response: NOAA identified Alternative 1 (which would include the waters of Midway Atoll and Hawaiian Islands National Wildlife Refuges in the proposed sanctuary) as the Agency-Preferred Alternative based on its comparative merits. Nothing in the establishment of the national marine sanctuary would diminish USFWS' authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act. Where Papahānaumokuākea National Marine Sanctuary overlays Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge, NOAA would implement the National Marine Sanctuaries Act to provide supplemental authority to protect resources. NOAA and USFWS are developing an agreement to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge.

In addition, the existing Monument is already jointly administered through a seven-member Monument Management Board, which includes NOAA's ONMS. ONMS and the USFWS have been cooperatively managing the area of the proposed sanctuary for nearly 20 years. As a result of the existing Monument management framework, of which ONMS is a critical part, this sanctuary rule has been specifically designed not to create any regulatory inconsistencies, and to ensure consistent management between the Monument, the national wildlife refuges, and the sanctuary.

Further, both NOAA and the State disagree that the designation would be inconsistent with the directives that established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve and the Monument. In part, the purpose of the designation is to specifically implement the provisions of Executive Order 13178, Presidential Proclamation 9478, and the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2021, that directed NOAA to consider initiating the sanctuary designation process.

I.2 Comment: Commenters expressed opposition to any sanctuary that would include additional portions of Middle Bank, beyond the areas that are included in the Monument.

Commenters: Abraham Albilado, Klayton Kubo, Gil Kualii, Isaac Harp, Hoku Cody, Lori Buchanan

Response: NOAA considered designating a sanctuary that expanded beyond the southeastern portion of the Monument boundary to include Middle Bank. However, NOAA eliminated this alternative from detailed study, as described in the draft and final EIS, Section 3.7.

I.3 Comment: Commenters requested that NOAA consider including most or all of Middle Bank in the proposed sanctuary boundary, because of the scientific, ecological, and commercial benefits of the area. Commenters also requested that NOAA consider expanding the boundary to include more area.

Commenters: Sydney Warren, Maggie MacMullen, Neil Frazer, Linda Paul, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly, Donald Schug, Andy Ku

Response: NOAA identified Alternative 1 (which is coextensive with marine portions of the Monument) as the Agency-Preferred Alternative based on its comparative merits, and therefore does not include all of Middle Bank or any additional areas that are not part of the Monument. This is consistent with the defined purpose and need and with the provisions of Executive Order 13178, Presidential Proclamation 8031, Presidential Proclamation 9478, and the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2021.

Although NOAA considered sanctuary boundary alternatives that included Middle Bank, NOAA concluded that aligning the boundary of the sanctuary with that of the Monument best fulfills the purposes and policies of the NMSA. In addition, the NMSA directs NOAA that it may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if it is determined that the area is of a size and nature that will permit comprehensive and coordinated conservation and management. NOAA concluded that any boundary alternative that expands beyond the existing boundaries of PMNM and the MEA would not be practicable in light of the need for comprehensive and coordinated management in a manner which complements the existing Monument management framework. NOAA has added these clarifications to the draft and final EIS, Section 3.7.1.

I.4 Comment: Commenters recommended Alternative 2 as the preferred alternative, a boundary which excludes the MEA. Some commenters expressed support for this alternative, emphasizing that excluding the MEA may allow for more fishing, including commercial fishing, in that area.

Commenters: Craig Severance, Jason Helyer, Gil Kualii

Response: NOAA identified Alternative 1 as the Agency-Preferred Alternative, which includes the MEA, based on its comparative merits. The proposed sanctuary is consistent with directives in Presidential Proclamation 9478, which has the force of law. Presidential Proclamation 9478, which designated the MEA, prohibits commercial fishing and provides that non-commercial fishing may be a regulated activity (i.e., allowed only with a permit). Selection of Alternative 2 would not alter the directives provided in Presidential Proclamation 9478, including the prohibition on commercial fishing in the MEA.

I.5 Comment: A commenter requested the inclusion of a legal definition of shoreline delineation in relation to iron seawall ruins and rubble at Tern Island, and questioned if the seawall and debris would be included in the sanctuary boundary.

Commenters: George Balazs

Response: The shoreline in the State of Hawai‘i as defined by the Hawai‘i Department of Land and Natural Resources is “the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occur, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves” (HAR §13-222). The Coastal Lands Program of the Hawai‘i Department of Land and Natural Resources, Office of Conservation and Coastal Lands maintains the State of Hawaii Shoreline Certification Program (see Shoreline

Certification Rules in HAR §13-222). It is this program that would determine where the shoreline is delineated in the location of the iron seawall on Tern Island when necessary. Therefore, under the current definitions, any debris or rubble or portion of the Tern Island iron seawall that occurs seaward of this shoreline as defined by the State of Hawai‘i would be within the sanctuary, and that which occurs upland of the shoreline would be outside the sanctuary.

I.6 Comment: A commenter requested that the shoreward boundary be extended to the mean high tide.

Commenters: Shark Stewards

Response: NOAA considered an alternative that designated the mean high tide line as the shoreward boundary, but eliminated this alternative from detailed study (see Section 3.7.1 of the EIS). NOAA typically uses the shoreline as legally defined by the State within which the national marine sanctuary occurs, because the shoreline delineates the boundary between public and private land. The shoreline in the State of Hawai‘i as defined by the Hawai‘i Department of Land and Natural Resources is “the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occur, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves” (HAR §13-222). NOAA strives to designate a sanctuary which supplements and complements existing authorities, and this designation adheres to both the State’s definition as well as the current landward boundary designation of the Monument.

J. Description and Analysis of Alternatives

General Analysis

J.1 Comment: Commenters requested a supplemental draft EIS that describes the governance framework of the proposed sanctuary, including a detailed description of the role and authorities of each Monument co-manager. Commenters also requested that an analysis consider how each may be used in support of the purpose and need for a sanctuary identified in the draft EIS.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA disagrees. The draft EIS adequately described the management framework of the proposed sanctuary, considering all aspects that are relevant to environmental impacts and useful to make a reasoned choice amongst the alternatives. However, NOAA has revised the final EIS to further address requests for information regarding the existing Monument governance framework, including by expanding the description of the No Action Alternative in Chapter 3 (see Section 3.2) and describing how the sanctuary framework may be integrated into the existing Monument governance framework (see Section 3.3) See also the response to E.1. NOAA, consistent with NEPA, considered how the proposed action and its alternatives—which are inclusive of varying levels of management and applicable authorities—met the purpose and need. Based on this

information, NOAA has determined that the draft EIS is sufficient, and a supplemental draft EIS is not necessary.

J.2 Comment: A commenter noted that the draft EIS claims there would be adverse potential impacts on the protection of the resources if refuge areas were excluded from a proposed sanctuary, but does not mention nor analyze existing comprehensive refuge regulations (50 CFR, subchapter C). This commenter recommended that the final EIS acknowledge and analyze the management of Midway Atoll National Wildlife Refuge and the Hawaiian Islands National Wildlife Refuge, and the authorities of the USFWS.

Commenters: U.S. Fish and Wildlife Service

Response: In the final EIS, NOAA acknowledges USFWS' authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge throughout the document, including in the description of the No Action Alternative and the action alternatives (see Chapter 3). For the purposes of the analysis, the primary focus is on the impacts caused by the differences between the action alternatives compared to existing management under the No Action Alternative. NOAA, pursuant to the NMSA, would provide supplemental authority to strengthen protection of resources where the national marine sanctuary and national wildlife refuge overlap. In other sanctuary sites when there is jurisdictional overlap between NOAA and USFWS, the agencies have worked to implement their respective authorities in a manner that complements, but does not diminish or interfere with existing authorities and strengthens existing protections and management. NOAA and USFWS are developing an agreement to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge.

In the final EIS, in analyzing the impact of an alternative that excluded the national wildlife refuges from the proposed sanctuary boundary, NOAA concluded that there may be only minor adverse impacts to laws and existing management (see Section 5.5). Specifically, under Alternative 3, NOAA concluded that the exclusion of the Hawaiian Islands National Wildlife Refuge imparts an adverse impact based on the potential ambiguity of where NMSA regulations can be enforced, as the Hawaiian Islands National Wildlife Refuge boundary is not agreed upon. The adverse impact is not due to the lack of management or authority for the area, but rather the impact that an ambiguous boundary may have on users and managers.

J.3 Comment: Commenters expressed concerns that there was an insufficient justification for designating a new national marine sanctuary and a mischaracterization of social, cultural, and economic impacts of designating a sanctuary. Several commenters requested that the final EIS include additional research and information on the impacts to Kānaka 'Ōiwi communities and Hawai'i residents. One commenter stated that the draft EIS is not legally sufficient because the analysis does not properly distinguish among, and analyze, impacts to environmental resources resulting from the No Action Alternative and each of the action alternatives.

Commenters: Hawaii Longline Association, Klayton Kubo, Linda Paul, Roger Mcmanus

Response: NOAA believes that Chapter 2 of the draft EIS adequately explains the need for the proposed sanctuary, citing the globally significant interconnected set of marine ecosystems in the action area, and threats from factors such as climate change, marine debris, invasive species, and marine traffic.

The action alternatives and scope of the impact analysis focus on implementing relatively minor changes to existing restrictions, regulations, and protections for the action area. These changes are designed to improve consistency of regulations across the area of the proposed sanctuary and to impart additional protections. The existing protections in the area of the proposed sanctuary would not be changed under any of the alternatives, including the No Action Alternative. Therefore, the EIS analyzes the effective differences between the action alternatives and the existing management framework under the No Action Alternative. In many cases, the impacts of the alternatives are broadly similar in nature and extent, because a primary goal for all alternatives is to improve regulatory consistency across the action area while minimizing new restrictions and requirements on users. Accordingly, the analysis of environmental impacts of the alternatives, including the social, cultural, and economic impacts of designating a sanctuary is limited, and only the effective differences between the action alternatives and the No Action Alternative are analyzed. For example, no alternative (including No Action) would remove the Monument or its accompanying regulations. An action alternative, if selected, would give NOAA the authority to supplement the existing protections and management.

In addition, due to the action area's remote location and the low level of human activity, available data from human impacts are sparse. When there is incomplete or unavailable information during the evaluation of impacts, the agency may make evaluations based upon reasonably foreseeable causations and impacts (42 U.S.C. § 4332(2)(C), 40 CFR § 1502.21).

J.4 Comment: Commenters stated that the action alternatives are insufficiently differentiated and fail to recognize alternatives to the proposed management strategy. Commenters recommended that NOAA analyze different management strategies and the environmental and related social, cultural, and economic effects of those alternatives.

Commenters: Lois Schiffer and Dinah Bear, Western Pacific Regional Fishery Management Council

Response: In accordance with NEPA, NOAA evaluated a reasonable range of alternatives that meet the proposed action's purpose and need. Given the purpose to provide comprehensive and coordinated conservation and management of the marine areas of Papahānaumokuākea to protect nationally significant resources, NOAA determined that alternatives that supplement and complement existing management would most effectively achieve that purpose and need.

NOAA determined, given the extensive existing management scheme for the area, that it was not appropriate to consider different management alternatives. Through sanctuary designation, NOAA would manage the sanctuary in partnership with Monument co-trustees. As a result of the existing Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, which is managed under the National Marine Sanctuaries Act, and the existing Monument

management framework, which includes ONMS, the proposed sanctuary has been specifically designed to complement and supplement other State and federal resource protection laws to manage the nationally significant resources of Papahānaumokuākea. Further, the draft sanctuary management plan was developed in consultation with the State, U.S. Fish and Wildlife Service, and the Office of Hawaiian Affairs. This collaborative approach was followed to explicitly ensure concurrence of plans between the proposed sanctuary and the Monument.

In addition, one of the NMSA's purposes and policies is to “develop and implement coordinated plans for the protection and management of these areas with appropriate federal agencies, state and local governments, etc.” As a result of the existing Monument management framework, of which ONMS is a critical part, proposed sanctuary management has been specifically designed to not create inconsistencies, and to ensure seamless operations between the Monument and proposed sanctuary. NOAA believes designating a sanctuary with a management strategy that differs from the existing Monument would not fulfill the purposes and policies of the NMSA, and therefore not meet the purpose and need for the proposed designation.

J.5 Comment: Commenters stated that it is unclear how the Agency-Preferred Alternative, Alternative 1 would alleviate the existing impacts, and asked about the options for effectively addressing the threats to marine mammals, sea turtles, and their ecosystem from marine debris and global warming. Another commenter specifically requested that the final EIS and sanctuary management plan provide detailed information and analysis on the importance of biodiversity associated with deep-water corals and related habitats.

Commenters: Birgit Winning, Deep Ocean Stewardship Initiative

Response: In the final EIS, as required by NEPA, NOAA provides detailed information and an impact analysis for a reasonable range of alternatives for the proposed sanctuary. NEPA does not require that an agency's action alleviate impacts, but requires a comparative analysis of what the impacts would be. Note that the No Action Alternative references the existing protections and efforts provided under current management of the Monument, including marine debris removal, protected species habitat restoration, and best management practices for invasive species prevention. These existing protections and efforts would remain in effect under all action alternatives, including the Agency-Preferred Alternative.

The purpose of this action is to provide comprehensive and coordinated conservation and management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources and to “maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes.” Alternative 1 would meet these goals through additional regulatory tools provided by the NMSA for management and protection of resources. In addition, sanctuary designation would provide the first set of implementing regulations for the provisions of Presidential Proclamation 9478 which created the MEA. Section 5.3.1 of the final EIS describes the beneficial impacts of Alternative 1 on both physical and biological resources. Specifically, sanctuary designation

would address threats by creating stronger deterrents to permit and regulatory violations through the supplemental authority to issue civil penalties, as well as providing a mechanism to conduct damage assessments and hold the permittee or vessel liable for response costs and damages resulting from such destruction, loss, or injury. Under Alternative 1, discharge would be regulated throughout the proposed sanctuary, extending the existing regulation from PMNM to the area of the proposed sanctuary that overlaps with the MEA. The regulation of vessel discharge would benefit water quality in the MEA, and subsequently benefit biological resources.

Regarding the request for further analysis, the scope of the EIS impact analysis focuses on minor changes proposed to improve consistency of regulations and management across the area of the proposed sanctuary and the additional protections imparted by a sanctuary designation. Therefore, the EIS focuses solely on the effective differences between the action alternatives and the existing management framework under the No Action Alternative.

For decades, scientists have been conducting surveys to characterize marine biodiversity in Papahānaumokuākea. Additionally, as part of the National Marine Sanctuary System, condition reports would be prepared in advance of any management plan review, approximately every 10 years. As referenced in Chapter 4 of the final EIS, the *State of the Monument Report* (or condition reports) are used by NOAA to assess the condition and trends of national marine sanctuary resources and ecosystem services. These reports provide a standardized summary of resources in NOAA's sanctuaries, driving forces and pressures on those resources, and current conditions and trends for resources and ecosystem services. These reports also describe existing management responses to pressures that threaten the integrity of the marine environment. Condition reports include information on the status and trends of water quality, habitat, living resources, maritime heritage resources, and the human activities that affect them. The reports also rate the status and trends of ecosystem services. Recent research since 2017 has revealed much new information about the diverse ecosystems in the deep-sea areas of Papahānaumokuākea.

J.6 Comment: A commenter pointed to a statement in the draft EIS that, under the Agency-Preferred Alternative, “there would be no anticipated change in the number of permits issued because permits are required under the current management regime and an increase in permitted activity is not anticipated under sanctuary designation.” The commenter felt that this seemed inaccurate in two respects: 1) the draft EIS argues that the biggest impact of the proposed sanctuary would be additional authority by NOAA to, among other things, issue permits, and 2) it does not account for what presumably would be some number of non-commercial fishing permits applied for in the MEA.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA reaffirms the statement made in the draft EIS that there is no anticipated change in the number of permits. Sanctuary designation is unlikely to increase the amount of visitation, research, or other activities within the area. NOAA also affirms that one of the benefits of sanctuary designation is that it would provide the first set of implementing regulations, including regulations for permitting, in the MEA. Currently, activities in the MEA have been approved via a Letter of Authorization signed by USFWS. The use of Letters

of Authorization was developed as an interim measure following designation of the MEA, until a formal permitting process could be implemented through regulations. In addition to these implementing regulations, National Marine Sanctuary Program regulations offer new tools for enforcement of permits issued pursuant to the NMSA.

Regarding the commenter's second point, NOAA does not propose to issue non-commercial fishing permits as part of the sanctuary regulations. NOAA only proposes to allow sustenance fishing as a term or condition of a permit, consistent with existing Monument management in the PMNM. In response to a recommendation for fishing regulations in the MEA by the WPRFMC, NOAA is preparing a separate proposed rule for regulations governing fishing in the MEA under the authority of the MSA, completing the environmental compliance requirements, including the consideration of the number of permit requests for non-commercial fishing in the MEA, and will accept public comment on the proposal.

J.7 Comment: Commenters noted that the draft EIS emphasized the need for “penalty schedules.” They felt that the draft EIS implies NOAA would only have the authority to issue penalties under the NMSA. The commenters stated that NOAA may seek to issue penalties under the MSA and develop penalty schedules for violating specific provisions or issued fishing regulations. They also felt there was no analysis of what matters have occurred since PMNM and the MEA were established, which have caused unaddressed problems because of lack of authority and cannot be easily remedied, such as by issuance of fishing regulations for the MEA.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA agrees that penalties for violations under MSA may be sought, but there are currently no fishing regulations for the area. Designating a sanctuary would provide the first set of implementing regulations for the provisions of Presidential Proclamation 9478, which include prohibitions that go beyond fishing, for which violations may be penalized under the NMSA.

Regarding the comment that there was no analysis of matters that have occurred since Monument establishment, NOAA directs the commenter to Chapter 4 of the EIS, where the agency identifies a number of past events that have impacted resources, including examples of illegal fishing.

Further, in Section 5.1.1, NOAA provides important information regarding the limits of the impact analysis for the proposed sanctuary. Due to the remote location and the corresponding low level of activity across the proposed sanctuary, there is very little data on human impacts available. When there is incomplete or unavailable information during the evaluation of impacts, the agency may make evaluations based upon reasonably foreseeable causations and impacts (42 U.S.C. § 4332(2)(C), 40 CFR § 1502.21). As the occurrence of illegal activity, permit violations, and loss or injury to sanctuary resources in the future cannot be predicted, the impacts of enhanced enforcement and authority to respond to and hold financially liable any person who destroys, causes the loss of, or injures any sanctuary resource are described qualitatively rather than quantitatively.

J.8 Comment: One comment takes issue with the draft EIS characterization of certain benefits accruing from adding sanctuary authorities. The commenters pointed to a draft EIS statement

that sanctuary status, unlike Monument status, would provide a way to obtain response costs and hold liable those responsible for destruction of sanctuary resources. The commenter disagrees with that statement and takes issue with the examples provided—specifically of lost cargo containers in Section 4.6.2; and vessel groundings in Section 4.3.1—concluding that these examples are both incorrect and misleading.

Regarding the example of lost cargo ships, the commenter states that the Sanctuary Natural Resource Damages provision provides that injury to a sanctuary resource caused solely by an act of God is a defense to liability, and states that the Oil Pollution Act and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) may already be used to provide resource damage liability. Regarding the examples of groundings, the commenter takes issue with the acknowledgement that National Weather Service buoys, broken free of their moorings, have been a cause of damage to resources. Finally, the commenter expresses that vessel groundings that lead to oil and/or chemical spills may be addressed by CERCLA. Ultimately, the commenters expressed that sanctuary designation is not likely to significantly enhance the ability of the government to address natural resource damages to resources.

Commenters: Lois Schiffer and Dinah Bear

Response: First, NOAA acknowledges other authorities exist that may be used to address resource damages in the area of the proposed sanctuary. In the EIS, NOAA only asserts that sanctuary designation imparts a specific set of new benefits afforded by the NMSA. Specifically, the NMSA allows ONMS to supplement existing authorities through the following:

- Emergency regulations (§ 922.7). Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition.
- Penalties (§ 922.8(a)) Each violation of the NMSA, any NMSA regulation, or any permit issued pursuant thereto, is subject to a civil penalty. Each day of a continuing violation constitutes a separate violation.
- Response costs and damages (§ 922.9) Under Section 312 of the NMSA, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss, or injury. Any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury.
- NMSA Section 304(d) requires interagency consultation for any federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource. This requirement applies to all federal agencies, including agencies that are otherwise exempt from sanctuary prohibitions.

The examples provided in Chapter 4, and referenced by the commenter, are simply examples of previous instances that have caused damages to resources, and which may be better addressed by one of the NMSA program regulations, not just an authority to hold liable those who destroy, cause loss of, or injure sanctuary resources. Instances of damage to

sanctuary resources may also prompt the use of emergency regulations, civil penalties, or interagency consultations, all of which serve as a supplemental tool that may enhance resource protection.

Regarding the example of the lost cargo containers in Section 4.6.2, NOAA disagrees that this example is incorrect and misleading. To date, there have been confirmed lost shipping containers within other sanctuaries. In 2004, 15 intermodal steel cargo containers fell overboard from the M/V *Med Taipei* as the vessel transited through Monterey Bay National Marine Sanctuary during a winter storm. Taking into consideration NOAA's assessment, as well as potential fines, government legal fees and costs to date, the shipping company agreed to pay NOAA a total [compensation of \\$3.25 million](#).

Regarding the example of grounding incidents, NOAA did not imply that the incidents of unmoored National Weather Service buoys would warrant natural resource damage response costs. It simply provided this as an example of a real instance of resource damage, where sanctuary designation may provide any number of management and/or regulatory tools to help address. Finally, NOAA does not state that other authorities, such as CERCLA and/or the Oil Pollution Act, do not apply to the area. The EIS only states that sanctuary designation may apply additional regulatory and non-regulatory tools to augment and strengthen existing protections for the area. The other authorities mentioned by the commenter are authorities that may be applicable in many other existing national marine sanctuary sites, but does not diminish the value provided by the NMSA, which provides authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities.

J.9 Comment: A commenter requested that the final EIS document explain the means and mechanisms by which “land-based legacy pollutants” are currently threatening marine resources given the remediation that has occurred under the Comprehensive Response, Compensation, and Liability Act over the past several decades. The commenter also stated that the EIS should state that the U.S. Navy is responsible for monitoring and maintaining Land Use Control Areas (the draft EIS describes these as landfills), and that the final EIS should clarify what is meant by “ongoing environmental remediation.”

Commenters: Friends of Midway Atoll National Wildlife Refuge

Response: NOAA has made minor revisions to Section 4.3.1 of the final EIS to include information on the means and mechanisms by which land-based legacy pollutants may impact water quality. The terrestrial areas of the Monument are, and would remain, outside of NOAA's jurisdiction. The USFWS, a Monument co-trustee, oversees the Midway Atoll National Wildlife Refuge and the Hawaiian Islands National Wildlife Refuge. The USFWS in partnership with other entities are attempting to remediate natural areas that have been affected by anthropogenic activities including the removal of hazardous contamination and deteriorated military infrastructure that pose a threat to marine resources. NOAA will share this comment with the USFWS, a cooperating agency for the sanctuary designation.

J.10 Comment: Commenters stated that the draft EIS statement that NOAA needs additional authority to prohibit and address introduced (invasive) species is also faulty. The commenters note the joint NOAA/USFWS regulations issued in 2006 covering the original Monument expressly prohibit such introduced species and that, using the same authority as in 2006, the agencies could extend that prohibition to the MEA. The commenters summarize that the failure is one of management, not authority.

Commenters: Dinah Bear and Lois Schiffler

Response: Throughout the EIS, NOAA frequently mentions threats to resources of the proposed sanctuary, including the threat of invasive species. NOAA acknowledges that other authorities exist which may be used to address invasive species, including the prohibition on introducing or otherwise releasing an introduced species from within or into the Monument, provided by both presidential proclamations establishing the Monument and MEA. NOAA has revised Section 5.2.3 to include a description of the existing management actions taken to address invasive species. Despite current management, regulations to implement the provisions of Presidential Proclamation 9478 for the MEA have not been promulgated. Sanctuary designation would provide the first set of implementing regulations, along with penalties for the provisions of Presidential Proclamation 9478, including the prohibition on releasing an introduced species.

J.11 Comment: A commenter requested that NOAA develop a detailed report outlining the access rights of the Department of Defense, and the practical ramifications of any national defense exceptions awarded to the Department of Defense with respect to military training within and around the proposed sanctuary.

Commenters: Ryan King

Response: Consistent with existing management of this area and in accordance with international law, as provided by Presidential Proclamations 8031 and 9478, NOAA proposes a broad exemption to allow activities and exercises of the U.S. Armed Forces, including those carried out by the U.S. Coast Guard. As the U.S. Department of Defense (DoD) already has a broad exemption for activities in the area of the proposed sanctuary, the analysis did not include DoD activities. However, a complete description of the U.S. Navy's activities that occur within and around the Monument (a relatively small percentage of their area of operations) and an analysis of their impacts can be found at Hawaii-Southern California Training and Testing Final Environmental Impact Statement/Overseas Environmental Impact Statement (U.S. Department of the Navy, 2018)³. The Navy is in the process of preparing a follow-on NEPA analysis for future military readiness activities in the Hawai'i and California area in support of renewal of current federal regulatory permits and authorizations that expire in December of 2025. See Section 4.6.2 of the final EIS.

J.12 Comment: Commenters expressed concerns regarding the lack of analysis and description on NOAA's ability to issue "emergency regulations" to prevent or minimize the loss or injury to a sanctuary resource. The commenter stated that the regulations issued jointly by

³ U.S. Department of the Navy. 2018. Hawaii-Southern California Training and Testing Final Environmental Impact Statement/Overseas Environmental Impact Statement. October 2018.

NOAA and USFWS in 2006 for the original Monument contain an exemption from prohibitions for emergency actions, and that Presidential Proclamation 9478 specifically exempts from prohibitions activities “necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.” The commenters questioned why sanctuary authority to issue sanctuary regulations is necessary given existing provisions and regulations for the Monument.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA acknowledges that the existing management of the area includes exemptions for any activity necessary to respond to emergencies that threaten life, property, or the environment, or to activities necessary for law enforcement purposes. These exemptions are also proposed for the sanctuary. However, NOAA’s references to “emergency regulations” throughout the EIS are not referring to this exemption, but to NOAA’s authority pursuant to 15 CFR 922.7, which states that “where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition.” This authority may be useful in implementing immediate temporary regulations to protect resources following incidents of resource damages, such as vessel groundings or disease. NOAA has added information regarding emergency regulations in the final rule, Section IV.O.

J.13 Comment: A commenter asked if the timeline for the seawall removal at French Frigate Shoals is listed (in Table 5.1 of Section 5.6.2) as unknown because there are no funding appropriations for the priority, or if there is another reason.

Commenters: Birgit Winning

Response: This project is outside the scope of the sanctuary designation, as infrastructure at French Frigate Shoals falls under the jurisdiction of the USFWS. NOAA will share this comment with the USFWS, a cooperating agency for the sanctuary designation.

J.14 Comment: A commenter noted that throughout the document, the claim is made that “At present, there are no regulations to authorize permitting or enforce the prohibitions in the MEA as outlined in Presidential Proclamation 9478.” Similarly, “Sanctuary designation provides the authority for a permitting system to manage waters of PMNM and the MEA in coordination with the Monument permitting system, eliminating potential gaps in management”, or that, “the MEA currently has no access restrictions.” The commenter does not believe this characterization of the current management is accurate. The commenter states that existing authorities enable the Monument co-managers to manage the MEA, and any gap area is merely NOAA-specific and not reflective of management as a whole.

Commenters: U.S. Fish and Wildlife Service

Response: NOAA disagrees with this comment. There are currently no implementing regulations, including regulations for permitting in the MEA for the provisions of Presidential Proclamation 9478. While Presidential Proclamation 9478 states that the Secretary of Commerce and the Secretary of the Interior shall share management

responsibility of the MEA, regulations to issue permits have not yet been established. Until a formal permitting process is developed, activities in the MEA have been approved via a Letter of Authorization signed by USFWS. The use of letters of authorization is only temporary until a formal permitting process is implemented and should not be considered precedent setting. The co-trustees agreed to implement this USFWS process as an interim measure. Sanctuary designation would provide the first set of regulations for permitting in the area of the MEA. Regarding the statement that the MEA has no access restrictions, NOAA maintains that statement. Presidential Proclamation 9478, which establishes the MEA, does not address access. The proposed sanctuary regulations would provide the first regulation for access to the area of the MEA. While interim measures, such as the letter of authorization, have been used since the designation of the MEA, enforcement of the provisions of Presidential Proclamation 9478 is limited because regulations have not yet been codified.

No Action Alternative Analysis

J.15 Comment: Commenters requested a more detailed description and analysis of the No Action Alternative, that would compare the protections currently in place, as well as the existing MOA that governs Monument management amongst the Monument co-trustees, with the changes implemented through sanctuary designation. One commenter specifically requested a comparative analysis of the proposed sanctuary permitting structure with the existing permitting process for the Monument. Commenters stated that a comparison of the potential effects of the No Action Alternative and the action alternatives requires an accurate description of the No Action Alternative.

Commenters: Lois Schiffer and Dinah Bear, Shark Stewards, Isaac Harp

Response: See also the response to J.1. In response to this comment, NOAA made revisions to the description of the No Action Alternative in Section 3.2. NOAA has added more detail on the existing management framework and authorities that govern the area of the proposed sanctuary, as well as a description of the existing prohibited and regulated activities, exemptions, and permitting process. NOAA also specifically acknowledges the existing Monument MOA in Section 3.2.2 of the final EIS. Section 3.3 of the final EIS states that NOAA would work in cooperation with the Monument co-trustees to update the Memorandum of Agreement for Promoting Coordinated Management of Papahānaumokuākea Marine National Monument with the State of Hawai‘i, Department of the Interior/USFWS, and OHA to reflect the addition of the proposed sanctuary, and specifically address how the addition of a sanctuary would supplement and complement, and not supplant, the existing Monument management framework. NOAA also mentions that the existing Monument MOA includes a provision, stating “In the event of the designation of the Monument or any portion of the Monument as a National Marine Sanctuary under the National Marine Sanctuaries Act, nothing herein shall be construed as automatically terminating or otherwise amending this Agreement.” In sections 3.3.1 and 3.4.2, NOAA has also revised the description of proposed permitting for the sanctuary, and clarified that the sanctuary permitting regulations were developed to allow for integration with the

Monument permitting system, to ensure continued joint permitting administered by the MMB.

J.16 Comment: Commenters emphasized that NOAA fails to explain why the agency cannot issue regulations or take other actions of a legal nature for the MEA outside of sanctuary designation. The commenters ask why NOAA had the authority to issue regulations for the original Papahānaumokuākea Marine National Monument and yet does not have that authority for the MEA. Commenters also stated that the draft EIS fails to identify pertinent authorities of the co-trustees that may fill in any gaps in NOAA’s legal authorities.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA does not dispute that NOAA Fisheries has the authority to issue fishing regulations for the MEA under the authority of the MSA. However, no such regulations have been issued. (Please see the responses to D.9 and J.14.) Further, there are additional provisions of Presidential Proclamation 9478 that are outside the scope of the MSA. The NMSA is the most comprehensive NOAA authority to conserve and manage areas of the marine environment which are of special national significance, and to implement the provisions of Presidential Proclamation 9478. NOAA has a variety of other potentially applicable authorities, but each of those authorities is resource specific and does not cover the scope of the proclamation. The NMSA provides authority for comprehensive and coordinated conservation and management of marine areas, and activities affecting them, in a manner which complements existing regulatory authorities.

NOAA has revised the description of the No Action Alternative in Section 3.2, adding more detail on the existing management framework and authorities that govern the area of the proposed sanctuary (see the response to J.15).

J.17 Comment: Commenters expressed concern regarding NOAA’s conclusion that the No Action Alternative will have “neither beneficial nor adverse effects.” The commenters emphasized the primary discussion of the impacts of the No Action Alternative imply that NOAA believes there would be adverse effects of the No Action Alternative.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA has made some revisions to the analysis, but it does not change the conclusion that selection of the No Action Alternative would not result in any change to existing or expected future management or uses of the area, and therefore no new beneficial or adverse impacts would occur from the No Action Alternative. However, impacts, both adverse and beneficial, presently occurring would continue to occur and would continue to be addressed to a certain degree through existing Monument management and existing federal and State authorities and programs. In Section 5.1 of the final EIS, NOAA has specifically clarified no new beneficial or adverse impacts would occur from the No Action Alternative, beyond what is presently occurring.

Analysis of an Alternative that includes Middle Bank

J.18 Comment: Commenters expressed that NOAA should consider a sanctuary which includes all of Middle Bank, and felt the EIS failed to analyze an alternative that included Middle

Bank. Commenters expressed there was a lack of data to inform the potential effects of the inclusion of Middle Bank in the proposed sanctuary, and requested a literature review compiled by a subcommittee of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, synthesizing information on the conservation value of Middle Bank and the implications for a sanctuary boundary decision, be incorporated into the final EIS. Commenters requested that the final EIS fully analyze the biological/ecological, economic, social, and cultural impacts of a sanctuary boundary alternative encompassing all of Middle Bank, specifically on the potential effects the inclusion of Middle Bank would have on traditional practices and livelihoods of local fishers.

Other comments requested that the final EIS provide data to support the statement that Middle Bank is important to Kaua‘i fishers and should include a summary of the economic, social, and cultural benefits of maintaining access to the fishery resources in the portion of Middle Bank currently open to fishing. Commenters expressed that the EIS analysis should identify and assess alternative ways to enhance subsistence and Indigenous access to the area of Middle Bank currently open to fishing, thereby helping protect Native Hawaiian traditional and customary fishing practices.

Finally, commenters also requested that if a detailed analysis of Middle Bank is not completed, the final EIS should provide a detailed explanation of why this alternative is inconsistent with the stated purpose and need of sanctuary designation and the NMSA. Commenters expressed that the elimination of a Middle Bank alternative from detailed study because of the State's opposition is inconsistent with the guidance in response to Question 2A in the Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (46 Federal Register 18026); and the decision to eliminate the Middle Bank alternative also did not consider what the draft EIS reported to be the guiding questions that directed ONMS' analysis, including the question: How does the spatial extent of the proposed sanctuary affect the resources, natural environment, cultural heritage, and human uses in and around the proposed sanctuary?

Commenters: Linda Paul, Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council, Donald Schug, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly

Response: When developing the draft EIS, NOAA considered analyzing an alternative that included all portions of Middle Bank in the proposed sanctuary boundary, but eliminated this alternative from detailed study. The State of Hawai‘i opposed a sanctuary that expanded towards the main Hawaiian Islands. The purposes and policies of the NMSA state that ONMS “develop and implement coordinated plans for the protection and management of these areas with appropriate federal agencies, state and local governments, etc.” As the State of Hawai‘i is a co-trustee for the Monument and a co-manager for the proposed sanctuary, NOAA concluded that designating a sanctuary that disregards the State’s opposition of expanding towards the main Hawaiian Islands would not fulfill the purposes and policies of the NMSA, and therefore not meet the purpose and need for the proposed designation. Therefore, NOAA disagrees that elimination of this boundary from further consideration, in part, due to the State’s opposition, is inconsistent with NEPA guidance.

NOAA has provided additional reasoning for its elimination of a boundary that included all of Middle Bank in Section 3.7.1 of the final EIS. See also the response to I.3. Specifically, in accordance with the NMSA, NOAA may designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if it is determined that the area is of a size and nature that will permit comprehensive and coordinated conservation and management. NOAA concluded that any boundary alternative that expands beyond the existing boundaries of PMNM and the MEA would not be practicable in light of the need for comprehensive and coordinated management in a manner which complements the existing Monument management framework.

Therefore, NOAA has not completed an analysis of the biological, economic, social, and cultural impacts of a sanctuary boundary that includes all portions of Middle Bank, and has not analyzed the impact of this alternative, and any variations of this alternative, on traditional practices and livelihoods of local fishers. The literature review provided by the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council has not been summarized in the EIS; however, the original comment and the literature review are available in this appendix (Appendix K), as the appendix includes all comments received in full.

J.19 Comment: Commenters expressed concern that NOAA is unable to enforce the commercial fishing prohibition at Middle Bank and requested Alternative 1 describe the potential adverse biological effects of current and future fishing at Middle Bank.

Commenters: Donald Schug

Response: See the response to D.22. NOAA Fisheries and the State of Hawai‘i have authority for fisheries management in this area. Regarding enforcement, see the response to B.21. Regarding the analysis of adverse biological effects of current and future fishing at Middle Bank, the geographic scope of the analysis only includes areas of the marine environment within the Monument, and does not include the portion of Middle Bank that falls outside the Monument, where fishing occurs.

J.20 Comment: Commenters requested that the final EIS acknowledge the public support for the inclusion of Middle Bank within the proposed sanctuary, noting that only three of 25 individuals consulted for the Cultural Impact Assessment expressed opposition to the inclusion of Middle Bank.

Commenters: Linda Paul, Donald Schug, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly

Response: In Section 3.7.1, NOAA has added an acknowledgement that NOAA did receive comments of support, as well as opposition, for an alternative that included all of Middle Bank.

J.21 Comment: Commenters requested that the final EIS remove any reference of assurances from NOAA to Kaua‘i fishers during public meetings regarding the 2016 Monument Expansion that the Monument boundary would not extend further towards Kaua‘i. There is concern that

the sanctuary boundary alternative (regarding Middle Bank) was pre-determined before the sanctuary designation process began. Commenters also noted that the draft EIS stated “there was significant opposition, including from fishers, to expand the boundary and include all of Middle Bank.” Commenters requested that the word “significant” be removed, as it suggests that public opposition to the inclusion of all of Middle Bank outweighs support for inclusion.

Commenters: Linda Paul, Donald Schug, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly

Response: In the EIS, NOAA acknowledges comments of support and opposition for an alternative that included all of Middle Bank. This includes comments referencing assurances provided to Kaua‘i fishers during public meetings regarding the 2016 Monument Expansion that the Monument boundary would not extend further towards Kaua‘i (Nohopapa Hawai‘i, 2023).⁴ NOAA has added clarification that a boundary alternative that would include Middle Bank received significant opposition during the sanctuary designation process, during both scoping and public comment review of draft designation documents. This boundary alternative was considered, but eliminated for multiple reasons (see Section 3.7.1), including opposition expressed during the sanctuary designation process.

J.22 Comment: Commenters requested that the final EIS remove the statement that the State of Hawai‘i manages fishing at Middle Bank, as Middle Bank is located entirely within federal waters, and therefore, fishing activity at Middle Bank should be managed by the federal government.

Commenters: Linda Paul, Donald Schug, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo, Thorne Abbott, Doug Fetterly

Response: In the final EIS Section 3.7, NOAA has clarified that Middle Bank is managed by both NOAA Fisheries and the State. Although there are no Middle Bank specific fishing regulations, State regulations and management actions do apply. The area is mainly known for its deep-7 and uku fishery, originating primarily from the island of Kaua‘i. Both uku and deep-7 are managed under state and federal co-management. Following the requirements of the MSA, both are managed under a stock assessment which determines stock status at a regular interval. Stock assessments are managed at a Main Hawaiian Islands-wide level, not a finer scale. Both fisheries are held to a specified Annual Catch Limit over which the Main Hawaiian Islands catch cannot exceed per year. Both fisheries are currently assessed as neither overfished nor experiencing overfishing. Other examples of state and federal co-managed fisheries include deepwater shrimp, kona crab, precious corals, and various pelagic species. In addition, commercial marine license holders are required to report all landings, which would include those at Middle Bank. These catches, which are based on commercial reporting grid, allow the State to track fishing in the area.

⁴ Nohopapa Hawai‘i. 2023. E Ho‘i I Ke Au A Kanaloa. Cultural Impact Statement and Legal Analysis for the Proposed Designation of a Papahānaumokuākea National Marine Sanctuary.

Analysis of Alternatives that include Midway Atoll

J.23 Comment: A commenter requested that the final EIS clearly describe how Alternative 1, as compared to Alternative 3, would provide enhanced protection of the marine waters of the Midway Atoll National Wildlife Refuge from each of the threats described in the draft EIS, including how such protection would be above and beyond that which is provided by existing laws, policies and regulations (e.g., Clean Water Act, CERCLA, Oil Pollution Act, Marine Mammal Protection Act, and Endangered Species Act). Further, the final EIS should describe how the overlay of the proposed sanctuary on Midway Atoll National Wildlife Refuge in Alternative 1 would be consistent with the presidential proclamations.

Commenters: Friends of Midway Atoll National Wildlife Refuge

Response: In response to this comment, NOAA has revised the description of existing management in the description of the No Action Alternative (Section 3.2), providing a clearer articulation of what exists under current management, and in the following sections of Chapter 3, how sanctuary designation would supplement and complement existing management. The final EIS has also been revised to more clearly articulate that sanctuary designation would not change existing authorities, and all existing authorities would remain in effect under all action alternatives.

Due to the existing management measures and protections enacted over the years, presented in sections 3.2 and 4.2, the proposed sanctuary designation primarily supplements existing protections and imparts only a few new restrictions and requirements on users. Sanctuary designation would not remove Monument designation or accompanying regulations, and would not remove any other existing authorities. The scope of the impact analysis focuses on minor changes proposed to improve consistency of regulations across the area of the proposed sanctuary and additional protections imparted by NMSA program regulations. The primary focus is on the impacts caused by the differences between action alternatives compared to existing management under the No Action Alternative. However, NOAA does provide a table (Table 6.1) showing the comparison of the aggregate average impacts for each alternative, including a comparison of impacts between Alternative 1 and Alternative 3. Finally, NOAA has concluded that a sanctuary that overlays Midway Atoll National Wildlife Refuge is consistent with the spirit of cooperative management in directives that established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve and the Monument.

J.24 Comment: Commenters suggested that the final EIS: (1) describe the role of Midway Atoll National Wildlife Refuge in providing support for all Monument partners and how Midway Atoll National Wildlife Refuge operations will be affected under each alternative for the proposed sanctuary; and (2) describe how implementation of the Midway Atoll Comprehensive Master Plan would support access, scientific research, environmental education, public appreciation of sanctuary resources, human safety, and partner agency operations. Commenters requested that the 2021 Midway Atoll Comprehensive Master Plan, and information on the proposed public visitation program, be included and evaluated in the cumulative effects assessment of the final EIS.

Commenters: Friends of Midway Atoll National Wildlife Refuge, Ann Bell

Response: Section 3.6 of the final EIS, with regards to human activity, describes why Midway Atoll is unique within the Monument. In Section 3.2, NOAA has provided additional information on the existing management framework for the Monument, including Midway Atoll National Wildlife Refuge. Regarding the request that the EIS describe how Midway Atoll National Wildlife Refuge operations would be affected by sanctuary designation, NOAA has provided additional clarity in Section 3.3 describing elements common to all action alternatives. Notably, through sanctuary designation, NOAA would supplement and complement existing management of the Monument. As a result of the existing successful Monument management framework, of which ONMS is a critical part, the final rule has been specifically designed to uphold the current management framework, to be consistent with the current management framework, and to allow for seamless operations between the Monument and proposed sanctuary.

NOAA has also clarified that nothing in these regulations or establishment of the national marine sanctuary shall diminish USFWS' authority to administer Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge under the National Wildlife Refuge System Administration Act (and other acts). Where Papahānaumokuākea National Marine Sanctuary overlaps Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge, NOAA would implement the National Marine Sanctuaries Act to provide supplemental authority to protect resources. NOAA and USFWS are developing an agreement to provide details on the execution of sanctuary management where the national marine sanctuary overlaps with Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge.

Most of the activity at Midway Atoll is land-based and is only indirectly related to this sanctuary designation action. Under Alternatives 1 and 2, the sanctuary boundary would overlay the pre-existing Midway Atoll and Hawaiian Islands National Wildlife Refuges, which are administered by the USFWS pursuant to the National Wildlife Refuge System Administration Act. The USFWS would retain sole management authority over the lands and waters within the boundaries of the refuges. Where the sanctuary overlays the marine areas of the refuges, NOAA may provide supplemental authority to strengthen protection of resources.

The final EIS addresses the implementation of Midway Atoll Comprehensive Master Plan, generally speaking, in the Cumulative Impact Analysis (see Section 5.6). NOAA, however, cannot speculate about how USFWS would implement the Midway Atoll Comprehensive Master Plan upon sanctuary designation to specifically support access, scientific research, environmental education, public appreciation of sanctuary resources, human safety, and partner agency operations.

J.25 Comment: The draft EIS states that the exclusion of refuge waters would have an adverse impact on the existing laws and management, because it “may potentially require permittees to obtain two permits, one for the activity that falls within the area of the sanctuary, and another for the area that falls outside the sanctuary but within the national wildlife refuge.” A commenter stated that if refuges are part of the Monument permitting system, the only reason

two permits would be needed is if a sanctuary permit is required in addition to a monument permit.

Commenters: U.S Fish and Wildlife Service

Response: NOAA has made revisions to the final EIS in response to this comment. See the response to E.3 for details on proposed sanctuary permitting. The sanctuary regulations were developed to allow for integration with the Monument permitting system, to ensure continued joint permitting administered by the MMB. These proposed sanctuary permit categories were designed to provide the same management function and permittee interface as the current Monument permit categories.

In addition, NOAA has removed this commenter's referenced portion of the impact analysis in the final EIS, Section 5.5.1. NOAA and the State agree with the comment, and have removed any statements implying there would be adverse impacts due to the creation of an additional permitting process/system.

Other

J.26 Comment: The draft EIS states that it relied on the Council on Environmental Quality's 2020 NEPA regulations. However, those regulations were amended, effective May 20, 2022. While scoping concluded before then, most of the draft EIS was likely written after promulgation of the final 2022 regulations.

Commenters: Lois Schiffer and Dinah Bear

Response: NOAA prepared this EIS in accordance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*) and CEQ's 2020 NEPA regulations because review of the proposed action began on November 10, 2021, which preceded the effective date of CEQ's Phase 1 and Phase 2 NEPA regulations (May 20, 2022 and July 1, 2024, respectively). However, the EIS is consistent with the Phase 1 rulemaking. Specifically:

- the Purpose and Need for the EIS complies with 40 CFR 1502.13 of the Phase 1 rule;
- the EIS analyzes the direct, indirect, and cumulative impacts of the alternatives, consistent with 40 CFR 1508.1(g) of the Phase 1 rule; and
- The EIS considers a reasonable range of alternatives that are technically and economically feasible, and meet the purpose and need for the proposed action, consistent with 40 CFR 1508.1(z) of the Phase 1 rule.

NOAA believes that this approach represents the best combination of regulatory consistency and stringent environmental review.

K. Sanctuary Administration and Funding, Resource Protection, Education and Outreach, Partnerships, and Sanctuary Advisory Council

Administration and Funding

K.1 Comment: Commenters emphasized the importance of having Kānaka ‘Oiwi in leadership positions for the sanctuary, such as a Native Hawaiian in the Superintendent role. Some commenters emphasized the importance of having full-time Native Hawaiian staff positions, including a Native Hawaiian Program Specialist. Commenters also expressed the importance of having Native Hawaiians implementing sanctuary management, conducting agency inreach, and guiding decision making. Additionally, commenters emphasized the need for full-time Native Hawaiian staff who have the credible knowledge, skills, and experience to ensure the Hawaiian cultural objectives and strategies are met.

Commenters: Maribel Ybanez, Evan Hamaoka, Naomi Himley, Roxane Keli‘ikipikāneokolohaka, Ashley Wong, Council for Native Hawaiian Advancement, American Civil Liberties Union of Hawai‘i, ‘Aha Pūnana Leo, Bishop Museum, Boys & Girls Club of Hawai‘i, Hawai‘i Land Trust, ‘Iolani Palace, Kanaeokana, Native Hawaiian Education Council, Papa Ola Lōkahi, Partners in Development Foundation, Pouhana O Nā Wāhine, National Wildlife Federation, Jackie Milligan, Surfrider Foundation Hawai‘i

Response: NOAA and the State of Hawai‘i agree that it is important to have Native Hawaiian expertise in management, including in leadership roles. The Native Hawaiian Program Specialist position, which is a current NOAA position for the Monument, would continue after sanctuary designation to further support the building of these partnerships and the integration of Hawaiian knowledge, values, and practices into co-management through the guidance provided in Mai Ka Pō Mai and in the proposed sanctuary management plan.

The sanctuary management plan (Appendix A) provides strategies to guide management based upon principles and examples of pono practices from Mai Ka Pō Mai. Native Hawaiian cultural integration and cultural proficiency are themes cross-cutting all Kūkulu, or pillars of management, within the plan including resource protection, research, governance, partnerships, and education/outreach. Sanctuary management plan strategies that emphasize these priorities include:

- Strategy 3.6. Integrated and Inclusive Management: Integrate diversity, equity, inclusion, and accessibility into our business practices and organizational culture to increase the diversity of our workforce and create a more inclusive work environment.
- Strategy 3.2. Culturally Integrated Management Approach: Continue to conduct and improve programs and initiatives to increase internal cultural capacity and proficiency.

Additionally, management of the site would rely upon input from advisory bodies (NWHI Coral Reef Ecosystem Reserve Advisory Council and the Native Hawaiian Cultural Working Group) to provide input in various areas of decision making, including permitting. See also comments C.1, C.2 and E.9.

K.2 Comment: Commenters provided questions about the adequacy and sustainability of funding to implement the proposed regulations and management plan, including statements of concern regarding the effects of funding gaps on the viability of management. Commenters expressed concern that insufficient funding and resource allocation makes it difficult and/or impossible for monitoring, surveillance, and enforcement, including detecting illegal fishing activities.

Commenters: Roxane Keli‘ikipikāneokolohaka, Papahānaumokuākea Native Hawaiian Cultural Working Group, Nicolas Anderson, Susan Olson

Response: Management of the proposed sanctuary is envisioned to be funded by a mix of federal appropriations, external funding from collaborations with other agencies and organizations, and in-kind/volunteer support and supplies. Although the federal budget for the sanctuary would be contingent on several factors, including the federal appropriations process, overall operational and construction budgets for NOAA as determined by Congress, and spending priorities determined by NOAA. In general, NOAA anticipates the budget to grow over time to meet the needs of sanctuary management. Collaboration with partners, including non-profit organizations, is also anticipated to help implement key programs and activities.

Although ONMS equally views the monitoring, surveillance, and enforcement efforts as critical components of overall protection, ONMS also recognizes that this responsibility largely falls on law enforcement partners with NOAA’s Office of Law Enforcement and the U.S. Coast Guard. To assist in this coordinated effort, ONMS facilitates a PMNM Law Enforcement Coordination Team which is composed of law enforcement representatives from NOAA, U.S. Fish and Wildlife Service, U.S. Coast Guard, and Hawai‘i Division of Conservation and Resource Enforcement. This group meets regularly to coordinate joint enforcement efforts in PMNM.

K.3 Comment: A commenter requested sufficient funding specifically for the removal of the seawall and decaying infrastructure at Lalo.

Commenters: Birgit Winning

Response: Although the sanctuary would not include shore-side infrastructure under its jurisdiction, the MMB sees the mitigation of effects from aging infrastructure in the Monument as being one of the highest priorities. This has led to a recent Lalo resilience study that is now being reviewed by Monument managers to determine the best path forward.

K.4 Comment: Commenters expressed support for funding priorities identified in the sanctuary management plan, including a Native Hawaiian Cultural Program, to enhance

understanding of cultural values; and a dedicated research vessel to implement site-specific research and monitoring.

Commenters: Papahānaumokuākea Native Hawaiian Cultural Working Group, William J. Aila Jr. and Melva N. Aila

Response: Sanctuary status would allow NOAA to enhance, or fill gaps in, critical programmatic/management priorities through the NMSA. This includes allowing NOAA to maintain a Native Hawaiian Cultural Program to conduct Kānaka ‘Ōiwi access and research and enhance understanding of Hawaiian cultural values, concepts, and traditional resource management stewardship. Another priority is to initiate the build and operation of a dedicated research vessel to support resource protection, research, and monitoring activities within Papahānaumokuākea.

K.5 Comment: A commenter requested that federal funding be distributed equally amongst all co-trustees.

Commenters: Northwestern Hawaiian Islands Hui, Pua‘āinahau Foundation, Hawai‘i Wildlife Fund, Malu ‘Aina, Life of the Land, Hālau Nā Mamo o Pu‘uanahulu, Malama Makua, Isaac Harp

Response: Federal funding for the sanctuary would be provided, in part, as a portion of the annual Congressionally-appropriated budget for NOAA’s ONMS. Meanwhile, the Monument is administered jointly by four co-trustees—the Department of Commerce (including NOAA), the Department of the Interior, the State of Hawai‘i, and the Office of Hawaiian Affairs. Each federal department and state agency provides support and funding for Monument management through their own, separate budget appropriations or allocation processes. These separate processes do not guarantee that this combination of federal and state funding would be equal across the co-trustees from year to year; however, NOAA works closely with our partners as we jointly manage the Monument and would continue to do so if a sanctuary is designated. For example, through agreements with the State of Hawai‘i and the Office of Hawaiian Affairs, NOAA has assisted in funding its partners’ Monument management activities.

Resource Protection/Threat Management

K.6 Comment: Commenters suggested that scientific research should not be conducted in a way that would harm resources. Commenters also expressed concerns about the use of remotely operated vehicles (ROVs) and other scientific instruments on the seafloor.

Commenters: Matthew Murasko, Susan Kiskis, Djedi Alliance, Rainbow Warrior Collective, Alisha Chauhan, Cindy Freitas

Response: The sanctuary includes a permitting system modeled after the existing Monument permitting system, such that there are sufficient safeguards in place that apply to the permit review process for all activities, including for scientific research and ROVs.

The sanctuary has adopted the same permit criteria as currently required for Monument permits, including that the proposed activity would be conducted in a manner compatible

with resource protection. In addition, conditions can be placed on the permit specific to the activity being permitted and permit applications would be reviewed with respect to all other pertinent regulations and statutes, including NEPA, 42 U.S.C. 4321 *et seq.*, and any required consultations, permits, or authorizations.

K.7 Comment: A commenter recommended NOAA consider an established framework for identifying vulnerable marine ecosystems from images for permitted scientific exploration and research activities.

Commenters: Deep Ocean Stewardship Initiative

Response: The National Marine Sanctuary System has an established framework, called condition reports (or, in the case of PMNM, the State of the Monument Report) to assess the condition and trends of national marine sanctuary resources and ecosystem services. The *2020 State of Papahānaumokuākea Marine National Monument Report* documents the status and trends of Papahānaumokuākea resources from 2008-2019. The report not only notes the status of the resources, but also identifies threats to natural resources, and gaps in current monitoring and management efforts. In this way, the document identifies species, ecosystems, and geographical regions that may warrant an additional level of protection, monitoring, or research.

K.8 Comment: A commenter suggested that NOAA leave Battle of Midway vessels and aircraft undisturbed to be respectful of the war and preserve the materials for future archaeological purposes.

Commenters: Jake Ruby

Response: NOAA's management principles emphasize an *in situ* management approach for the long-term protection of site information and integrity, as well as other preservation methods and activities outlined in the ONMS policy guidance document *Monitoring and Management of Tangible Maritime Heritage Resources*.

The Sunken Military Craft Act of 2004 preserves and protects all sunken military craft that are owned by the U.S. government, as well as foreign sunken military craft that lie within U.S. waters, from unauthorized disturbances.

K.9 Comment: A commenter recommended that NOAA clean up the eroded/deteriorated military infrastructure, plastics, or derelict fishing gear at Midway Atoll and/or Lalo.

Commenters: Skippy Hau, Birgit Winning

Response: The terrestrial areas of Midway Atoll and Lalo are outside of NOAA's jurisdiction, and would remain so in the event of sanctuary designation. The USFWS, a Monument co-trustee, oversees the Midway Atoll National Wildlife Refuge and the Hawaiian Islands National Wildlife Refuge. The USFWS is attempting to remediate natural areas that have been affected by anthropogenic activities including the removal of hazardous contamination and deteriorated military infrastructure. Additionally, NOAA supports and partners with nonprofits like Papahānaumokuākea Marine Debris Project that work to

remove plastics and derelict fishing gear from both terrestrial and near shore waters of the refuge.

K.10 Comment: Commenters expressed concerns regarding the impacts of sonar activity and underwater detonations to marine mammals, fish, sea turtles, and sea invertebrates. Commenters specifically expressed concern with impacts from sonar activity and testing by the military. One commenter recommended mid-frequency active sonar as an alternative technology.

Commenters: Lynn Ryan, Claire Iloprizi, Susan Olson, Cindy Freitas, Nā Iwi Kūpuna

Response: Consistent with the presidential proclamations establishing the Monument, NOAA would prohibit “using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a sanctuary resource.” NOAA would also prohibit, unless conducted pursuant to a permit “removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource.” The use of sonar by U.S. Armed Forces is a lawful Armed Forces activity and the use has been analyzed by the U.S. Navy within prior environmental planning documents (U.S. Department of the Navy, 2018)⁵ and is subject to other applicable laws, permits, and authorizations, including the MMPA.

NOAA provides a broad exemption to allow activities and exercises of the U.S. Armed Forces, including those carried out by the U.S. Coast Guard, to be consistent with existing management of this area, as provided for the Monument by Presidential Proclamations 8031 and 9478. However, all activities and exercises of the Armed Forces shall be carried out in a manner that avoids, to the extent practicable and consistent with operational requirements, adverse impacts on sanctuary resources and qualities. See also the F.3 response.

K.11 Comment: A commenter recommended protections for koholā (humpback whale) that are similar to the protections included in Hawaiian Islands Humpback Whale National Marine Sanctuary, including vessel rules, restrictions on sonar, and maintaining a minimum distance away from koholā.

Commenters: Katy Weeks

Response: NOAA would prohibit several activities in the sanctuary that are responsive to this comment, consistent with the presidential proclamations establishing the Monument. The prohibitions most relevant for the protection of humpback whales include prohibitions on “removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove, move, take, harvest, possess, injure, disturb, or damage any living or nonliving sanctuary resource” and “attracting any living sanctuary resource.” The use of sonar by the U.S. Armed Forces is a lawful activity of the Armed Forces, but is subject to other applicable laws, permits, and authorizations, including the MMPA.

⁵ U.S. Department of the Navy. 2018. Hawaii-Southern California Training and Testing Final Environmental Impact Statement/Overseas Environmental Impact Statement. October 2018.

K.12 Comment: A commenter requested that the Outer Sanctuary Zone be named “pu‘uhonua,” which means a place of safety and refuge. Another commenter asked if there would be a process for naming this area of the sanctuary.

Commenters: Isaac Harp, William J. Aila, Jr.

Response: NOAA will give further consideration to this. NOAA and the State would like to ensure an inclusive process that allows for additional input and discussion from all stakeholders and Monument co-trustees regarding a name for the Outer Sanctuary Zone. In the event that the sanctuary is designated, the proposed name and the process of naming this Outer Sanctuary Zone will be discussed within the Papahānaumokuākea Native Hawaiian Cultural Working Group, facilitated by the Office of Hawaiian Affairs.

K.13 Comment: A commenter recommended that the management plan provide mitigation strategies to address potential economic impacts and challenges faced by local fishing communities. The commenter also requested that the strategies support sustainable fishing practices and promote alternative livelihoods to ensure that the economic well-being of local people is maintained.

Commenters: Dallin Marsh

Response: The sanctuary regulations were drafted to supplement and complement existing management of the area, which already restricts fishing. For example, Presidential Proclamation 8031 for PMNM prohibited commercial fishing for bottomfish and associated pelagic species after June 15, 2011. Presidential Proclamation 9478 for the Monument Expansion Area also prohibits commercial fishing, but states that non-commercial fishing may be regulated, so long as fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade and that the resource is managed sustainably. Sanctuary designation would not change those restrictions.

Indigenous and underserved communities are two important areas where ONMS is currently expanding partnerships and engagement. The sanctuary management plan (Appendix A) contains objectives and strategies that address community engagement and support in several ways. Objective 6 is focused on enhancing community engagement and involvement, including engagement of the Indigenous Hawaiian community in the development and execution of management of the sanctuary. Kūkulu 2, Hō‘ike, calls for engagement of community in monitoring and citizen science research, and associated educational and mentorship opportunities that can be applied across the pae ‘āina, as well as conducting and supporting socio-economic research. Kūkulu 4, Ho‘oulu, contains several strategies that focus on building diverse, inclusive, and equitable partnerships that enhance the ability to serve Native Hawaiian, underserved, and underrepresented communities; and Kūkulu 5, Ho‘olaha, contains strategies for Native Hawaiian culture and heritage education, and for providing cultural outreach to serve the Native Hawaiian community. Several new community partnerships which support marine research and marine resource stewardship are underway.

K.14 Comment: A commenter suggested that an in-depth study for each species in Papahānaumokuākea be conducted to ensure that their entire habitat is protected. One

commenter asked how all life forms in the ocean would be protected while migrating in and out of the sanctuary boundaries.

Commenters: Nalani Minton and anonymous commenter(s)

Response: As part of the National Marine Sanctuary System, condition reports would be prepared in advance of any management plan review, approximately every 10 years. Condition reports (or, in the case of PMNM, the State of the Monument Report) are used by NOAA to assess the condition and trends of national marine sanctuary resources and ecosystem services. The 2009 and 2020 Reports on PMNM resources are available [online](#). These reports provide a standardized summary of resources in NOAA’s sanctuaries, driving forces and pressures on those resources, and current conditions and trends for resources and ecosystem services. These reports also describe existing management responses to pressures that threaten the integrity of the marine environment. Condition reports include information on water quality, habitat, living resources, maritime heritage resources, and the human activities that affect them. They present responses to a set of questions posed to all sanctuaries. The reports also rate the status and trends of ecosystem services. Resource and ecosystem service status are assigned ratings ranging from good to poor, and the timelines used for comparison vary from topic to topic. Trends in the status of resources and ecosystem services are also reported, and unless otherwise specified, are generally based on observed changes in status since the prior condition report.

Education, Outreach and Partnerships

K.15 Comment: Commenters suggested expanding the efforts led by the National Fish and Wildlife Foundation and Papahānaumokuākea Marine Debris Project.

Commenters: Birgit Winning, Pacific Whale Foundation

Response: NOAA currently supports efforts by these entities, and would consider this suggestion when planning future management activities. This is consistent with the sanctuary management plan (Appendix A), which contains strategies that address multiple types of research, as well as partnership building and education support. For example, Kūkulu 2, Hō‘ike, calls for supporting, conducting, and coordinating research and monitoring, incorporating multiple forms of knowledge. Kūkulu 4, Ho‘oulu, contains several strategies that focus on building diverse, inclusive and equitable partnership, including community, academic and economic partnerships.

K.16 Comment: Commenters expressed support for building partnerships with Native Hawaiian practitioners, scientific organizations, and institutions.

Commenters: Karyn Bigelow, Roberto Torres

Response: Creating partnerships with Kānaka ‘Ōiwi practitioners, scientific organizations, educational institutions, and others is crucial to supporting the management of Papahānaumokuākea. Partnerships with Kānaka ‘Ōiwi practitioners and communities help ensure the inclusivity of ‘Ōiwi worldviews. This priority is reflected in the sanctuary management plan (Appendix A), in Kūkulu 4, Ho‘oulu, Partnerships and Constituent

Engagement. Partnerships with scientific and educational institutions help ensure that research is documented, and uses the latest methodologies. Engaging with educational institutions connects future leaders, scientists, and educators to the place, with scholarship and mentoring programs providing the pathways for future careers.

K.17 Comment: Commenters emphasized the importance of raising awareness of the marine environment. Additionally, it was suggested for (1) advertisement on the marine environment throughout schools, social media, publications, and the news; and (2) sharing scientific information in a way that is accessible to the youth.

Commenters: Andy Ku, Alisha Chauhan, Zahz Hewelen, Nalani Merrill, Myra Dehestani

Response: NOAA strives to provide education and outreach that brings the place to the people. NOAA conducts and supports programs and events to teach ocean, land, climate, and conservation literacy through a biocultural lens and build connections to Papahānaumokuākea. NOAA's interpretive visitor center, Mokupāpapa Discovery Center, provides vital educational and community gathering space to bring Papahānaumokuākea to all audiences. Hundreds of teachers and thousands of students are served each year. See Section 1.2.2 in the final EIS. In addition, a broad complement of education partnerships and collaborations with other interpretive centers, Monument co-trustees, educational institutions, organizations, and businesses has, over time, expanded into a diverse network serving both kama'āina (locals) and malihini (visitors/tourists) alike. Education and outreach efforts also are amplified through collaborations with Kānaka 'Ōiwi educators and organizations to weave in 'Ōiwi values, knowledge, and place-based connections, providing a holistic understanding of how nature and culture are interwoven. Additionally, ONMS maintains a strong web and social media presence through the PMNM website, Facebook, Instagram, Flickr, and other avenues. The sanctuary management plan Kūkulu 5, Ho'olaha, reflects the priorities of raising awareness of the marine environment.

K.18 Comment: Commenters suggested the enlistment of Hawai'i fishers to help with conservation efforts by removing invasive fish species, including ta'ape and roi.

Commenters: Anonymous commenter(s)

Response: Resource protection and mitigation of alien/invasive species impacts are very high priorities for the Monument and proposed sanctuary. Resource protection staff would continue to come up with innovative management activities to address threats to sanctuary resources.

Reserve/Sanctuary Advisory Council

K.19 Comment: A commenter expressed concern that the Sanctuary Advisory Council has minimal influence or legal authority in decision making. Commenters requested the need to expand RAC/SAC authorities.

Commenters: Roxane Keli'ikipikāneokolohaka, Nai'a Ulumaimalu Lewis

Response: Section 315 of the NMSA (16 U.S.C. § 1445a) allows the Secretary of Commerce to establish one or more advisory councils to advise and make recommendations to the

Secretary regarding the designation and management of national marine sanctuaries. Advisory councils are community-based advisory groups established to provide advice and recommendations to the superintendents of national marine sanctuaries and marine national monuments across the system. Council members provide expertise about the local community and sanctuary resources, strengthen connections with the community, and help build stewardship for sanctuary resources.

Because advisory councils are authorized to advise and make recommendations “regarding the designation and management of national marine sanctuaries,” any council advice, recommendations, or comments (i) must address the planning or management of the National Marine Sanctuary System or the management and protection of sanctuary resources, and (ii) if implemented, must be part of or related to existing or potential management measures that could be authorized under the NMSA. Advisory councils, therefore, are not managing bodies of the sanctuaries; for example, they do not create regulations. Rather, they tap into their members’ and alternates’ diverse backgrounds to provide NOAA with advice and recommendations. NOAA considers all advisory council advice and recommendations, but ultimately, NOAA decides which courses of action to pursue.

K.20 Comment: A commenter requested ONMS to conduct a study on the weaknesses of the Hawaiian Islands Humpback Whale National Marine Sanctuary Advisory Council to establish a more effective Sanctuary Advisory Council for Papahānaumokuākea.

Commenters: Roxane Keli‘ikipikāneokolohaka

Response: The effectiveness of other Sanctuary Advisory Councils is outside the scope of this action. See the comment response to K.21 for more information on the Advisory Council for the proposed sanctuary.

K.21 Comment: Commenters requested clarification on the role of the Reserve Advisory Council in the sanctuary management plan and final EIS. A commenter also stated that the Reserve Advisory Council should become the Sanctuary Advisory Council, and that it should continue to engage with federal and state agencies, friends groups, and non-governmental organizations. Finally, a commenter requested that any changes to the composition of the SAC should require public review and input.

Commenters: Papahānaumokuākea Native Hawaiian Cultural Working Group, 'Aulani Wilhelm, William J. Aila Jr. and Melva N. Aila

Response: The existing Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC), formed in 2001, was created by Executive Order 13178 pursuant to the NMSA. The RAC has served as a mechanism for public input and a venue for public comment on Monument management activities, including for the areas of the Monument that overlap with national wildlife refuges. As the RAC was created pursuant to the NMSA and operates per the policies and procedures of a Sanctuary Advisory Council, the RAC is effectively already a Sanctuary Advisory Council. The identifier would be changed to be more consistent with the sanctuary designation. Revisions were made to Strategy 4.1 in the sanctuary management plan to clarify that the existing RAC would be transitioned to also

serve as a Sanctuary Advisory Council. The advisory council would continue to engage with Monument co-trustees, friends groups, non-governmental organizations, and the public. Revisions describing the role of the Sanctuary Advisory Council were also made to final EIS Section 1.3.2. See also the response to C.3 regarding seat composition.

L. Other, Editorial Changes, Including Technical Edits

L.1 Comment: A commenter suggested that a glossary of acronyms and terms be added to the draft management plan.

Commenters: Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council

Response: NOAA has included an abbreviations section to the sanctuary management plan.

L.2 Comment: Commenters noted missing or misquoted text pertaining to the description of NMSA purpose, in Section 2.2.1 and elsewhere. Specifically, one commenter noted that the word “conservation” is absent in the sections.

Commenters: Peter Auster

Response: NOAA has made revisions in the final EIS Section 1.1.2 and Section 2.1 to include the word “conservation” when referring to the purpose of the proposed sanctuary.

L.3 Comment: A commenter suggested replacing “MEA” with “Monument Expansion Area” and “OSZ” with “Outer Sanctuary Zone.”

Commenters: Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council

Response: NOAA recognizes that the term “Outer Sanctuary Zone,” proposed as the name for a portion of the sanctuary, is unfamiliar. NOAA has revised the final EIS to spell out Outer Sanctuary Zone. NOAA will continue to use the acronym MEA for “Monument Expansion Area.”

L.4 Comment: A commenter requested that the final EIS state that the Battle of Midway occurred at both Midway Atoll and at sea.

Commenters: Friends of Midway Atoll National Wildlife Refuge

Response: The final EIS refers to maritime aspects and submerged resources associated with the Battle of Midway in Section 4.5.2, Section 5.1.4, and in Appendix C. NOAA feels that the description in Section 4.5.2 clearly states that the Battle of Midway occurred at Midway Atoll and at sea in surrounding waters. A minor revision has been made to Appendix C to better reflect this aspect.

L.5 Comment: A commenter requested that the rule language be revised to allow for an ongoing process for updating the sanctuary regulations. Specifically, the commenter suggested replacing the words “as may be necessary,” in the Terms of Designation, Activities Subject to Regulation section, with “on an ongoing basis.”

Commenters: Alisha Chauhan

Response: The terms of designation, as defined under section 304(a)(4) of the NMSA, may be modified only by the same procedures by which the original designation is made, including public hearings, consultations with interested federal, Tribal, State, regional, and local authorities and agencies, review by the appropriate Congressional committees, and approval by the Secretary of Commerce, or his or her designee. Any future proposed changes to sanctuary regulations or boundaries would be subject to public review as mandated by the NMSA and other federal statutes.

L.6 Comment: A commenter provided questions and suggestions regarding perceived data anomalies in the boundary description, including:

- “The proposed SMA and SPA boundaries do not coincide with the boundaries as described in Presidential Proclamation 8031 nor do they coincide with the proclamation’s SMA and certain SPA boundaries as charted on ENC’s that are larger scale than Band 2 (General Navigational Purpose). It appears that the coordinates of the proposed boundaries may have been derived from the SMA and SPA boundaries of the national monument as depicted on the Band 2 ENC’s.
- Appendix A to Subpart W, Points 610-662 - Papahānaumokuākea National Marine Sanctuary Boundary: Points 610 through 662 form the easternmost extent of the proposed sanctuary boundary. However, these points are coincident with a portion of the Inner Reporting Area Boundary Around Nihoa ATBA. Should Points 610 through 662 be coincident with the Reporting Area Outer Boundary instead of the Inner Reporting Area Boundary?
- Pages 15302 - 15303, Appendix D to Subpart W - Unnamed, unnumbered table: ONMS did not designate a table number and name for the first set of coordinates that encompasses Kure Atoll.
- Pages 15306 - 15307, Appendix E to Subpart W, Table 1 - Ship Reporting Area (Reporting Area Outer Boundary): According to FR page 15278, Column 1: “NOAA proposes to establish this reporting area, which would be defined as “the area of the proposed sanctuary that extends outward ten nautical miles from the PSSA [Particularly Sensitive Sea Area] boundary, as designated by the IMO...” The coordinates for the Reporting Area Outer Boundary of Appendix E / Table 1 do not completely coincide with a 10-NM buffer (geodesic) from the PSSA boundary per the International Maritime Organization (IMO). I recommend a re-evaluation of the boundary points for the Reporting Area Outer Boundary.”

Commenters: Lance Roddy

Response:

- Regarding the boundary discrepancies in the special management area and special preservation areas, those boundaries have been corrected and the updated coordinate tables, to be appended to the final rule, will correspond to the coordinates as described in Presidential Proclamation 8031.

- Regarding the outer boundary of the Reporting Area, NOAA intends to define the Reporting Area as was defined by IMO Resolution MSC.171(57) and the subsequent amendment IMO Resolution MSC.279(85) adopted in December 2008. This boundary has been corrected and is now described citing the geographic coordinates of the outer boundary of the “CORALSHIPREP” reporting area of IMO Resolution MSC.279(85).
- Regarding the missing designation of a table number and name for the first set of coordinates that encompass the Kure Atoll Special Preservation Area, after investigating the issue, NOAA determined that the table did in fact have a name and number as referenced at the [web address](#) and therefore no corrective action was necessary.
- Regarding the portion of the proposed sanctuary boundary identified as being coincident with the Inner Ship Reporting Area Boundary around the Nihoa Area to be Avoided, NOAA determined that this portion of the boundary was the same as that used for both the original and expanded marine national monument, and intends that it would also be used for this portion of the national marine sanctuary boundary. Therefore, no edits were necessary.



NATIONAL MARINE
SANCTUARIES

AMERICA'S UNDERWATER TREASURES



Papahānaumokuākea National Marine Sanctuary

Final Environmental Impact Statement Appendix K1: Public Comment



U.S. Department of Commerce
Gina Raimondo, Secretary

National Oceanic and Atmospheric Administration
Richard W. Spinrad, Ph.D., Under Secretary of Commerce for Oceans and Atmosphere and
NOAA Administrator

National Ocean Service
Nicole LeBoeuf, Assistant Administrator

Office of National Marine Sanctuaries
John Armor, Director



**NATIONAL
MARINE
SANCTUARIES**

Cover Images: NOAA diver investigates whaling shipwreck; native fish swim on a coral reef; Hawaiian voyaging canoe sails in Papahānaumokuākea; Hawaiian monk seal and ulua swim over the seafloor. Photos: NOAA

Recommended Citation: National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries. 2024. Papahānaumokuākea National Marine Sanctuary Final Environmental Impact Statement Appendix K1: Public Comment. Silver Spring, MD.



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Public Comments

In accordance with Hawaii Administrative Rules, Chapter 11-200.1-27, this appendix includes copies of all written and oral comments received on the draft EIS. Letters received as paper copies, PDFs, or e-text documents are graphically reproduced below. Comments received via the regulations.gov e-portal fillable form are compiled in the table below, and oral comments are provided in transcript form.

All comments, including transcripts, are publicly accessible as posted at regulations.gov (docket #NOAA-NOS-2021-0114).

Written Comments

Submitter	Comment
Joanne Anderson	Yes please provide a protected sanctuary for all the natural inhabitants in that area. It is responsible stewardship. Mahalo.
Carl Gunderson	I would encourage recreational access to be allowed for the purposes of snorkeling and scuba diving, without an undue amount of permitting and regulation. These activities can be done in a manner that is not harmful to sea life (i.e., no spearfishing, use coral-safe sunscreen), and will increase public awareness of the sanctuary and the need to protect it. Permits should be easy to get, and there be enough of them to allow the majority of interested parties to successfully visit.
Dan Haifley	Thank you for beginning this designation process for the proposed Papahānaumokuākea National Marine Sanctuary. This will be a wonderful addition to the national inventory of marine sanctuaries and will help further their mission of research, resource protection, and education and outreach. The involvement of Native Hawaiian communities as well as the individuals and organizations involved in conservation, research, education and ocean use will be invaluable to the effort that will transform this marine national monument into a national marine sanctuary. Of utmost importance will be the preservation and, it is hoped, the enhancement of the region's biodiversity, as well as managing the area to help mitigate and deal with the impacts of climate change. I look forward to watching this process unfold, and the needed additional tools it will provide for ocean protection.
Michelle Johnston	I support this designation, as it would add the conservation benefits of a national marine sanctuary by applying additional protections and management tools to augment and strengthen conservation for the marine areas of Papahānaumokuākea. The proposed rule would add to and not diminish or replace the existing management measures and protections provided by the Monument. NOAA is proposing to adopt the management measures from the existing monument, and in a few places, add to those measures to allow for consistency in management across the proposed sanctuary area.
Ronald Whipple	I highly support this effort as it would remove Midway Island from the disastrous administrations and destruction of the islands at the hands of our National Forest Service. The islands are overrun by invasive mice and little has been done to protect the birds from being overwhelmed by washed up plastics and debris. And, destruction of national heritage structures and infrastructure must stop. None of this is natural and responsible care for the islands must be established.

Submitter	Comment
Oliver Lee	<p>I'm fully in support of the proposal to designate marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. I just can't believe it's taken almost a quarter of a century to get here. Environmentally, as global warming increases the ocean's temperature, overfishing, illegal fishing and simply bad stewardship continue, it's more important than ever that we create sanctuaries for sea life. It will also help to continue to educate the public and produce important research. Responsibly handled eco-tourism like small dive groups that help fund the sanctuary is one example. Culturally, I believe the Hawaiian people should be able to protect their land and way of life by ensuring their land and traditions can continue. Having been able to experience the land and sea aspects of Hāpuna Beach State Recreation Area, we know how much legal protection and responsible stewardship can do. I hope to see the good news later this year that this passes!</p>
Richard Spotts	<p>I strongly support and greatly appreciate this proposed national marine sanctuary designation. This designation is reasonable, necessary, timely, and in the public interest. This designation would protect significant marine species and ecosystems. This protection is especially valuable in the context of the already deadly and rapidly worsening climate and extinction crises. These crises overlap and constitute an existential threat to humanity and the biosphere. For example, please review the attached IPCC report. It summarizes the international consensus on the increasing severity of the climate crisis and the urgent need to phase out fossil fuels. Protecting marine ecosystems is a crucial part of responding to the climate crisis. These ecosystems absorb and sequester harmful atmospheric carbon. They further help address the extinction crisis by safeguarding marine biodiversity. Please proceed to adopt this sanctuary designation and actively implement its protections. Thank you very much for this wonderful work and for considering my input.</p>
Sarah Brandt	<p>I strongly support this proposal. By designating this area as a sanctuary, the future protection of the area and the life it contains will be secured. I also strongly support working with native peoples to come to decisions regarding environmental decisions and protections. Generations of people understand the land incredibly well, and can serve to protect it for this and future generations. This example needs to be upheld and needs to become standard if we are to have any hope for the future of this planet.</p>

Submitter	Comment
Connor Davis	<p>The proposal to designate portions of the Papahānaumokuākea national monument as a national marine sanctuary (while still preserving the monument status) is an all-around excellent proposed ruling that should be put into effect. The Papahānaumokuākea monument is an ideal candidate for a national sanctuary due to its status as an area of ecological importance, historical interest, and cultural significance. Ecologically, the reefs of Papahānaumokuākea are immensely interesting and vital to the local and even global habitats. With coral reef populations diminishing worldwide, the vibrant reefs of Papahānaumokuākea could serve as a source of biological study and a target for conservation. The region is also host to a wide array of endangered or threatened species of marine life. A multitude of cetacean species residing in the region are deemed threatened or endangered, many different types of sea birds roost and feed in the region, and critically endangered mammals such as the green sea turtle and Hawaiian monk seal are found at Papahānaumokuākea. The area is so environmentally critical that about 1500 of the known species there are found nowhere else in the world. Papahānaumokuākea also hosts historical significance particularly because it is the location of the Battle of Midway in World War II. This battle was a turning point for the allies and hosts a slew of historical interest as well as a multitude of ship remains that could inform historians about the war and the era. With so few naval battles in the United States' history having concrete and definable areas that can be explored and studied, Papahānaumokuākea could prove invaluable to informing our historical knowledge of World War II's naval warfare. Finally, converting Papahānaumokuākea to a national sanctuary is vital to preserving Hawaiian cultural heritage. From a spiritual standpoint, the islands and the wildlife are viewed as ancestrally sacred by the Hawaiian people. Additionally, remnants of ancient Hawaiian tribes make the place an area of archaeological and historical significance specifically for Hawaiian history and culture. With so many culturally significant Hawaiian sites being destroyed or diluted for the sake of tourism or commercialism, preserving such a beautiful and vibrant one is absolutely necessary. Papahānaumokuākea is highly deserving of a title of national sanctuary as a means to insure the vast ecological, historical, and cultural importance of the region. With the species inhabiting the region slowly dying out globally, the types of historical site being so rare, and the cultural significance to Hawaiians being harder and harder to come by, the time is now to firmly protect the Papahānaumokuākea region, preserving these aspects before it is too late.</p>

Submitter	Comment
Evan Hamaoka	<p>I agree that portions of the current Papahānaumokuākea National Marine Monument should be designated as a sanctuary. The new designation would act as an expansion of its protections as a marine national monument for the wildlife and ecosystem—it does not lose any previous protections. For one, a sanctuary designation would also prevent non-commercial fishing on its lands, which is essential to protecting endangered species such as the Hawaiian monk seal and leatherback and hawksbill sea turtles. Additionally, this designation could protect other species within Papahānaumokuākea National Marine Monument in combination with other federal statutes such as the Migratory Bird Treaty Act. One of the suggestions within the proposal is that a Native Hawaiian specialist would be appointed on staff and the “sanctuary advisory council would include Native Hawaiian seats.” Shared governance would be ideal, and I would go even further and suggest that Native Hawaiians should comprise a majority of the council seats to minimize possible interference from outside entities and promote the area’s preservation for generations to come. It holds an incredible significance for their culture, as this area is considered both the source of all life and the destination of all life after death. A 2021 study by the Commission on Environmental, Economic, and Social Policy shows that in general, conversation by indigenous groups “based around their own knowledge systems and stewardship, is the best strategy for people and nature.”</p>
Anonymous	<p>To: John Armor, Director of the Office of National Marine Sanctuaries/o PMNM-Sanctuary Designation, NOAA/ONMS1845 Wasp Blvd., Bldg 176, Honolulu, HI 96818 From: Anonymous RE: Public Comment on National Marine Sanctuary Designation for the Northwestern Hawaiian Islands Hello John, I am writing in full support of the consideration of the designation of a National Marine Sanctuary in the Northwestern Hawaiian Islands. The agencies involved, Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), and Department of Commerce (DOC) are also publishing drafts of their statements. This sanctuary is necessary to protect nationally significant biological, cultural, and historical resources and to manage this special place as part of the National Marine Sanctuary System. This area is home to many ecosystems such as the coral reef ecosystem. It is continuously being impacted by climate change, coral bleaching, rising sea levels, and habitat destruction. Being able to protect this area could give us the opportunity to preserve it for the future generations. By being able to protect these areas there will be an increase in biodiversity and productivity of species. These protected areas create a functionally productive ecosystem. The National Marine Sanctuaries Act authorizes the Secretary of Commerce (Secretary) to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance. As someone who has snorkeled in Hawaii, I have seen how valuable the coral reef ecosystem is. The possibility of no longer having such a beautifully maintained marine life would be a tragedy. I wish I could attend the meeting in Honolulu, O’ahu—April 8, 2024, 5 p.m.–8 p.m. HST, Aloha Tower, Multipurpose Room 3, 1 Aloha Tower Drive, Honolulu, Hawai’i 96813. I believe that many passionate people will be able to contribute their ideas. Not only would the addition of a National Marine Sanctuary help the ecosystem it also helps fisheries in Hawaii’s Main land. This area is a crucial site for bottom fishing, this sanctuary would help provide a source of bottomfish larvae, by helping replenish the depleted stocks of bottom fish. Thank you for the opportunity to submit comments on this important matter.</p>

Submitter	Comment
Danella George	<p>I am a retired federal land manager. BLM, USFS and a tour with US EPA Region 6 in water quality. I am in strong support for the Proposed Papahānaumokuākea designation to the National Marine Sanctuary status. The unique and diverse aquatic system is in need of protection for our marine life and water quality. The terrestrial historic and cultural sites will receive greater protection as will wildlife habitat for birds such as our beloved Wisdom. My experience with Marine Sanctuaries is the Monterey Bay Marine Sanctuary. The number of educational benefits about our oceans and creating positive tourism opportunities is platinum at the Monterey Bay Sanctuary. NOAA and the cooperating agencies will do a great job. NOAA is outstanding in managing marine sanctuaries.</p>
Anonymous	<p>I am writing this comment in support of the proposed Papahānaumokuākea National Marine Sanctuary in the Northern Hawaiian Islands. As a diver myself, going on six years open water certified, who has also dove around the Hawaiian islands, I know how important it is to protect the ecosystem and biodiversity not only for the sustainability of the oceans, but to preserve the biodiversity for future generations to admire and learn from.</p> <p>This Sanctuary has the ability to protect wildlife from high levels of overfishing occurring in the area. Overfishing is a prominent problem in Hawaii, decreasing species by nearly 75 percent over the last years. This high level of overfishing could lead to an extinction of species of fish, while specifically dwindling the amount of bottom dwelling fish. Since this sanctuary is located in a high traffic area approximately, 582,570 square statute miles of water that surrounds various parks of the Hawaiian Islands, this would be the perfect area to implement this Sanctuary and have impactful and lasting effects by largely decreasing traffic in the area.</p> <p>Other species like green sea turtles, Hawaiian monk seals, and a variety of coral species are native to that area and are in danger of extinction if the area is not protected. Since this area is high traffic for commercial ships and fishing ships, the biodiversity of the area is negatively impacted by pollution from these ships, killing off many species, and causing coral bleaching.</p> <p>Although this Sanctuary isn't won't solve all the issues surrounding the loss of biodiversity in the Northern Hawaiian Islands, it will greatly contribute to the protection of it. Please consider my stance on the addition of the Papahānaumokuākea National Marine Sanctuary, for the future of the ocean and the ecosystems that thrive within them.</p>
Curtis Mahon	<p>I prefer Alternative 1. I do have one question though, will Prohibition 3 (disallowing invasive species introductions) apply to ships/Vessels Passing Without Interruption that could have invasive and potentially very harmful algae stuck to their hulls? As your no doubt aware, along with climate change and marine debris, one of the biggest threats to the marine parts of the monument is invasive algae, such as Chondria on Midway, Kure and Pearl and Hermes, and now Acanthophora on Midway. Both were very recent finds, with Acanthophora only being first being detected in 2022. This illustrates that the risk of algae introduction is a current one which could significantly damage the reefs of the atolls, and therefore clarification on this question should be made</p>

Submitter	Comment
Elizabeth Collaton	Thank you for the opportunity to comment on the proposal to designate marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. I am in full support of this designation. It promises to honor and extend the legacy of Native Hawaiian stewardship of this vital ecosystem, as well as provide concrete jurisdictional authority to protect this entire area from illegal fishing and other activities jeopardizing the unique marine species in this part of the Pacific. Thank you.
Patrick Mansell	I support the NOAA initiative for this proposal
Anonymous	<p>Overall, I write this comment in support of the proposed Papahānaumokuakea National Marine Sanctuary. I specifically support Alternative 1 and the inclusion of Native Hawaiian seats in the advisory council. Prioritizing conservation of the expansive, beautiful, and ecologically diverse systems that surround Hawaii's northern islands is crucial for maintaining the cultural heritage of native Hawaiians for generations. While I believe the sanctuary bounds could be expanded further to encompass the Middle Bank, as long as local communities support the proposal, then I do too.</p> <p>Regulation number 20 acknowledges the regulation, up to prohibition, of Native Hawaiian practices. These practices are essential for maintaining cultural and spiritual relationships. I support permits for activities deemed necessary, but I believe that permit accessibility should be prioritized. The permit acquisition processes should be streamlined to minimize barriers to practicing these traditions.</p>
Myrna Fant	This is a very important area of the ocean as well as Hawaii. It needs all the protections the government can assign it.
Andrew Grigg	Dear NOAA,I am writing to express my strong support for the proposal to designate the marine portions of Papahānaumokuākea Marine National Monument as Papahānaumokuākea National Marine Sanctuary.This area holds immense biological, cultural, and historical significance, and there is no place for excavation, drilling or other harmful activities within the borders of the Monument.By establishing it as a national marine sanctuary, we can ensure the protection of these invaluable resources for generations to come.Preserving this special place as part of the National Marine Sanctuary System aligns with the responsibility our greater humanity has to be stewards of the environment. It offers a crucial opportunity to safeguard diverse marine ecosystems, support sustainable practices, and promote scientific research.I commend NOAA for its dedication to managing and conserving our oceans. I urge you to move forward with this proposal, as it represents a significant step towards safeguarding the natural and cultural heritage of Papahānaumokuākea.Thank you for considering my comments in support of this important initiative

Submitter	Comment
Jessica Williams	<p>Aloha! I am just an “ordinary” citizen - not a scientist or official or any kind. I grew up in Honolulu as a third-generation Chinese American and relocated to Los Angeles for graduate school and career reasons. However, I visit relatives annually in Hawaii and many of my fondest life memories are in the Islands and feel so strongly about Hawaii that I went through a lot of clicks to find this page and leave this comment. Though I’m not of Native Hawaiian descent, in my 23 formative years on Oahu, I grew to have a deep love of the entire island chain, of the aina (land) and its mana (spirit), of the people, plants, and animals that inhabit this sacred place. Hawai’i is not only a place that welcomed my ancestors and many, many races to its shores, the Hawaiian Island chain is a gift to the world that deserves our protection and malama (care). I fully support any and all attempts to preserve Papahānaumokuākea to the greatest extent possible. As others have so eloquently stated, the biodiversity here is unique and irreplaceable. It may sound trite, but as I look at my son, nieces, nephews, and extended family, I believe with all my heart that we must do all we can to protect what we have for future generations before it’s too late. Mahalo (thanks) for this opportunity to comment. I’m grateful this Sanctuary is under consideration and pray it is successful. Every part of the Hawaiian chain is a precious resource for all peoples on the Earth.</p>
Shannon Barber Meyer	<p>I support Alternative 1. This alternative provides for increased protection and conservation of resources, and improved coordination of conservation and management, while likely causing no significant adverse impacts to biological and physical resources, cultural and historic resources, or socioeconomic resources. Alternative 1 also includes areas very much in need of additional protections, such as the waters of Midway Atoll and Hawaiian Islands National Wildlife Refuges, areas of the proposed sanctuary subject to the highest level of human activity. The other alternatives do not achieve the necessary protection levels and coordination across important areas. Thank you</p>
Anonymous	<p>This is a class assignment designed to teach on how to use the Regulations.gov website. I chose to write on this proposal as designating wildlife sanctuaries is an important factor in conservation. I do not have any data to provide on the matter at hand. Many endangered species use this area as habitat. It is critical to protect areas where endangered species reside.</p>
Jane Jacobsmeier	<p>I was very pleased to read this proposal and to learn of the opportunity that Papahānaumokuākea National Marine Sanctuary has to protect marine life, including multiple species of endangered animals, and preserve the beauty of the reefs in the area. It is also vital to preserve this location due to cultural and historical significance. As someone who grew up in Hawaii, I can clearly see the benefits of this proposition and the positive impacts this sanctuary can have on the community as they demonstrate responsible stewardship for the nature around them. I agree with Section 4.6.2 in regards to recreation and human use of the sanctuary. However, in establishing limitations and regulations for activities such as snorkeling, public involvement and enjoyment should be considered. Allowing the public more opportunities to interact with the wildlife and reef of the sanctuary will increase support for these creatures and maximize awareness. While these recreational activities do have a need to be regulated, they can be responsibly completed in such a way that marine life is protected, and communities are able to experience the wonders of the ocean. With this in mind, I support this proposal and look forward to the beneficial outcomes of it. Thank you for your consideration of my comments.</p>

Submitter	Comment
Hannah Yun	<p>Hello! Thank you for the opportunity to provide a comment on the proposed regulations to the proposed rule to designate the marine portions of the Papahānaumokuākea Marine Sanctuary. I have considered Manoa, and Hawai'i more broadly, to be my second home for my entire life due to my familial ties to the island of Oahu. My uncle was born and raised in Kaneohe, and he has made an effort to share his homeland with me, rendering within me a profound respect for the culture ingrained in the islands. In addition to numerous visits throughout my childhood, I stayed with family for three months in 2021 and I soon became invested in efforts to preserve the land and ecosystems and prevent its degradation. What many mainlanders consider to be a vacation destination is the year-round home to the local and native populations, who work hard to preserve the ecosystems of the islands and, by extension, the cultural and historical significance that these ecosystems hold. I echo the assertion that the marine habitat surrounding the islands is home to a vast array of wildlife and organisms, including the green turtle, Hawaiian monk seals, the Hawaiian humpback whale, and deep reef and coral habitats. This wildlife has lived in the Pacific Ocean for a long time, and they serve critical functions in working in connection with the surrounding environment and ecosystem to preserve harmony and balance in the ocean waters and produce the same breathtaking landscape that many visitors flock to the islands to admire. As such, their function in preserving Native Hawaiian culture and history indubitably renders their protection important. Among the other proposed regulations for the proposed sanctuary, I wholeheartedly support the Prohibition on Exploring for, Developing, or Producing Oil, Gas, or Minerals, or Any Energy Development Activities. Oil drilling is widely recognized to pose an immense disruption to native wildlife, thus disrupting the ecosystems that these wildlife feed into and contribute to. In Alaska's North Slope, the local polar bears, migrating caribou, and waterfowl find their natural habitats impeded by the authorization and presence of oil-drilling projects that exploit the natural resources of the land for the sake of energy production. The continuing prevalence of oil-drilling projects in natural habitats and sensitive lands across the mainland, Alaska, and Hawai'i only further engrains the United States' dependence on non-renewable energy sources and prevents ecologically-necessary transitions to renewable energy sources. I appreciate that the proposed regulation acknowledges the direct harm that potential oil spills would have on the marine ecosystems within the Pacific Ocean, and I agree that this prohibition is critical to ensuring the preservation of these ecosystems. Nature is an extension of culture, particularly in Hawai'i. Thus, efforts to maintain the Hawaiian ecosystems and environment are efforts to preserve Hawaiian culture. I am still in progress in my semester on the mainland, but I plan to attend the virtual meeting on April 6th, and I have asked my family to attend the other in-person meetings. I am excited to track the progress of this rule and the regulations within and I look forward to seeing the development of the Papahānaumokuākea Marine Sanctuary.</p>
Jennifer Welch	<p>The proposed Papahānaumokuākea National Marine Sanctuary is an important measure to preserve Native Hawaiian sacred sites as well as preserve the flora and fauna, such as the Hawaiian Green Sea Turtle nesting sites and protection for our endangered seals. As a relative newcomer to Hawaii (12 years), I have witnessed abuse of animals on the main islands and fully support the protections proposed.</p>
Jake Ruby	<p>I support NOAA's proposed designation of the proposed sanctuary. It is important that we protect our environmental resources.</p>

Submitter	Comment
Arwain Giannini-Karline	Our oceans urgently need protected space more than ever before. Marine life needs designated areas to thrive and grow, the entire ocean is under the greatest threat we've ever seen. Any actions we can do at this point to secure the future of our reefs and marine life are absolutely vital. This wonderful effort to preserve this part of the oceans must succeed if our way of life is to continue.
E Hsieh	As a Hawaii resident I strongly support and appreciate NOAA's proposal to designate portions of the Papahānaumokuākea national monument as a national marine sanctuary (while still preserving the monument status).
Meyer Cummins	Part III. Summary of Proposed Regulations, Item D. Co-Management of the Sanctuary of the Proposed Papahānaumokuākea National Marine Sanctuary explains that "NOAA and the State of Hawai'i would collaboratively manage the sanctuary," but notes that NOAA "would establish the framework for co-management..." What role does the State of Hawai'i have in shaping the framework of the proposed co-management of the sanctuary? This section implies that NOAA will have the sole discretion to design the "co-management framework" and goes on to say that NOAA "may" develop an MOA with the state to provide greater details of the terms of the co-management. This section suggests that NOAA will be the primary manager of this co-management system, or at the very least, will be the party that decides how much managing of the sanctuary the state will be permitted to do. Exactly how will the management duties will be distributed between NOAA and the state and will the state have the ability to veto NOAA decisions regarding management if it feels it is necessary? Further, this section states that "Co-management of the proposed sanctuary with the State of Hawaii would not supplant the existing co-management structure for the Monument." If this new co-management structure does not supplant the existing one, in what way would this proposed sanctuary modify, if at all, or add to, the existing co-management structure for the Monument? To your knowledge, has the state objected to or expressed concerns about the existing co-management structure for the Monument and will this process provide the state an opportunity to modify that structure, if necessary, or permit NOAA to mitigate the cause of the state's concerns, if any?
Anonymous	Katoo au i ta malama ana o teia wahi tupuna, oia o Papahānaumokuākea. Nui na tumu kanaka no ta malama ana o ia wahi tapu, e hoolohe i na leo o ta Hawaii! I support the caring of this place by designating it a sanctuary. There's so many reasons why this place is special and MUST be protected even further than it already is. Don't ignore our voices.

Submitter	Comment
Tina Marzan	<p>While many may feel that the area in question should become one that generates more profit for Hawaii they should stop envisioning future dollar signs and look at the totality of what makes up the area, as well as its nearby surroundings, (keep in mind how far it already spreads out), and the impacts added activity and changes to existing ecosystems would be. The very thing---area, fish, protected sea life, it's habitats---many want to "use for profit" is what those same people can damage, possibly beyond repair or salvation, in implementing the changes. Much damage and unwanted change is and has already happened due to various weather and climate changes. Not every change in the ocean or near the monument areas and life there, is a good one. Want to know what has happened or what changes have already wrought in past several years or projected ones in recent, coming years? Talk with those who have worked or volunteered in the areas in past years. Then talk about what amounts to exploiting the monument and areas for profit would be like and what kind of future, if any, you're giving them.</p>

Submitter	Comment
Maribel Ybanez	<p>John Armor, Director of the Office of National Marine Sanctuaries/o PMNM-Sanctuary Designation, NOAA/ONMS1845 Wasp Blvd., Bldg 176, Honolulu, HI 96818 From: Maribel Ybanez RE: Public Comment on National Marine Sanctuary Designation for the Northwestern Hawaiian Islands Good morning, Director John Armor and members of the National Oceanic and Atmospheric Administration. My name is Maribel Ybanez and I am a Junior Environmental Science major at the University of San Francisco. I fully support NOAA-NOS-2021-0076 the Proposed Papahānaumokuākea National Marine Sanctuary. As someone who has both family and friends from Hawaii, this sanctuary would both heal a part of them that has been longing for protection for a long time and would save the oceans from the global decrease in marine biodiversity. This proposal should especially be looking into the sacredness of the waters, its impact on biodiversity, and its protection of waters in the US staying consistent. Papahānaumokuākea is sacred to the Native Hawaiians. This is a place of deep-rooted tradition, values, and practices for all generations of Native Hawaiians. The threats to the area from those only looking to kill the marine life and potentially killing the coral reefs, is affecting the land and the people who find it significant. The marine diversity in this area is massive and needs to be protected at all costs. For example, the coral reef ecosystem in this area supports 98% of the breeding population, serving as an important place for reproduction and continuing life. Papahānaumokuākea serves as an endemic hotspot and is necessary to keep the flow of endangered species that go through this area and use it. Papahānaumokuākea is already the largest contiguous protected conservation area of the United States, this proposal would not change that, but instead place it as a sanctuary, strengthening the existing protection on the land already. Therefore, not much change will be added since the United States has been protecting this area for decades, but adding a sanctuary would be mandatory for the sake of the marine life and to keep the sacredness of the waters. No culture should have to worry about their waters/lands without the maximum protection necessary. Along with culture, since this can strengthen the number in biodiversity, it is important to pass. I believe if passed, a native Hawaiian should direct it and oversee the plans for the Sanctuary. No one else can understand the waters of Papahānaumokuākea like a Native Hawaiian and should be taken seriously. I urge you to vote and initiate the Papahānaumokuākea National Marine Sanctuary, NOAA-NOS-2021-0076. Thank you for the opportunity to comment and I am willing to answer any questions you may have. Maribel Ybanez</p>
Daniela Escontrela Dieguez	<p>I strongly support the designation of Papahānaumokuākea as a National Marine Sanctuary. Papahānaumokuākea is of vital importance ecologically and culturally. The reefs in this area harbor a wide array of biodiversity and provide us with essential ecosystem functions. The sanctuary designation would also ensure the protection of highly mobile fauna such as sharks, whales and monk seals.</p>

Submitter	Comment
Anonymous	<p>The Papahānaumokuākea National Sanctuary seems incredibly beneficial to the area so I definitely support this. The sanctuary would create a stronger healthier ecosystem and preserve endangered species and rare species. This habitat is crucial for many organisms that can't be found anywhere else so if this area declines the species would be in great danger. I think the unified regulations would allow for much better care of the area as well as the increased knowledge from the research this would allow for. I cannot see a reason for this area to not receive the title of Papahānaumokuākea National Marine Sanctuary considering how important the area is to locals and the species that call it home.</p>
Anonymous	<p>Hello,</p> <p>I'm writing to support the designation of marine portions of Papahānaumokuākea Marine National Monument to be a part of the National Marine Sanctuary System. This would protect the evolving ecosystem that holds historical and cultural significance to the Northwestern Islands of Hawaii. The Pacific Ocean waters that surround the Northwest Hawaiian Islands and the submerged lands possess over seven thousand marine species. Some of these species are only found in these regions, and others are extremely endangered, such as the green sea turtle and the Hawaiian monk seal. The protection under a National Marine Sanctuary system would help prevent the tragic disappearance of these species.</p> <p>On July 30, 2010, Papahānaumokuākea was inscribed as a mixed (natural and cultural) World Heritage Site by the delegates of UNESCO at the 34th World Heritage Convention in Brasilia, Brazil. This stands true as the natural elements listed above are important to the land and the cultural aspects, such as the Battle of Midway, hold cultural meaning. Objectives must be taken to preserve the ecosystems, wildlife, culture, and maritime heritage. This can be done through applying additional regulations under the National Marine Sanctuary System and non-regulatory actions such as pedestrian evaluations and surveillance.</p> <p>I believe that authority, supervision, education, research, and protection of this area are important to the proliferation of the island's significance. As a future traveler to Hawaii, I chose this destination because of its importance, and it would be disastrous to see the natural and cultural beauty of the Northwest Hawaiian Islands deplete.</p> <p>"Aloha! Welcome to Papahānaumokuākea Marine National Monument – Where Nature and Culture Are One." Papahānaumokuākea Marine National Monument, 5 Dec. 2022, www.papahanaumokuakea.gov/about/.</p>
Anonymous	I support the establishment of this sanctuary.
Jazon Ray-Keil	I support this National Marine Sanctuary! Its a no brainer!
Anonymous	I support the establishment of the Papahānaumokuākea National Marine Sanctuary.

Submitter	Comment
Anonymous	Protecting Papahānaumokuākea and the marine organisms it houses is of utmost importance. Oceans everywhere are facing many anthropogenic impacts, and the endemic and native organisms in this incredibly biodiverse area are at risk. I strongly support the proposed Papahānaumokuākea National Marine Sanctuary.
Heuionalani Wyeth	I strongly support the increased protection of Papahānaumokuākea that Sanctuary designation would confer. This precious environment needs as much protection as possible, Please designate the area a National Marine Sanctuary. thank you.
G H	I support adding marine sanctuary status to the Papahānaumokuākea area.
Jacquelyn Benson	I support the establishment of this sanctuary!
Noelle C	I support the establishment of this sanctuary as well as the expanded boundaries. The ecological reasonings behind the proposal of this sanctuary give it justice tenfold. We need some sectors in our environment where profit does not reign over what is right. We are sucking this earth dry and this is an opportunity to prevent that from being done at Papahānaumokuākea. Economic interests who oppose this sanctuary are thinking short term, this proposal increases the chances for a healthier ocean that keeps those economic interests in opposition as well as the rest of us, "in business" for longer than we would be otherwise-this is smart longterm. This is a time of great urgency to protect what's left of our planet, and here we have the opportunity to do so.
Valerie Weiss	RE: Papahānaumokuākea Marine National Sanctuary. I support making this change to the sanctuary including especially no commercial fishing, no native Hawaiian fishing, and no aquarium fishing of any kind. No wildlife of any variety should be removed for any reason, other than possibly for treatment of injured mammals or birds. The sanctuary should be for species survival and species proliferation without the interference of humans other than medical help.
Mary Toss	I would like clear regulations enacted to support protections to the entire expanded protections to the entire federal monument area.
Len Nakano	Hello, my name is Len Nakano and I do not support a sanctuary in the NWHI. Thank you for your time.

Submitter	Comment
Klayton Kubo	<p>Summary StatementI believe the “No Action” alternative is the most appropriate action because NOAA has not provided a legally sufficient justification for designating a new National Marine Sanctuary and has mischaracterized the impacts on socioeconomics, human uses, and environmental justice associated with the proposed action alternatives.Insufficient Justification for Sanctuary DesignationNOAA has not provided a compelling argument that a sanctuary is needed to complement or supplement existing authorities, which is a statutory requirement for designating a new sanctuary. Parts or all of the proposed sanctuary are already protected as a National Monument, National Wildlife Refuge and/or State Wildlife Sanctuary. Various federal and state government agency’s already have sufficient authority under several federal and state laws to enact any of the proposed the additional regulations or management actions. These laws include the federal Magnuson-Stevens Fisheries Conservation and Management Act, Fish and Wildlife Coordination Act, Marine Mammal Protection Action, Endangered Species Act, Clean Water Act, and Rivers and Harbors Act, as well as state laws and regulations under Hawaii Revised Statutes 187a and 195d. All of the regulations and management actions proposed in the proposed action items 1-3 could be enacted under these and other existing authorities without the need for a new sanctuary designation. Note: We don’t believe any new regulations or actions are needed – to the contrary, but if the government must enact new regulations or actions, it already has the authority to do so without this new proposed sanctuary.Inaccurate Assessment of Social and Cultural ImpactsThe assessment assumes the national monument designation is permanent and thus the proposed additional fishery regulations are only modest additional restrictions. This approach fails to recognize that any national monument and associated regulations can be eliminated via an executive action. Once a sanctuary is fully designated the associated regulations require significantly more effort to change or eliminate. Thus the assessment of the potential impacts of the proposed action alternatives should consider the effort needed to undo the new regulations enacted pursuant to the National Marine Sanctuaries Act compared to the effort needed to undo existing regulations enacted under the authority of the Antiquities Act. If we continue to get areas taken away how are we going to be a self sustainable state? Also the southern line of the National Marine Monument was promised please remember that.Klayton KuboWaimea, Kaua’i</p>
Janis Clark	<p>I'm writing in support of Papahānaumokuākea becoming a National Marine Sanctuary. We are losing marine life at an accelerated pace and we must take action now to protect oceans and all marine life.</p>
Jake Ruby	<p>(I had previously submitted a comment, but had more to say after attending the April 6, 2024 online hearing)My name is Jake Ruby and I am a 3L at UH Mānoa William S. Richardson School of Law.I am writing in full support of the proposed Papahānaumokuākea Marine Sanctuary. Creating a Marine Sanctuary to protect some of the most important marine resources in the ocean waters around Hawai’i is extremely important.My only concern is the allowance of potentially harmful non-commercial fishing. While non-commercial fishing is a regulated activity, I suggest that the permits be rarely granted and tightly prescribe the amount of fish allowed.In addition to the preservation of natural resources, leaving the military vessels and aircraft from the battle of Midway undisturbed is both respectful to the war dead, and preserves the materials for future archeological purposes.</p>

Submitter	Comment
Bruce Berger	<p>I am writing to unequivocally support the establishment of the Paphanaumokuakea National Marine Sanctuary. This sanctuary is not only important to the preservation of all marine life but also respecting Hawaiian culture. It is our responsibility to preserve and protect our resources for future generations.</p> <p>Bruce E. Berger, M.D. Head of Research and Science Committee Marine Institute Maui Ocean Center</p>
Anonymous	<p>I support elevating Papahānaumokuakea a national marine sanctuary because of the priceless ecological value and natural beauty that it contains. We must protect these resources from further depletion and degradation.</p>
Quinn Goo	<p>Protecting Papahānaumokuākea and the marine organisms it houses is of upmost importance. Oceans everywhere are facing many anthropogenic impacts, and the endemic and native organisms in this incredibly biodiverse area are at risk. I strongly support the proposed Papahānaumokuākea National Marine Sanctuary.</p>
Myra Dehestani	<p>The National Oceanic and Atmospheric Administration's (NOAA) proposed designation of Papahānaumokuākea's marine areas as a national marine sanctuary is a suggested ruling that I wholeheartedly agree with, find comfort in, and feel is necessary amid the environmental conditions of today's world. With the daunting climate crisis and threats to species and ecosystems worldwide, acting to better protect the environment is a worthwhile endeavor. This designation intends to protect the area, preserve local values, strengthen protections for local ecosystems, wildlife, and culture, and make it possible to institute civil penalties and impose liability for violations of rules regarding the protected area, among other objectives (National Oceanic and Atmospheric Administration, "Proposed Papahānaumokuākea National Marine Sanctuary"). Papahānaumokuākea is particularly important for these objectives because of the inherent qualities of its marine areas, as "oceans are a vital source of food and other resources and an economic engine for many communities" (National Geographic). Furthermore, the region specifically is crucial due to the thousands of endemic marine species that reside in its waters. Two species facing the threat of extinction that rely on the region are the endangered Hawaiian green sea turtle (<i>Chelonia mydas</i>) and Hawaiian monk seal (<i>Monachus schauinslandi</i>) (National Oceanic and Atmospheric Administration, "Turtle and Seal Biologists Deploy"). Protecting these species among many others means contributing to biodiversity conservation, which is vital and "fundamental for the provision of ecosystem services, which we depend on for food, air, and water security" (Environmental Protection Agency). In addition to the environmental interest, protecting Papahānaumokuākea as a marine sanctuary also has cultural significance. Placed on the World Heritage List, Papahānaumokuākea represents "the Hawaiian concept of kinship between people and the natural world" (United Nations Educational, Scientific and Cultural Organization). More precisely, the region is "considered a sacred area, from which Native Hawaiians believe all life springs, and to which spirits return to after death" (Papahānaumokuākea Marine National Monument). As generations on generations of Native Hawaiians have dedicated themselves towards appreciating and caring for the land, these historical roots run deep, and this sentiment shouldn't be disregarded. Respecting this history through the protection of the region's waters and resources is a responsibility that should be upheld. If the State of Hawai'i is involved in this process and local</p>

Submitter	Comment
	<p>voices are considered, designating Papahānaumokuākea as a national marine sanctuary is an excellent way to honor the Hawaiian culture. For me personally, the environmental and cultural objectives of this proposed rule are among the most convincing in supporting it. Out of the three alternatives proposed for the boundaries of the national marine sanctuary at Papahānaumokuākea, I agree with NOAA’s preferring alternative, Alternative 1. This preference dedicates the most square miles to the boundaries. With modern threats to the environment, the more that’s protected, the better. Alongside protecting the area, I also suggest encouraging public interaction with Papahānaumokuākea in a safe and responsible manner to support public education, enthusiasm, and protection for the natural world. All in all, I believe this proposed rule will be an effective effort towards preserving the environment and life on earth in a time when it’s needed most. Works Cited Environmental Protection Agency. “EnviroAtlas Benefit Category: Biodiversity Conservation.” EPA, 9 Aug. 2023, www.epa.gov/enviroatlas/enviroatlas-benefit-category-biodiversity-conservation. National Geographic. “Protecting Marine Ecosystems.” National Geographic, education.nationalgeographic.org/resource/protecting-marine-ecosystems/. Accessed 15 Apr. 2024. National Oceanic and Atmospheric Administration. “Proposed Papahānaumokuākea National Marine Sanctuary.” Federal Register, 1 Mar. 2024, www.federalregister.gov/documents/2024/03/01/2024-03820/proposed-papahnaumokuakea-national-marine-sanctuary. National Oceanic and Atmospheric Administration. “Turtle and Seal Biologists Deploy to Papahānaumokuākea for the 2022 Field Season.” NOAA Fisheries, 3 May 2022, www.fisheries.noaa.gov/feature-story/turtle-and-seal-biologists-deploy-papahanaumokuakea-2022-field-season. Papahānaumokuākea Marine National Monument. “Papahānaumokuākea: A Sacred Name, a Sacred Place.” Papahānaumokuākea Marine National Monument, 5 Dec. 2022, www.papahanaumokuakea.gov/about/name.html. United Nations Educational, Scientific and Cultural Organization. “Papahānaumokuākea.” UNESCO World Heritage Convention, whc.unesco.org/en/list/1326. Accessed 15 Apr. 2024.</p>
Kate & Mike Kitchell-Eldred	<p>We applaud NOAA for developing an excellent proposal and NEPA analysis. The public information is very well done. We support the preferred alternative as it would provide added protections for an ecologically and culturally significant area as the oceans face drastic changes associated with climate change.</p>
Allison Doss	<p>I am writing to express my agreement with the proposed Papahānaumokuākea National Marine Sanctuary. As a wildlife conservationist and as someone who expresses a strong interest in learning more about other cultures and endorsing their protection, I fully support the benefits that this project poses. I believe that implementing the Papahānaumokuākea Marine National Monument as a National Marine Sanctuary would strengthen the protection of Papahānaumokuākea ecosystems, wildlife, and cultural and maritime heritage resources.</p>

Submitter	Comment
Robert Hauff	<p>I strongly support the establishment of a Papahānaumokuākea National Marine Sanctuary (Action Alternative 1). As a resident of the island of Oahu, the Sanctuary would provide benefits to our ocean environment in the main Hawaiian islands, helping protect threatened and endangered species as well as valuable fish stocks for the replenishment of over-fished species in the main Hawaiian islands. The Sanctuary could therefore play a role in improving local food security in the long-term, as well as contributing to the tourism industry in Hawaii through enhancement of wildlife viewing opportunities (such as sea turtles, cetaceans, albatross, and monk seals). The Sanctuary will also keep Papahānaumokuākea a wild, healthy ecosystem by reducing pressures from invasive species and harmful fishery interactions, benefitting the native species that are increasingly under threat from climate change and associated sea level rise.</p> <p>Large reserves, both marine and terrestrial, have been found to be critical in protecting biodiversity and the health of the planet. Research has repeatedly shown that size absolutely matters, which is why I support Action Alternative 1. Creation of the Sanctuary is forward thinking and will be viewed by future generations as an enlightened measure for protecting an incredible biological and cultural treasure for Hawaii and the entire world.</p> <p>Mahalo.</p>

Submitter	Comment
Dallin Marsh	<p>I am writing to express my strong support for the designation of Papahānaumokuākea Marine National Monument as a National Marine Sanctuary. This critical step will significantly bolster the ongoing efforts to preserve this unique and ecologically vital marine area.</p> <p>Enhanced Protections: The designation as a National Marine Sanctuary equips NOAA with crucial additional tools and resources to effectively manage human activities within Papahānaumokuākea. This enhanced management framework is vital for protecting the fragile ecosystems and endangered species that thrive within the monument's extensive boundaries. It ensures a more robust approach to conservation, where regulatory measures can be tailored to preserve the delicate balance of this marine habitat.</p> <p>Collaborative Management: The proposed focus on collaborative management, involving Native Hawaiian communities in the decision-making process, represents a significant positive development. The deep cultural connections and traditional ecological knowledge of Native Hawaiians are invaluable assets that will contribute profoundly to the sustainable health and management of Papahānaumokuākea.</p> <p>Increased Resources: The sanctuary designation promises to draw additional funding and resources, which are crucial for enhanced research, monitoring, and conservation initiatives. These resources will enable a deeper and more comprehensive understanding of the monument's diverse ecosystems, facilitating more effective protection measures and promoting long-term ecological health.</p> <p>While I support this designation wholeheartedly, I also have concerns regarding its potential economic impacts, especially on local fishing communities. It is crucial that the management plan includes comprehensive mitigation strategies to address potential economic challenges faced by these communities. Strategies should aim to support sustainable fishing practices and promote alternative livelihoods to ensure that the economic well-being of local populations is maintained.</p> <p>Thank you for considering my comments on this vital public matter. I appreciate the opportunity to contribute to the discussion on the future of Papahānaumokuākea.</p>
Anonymous	<p>I am submitting my support for NOAA-NOS-2021-0114, a proposed national marine sanctuary in Papahānaumokuākea, if and only if the sanctuary regulations mirror existing regulations (50 CFR 404) in the original Monument waters and the regulations for the Monument expansion area (MEA) are based on preexisting presidential proclamations and 50 CFR 404. Exploring for, developing, extracting, processing or producing oil, gas or minerals within the sanctuary should be strictly and expressly forbidden. Commercial fishing should be prohibited in the entire Sanctuary. Sustainance fishing should be limited to the MEA with the following conditions. Any resource harvested in the MEA during sustainance fishing: must be a sustainably managed resource; must be consumed or utilized within the MEA; either in whole or in part, may not enter commerce through sale, barter or trade; and must be harvested incidental to a permitted activity.</p>

Submitter	Comment
Leimomi Fisher	<p>I submit this comment in my personal capacity as a Native Hawaiian attorney & descendant of a long line of lawai'a (fishers) and sailors in Hawai'i. My family also currently consists of true subsistence fishers that fish sustainably & only enough to feed their family. I strongly support sanctuary designation, and I urge you all to take a deeper look into the make-up of certain groups claiming to be "subsistence" and "traditional Native Hawaiian fishing practitioners," when in reality they are entrenched in the commercial fishing industry. Several community groups & individuals are calling to action our communities to help dispel some of the misunderstandings that these commercial-interest groups have been spreading under the guise of "native rights." The large-scale extraction that is being proposed by WESPAC to be taken annually from the expanded monument region does Not align with Native Hawaiian cultural or subsistence practices that never require that much take of fish. This amount of take is clearly coming from commercial intent & in my humble opinion, the vast majority of Native Hawaiians & subsistence fishers do not sell their fish to make a living. They fish only to feed their own families, share with friends, and maybe for a few large celebrations here and there. Please take a harder look at who is claiming to be "subsistence" and acting with "Native Hawaiian cultural understanding." And please designate this sacred place as the sanctuary that it is, with legal protections & safeguards against greedy commercial fishing industry entities & individuals. Mahalo nui, thank you for considering my testimony.</p>

Submitter	Comment
Naia Ulumaimalu Lewis	<p>My name is Nai'a Ulumaimalu Lewis. Today, I offer comments on behalf of myself and my family. I worked at Papahānaumokuākea for almost a decade and have been a member of the Native Hawaiian Cultural Working Group (CWG) since 2010. I am also the director of Big Ocean, a network of the world's large-scale marine-managed areas. I wholeheartedly support Alternative 1 - the preferred alternative – for the Designation of Papahānaumokuākea as a National Marine Sanctuary. Alternative 1 is critical because it would designate co-extensive boundaries with the Papahānaumokuākea National Marine Monument. This alternative includes the deep-water resources of the monument expansion area, including seamounts supporting rare oases of life in this primarily pelagic and deep-ocean environment, vulnerable shallow reef waters, and maritime heritage resources that may be excluded from sanctuary protections under other alternatives. The sanctuary would establish an additional layer of supplementary regulations over the existing boundaries of the current Marine Monument that would maintain and enhance existing resource protections. Additionally, the proposed sanctuary acknowledges the past advocacy and discussions among a wide group of people, from fishers to Hawaiians and conservationists, during the Monument expansion effort. It does not expand the area's specific boundaries any further than what is currently in place under the Papahānaumokuākea Marine National Monument. I want to underscore that it is inspiring to see that the proposed rule and Draft EIS for the proposed sanctuary keep existing protections, such as from deep-sea mining or other extraction, in place as a baseline. Sanctuary designation would also help to strengthen the durability of the existing protections provided through the Monument, which has been threatened by a former President and other lawmakers and resource managers in the past. Also, the sanctuary would be eligible for additional public and non-profit sources of funding that could strengthen the public's appreciation of Papahānaumokuākea and support a more consistent budget for areas such as operations, research, citizen science, education, and emergency response. The NMSA provides much clearer regulations and guidance for enacting civil penalties for permit and regulatory violations than what is currently available with the Monument Proclamation alone and imposes liability for damage to sanctuary resources. The sanctuary also keeps in place the existing Reserve Advisory Council, including the Native Hawaiian seats, which is essential to the longevity of the MPA and to the area achieving its highest potential as a pu'uhonua, sacred site, and refuge for the critical ecosystems and biocultural resources, of the Pacific and Hawai'i, generations to come. The industrial fishing industry has been a primary threat to this magnificent place's health and well-being and all its life forms. Currently, commercial fishing is prohibited in the management area of this region. However, non-commercial fishing is allowable. I want to highlight that maintaining the requirement of permit-only access approved by all agencies and following the regulations created to ensure protection is critical. I oppose any large-scale extraction that Wespac has proposed, and alarmingly, under the guise of native rights. I also oppose any sale, barter, or trade of large-scale extraction, and the cost recovery proposed by Wespac for these trips. I hope that the consistent and unified support of the Hawaiian community, conservation groups, and the public for the protection of this expansive part of our archipelago will be recognized. I offer my testimony today to help ensure the intergenerational protection of the most remote ¾ of the most remote archipelago on Earth in perpetuity.</p>
Tee & Kathy Jimenez	<p>Aloha and Mahalo to all the members of NOAA who have taken the initiative and time to identify, designate, include and protect areas of our precious marine habitat that have special cultural and national significance.</p>

Submitter	Comment
Kyle Burns	Please help make Papahānaumokuākea Marine National Monument a national marine sanctuary. We, as humans, have already destroyed so much of the world, and we need to take every precaution to protect the world we still have left. We don't just want to maintain our earth's current health, but we want to promote a healthier world for all living creatures. Let's do our part in history! Thank you!
Todd Jones	I write in support of Papahanaumokuakea being designated a National Marine Sanctuary. This precious environment is a prime ecosystem for countless living organisms and a natural laboratory to better our understanding of how to maintain a symbiotic relationship with the Pacific Ocean.
Carol Wilcox	<p>My name is Carol Wilcox, I am testifying as a prior member of the NWHI RAC, first as an alternate to member Laura Thompson and then as a sitting member when she retired. I stepped down in 2020 when Audrey Newman took my place. I support Sanctuary designation as described in Alternative #1 for the same reasons many others on the RAC have stated. 1. Continues and builds on decades of protection for this area, 2. Supports and adds to existing protections, 3. Allows for additional sources of funding, 4. Provides increased enforcement tools, 5. Maintains the Reserve Advisory Council, which has been and continues to be an essential partner in the protection of Papahanaumokuakea.</p> <p>Mining interests, commercial fishing industry generally, and Wespac specifically, all continue to threaten the well being of this place. I urge NOAA to protect against any effort to undermine resource protections through the otherwise permitted backdoors of research, native rights, fundraising, cost recovery, or education.</p> <p>Thank you for the opportunity to testify. Carol Wilcox </p>
Anonymous	I do not support the move to sanctuary status. This doesn't seem like a fair mechanism to accurately gauge the level of support or lack there of regarding moving this from a monument to a sanctuary. On one side you have conservationists who will fervently and unyieldingly demand the maximum levels of "protection" on any front. On the other side, you have actual stakeholders who are pragmatically trying to balance conservation benefits with how their current interaction actually affects some of those goals. One side is obviously more adept at navigating these channels to "influence policies and regulations". If you're setting out to do anything: 1) State the goal or intention 2) Have a way to measure the results 3) Collect Data 4) Determine if goals are met and if more or less measures are needed to achieve/maintain stated goals. The move to make NWHI a monument and subsequently a sanctuary without any measurable goals or objectives, should be viewed as rushed, insensitive, and irresponsible.

Submitter	Comment
Gabriela Dimas	Dear Eric Roberts,I am writing as a wildlife management and DVM student from Phx, Arizona. I wanted to express my enthusiasm and excitement about the proposed Papahānaumokuākea Sanctuary. In these times of drastic climate change it is more important than ever to protect the reefs and waters of Hawai'i, especially given the incredible number of threatened species that rely on these ecosystems. It also pleases me to read that this action will protect areas of cultural importance to Native Hawaiians. Best of luck and I look forward to following the progression of this project.Sincerely,Gabriela Dimas
C Tolbert	I strongly support the establishment of the Papahānaumokuākea National Marine Sanctuary. It is critical that we protect our marine natural and cultural resources for future generations. Thank you for the opportunity to comment.
Kathee LeBuse	I strongly support the proposed Papahānaumokuākea National Marine Sanctuary, as large marine preserves are essential to facilitate the natural propagation of marine species. Over used and stressed areas of the Pacific Ocean exhibit less volume and diversity of marine life. Marine sanctuaries are important incubators for replenishing our fish stocks, which are under increasing pressure. If we do not seize this opportunity now, it may be lost forever.
Anonymous	I write as a concerned college student wishing to pursue marine conservation and research as a future career. As someone who has participated in marine research focusing on restoration of endangered species and cultural heritage, this rule is particularly relevant to my career goals. With one year left in my degree, I have already spent two years in the field aiming to preserve places like Papahānaumokuākea Marine National Monument, and support NOAA's proposal to designate areas of this monument as a National Marine Sanctuary. With this designation aspiring scientists and researchers like I will be able to continue learning and protecting species, and ecosystems like these, without the designation they could disappear one day.I support this designation to make areas of the monument national sanctuaries because protection under the National Marine Sanctuaries Act is more secure than the designation through the Antiquities Act. While the presidential designation cannot be revoked, the size and boundaries of National Monuments can be reduced to any amount at any time (Congressional Research Service, 2019). This has happened 18 times in presidential history. The National Marine Sanctuaries Act is more secure and cannot be revoked once granted. Going through Congress, many public comment sections, creating a full EIS report, and co-management strategies, the designation will stand to protect the 582,570 square miles without change (National Ocean Service, 2024). With this designation it will protect the area from being potentially reduced in the future and provide lasting protection for the cultural, biological, and historical resources within the boundaries. With the help ofWritten in the proposed rule, human activity like fishing, boating snorkeling, SCUBA diving, and removing, moving, or taking and resources will be strictly prohibited. Research of the site would be allowed but any destruction to natural resources or organisms by visitors will be held liable and responsible for its destruction. This designation successfully eliminates some of the driving factors of fishery collapse such as fishing and habitat degradation (Rasband et. al. 2016). Eliminating these activities will continue to promote restoration and protection of this ecosystem. Therefore, I agree with NOAA's proposal to turn areas of the Papahānaumokuākea Marine National Monument into a Papahānaumokuākea National Marine Sanctuary

Submitter	Comment
Naomi Himley	<p>Thank you for the opportunity to comment. My name is Naomi and I am a wildlife biologist and professional mariner. I strongly support the designation of Papahānaumokuākea as a National Marine Sanctuary. I was privileged to work in Hawaii for 8 months in 2020-2021 on bird conservation projects for the State Department of Land and Natural Resources. These projects included forest and seabird enhancement, monitoring, and threat mitigation efforts. In addition, I've worked for the conservation of Pacific seabirds from Oregon to Alaska for private biologists and the US Fish and Wildlife Service. Due to the way seabirds connect people and places to the oceans, I do not need to visit Papahānaumokuākea in order to understand its importance and the necessity of stronger protections for this special place. While I have been lucky to work in many places throughout North America, I consider Hawaii to be the most special and unique place I've ever been. From the endemic flora and fauna to the amazing people, no place compares to Hawaii. That uniqueness is truly irreplaceable and impossible to put a price tag on. Seabirds are among the most threatened taxa in the world and ensuring safe nesting places is of utmost importance to ensuring their place in a rapidly changing world. Papahānaumokuākea has been and still is the site of major rehabilitation efforts to benefit nesting seabirds from invasive mammal eradication projects to marine debris removal. The birds who nest there and people who have worked so hard on these projects deserve for those results to be enshrined in stronger protections for future years. While my personal experience and comments come from my connection to the ocean as a mariner and my connection to seabirds, I most of all want to emphasize that I support this designation out of support for Native Hawaiians. The Kānaka Maoli I worked with on Big Island as well as many other people I've never met are at the forefront of conservation and environmental stewardship in Hawaii. This particular designation was brought to my attention by Native Hawaiians and they lead the grassroots efforts for this designation. In addition to providing sanctuary for nesting seabirds, these islands and the surrounding water are immensely important to Native Hawaiians. From hosting archaeological sites from the ancient days to providing space for cultural practitioners today for ceremony, healing, and voyaging, protecting these islands goes beyond strictly ecological importance. I cannot overstate the significance of demanding stronger protections of Papahānaumokuākea for cultural reasons. In fact, these two issues should not be seen as separate things to weigh, but instead compliment and strengthen one another. Environmental protections which include Indigenous voices and a role in management are imperative in order to face the history of colonialism and move forward into the world I'd like to see. That is a world where Indigenous people lead the stewardships of their lands, and where these resources are protected from extractive industries which do not serve the local populations. Thank you for your time, Naomi Himley</p>

Submitter	Comment
Tamra Hayden	<p>As a 36 year resident of Hawai'i and a climate activist. The following is my testimony in support of the plan of Papahānaumokuākea National Marine Sanctuary. We have recently learned that the majority of coral reefs in the world are now considered "bleached". We are running out of time. In Hawai'i our fish ponds and way of life has been hindered and in some cases stopped do to our contentious relationship with the military. They continue to destroy our aquifers on Oahu and Kahlawe. They have spilled diesel fuel on Haleakala. We have lost to developers and I believe the illegal occupation of the United States Government in 1893. We need to save and protect the marine life that exists. I am concerned about ocean mining and having no legislation protecting our waters, the lame duck Congress has not helped to promote environmental issues. NOAA is proposing a sanctuary area approximately 582,250 square miles. The agency's preferred boundary overlaps with the marine portions of the monument. The boundary includes the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline of the islands and atolls seaward to 200 nautical miles, including all state waters and waters of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and state of Hawai'i Northwestern Hawaiian Islands Marine Refuge. Large-scale conservation areas such as this are important to protect highly mobile species, such as sharks and marine mammals. They also protect entire ecosystems, preserving critical ecological functions and conserving biodiversity. The proposed sanctuary would only add to — and not diminish — the management measures and protections provided by the presidential proclamations. NOAA has adopted the management measures from the presidential proclamations, and in a few places, added onto those measures to allow for consistency in management across the proposed sanctuary, the boundary of which would include the original monument as well as the monument expansion area. The proposed rule unifies management of the area by removing discrepancies and gaps in prohibitions, regulated activities, and permit criteria, providing clarity and comprehensive protection for the proposed sanctuary. Commercial fishing is currently prohibited in monument waters. National marine sanctuary designation will not change this. Please carefully consider what can still be done. We have the opportunity to save and protect this area. Instead of regretting what we haven't saved for future generations. Let's do this for them. For all future generations of the world. Malama the Kai. Mahalo Nui Loa for your time.</p>
Kim Mah	<p>See attached file(s) My name is Kim Mah and I am a teacher at 'Aikahi Elementary School. We have been studying Papahānamokuākea for a semester and at the perfect time. I have included 4 essays that reflect what most of my students feel about this special place.</p>
Anonymous	<p>Yes, I support the proposed Papahānaumokuākea National Marine Sanctuary</p>

Submitter	Comment
Vincent Silva	<p>Hello and thank you for your time presenting the proposed plan for Papahānaumokuākea Marine Sanctuary. I am a lifelong commercial fisherman here on Kaua'i. While I am not against tighter fishing regulations and sustainable practices, I do disagree with a complete closure of the stated 582,250 square miles for fishing. I see commercial fishing not only as how I make my income, but as another food source to feed our people in Hawai'i. "Hawai'i's Seafood Consumption and its Supply Sources" tells us that 57 percent of our seafood is imported. How can we care for our environment, yet still have the needs of our people in mind? I believe through strict regulation, permits, quotas, and observation, we can achieve this together. There are currently very few vessels along the captains that I'm aware of in Hawai'i with the capacity and resources to make the long journey to the monument; besides the Honolulu longline fleet. A select few could be allowed access to the area following strict guidelines for operation. If this is beyond reason or contemplation at this time, could there be a time frame added to when this matter could be reevaluated, based on the abundance of Papahānaumokuākea and the needs of our people? Say in five to ten years time? Mahalo, Vincent Silva</p>
Mary Alice Lorio	<p>RE: Public Comment on National Marine Sanctuary Designation for the Northwestern Hawaiian Islands</p> <p>Greetings,</p> <p>I am writing in full support of the consideration of the designation of a National Marine Sanctuary in the Northwestern Hawaiian Islands.</p> <p>This sanctuary is necessary to protect a significant biological area as part of the National Marine Sanctuary System. This area is home to many ecosystems such as the coral reef ecosystem. By being able to protect these areas there will be an increase in biodiversity and productivity of species. These protected areas create a functionally productive ecosystem.</p> <p>I earnestly implore you and your organization to support this cause.</p> <p>Warm regards,</p> <p>Mary Alice Lorio</p>
Roxanne Keli'ikipikāneokolohaka	<p>Submitting written comment in support of sanctuary designation for Papahānaumokuākea. See attached written comment.</p>

Submitter	Comment
Ansley Pontalti	I would like to share my strong support of the proposal to designate Papahānaumokuākea national monument as a marine sanctuary. The Papahānaumokuākea monument should be designated as a marine sanctuary due to its ecological, historical, and cultural significance. As an advocate for marine conservation, I believe the continued protection of marine ecosystems such as Papahānaumokuākea national monument are necessary to conserving quickly diminishing marine biological resources globally. The preservation of coral reefs and marine biodiversity are essential to environmental health locally and globally. This marine area contains interconnected ecosystems that are habitats to already endangered species such as the green turtle and Hawaiian monk seal. In addition to marine life, it also serves as an important habitat for seabirds, including species that are found nowhere else in the world. Designating this area as a marine sanctuary will ensure the continued protection of one of the world's most important marine ecosystems. In addition to the environmental impact, this proposal will also continue to protect the living culture of Native Hawaiians by protecting the spiritual cultural sites and significance in the region. By protecting this marine ecosystem we are safeguarding environmental and culturally significant resources.
Jennifer VanderVeur	I strongly support the designating Paphanaumokukea as a national marine sanctuary. This would help expand the protection of Hawaii's unique and priceless marine life, protected species and ecosystems. In addition this protection will help ensure the survival of culturally important species for generations of Hawaiians. Native Hawaiians are recognized as an underserved community by the federal government and this protection would help ensure resources for future generations by perpetuating the populations of culturally important species.
Anonymous	Aloha kākou, Mahalo for this opportunity to express my support and comments on this proposed agency action designating a National Marine Sanctuary within Papahānaumokuākea Marine National Monument (PMNM). I fully support the agency's Alternative 1 boundary of the proposed management plan; for adding additional permit categories regarding Native Hawaiian Practices within the proposed sanctuary; and limiting recreational activities to the Midway Atoll Special Management Area. Designation as a national marine sanctuary will strengthen existing protections for the PMNM, further the goals of resource protection and conservation of nationally significant ecosystems, and fill gaps in existing PMNM management activities through adoption of a sanctuary management plan. In tandem with enhanced environmental resource protection, designation must also protect Native Hawaiian cultural resources, heritage, and traditional and customary practices. To this end, please consider making the Office of Hawaiian Affairs a co-trustee of the monument and remove the exemption on non-commercial fishing to allow for more input from the Native Hawaiian community. It is of utmost importance that Native Hawaiians are consulted regarding sanctuary management and have an active role in decision-making that affects it. We are already experiencing the effects of the climate crisis in the form of coral bleaching, coastal erosion, and loss of threatened and endangered species due to habitat destruction and invasive species. Safeguarding our natural and cultural resources is an issue that requires comprehensive, immediate action and the federal and state governments have an obligation to provide long-term protection for this sacred area for the benefit of future generations.
Amanda Padilla	Hello, my name is Amanda Padilla and I do not support a sanctuary in the NWHI. Thank you for your time.

Submitter	Comment
Andy Ku	After reviewing the "Proposed Papahānaumokuākea National Marine Sanctuary", I 100% agree to propose this rule. This topic is critical, especially for the marine ecosystem. As a spearfisher and someone who appreciates the ocean very much, it is essential to protect the National Marine Sanctuary System for scientific research and the marine ecosystem from factors such as producing oil, commercial fishing, using toxic and explosives near the sanctuary, etc. These factors cause significant damage to the marine ecosystem such as ruining the coral and the fish's environment. Fishes need the coral to maintain a living environment. If there are a bunch of factors that could potentially harm the corals such as oils, gas, or any energy development activities, this could cause damage to the corals and ruin the marine ecosystem. I also believe this rule should be proposed because it will create positive tourism opportunities.
Andy Ku	As a spear fisherman and a person who loves the ocean, this regulation/rule should 100% be proposed and approved. The marine ecosystem is vital for many reasons. It supports diverse species, producing oxygen, regulating climate, providing food, economic resources, carbon storage, recreation, tourism, and cultural significance. Its protection and preservation are vital for the planet's health and the well-being of its inhabitants. The marine ecosystem also plays a part in culture. Many Native Hawaiians food sources come from the ocean. I believe this rule should be proposed because it would protect the National marine Sanctuary system from producing oil, gas, minerals, or any other energy development activities that could affect the corals and marine life. These factors can destroy habits by releasing carbon and suffocating coral reefs. The National Marine Sanctuary system needs to be protected for future scientific research. I believe proposing this rulemaking will increase awareness and public pressure regarding environmental issues. Preserving the National Marine Sanctuary will also provide opportunities for jobs and ensure the long-term health of marine ecosystems, and the sustainability of fisheries, tourism, and recreational activities. I work for the Hawaii State Department of Health and my main priorities is protecting the local communities from health disparities and creating a healthier Hawaii. I am a huge advocate for protecting what should be protected and minimizing every risk possible, especially our marine life here. Please support this proposed rule and protect our marine ecosystem.
Shannon Cummings	I object to any measure that prevent's American Samoa residents from making a living. Especially if that measure is based on questionable scientific conclusions.
Nate Ilaoa	This proposed expansion does not meet the Magnuson-Stevens Act National Standard 1 nor does it meet this administration's mandate for equity and justice for underserved communities. There's also no scientific evidence that these large marine reserves that close fishing have any conservation benefits to the fish stocks. I do not support the proposed Papahānaumokuākea National Marine Sanctuary expansion.
Anonymous	No to Sanctuaries
Anonymous	No to sanctuaries.
Fiataua Penalosa	I do not support a sanctuary in the NWHI.
Uilisone Tuese	No to sanctuaries

Submitter	Comment
Louis Solaita	<p>Talofa Lava NOAA,I am writing about your expansion of the monuments around the pacific to include American Samoa. The Pacific Ocean is a vast region body of water that has provided fish to our people in American Samoa to include a rich history of purse seine and longline services. Cutting into our area will cause our people to suffer as our traditions are based on our waters and lands. I do not speak on what Hawaii needs as I know what we need in American Samoa. For decades American Samoa Mom and Pop stores have generated currencies that have been pouring into our economy. We speak about doing what's right for the territories and fishing waters, our island is not as blessed as Hawaii with their flat lands and wide American Influence to include flights and rich hotels. American Samoa has always prided themselves on sustaining industry. From world war 2 to the beginning of the canneries to our sons and daughters picking up their weapons to go to war. America has been successful on the backs of Samoans, now I ask America to give our people a chance to maintain our course with the canneries and boats that support this process. We have not had any issues of living and expanding for more industries in American Samoa, we are asking to keep the expansion project far far away from our areas of responsibilities. As we want American Samoa to grow, it will not if you decide to uphold this policy. We will lose everything and our territory will decline. This will have a ripple affect through crime rates and alienation of our homelands. We have seen this happen in parts of America and request that you reconsider this policy so that we can move forward and grow with the rest of the US.</p>
Anonymous	<p>The importance of a marine sanctuary is understood. However, closure of this much fishing grounds will make it difficult, dangerous and costly for commercial and non commercial fishermen alike. The sanctuary has been around for over 100 years, is adding so much square miles to it necessary? 7000 species have been found there and will still be there even if the sanctuary was widen. Fishing is for Substance not only Science!</p>
Jason Miller	<p>No more closures. Just forget about the Marianas.</p>
Anonymous	<p>I don't support it!</p>
MJ Liliu	<p>I do not support a sanctuary in the NWHI. Thank you.</p>

Submitter	Comment
Jesse Rosario	Aloha and hafa adai;As an indigenous slander of Guam and a traditional fisherman of near and off- shore fishing we have relied and are dependent on our oceans valuable resources to feed our people and our communities by which we describe as our visitors and military personnel- DOD personnel included to our island. We have been the gate keepers of our ocean resources for centuries and will continue to perpetuate this legacy of effective leadership management by OUR island people who values the lands and oceans so that our people of generations can enjoy the benefits we have protected and manage for them. I fully endorse and support the Hawaiian people enabling their constitutional rights as well as their traditional rights and values to protest against the federal government to manage and place strict restrictions upon their own islands and oceans. The U.S. government needs to Respect our sovereignty and our rights to protect our own islands and oceans. The WPRFMC is comprised of indigenous peoples, fishermen & fisherwoman and others who have a rooted in Hawaii as their homeland. I strongly support WPRFMC to continue their mission of protecting our islands and oceans by ensuring effective conservation and scientific integrity of management decisions for our oceans. We don't need outsiders to determine our future who only exists when they visit our land and then claim to be experts in our culture and history. I strongly urge the federal governments to believe in our own management since we are the indigenous people of our land and oceans. Let's do the right things and support the indigenous peoples and communities to direct their future generations to live in harmony with our land and oceans.
Brian Thompson	Just another reason why this administration should leave. I don't support this plan.
Anonymous	The importance of a marine sanctuary is understood. However, closure of this much fishing grounds will make it difficult, dangerous and costly for commercial and non commercial fishermen alike. The sanctuary has been around for over 100 years, is adding so much square miles to it necessary? 7000 species have been found there and will still be there even if the sanctuary was widen. Fishing is for Substance not only Science!
Audrey Toves	Recreational Fishing should still be allowed with permits in the proposed areas. To ensure sustainability for the local community, cultural practices, and traditions for our present and future generations.
Anonymous	Talofa from Nuuli Am.Samoa and I do not support sanctuary extension. Thank you.
Anonymous	I do not support the proposed Papahanaumokuakea National Marine Sanctuary expansion. This will have a negative impact on American Samoa's economy if further expansion on Marine Sanctuary takes place in our islands.
Calvin Ilaoa	I do not support the expansion.
Michael Gawel	RE: US Marine Sanctuary at Papahanaumokuakea Marine National Monument (PMNM). I wish to question some of the restrictions proposed on fishing and implications of this proposed sanctuary for decisions on other fisheries management approaches on other Pacific Islands' marine resources . I am on Guam. However, I have spent the last 54 years residing in Hawaii and other Pacific Islands where I have researched, taught, planned, developed and managed fisheries and marine resources, including teaching current managers and elected decision makers in Pacific Island countries that share pelagic fisheries resources with the U.S.Over the years I saw value and practicality of marine sanctuaries, particularly in providing support for research, education, management and enforcement to sustain ecological resources for future values. While marine monuments

Submitter	Comment
	<p>protect resources from damage of marine mining, pollution, destructive fishing and over-fishing, etc., the sanctuary status can better serve to maintain and support scientific resources for monitoring, management and protection of natural resources. Current National Monument status can accomplish this but it can be eliminated by any US President by Executive Order as his/her personal decision. Sanctuaries do not have this same vulnerability. However, broad exclusion of sustainable fishing and resources uses should not be the objective of marine sanctuaries, even though it simplifies their administration. US Marine Sanctuaries must be created to include co-management authority of local stakeholders. Those existing sanctuaries can and do allow sustainable commercial fishing. This is evident in US Marine Sanctuaries that have monitored and managed resources for decades. Appropriate management of long-line fishing and trolling for pelagic species should be considered for management and allowed in the proposed PMNM. NOAA employs experienced excellent fisheries scientists as do the Western Pacific Regional Fisheries Management Council, the Secretariate of the Pacific Islands, the Pacific Forum Fisheries Agency, the Western and Central Pacific Fisheries Mgt Commission, Parties to the Nauru Agreement and others, all providing best advice on management of the highly migratory pelagic fish stocks targeted for world supply of sustainable, healthy fish protein. Such management applies to the pelagic fish that pass through the PMNM. While ever-improving technologies allow better management of impacts of activities in marine monuments and protected areas, these technologies and evolving recognition of traditional knowledge of resources should contribute to the best uses of the natural resources. Uses can include scientifically managed harvest of pelagic species done on a regional basis by countries and territories sharing the migratory fish resources and having history of sustainably using the resources for many thousands of years. Protection from impacts of proposed deep sea-bottom mining, which can potentially devastate living organisms and the area's ecology, is an important feature of sanctuary and monument status. This is likely not a threatened use at PMNM but is a serious threat to the Marianas Trench MNM which appears to contain some of the most valuable cobalt crusts for ocean mining as well as many possibly valuable minerals related to volcanic vents. The PRIA proposed sanctuary may also risk marine mining threats. But both of those monuments deserve consideration of allowing managed commercial fishing of pelagic species and have the same scientific management resources as the pelagic species moving through the PMNM. Decisions on management of a National Marine Sanctuary in Hawaii will influence the decisions for other proposed sanctuaries. Decisions should be derived separately for each area with co-management by local stakeholders and sustainably managed traditional, subsistence, commercial and recreational fisheries. The influence of Hawaii-based stakeholders in Hawaii sanctuary management is expected. But the dominance of those from Hawaii and from the US Mainland affecting decisions on marine resources management in other Pacific US Territories seems to be counter to equitable justice. Monuments/sanctuaries in the Marianas and the PRIA lack stakeholder powers to control decisions through lacking elected US Senators and equitably powered US Congress members (not to mention inability to vote for US Presidents). But traditional marine environmental knowledge in the US Territories, the US FAS in Micronesia and neighboring countries with histories of sustainably using and managing of the marine resources for literally thousands of years should not be overshadowed by decisions on the sanctuary status in Hawaii.</p>

Submitter	Comment
Anonymous	I support elevating Papahānaumokuākea a national marine sanctuary because of the priceless ecological value and natural beauty that it contains. We must protect these resources from further depletion and degradation.
Anonymous	Greetings! My take on this proposal is I'm against if regulations are managed by federal. I would love to see and have local level manage and protect all their resources with only financial support from NOAA. Only afford NOAA give comments and recommendations but have local decide what best options work for them.
David Cabrera	I do not support this proposed sanctuary. I believe this proposal needs to be further discussed with the local community agencies and NGOs of whom this proposed sanctuary most affects.
Tim Perez	Another setback to the people of the islands. The small boat fishing industry will slowly go away. This will hurt in the transmission of the fishing traditions of future young fishermen/fisherwomen.
Mark Oyama	I am for the opening of fishing for the native hawaiiians.
Anonymous	I do not support the proposed marine sanctuary. Already there are too many closures, monuments, preserves, military training areas closures, critical habitat areas. Please find another area outside of the western pacific.
Abdine Ouedraogo	<p>The preferred sanctuary boundary area, which is 582 square miles (the largest sanctuary area choice).</p> <ul style="list-style-type: none"> - Tight enforcement and monitoring of marine waste, fishing gear, and line to prevent entanglement of marine life that is endangered in marine protected areas; NO longline fishing. -Tight restrictions: NO fishing in marine protected areas for non-commercial purposes and NO fishing for sustenance. -NO exclusions for mining operations in the sea. -NO submarine activity.
Katheryn Wagner	The beautiful and incredible creatures of the ocean--from the smallest coral polyp to the chunkiest seal--cannot speak. We must speak for them. Please protect as large a swath of the ocean as you can! We need the oceans to be healthy so we humans, too, can be healthy.
Aitofi Lomu	I am for it. Our ocean has to be saved for future generations. Many of these fishing vessels are killing other organisms that do not relate to their goal. There should be a limit to these fishing lines. Over fishing is destroying the ecosystem and other species in the ocean. Let us not forget that once a living thing is threatened or endanger it can affect the ecosystem. This can also affect us humans.

Submitter	Comment
Helen Raine	I would like to offer my support for this proposal. In particular I would like to see the following: <ul style="list-style-type: none">- Preferred sanctuary boundary area (maximum sanctuary area alternative 582K square miles)- Strict Monitoring & Enforcement on marine debris, fishing line, fishing gear to eliminate entanglement of endangered marine life in marine protected area; NO longline fishing- Strict regulations / NO non-commercial fishing,-NO exemptions for marine mining activities
Virjean Etelagi	I oppose the Federal government's attempt to expand the fishery closures of the North Western Hawaiian Islands.

Submitter	Comment
Robin Girard	<p data-bbox="506 233 1205 383">Proposed Papahānaumokuākea National Marine Sanctuary 15 CFR Part 922 Docket No. 240213-0047 RIN 0648-BL33 Federal Register 89.42 (Mar. 1, 2024) 15272–310</p> <p data-bbox="506 415 583 443">Aloha,</p> <p data-bbox="506 475 1797 625">To the extent that the proposed rule does not diminish existing protections under Hawai'i law for the traditional and customary practices of native Hawaiians; and to the extent that the proposed rule does not authorize commercial fishing or the non-subsistence taking of fish and other biological resources within the marine sanctuary area, I write in support of the creation of the Papahānaumokuākea National Marine Sanctuary. However, I wish to express two reservations.</p> <p data-bbox="506 657 1808 963">First, I remain concerned that Section 922.224(f) of the proposed rule, which exempts “scientific exploration or research activities by or for the Secretary of Commerce of the Secretary of the Interior when the activity occurs within the [Outer Sanctuary Zone],” provides a sufficient loophole to permit the large-scale taking of biological resources from within the sanctuary under the guise of science. The pretext of scientific research has been used in the past to justify—or to claim as lawful—takings that would otherwise have been prohibited by domestic or international law, such under as Japan’s “scientific” whaling policy. See, e.g., Yanxi Fang, A Whale of a Problem: Japan’s Whaling Policies and the International Order, HARV. INT’L R. (Oct. 23, 2019), https://hir.harvard.edu/a-whale-of-a-problem-japans-whaling-policies-and-the-international-order/. The proposed rule should impose greater constraints on the types and scope of takings permitted within the proposed sanctuary for valid scientific purposes.</p> <p data-bbox="506 995 1797 1328">Second, I am concerned that the proposed rule does not provide sufficient protections against biofouling by vessels traversing the proposed marine sanctuary. See §§ 922.243(c), .244(13). Biofouling can occur not only through discharge, but through hull fouling and other contaminated equipment. Ensuring that invasive species and exotic diseases are not introduced into the proposed marine sanctuary is paramount to protecting the unique biodiversity of the region, especially in light of the ravages caused by stony coral tissue loss disease in the Caribbean and Gulf of Mexico. See Michael S. Studivan et al., Transmission of Stony Coral Tissue Loss Disease (SCTLD) in Simulated Ballast Water Confirms the Potential for Ship-Born Spread, 12 SCI. REPS. (Nov. 10, 2022), https://www.nature.com/articles/s41598-022-21868-z; Nicholas A. Rosenau, Considering Commercial Vessels as Potential Vectors of Stony Coral Tissue Loss Disease, 12 Frontiers in Marine Sci. (Sept. 22, 2021), https://www.frontiersin.org/articles/10.3389/fmars.2021.709764/full/. I would request that the proposed rule include greater protections against incidental—as well as intentional—biofouling.</p> <p data-bbox="506 1360 831 1416">Mahalo, Robin William Girard, Ph.D.</p>

Submitter	Comment
Ramon Tebuteb	<p>It appears that the proposed National Marine Sanctuary over the existing Papahānaumokuākea National Monument will go beyond the shores of Hawaii. The petitioners are in fact well on their way to the CNMI. I am in full support of our Hawaiian family who opposed another US federal bureaucratic overreach. I support the status quo as is. It is enough that the presidential proclamation policy does not give respect to our local policies, local traditions. That Antiquity Act was short to pulling the trigger of a loaded silencer. Perhaps the energy should be focused on the existing Monument now. Her regulations are sufficient as is. The process to "fix" policies along the way if we need to, exist. It does not need additional cosmetics. Too much make up. We should "make up" what we already have. Listen to the locals who ocean the seas for their family. You see, central to all Pacific Islanders, are our cultural heritages and our ocean. Infact, our way of life is central to the ocean. We only fish what we need. We gift our knowledge to the ocean and from the ocean. Stop this proposal. Work on the existing Monument. Status quo. Respectfully,</p>
NOAA-NOS-OCS	<p>Dear Superintendent Roberts, The Office of Coast Survey of the National Oceanic and Atmospheric Administration (NOAA) is responsible for charting U.S. coastal waters. Our mission is to help ensure safe navigation for all vessels, regardless of size and purpose. We need your assistance in updating NOAA ENC's (Electronic Navigational Charts) in order to provide mariners with information about federally regulated areas, including those described in Federal Register Vol. 89, No. 42 / Friday, March 1, 2024 / Pages 15272 – 15310 / Proposed Papahānaumokuākea National Marine Sanctuary. My credentials follow:- Cartographer; member since December 2004 of NOAA / National Ocean Service / Office of Coast Survey / Marine Chart Division / Nautical Data Branch.- Experienced in using Geographic Information System (GIS) software, i.e., Esri ArcMap and ArcGIS Pro, to plot geographic coordinates and boundaries on NOAA nautical charts.- Extensive experience in vetting boundaries and regulations associated with Federal Register proposed and final rules as they relate to nautical charting.- Examined other sanctuary boundaries created by Office of National Marine Sanctuaries (ONMS) personnel and exchanged email correspondence with ONMS personnel to provide feedback. My feedback about the proposed rule follows: 1. Page 15294, Appendix A to Subpart W, Points 610-662 - Papahānaumokuākea National Marine Sanctuary Boundary: Points 610 through 662 form the easternmost extent of the proposed sanctuary boundary. However, these points are coincident with a portion of the Inner Reporting Area Boundary Around Nihoa ATBA. Should Points 610 through 662 be coincident with the Reporting Area Outer Boundary instead of the Inner Reporting Area Boundary? To view a supporting graphic, please refer to "Attachment1 Easternmost Boundaries Issue.pdf". 2. Pages 15302 - 15303, Appendix D to Subpart W - Unnamed, unnumbered table: ONMS did not designate a table number and name for the first set of coordinates that encompasses Kure Atoll. 3. Pages 15306 - 15307, Appendix E to Subpart W, Table 1 - Ship Reporting Area (Reporting Area Outer Boundary): According to FR page 15278, Column 1: "NOAA proposes to establish this reporting area, which would be defined as "the area of the proposed sanctuary that extends outward ten nautical miles from the PSSA [Particularly Sensitive Sea Area] boundary, as designated by the IMO..." The coordinates for the Reporting Area Outer Boundary of Appendix E / Table 1 do not completely coincide with a 10-NM buffer (geodesic) from the PSSA boundary per the International Maritime Organization (IMO). To view a supporting graphic of the boundary issue, please refer to "Attachment2 - Ship Reporting Area (Reporting Area Outer Boundary).pdf". Refer to "Attachment3 IMO Resolution MEPC.171(57).pdf" for the</p>

Submitter	Comment
	<p>coordinates of the PSSA boundary. I recommend a re-evaluation of the boundary points for the Reporting Area Outer Boundary.4. Pages 15302 – 15306 – Boundary Discrepancies - Special Management Area (SMA) and Special Preservation Areas (SPA): The proposed SMA and SPA boundaries do not coincide with the boundaries as described in Presidential Proclamation 8031 nor do they coincide with the proclamation's SMA and certain SPA boundaries as charted on ENC's that are larger scale than Band 2 (General Navigational Purpose). It appears that the coordinates of the proposed boundaries may have been derived from the SMA and SPA boundaries of the national monument as depicted on the Band 2 ENC's. I have included an attachment of one example (Onunui and Onuiki [Gardner Pinnacles] SPA) that represents a boundary discrepancy that is similar to the SMA and other SPAs. Refer to "Attachment4 - Onunui and Onuiki (Gardner Pinnacles) SPA.pdf". If the proposed SMA and SPA boundaries of the national marine sanctuary are not reconciled with the previously established SMA and SPA boundaries of the national monument, then how will the differences in boundaries potentially impact the enforcement of sanctuary regulations and monument regulations? Is it possible that overlapping, non-coincident, charted boundaries could lead to uncertainty for stakeholders that navigate in the area? I look forward to collaborating with you in order to potentially address the four issues that I have identified. Please contact me if you have any questions and/or comments. Respectfully, Lance Roddy Cartographer Nautical Data Branch (NDB), Marine Chart Division Office of Coast Survey, National Ocean Service, NOAA</p>
Anonymous	I am in favor of designating Papahānaumokuākea Marine National Monument as a marine sanctuary.
Anonymous	I oppose adding more layers of regulations in the Papahānaumokuākea National Marine Sanctuary. There has already been egregiously mismanaged by vby existing sanctuary agency partners ex. NOAA has failed to access ecosystem based marine life and only has focused on protected species such as green sea turtles and monk seals. The area once had a pristine and well managed fishery for bottomfish and lobster. The State of Hawaii has introduced taape which has now spread throughout the archipelago (up to Midway) which is in violation of sanctuary rules. Since establishment of the sanctuary has there been any enforcement actions? We should not pre-determine the faith and future of generations to come. Only God has that right!
Andy Ku	<p>The proposed rule I am commenting on is the Proposed Papahānaumokuākea National Marine Sanctuary. The Papahānaumokuākea National Marine Sanctuary aims to enhance the area's ecosystems, wildlife, and cultural heritage (National Oceanic and Atmospheric Administration, n.d). It will be managed by NOAA and the State of Hawaii, complementing the existing management structure for the marine national monument. The sanctuary will provide clear protections for Papahānaumokuākea's resources, ensuring its continued protection and preservation. The goal is to preserve and protect natural habitats, populations, and ecological processes in national marine sanctuaries, ensuring their continued existence and preservation. The rule also proposes to raise public awareness and promote understanding, appreciation, and sustainable use of the marine environment and its natural, historical, cultural, and archaeological resources.</p> <p>As a spear fisherman and a person who loves the ocean, this regulation/rule should 100% be proposed and approved. The marine ecosystem is vital for many reasons. It supports diverse species, producing oxygen, regulating climate, providing food, economic resources, carbon storage, recreation, tourism, and cultural significance. Its protection and preservation are vital for the planet's health and the well-being of its inhabitants. This rule should be proposed because it would protect the National Marine Sanctuary system from oils, gas,</p>

Submitter	Comment
	<p>minerals, or any other energy development activities that could affect the corals and marine life. Oil and gas operations could release harmful pollutants into the air and water, causing degradation of clean air and water for the survival of polar bears, whales, walrus, and humans (World Wild Life (n.d). These factors can destroy habits by releasing carbon and suffocating coral reefs. Oil can lead to the death of marine organisms, have sublethal effects on their fitness, and disrupt the structure and function of marine communities and ecosystems (National Library of Medicine, 1970).</p> <p>The National Marine Sanctuary system needs to be protected for future scientific research. Proposing this rulemaking will increase awareness and public pressure regarding environmental issues. National marine sanctuaries provide a unique opportunity for monitoring and research, enhancing our understanding of natural and historical resources, and providing early warning capabilities to detect changes in ecosystem processes and conditions, thus serving as sentinel sites (National Marine Sanctuary, 2014). Preserving the National Marine Sanctuary will also provide opportunities for jobs and ensure the long-term health of marine ecosystems, and the sustainability of fisheries, tourism, and recreational activities.</p> <p>One of the comments I have for this proposed rule is there should be an extended boundary of protecting the National Marine Sanctuary. The marine life and ocean outside of the National Marine Sanctuary should also be protected and have regulations against harmful factors. I don't expect the entire ocean or marine ecosystem but I do believe it is important to protect the coral, fish, and quality of the water around the National Marine Sanctuary.</p> <p>The proposed rule focuses on protecting the sanctuary and raising public awareness for the community to understand and appreciate the marine environment and its natural, historical, cultural, and archaeological resources. This is extremely important and should be advertised throughout schools, social media, publications, and the news. Many individuals need to be educated on the importance of the marine environment and why it is important to propose this rule.</p> <p>I work for the Hawaii State Department of Health and my main priorities are protecting the local communities from health disparities and creating a healthier Hawaii. I am a huge advocate for protecting what should be protected and minimizing every risk possible, especially our marine life here. The Papahānaumokuākea Marine National Monument is a beautiful monument and has a lot of history behind it . This proposed rule has my full support and I believe this is a very important rule that should be reviewed and supported by people who appreciate and value the ocean. Please support this proposed rule and protect our marine ecosystem.</p>

Submitter	Comment
Jerome Ierome	It is obvious that NOAA's "politically motivated" action to expand the PNMS in the Hawaiian Islands, was determined by what they claimed to be a "thorough analysis and feedback" from their own selected "public" communities. These presidential "politically motivated" proclamations, designations, and expansions of monuments traced back to President Clinton in 2000, Bush in 2006, and to President Obama in 2016. The NOAA claimed, that the "stakeholders, Native Hawaiian communities, state agencies" to name a few, were all among the public communities they analyzed and decided to collect "feedback" from! So, it is fair to say, that the Hawaii Longline Association, workers who would bear the adverse consequences, and the employees who represent the true faces of those who will be affected by the expansion are the true victims here. Where is the equality and equity that the federal government preached and required into law? I stand with hundreds, if not thousands of others who are saying, "No to the Expansion" proposed by NOAA.
Natalia Palamo	My name is Natalia Palamo and I do not support the expansion.
Anonymous	This is absurd..don't you so called experts know pelagic species are not territorial..the only thing the boundaries will do is make it harder and more costly for local fisherman to provide fresh and affordable fish to local communities
Anonymous	We don't support expansion
Tune2Oceans LLC & AhiHubKauai	Thanks for the opportunity to submit comments in regard to the Proposed Papahānaumokuākea National Marine Sanctuary. I am opposed. The current management framework and oversight of the Monument area is extensive, has worked well, and should continue to do so in the future. The imposition of additional bureaucratic layers of governance would take human and financial resources away from areas where they are vitally needed. It's not in the best interest of MHI stakeholders or even the Sanctuary's environmental resources themselves. My opposition to the proposed rule is based on scientific and management expertise as a senior fisheries Ph.D. scientist in this region- as a large pelagics fisheries researcher (MHI) with scientific publications relevant to the NW Hawaiian islands, as a member of the Science and Statistics Committee of the Westpac Fisheries Management Council (2007-2016), and sea turtle ecologist and former advisor to the IUCN Sea Turtle specialist group. Science and research is what is needed in the face of climate change and changing baselines- yet remains grossly underfunded by federal and HI state budgets. I'd prefer to see the current administration's focus turn to those realities, rather than imposition of Sanctuary status that already has extensive oversight by multiple agencies. Thank you.

Submitter	Comment
Namele Naipo-Arsiga	<p>I oppose the sanctuary designation of Papahanaumokuakea. The sanctuary designation is a strategic power grab by the department of commerce which NOAA is a bureau within. The mission of this department is to create the conditions for economic growth and opportunity for all communities. NOAA is a conduit of the government to capitalize over the ocean and all beings that depend on it. Designating Papahanaumokuakea will relinquish the monument title and co-agency management framework. Moving forward into a sanctuary designation will increase the vulnerability of all organisms small and large, including the potential to open doors to the harmful practice of deep sea mining and recreational tourism. Papahanaumokuakea should hold its status as a monument utilizing a co-agency management system. Though this is not a perfect framework, this frame provides decision making across many agencies rather than just one under a sanctuary designation. The sanctuary designation will not further protect or safeguard resources. There is a total of 15 marine sanctuaries within the northern hemisphere. One is within Hawaii, the Hawaiian Islands Humpback whale sanctuary. This year, 2024, yielded six confirmed reports of vessel strikes to humpback whales within Hawaii. Within a two week span, there were two confirmed cetacean deaths caused by vessel strikes a dolphin yearling on Kauai and humpback calf on Lanai shores which is in the sanctuary boundaries. There are multiple threats to whales including acoustic disturbances, entanglement, and vessel whale contacts. NOAA knows of these threats yet they allow recreational boating, fishing and tourism within the sanctuary boundaries. These allowed activities conflict with the known appropriate and healthy environment that humpback whales require. Why has NOAA not instituted regulations and prohibitions to facilitate the change necessary to promote the well being of the humpback whales within its sanctuary boundaries? This mismanaged sanctuary is an example of what can be expected if Papahanaumokuakea becomes a NOAA sanctuary. Another issues with the sanctuary designation is access. There should be no commercial fishing/ boating, recreation, and US Armed forces activity within or near the monument boundaries. These activities cause known harm to the organisms living and transversing these spaces above and below the water surface. Papahanaumokuakea has more than 7,000 species of wildlife including 23 endangered species, 14 millions seabirds, 90% of the Hawaiian sea turtles population, 80% of the Hawaiian monk seal population, and 3.5 million acres of coral reefs. The abundance of life requires protection for the future and cannot be subject to military activities, recreational use, and harmful large scale commercial fishing operations.</p>

Submitter	Comment
Mystic Aquarium	<p>2 May 2024 To Whom It May Concern: Thank you for the opportunity to comment on the proposed Papahānaumokuākea National Marine Sanctuary (Docket No. 240213–0047). Here I support NOAA’s proposal to designate marine portions of Papahānaumokuākea Marine National Monument as a National Marine Sanctuary with the objective to protect nationally significant biological, cultural, and historical resources and fully support implementation of Alternative 1. Alternative 1 is the most inclusive of the marine elements of the Monument and links shallow-water coral reefs, deeper mesophotic reefs, and island and seamount slope habitats, including deep-sea corals, with shallow and deep pelagic waters. Alternative 2 excludes open ocean and deep-water regions and alternative 3 excludes shallow reef areas. Neither of these later alternatives incorporates the ecological connectivity and species interactions inherent to such ecosystems that facilitate and enhance conservation objectives. The one troubling issue in the draft is the exclusion of the word “conservation” from quotes of the purpose of the National Marine Sanctuary Act. That is, while the draft designation document (Section 2.2.1 and elsewhere) states that (16 U.S.C. § 1431 b 2) “one purpose of the NMSA is to provide coordinated and comprehensive management of special areas of the marine environment that would complement other existing regulatory authorities”, the Act actually states that the purpose is “... to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities” (emphasis by the writer). While the text in the draft may be an error, it is absent throughout the document and fails to emphasize the legislative goal of “conservation”. This omission should be corrected in the final designation document and EIS. If this was intentional, the rationale for such deviation should be clearly explained. Indeed, the proclamation designating the Marine National Monument has an overarching focus on preservation under the authority of the Antiquities Act. I would hope that the Sanctuary plan would do the same. Thank you, in advance, for your consideration. Sincerely, Peter J. Auster, PhD Senior Research Scientist, Mystic Aquarium and Research Professor Emeritus of Marine Sciences, University of Connecticut</p>
Gail Grabowsky	<p>As a 20 year veteran of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC) as the Education Representative I am in full support of Sanctuary Designation for Papahānaumokuākea National Marine Monument and World Heritage Site. I think this would complete the protections and opportunities for this absolutely precious, pristine and sacred place. Dr. Gail Grabowsky, Dean, School of Natural Sciences & Mathematics, Chaminade University, Honolulu, Hawaii. Executive Director, United Nations CIFAL Honolulu Sustainability Training Center</p>
Epenesa Jennings	<p>National Marine Sanctuary boundaries for islands affect the livelihood of their residents, especially in the Southern hemisphere and Hawaii. Many islanders are dependent on local fishing for their livelihood. Subsistence fishing is a “thing” on many islands. Expanding the opportunity for “outside” fishing companies limits the authority of local residents who actually own the land culturally, but never get to voice their opinion. I object to this move and feel that our islands will be included in NOAA’s proposed move for the Proposed Papahānaumokuākea National Marine Sanctuary. Leave the islands alone.</p>

Submitter	Comment
Jason Pritchard	Please let American Samoa control our own fishing territory. It is better for people that reside in American Samoa to make the best recommendations vs those that have no idea about our economy or way of life. That live in the united states. To those that live away they want to use us as a number in on their chart but we will be affected in every way on the ground here on American Samoa. Our islands our oceans. If they want to close fishing close around the continental United States. Please don't make decisions for us here. It is unfair and un-American. Thank you
Ray Tulafono	I am opposing the NWHI Sanctuary Proposed Expansion by the Federal Government. I believed this proposed closure will further handicapped the Hawaiian Longline Fishery which provide fish to markets in Hawaii.
Robert Pecoraro	I strongly support designating Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. This designation will help to give the Hawaii marine ecosystem a fighting chance, here on the Kona coast. Climate change and pollution have ravaged the fragile ecosystem here in Kona, and in many parts of Hawaii. Once beautiful, healthy reefs have been reduced to rubble. In addition to addressing the issues that have contributed to reef degradation, this designation will help to protect the reef inhabitants, which will be necessary if the reefs are to be restored to their previous condition. Strict regulation and enforcement will be necessary to ensure the success of this designation. I implore you to consider this proposition for the good of the reefs, for the good of Hawaii and for the good of this planet. Thank you for your consideration.
Bary Mayer	I support the Sanctuary designation for the PMNM; the more protection, the better! Imua!
Pono Advocacy	Papahānaumokuākea deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahānaumokuākea is also a place for Native Hawaiian cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature.
Anonymous	As a Hawaii resident I see first hand the impact of invasive species and destructive development practices. the strip mining approach to commercial fishing proposed here is astounding and unconscionable. The ONLY way to stop this for ever is to give this a Sanctuary status. Just DO it please? Mahalo!
Elle Cook	I am sharing today that our family fully support the designation of Papahanaumokuakea as a National Marine Sanctuary. The wildlife that this can/will support is critical.
Gerdine Markus	I would like to see that proposed Marine Sanctuary come into being, so we have beautiful resources for our reiki to enjoy when they grow up. Thank you, Gerdine Markus
Shyla Moon	Give the oceans back to the people of Hawaii for fishing for food.
Deborah Eudene	Please approve this designation.

Submitter	Comment
Rhonda Mayfield	Thank you for the opportunity to comment on the proposal to designate marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. I am in full support of this designation. My siblings grew up on Midway Island and I was born there. We need to protect our reefs and wildlife.
Anonymous	I don't support this proposal
Joseph Watts	I would like to express my concern for the Northwest Hawaiian Islands and the life in the waters surrounding them, a world natural treasure that I may never experience in person but nevertheless wish to help perpetuate for the future in as pristine a state as possible. Please designate the expanded sanctuary status so that these jewels of the Pacific may thrive even more. This planet needs places like this fully protected so as to help life thrive and help to heal our Earth.
Harald Ebeling	To Whom It May Concern I am writing in strong support of the proposed Papahanaumokuakea National Marine Sanctuary. The arguments in favor are overwhelming and should be undisputed: the strongest possible protection of extensive, contiguous marine habitat is crucial in times of global pollution, ocean warming, overfishing, and rampant human-rooted disturbance of fragile ecosystems. Sanctuary status has been an integral part of the effort to protect this area for over two decades; actually executing this important step is way overdue. I am unaware of any counter-argument that should be allowed to even delay this designation, let alone prevent it. Extensive concessions were made in the original Monument designation to accommodate Kaua'i fishermen; the proposed Sanctuary designation must not be taken hostage by yet more shortsighted demands of a few that threaten the protection of an ecosystem that is a global natural and cultural treasure. As a resident of Hawai'i Island, as a US citizen, and as an environmentally aware member of our species, I hope and expect that the proposed Sanctuary will be approved and executed promptly without modifications or concessions. Aloha, Harald Ebeling

Submitter	Comment
Pelika Andrade	<p>My name is Pelikaokamanaoio Andrade from the island of Kauai. As a Native Hawaiian deeply committed to the care of Papahānaumokuākea and active in the Papahānaumokuākea Native Hawaiian Cultural Working Group (CWG), I am advocating and sharing my support for the Designation of Papahānaumokuākea as a National Marine Sanctuary. I am in SUPPORT of sanctuary designation, specifically Alternative 1, the preferred alternative. It's important to know that sanctuary designation would strengthen the existing conservation benefits of the Monument by applying additional protections and management tools for the marine areas of Papahānaumokuākea, while keeping the existing Monument boundaries in place. Sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today's uncertain political climate, ensuring added safeguards regardless of who becomes President. Also, Wespac is proposing large-scale extraction from the expanded region of Papahānaumokuākea (350,000 lbs of bottomfish and 180,000 lbs of pelagic fish annually), with the recommendation that permittees take home catch for "consumption, including community sharing, bartering, and trade" and recover costs from these trips, through the "sale of catch." I strongly oppose Wespac's attempt to yet again push their industrial fishing interests forward at the expense of the health of Papahānaumokuākea. From a traditional Hawaiian Lens and relationship, the suggestions and proposals of Wespac are directly conflicting with Hawaiian Rights and Responsibilities. Native Hawaiian relationships are familial, dependent on reciprocity, and based on long-term success. Practices and customs developed and altered based on these relationships while traditional lifestyles shifted to ensure the relationship remained. Our contemporary relationship with our islands are extremely unhealthy, have strayed from familial, are not reciprocating and are very short-sighted. We collectively are extracting/consuming/taking without the knowledge and actions of replacing threatening long-term success. We collectively no longer treat the world around us as family, we don't reciprocate what we take or consume, and our actions cannot sustain us for the long term. The proposals of Wespac are in direct conflict with Native Hawaiian fundamental relationships. To reiterate, I support the Designation of Papahānaumokuākea as a National Marine Sanctuary, specifically Alternative 1. I support sanctuary designation to strengthen the existing conservation benefits of the Monument, while keeping the existing Monument boundaries and management structure in place.</p>
Miranda Sarola	<p>-Preferred sanctuary boundary area (maximum sanctuary area alternative 582K square miles)(Alternatives are being considered for area of marine waters to be protected)- Strict Monitoring & Enforcement on marine debris, fishing line, fishing gear to eliminate entanglement of endangered marine life in marine protected area; NO longline fishing- Strict regulations: NO non-commercial fishing, NO sustenance fishing in marine protected area-NO exemptions for marine mining activities-NO submarine activity Mahalo, Miranda</p>

Submitter	Comment
William Quinlan	<p>[I am from Oahu with knowledge and experience as a certified Scuba instructor for 50 years. My diving around the world has taught me how important supporting Papahānaumokuākea is. Specifically I am in support Alternative 1 - the preferred alternative - which would designate boundaries that are co-extensive with the marine portions of the Papahānaumokuākea National Marine Monument. The preferred alternative acknowledges the deep discussions, thoughts and opinions expressed by hundreds and thousands of people who came forward during the Monument expansion effort. It rightfully does not expand the area's specific boundaries any further than what is currently in place. The proposed rule and Draft EIS also establish an additional layer of regulations over the existing boundaries of the current Marine Monument that would maintain and enhance existing protections. The proposed management plan appropriately incorporates Mai Ka Pō Mai, which was informed and created by the Native Hawaiian community, and the vision of how Papahānaumokuākea should be cared for now and in perpetuity. Papahānaumokuākea deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahānaumokuākea is also a place for Native Hawaiian cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature. A sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today's uncertain political climate, ensuring added safeguards regardless of who becomes President. A sanctuary can also attract additional public and non-profit funding, which could strengthen the public's appreciation of Papahānaumokuākea and support a more consistent budget for operations, research, citizen science, education, and emergency response. The National Marine Sanctuary Act provides clearer regulations and guidance for enacting civil penalties for permit and regulatory violations than what is currently available with the Monument Proclamation alone and imposes liability for damage to sanctuary resources. Regarding industrial fishing, Wespac's proposal to have large-scale fish extraction in Papahānaumokuākea is not beneficial to the resource or to the communities of Hawaii and the greater Pacific and only seeks to benefit a select few. I/we oppose any sale, barter, or trade of this large-scale extraction and the cost recovery proposed by Wespac for these trips. Because the fishing rules are being developed under a separate process not aligned with Sanctuary designation, NOAA should ensure it has protective regulations consistent with the Monument Proclamations. This process should include an EIS, with a public comment period. With only 3% of the global ocean fully protected, we must support additional protections for Papahānaumokuākea that will help to mitigate against possible negative impacts from changes in political administrations. Mahalo. William Quinlan Oahu</p>
Kaupa Kawelo	I support the sanctuary designation for papahānaumokuākea, specifically, I support alternative 1.

Submitter	Comment
B.A. McClintock	<p>I fully support the designation of Papahānaumokuākea as a National Marine Sanctuary. The proposed rule and Draft EIS also establish an additional layer of regulations over the existing boundaries of the current Marine Monument that would maintain and enhance existing protections. The proposed management plan appropriately incorporates Mai Ka Pō Mai, which was informed and created by the Native Hawaiian community, and the vision of how Papahānaumokuākea should be cared for now and in perpetuity. Papahānaumokuākea deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahānaumokuākea is also a place for Native Hawaiian cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature.</p>
Sheryl Gardner	<p>A sanctuary designation would strengthen the durability of existing protections provided through the Monument, which has been threatened by today's uncertain political climate, ensuring added safeguards regardless of who becomes President. Specifically I am in support Alternative 1 - the preferred alternative - which would designate boundaries that are the same as the marine portions of the Papahānaumokuākea National Marine Monument.</p>
Lily Monte	<p>Aloha</p> <p>I am a concerned citizen for this area. I believe the following should be enforced for this area and many more.</p> <ul style="list-style-type: none"> - Preferred sanctuary boundary area (maximum sanctuary area alternative 582K square miles) (Alternatives are being considered for area of marine waters to be protected) - Strict Monitoring & Enforcement on marine debris, fishing line, fishing gear to eliminate entanglement of endangered marine life in marine protected area; NO longline fishing - Strict regulations: NO non-commercial fishing, NO sustenance fishing in marine protected area -NO exemptions for marine mining activities -NO submarine activity <p>Mahalo</p>

Submitter	Comment
Helen Nielsen	Aloha, I am in full support of Sanctuary designation for Papahānaumokuākea National Marine Sanctuary, especially under designation 1. Our many oceans' quality continues to decline worldwide. There have been so many well-documented benefits provided by professionals as to why this Sanctuary should continue and be strengthened. Seeing first hand the changes in the reefs over the past 30 years really frightens me and we should be doing all we can to protect the most pristine places left. What kind of a world will we be left with if we are not continually proactive against harmful policies, especially to the PMNS.
Mina Ellison	Aloha, I am sharing today that I fully support the designation of Papahānaumokuākea as a National Marine Sanctuary. Specifically, I, am in support Alternative 1 - the preferred alternative - which would designate boundaries that are co-extensive with the marine portions of the Papahānaumokuākea National Marine Monument. The preferred alternative acknowledges the deep discussions, thoughts and opinions expressed by hundreds and thousands of people who came forward during the Monument expansion effort. It rightfully does not expand the area's specific boundaries any further than what is currently in place. The proposed rule and Draft EIS also establish an additional layer of regulations over the existing boundaries of the current Marine Monument that would maintain and enhance existing protections. The proposed management plan appropriately incorporates Mai Ka Pō Mai, which was informed and created by the Native Hawaiian community, and the vision of how Papahānaumokuākea should be cared for now and in perpetuity. Papahānaumokuākea deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahānaumokuākea is also a place for Native Hawaiian cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature. A sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today's uncertain political climate, ensuring added safeguards regardless of who becomes President. A sanctuary can also attract additional public and non-profit funding, which could strengthen the public's appreciation of Papahānaumokuākea and support a more consistent budget for operations, research, citizen science, education, and emergency response. The National Marine Sanctuary Act provides clearer regulations and guidance for enacting civil penalties for permit and regulatory violations than what is currently available with the Monument Proclamation alone and imposes liability for damage to sanctuary resources. Regarding industrial fishing, Wespac's proposal to have large-scale fish extraction in Papahānaumokuākea is not beneficial to the resource or to the communities of Hawaii and the greater Pacific and only seeks to benefit a select few. I/we oppose any sale, barter, or trade of this large-scale extraction and the cost recovery proposed by Wespac for these trips. Because the fishing rules are being developed under a separate process not aligned with Sanctuary designation, NOAA should ensure it has protective regulations consistent with the Monument Proclamations. This process should include an EIS, with a public comment period. With only 3% of the global ocean fully protected, we must support additional protections for Papahānaumokuākea that will help to mitigate against possible negative impacts from changes in political administrations. Mahalo, Mina

Submitter	Comment
Nicholas J. Anderson	<p>I generally support the proposed sanctuary designation, but I comment to express my concern about the exemptions and exceptions associated with non-commercial fishing. Without sufficient funding and resource allocation, monitoring and oversight of activities in the enormous designated area may be inadequate and render difficult or impossible the detection of potentially illegal fishing activities. The final version of this sanctuary regulation should be revised to contemplate the likelihood of abuse of non-commercial fishing exemptions. Under the draft rule, non-commercial fishing activities in the OSZ authorized under the Magnuson-Stevens Fishery Conservation and Management Act are not subject to sanctuary regulations. This act is criticized for its failure to stem overfishing and the final version of the sanctuary regulations should reflect this shortcoming in its prevention of non-commercial fishing abuse in the Papahānaumokuākea National Marine area.</p>
Patricia Richardson	<p>I fully support National Marine Sanctuary designation of the waters of Papahānaumokuākea Marine National Monument. This fragile and vulnerable environment deserves all possible protection from commercial exploitation. Designating the areas from the shorelines out to current Monument boundaries as a National Marine Sanctuary would add a much needed level of protection.</p> <p>My connection to Papahānaumokuākea Marine National Monument comes from twenty years of volunteering at Mokupapapa, the Discovery Center for the Monument, in Hilo, Hawaii. I explain the geography, geology, history and wildlife of the Monument to visitors from near and far. I have also made three trips to Midway Atoll to count albatross nests as a volunteer with the U.S. Fish and Wildlife Service.</p> <p>The northwestern part of our Hawaiian archipelago is indeed a beautiful and unique area. I want to see the islands, atolls, reefs and deep water areas receive maximum protection. This area is home to Hawaiian monk seals, nesting ground for Hawaiian green sea turtles, and nesting area for over 20 species of native seabirds. The near-shore reefs are filled with native fish, some found only in these waters. This unique wildlife and its habitat must be preserved now and for future generations to experience.</p>

Submitter	Comment
Paulette Smith	<p>As a former monk seal responder and educator on the Big Island from 2013 - 2017, I learned a great deal about Papahānaumokuākea. If ever we needed stronger protection for this area and ecosystem, I implore you to support the sanctuary designation, alternative 1. Reflecting on this designation, I think of a program with which I was involved. Take a look at the 23 seals painted in a painting that now hangs in the Mokupapapa Discovery Center in Hilo. One talk by our volunteer educational program inspired fourth graders to become advocates and messengers for the conservation of the critically endangered Hawaiian monk seal. One talk. Supported by their teacher, those 4th graders grasped the crucial importance of conservation as did over 100 other classrooms on the Big Island in which this program was presented. They are the legacies of your actions. I saw clearly in those unstained, transparent eyes of over 4,000 fourth graders we reached, their hopefulness for a brighter future for that ONE species, the Hawaiian monk seal. Imagine what your actions can do for an entire ecosystem, region. Please, their future for preserving, protecting, enhancing this incredibly unusual area is in your hands. They desperately need the wisdom of the kupuna that no one living or having experienced Hawaii for years doesn't have rub off on them. And you in the legislature carry within you that wisdom, however great or small, but I believe it is great. For one cannot live or experience Hawaii without breathing in the connection to the aina, without absorbing and benefiting from encounters with the kupuna. And with it bears the heavy weight of acting wisely for it. Which is why, especially for the youth of today, they need your support to more strongly protect Papahānaumokuākea. With respect, Paulette W Smith, formerly of Hilo, Hawaii.</p>

Submitter	Comment
Linda Elliott	<p>Aloha,I would like to share that I fully support the designation of Papahānaumokuākea as a National Marine Sanctuary. I have grown up here in the Hawai'i islands and I have studied our native species and I have worked as a conservation biologist for several decades. I have also had the amazing life changing experience of working in the remote islands and seeing what Hawai'i ecosystems should be like for Hawai'i's unique and precious biodiversity. We have lost so much and now is the opportunity to protect what remains and help recover the ecosystems. This in turn will protect our islands from climate change and for future generations of all species. Specifically, I am in support Alternative 1 - the preferred alternative - which would designate boundaries that are co-extensive with the marine portions of the Papahānaumokuākea National Marine Monument. The preferred alternative acknowledges the deep discussions, thoughts and opinions expressed by hundreds and thousands of people who came forward during the Monument expansion effort. It rightfully does not expand the area's specific boundaries any further than what is currently in place. The proposed rule and Draft EIS also establish an additional layer of regulations over the existing boundaries of the current Marine Monument that would maintain and enhance existing protections. The proposed management plan appropriately incorporates Mai Ka Pō Mai, which was informed and created by the Native Hawaiian community, and the vision of how Papahānaumokuākea should be cared for now and in perpetuity. Papahānaumokuākea deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahānaumokuākea is also a place for Native Hawaiian cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature. A sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today's uncertain political climate, ensuring added safeguards regardless of who becomes President. A sanctuary can also attract additional public and non-profit funding, which could strengthen the public's appreciation of Papahānaumokuākea and support a more consistent budget for operations, research, citizen science, education, and emergency response. The National Marine Sanctuary Act provides clearer regulations and guidance for enacting civil penalties for permit and regulatory violations than what is currently available with the Monument Proclamation alone and imposes liability for damage to sanctuary resources. Regarding industrial fishing, Wespac's proposal to have large-scale fish extraction in Papahānaumokuākea is not beneficial to the resource or to the communities of Hawaii and the greater Pacific and only seeks to benefit a select few. I/we oppose any sale, barter, or trade of this large-scale extraction and the cost recovery proposed by Wespac for these trips. Because the fishing rules are being developed under a separate process not aligned with Sanctuary designation, NOAA should ensure it has protective regulations consistent with the Monument Proclamations. This process should include an EIS, with a public comment period. With only 3% of the global ocean fully protected, we must support additional protections for Papahānaumokuākea that will help to mitigate against possible negative impacts from changes in political administrations. Mahalo, Linda Elliott Wildlife Biologist Hāwī, HI 96719</p>

Submitter	Comment
Jill Williams	<p>Aloha,I am sharing today that Jill Williams fully support the designation of Papahanaumokuakea as a National Marine Sanctuary.I live on Oahu with knowledge of Papahanaumokuakea)].Specifically I am in support Alternative 1 - the preferred alternative - which would designate boundaries that are co-extensive with the marine portions of the Papahānaumokuākea National Marine Monument.The preferred alternative acknowledges the deep discussions, thoughts and opinions expressed by hundreds and thousands of people who came forward during the Monument expansion effort. It rightfully does not expand the area’s specific boundaries any further than what is currently in place.The proposed rule and Draft EIS also establish an additional layer of regulations over the existing boundaries of the current Marine Monument that would maintain and enhance existing protections.The proposed management plan appropriately incorporates Mai Ka Pō Mai, which was informed and created by the Native Hawaiian community, and the vision of how Papahānaumokuākea should be cared for now and in perpetuity.Papahānaumokuākea deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahānaumokuākea is also a place for Native Hawaiian cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature.A sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today’s uncertain political climate, ensuring added safeguards regardless of who becomes President.A sanctuary can also attract additional public and non-profit funding, which could strengthen the public’s appreciation of Papahānaumokuākea and support a more consistent budget for operations, research, citizen science, education, and emergency response.The National Marine Sanctuary Act provides clearer regulations and guidance for enacting civil penalties for permit and regulatory violations than what is currently available with the Monument Proclamation alone and imposes liability for damage to sanctuary resources.Regarding industrial fishing, Wespac’s proposal to have large-scale fish extraction in Papahanaumokuakea is not beneficial to the resource or to the communities of Hawaii and the greater Pacific and only seeks to benefit a select few. I/we oppose any sale, barter, or trade of this large-scale extraction and the cost recovery proposed by Wespac for these trips.Because the fishing rules are being developed under a separate process not aligned with Sanctuary designation, NOAA should ensure it has protective regulations consistent with the Monument Proclamations. This process should include an EIS, with a public comment period.With only 3% of the global ocean fully protected, we must support additional protections for Papahānaumokuākea that will help to mitigate against possible negative impacts from changes in political administrations.Mahalo.Jill Williams</p>
American Samoa Veteran and their Families	<p>Proposed Sanctuary needs to be reevaluated with the understanding this life giving area of ocean that the indigenous islands state and territories are a part of must have an equitable return on this federal investment. What is need , Local state and Territories Regulatory Management fisheries independence, Federal legislation protection of local and US fishing fleet in the Pacific, US Fishing fleet only, Coast Guard /Navy needs to have a larger monitoring presence in illegal Fishing, More Federal laws. protection of indigenous fishing rights and ocean resources in line with the laws protecting our US Native Americans on the main land. Sustainable and equitable Compensation for States and Territories. OR NO . WE DO NOT WANT THIS.</p>

Submitter	Comment
Anonymous	I am OPPOSED to this regulation because it will just decrease the fishing waters for American Samoa even more, and it's already getting smaller and smaller with each passing day.
National Wildlife Federation	The National Wildlife Federation is pleased to submit the attached letter of support for designation of marine portions of Papahānaumokuākea Marine National Monument and the Monument Expansion Area (collectively called the Monument) as a national marine sanctuary. Dedication of this national marine sanctuary would honor the legacy of these islands and atolls, their significance to Indigenous Hawaiians, and protect abundant populations of wildlife such as coral, fish, sharks, turtles, rays, whales, dolphins, birds, and other important marine ocean species in the face of threats like deep-sea mining, climate change, and overfishing. Thank you for doing all that you can to ensure maximum protections for this national Hawaiian treasure for fish, wildlife, Pacific Island communities, and those who love this area, now and for generations to come.
Anonymous	I am not for opening up Papahanaumokuakea because keeping the area can protect species of fish from going extinct. Keeping Papahanaumokuakea closes can help keep fish species alive.
Anonymous	They shouldn't open it up for commercial fishing because it's a historical monument and should be preserved forever. Also I don't think it would be appropriate for Hawaiian culture to have those islands being used for fishing.
Anonymous	Overfishing is bad. Overfishing is very bad and hurting our marine life. We have to make a change and love you Aina. Mahalo Nui loa Family
Anonymous	What we've learned about the North- western Hawaiian islands is that each ecosystem is valued. We've come to the understanding that although local fisheries can only fish within a certain zone. Fishing is heavily relied based how expensive it is with the economy itself and I believed will give some breaks for certain areas of our island. It's the continuous cycle, that maintains overfishing and doesn't prevent the potential consequences reflected on economic decisions.
Anonymous	I believe that Papahanaumokuakea should be protected. If we expand the quotas and open up to more fishing then it would lead to more overfishing. This is overall bad for our environment because of the impacts that it'll have on our marine.
Anonymous	I believe that this proposed rule can lead to many harmful impacts in our ocean ecosystem. First of all, allowing fishermen to fish along the Northwestern Hawaiian Islands will go against and outwardly disrespect our culture in preserving the NWHI as a national monument, keeping the marine organisms safe and thriving. An economic factor to this is if we allow the fishing in the NWHI, it will eventually lead to overfishing around our EEZ and the benefits of the spill over effect will cease to exist. This will also encourage the demand for fishing in other protected areas of the ocean leading to more overfishing and rising demand of fish across the globe.
Anonymous	I think that if this site is sacred then they should not open it up. I believe they shouldn't do it in order to protect the area from any harm caused by modern fisheries.
Anonymous	Don't give in and save our national monument and also save the marine life ecosystem, If you open it up the numbers of illegal fishing will rise and the marine life ecosystem can decrease drastically.

Submitter	Comment
Anonymous	You shouldn't open up the north western islands. Why would you put fishermen above culture, and just for them to overfish the area. Theres already been studies showing the increase in fish that is spilling over from the north western islands.
Anonymous	I feel that the new rule should not continue because.It could effect people dramatically since people use fish as a food resource.letting these Fisher men do this would make fish go extinct.
Anonymous	i think they should keep the monument alone and within protection. if they allow it to be open for fishermen, i believe it will cause a bigger issue with the already current issues with overfishing. it will not help areas like such be protected if they keep opening these areas to be fished.
Anonymous	Papahānaumokuākea should not be used for commercial fishing. It is important to keep areas for fish to reproduce and grow without the need to worry about commercial fishing. It should be seen as sacred grounds for fish to thrive.
National Wildlife Federation	<p>Dear Superintendent Roberts,</p> <p>The National Wildlife Federation strongly supports designation of marine portions of Papahānaumokuākea Marine National Monument and the Monument Expansion Area (collectively called the Monument) as a national marine sanctuary. Dedication of this national marine sanctuary would honor the legacy of these islands and atolls, their significance to Indigenous Hawaiians, and protect abundant populations of wildlife such as coral, fish, sharks, turtles, rays, whales, dolphins, birds, and other important marine ocean species in the face of threats like deep-sea mining, climate change, and overfishing.</p> <p>With over 7 million members and supporters, the National Wildlife Federation is the nation's largest conservation organization. Our unique Federation model means we have affiliate partners in 52 states and territories, including Hawai'i. We cannot complete our mission of uniting all Americans to ensure wildlife thrive in a rapidly changing world without addressing threats facing ocean health and marine biodiversity. We are eagerly employing our science-based advocacy, community partnerships, and engagement of diverse stakeholders, to build community and political support for the protection of additional offshore areas around the nation. This includes supporting the added protections and management needs for Papahānaumokuākea that will be afforded through sanctuary designation that are crucial to strengthening the existing resource protections.</p> <p>The proposed Papahānaumokuākea sanctuary area extends 1,200 miles across the northwestern region of the Hawaiian archipelago, starting approximately 140 miles from the main Hawaiian Islands, and roughly 3,000 miles from the nearest continental land mass. This vast ecosystem is one of the largest wild, pristine marine sites in the world, encompassing 582,578 square miles of the Pacific Ocean. The monument protects traditional Hawaiian habitation sites, heiau (temples), ko'a (fishing grounds and shrines), culturally significant species such as sharks, sea turtles, and other 'aumākua (ancestral family gods), and the flight paths and foraging habitat of seabirds essential to traditional navigators during ocean voyaging by canoe. The addition of the national marine sanctuary would provide important regulatory and management tools to complement and</p>

Submitter	Comment
	<p>enhance existing protections for Papahānaumokuākea ecosystems, wildlife, and cultural and maritime heritage resources.</p> <p>We urge that NOAA act swiftly to designate the new sanctuary by finalizing and approving the associated draft environmental impact statement (EIS) (Alternative 1) and draft sanctuary management plan that are currently out for public comment. Specifically, this proposed action and national marine sanctuary designation would:</p> <ul style="list-style-type: none"> • Maximize benefits for the largest proposed sanctuary of the three alternatives that NOAA is evaluating, and provide critically needed guidance for management, a top priority of which should be species protections. • Protect this coral reef ecosystem that is a global marine biodiversity hotspot, providing essential habitats for rare species such as the threatened green turtle and the critically endangered Hawaiian monk seal, the Hawaiian humpback whale, sharks, millions of seabirds, and others. There is a high degree of endemism in this area, and it is crucial to safeguard these species and actively manage these habitats so they not only survive, but thrive. • Provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources. By adopting a co-management model NOAA and partners will help ensure that traditional ecological knowledge (TEK) and Western science can be at the forefront of ongoing and future protections for the Pacific. This includes enhancing management of the proposed sanctuary by having a Native Hawaiian program specialist on staff and the sanctuary advisory council including Native Hawaiian seats, and outreach to the Native Hawaiian Community. <p>While there is still more work to be done to expand the National Marine Sanctuaries Program so that there are geographically representative, ecologically connected, and climate-resilient marine areas off all U.S. coasts, the Papahānaumokuākea designation is critically needed and demonstrates meaningful progress toward these broader goals. Thank you for doing all that you can to ensure maximum protections for this national Hawaiian treasure for fish, wildlife, Pacific Island communities, and those who love this area, now and for generations to come.</p> <p>Sincerely,</p> <p>Jessie Ritter Associate Vice President, Water and Coasts National Wildlife Federation National Wildlife Federation</p> <p>Lindsay Gardner Director of Marine Conservation National Wildlife Federation National Wildlife Federation</p>

Submitter	Comment
Chelsea Tanimura	<p>MEMORANDUM FOR: Gina Raimondo Secretary of Commerce FROM: Chelsea Tanimura Lifelong resident of Hawai'i DATE: May 5, 2024 SUBJECT: Department of Commerce National Oceanic and Atmospheric Administration 15 CFR Part 922 [Docket No. 240213-0047] RIN 0648-BL33 Proposed Papahānaumokuākea National Marine Sanctuary</p> <p>The National Oceanic and Atmospheric Administration (NOAA) proposes to designate marine portions of Papahānaumokuākea Marine National Monument as Papahānaumokuākea National Marine Sanctuary (proposed sanctuary) to protect nationally significant biological, cultural, and historical resources and to manage this special place as part of the National Marine Sanctuary System. The proposed sanctuary consists of an area of approximately 582,570 square statute miles (439,910 square nautical miles) of Pacific Ocean waters surrounding the Northwest Hawaiian Islands and the submerged lands thereunder. NOAA proposes to establish the terms of designation for the proposed sanctuary and proposes regulations to implement the designation of the national marine sanctuary. NOAA is also publishing a draft environmental impact statement (DEIS), prepared in coordination with the State of Hawai'i, and a draft management plan (DMP). NOAA is soliciting public comments on the proposed rule. As a lifelong resident of Hawai'i, I am pleased to comment in support of NOAA-NOS-2021-0076, the Proposed Papahānaumokuākea National Marine Designation for the Northwestern Hawaiian Islands. This proposed rule would help to protect biodiversity; this is critical as the coral reefs are the home of both immature marine life and the breeding population of important species that residents depend upon, either for commercial purposes or to feed their families. I have witnessed first hand over nearly four decades a dramatic decline in the number of fish near shore; where once as a child I could see numerous schools of aholehole swimming in knee deep water, this is now an occurrence that my own son and I will remark on nowadays due to the rarity. Likewise, I remember that halalu would "run" for days off of Port Allen on Kaua'i; this does not happen anymore. Papahānaumokuākea is currently the largest contiguous protected conservation area in the United States and this proposal would strengthen its protection by designating it as a sanctuary. The original Papahānaumokuākea Marine National Monument, and the Monument Expansion Area, located around the Northwestern Hawaiian Islands, were established under the Antiquities Act of 1906 (54 U.S.C. 320301 et seq.) through, respectively, Presidential Proclamation 8031 of June 15, 2006; as amended by Presidential Proclamation 8112 of February 28, 2007; and Presidential Proclamation 9478 of August 26, 2016. The monument was created to protect and preserve the marine area of the Northwestern Hawaiian Islands and certain lands. However, the Papahānaumokuākea National Monument has faced criticism for its size, mainly from the fishing industry. It was also included in former President Trump's list of national monuments to be reviewed for removal of its monument status reportedly due to feared negative impacts on jobs. This rule grants double protection to Papahānaumokuākea since it would designate Papahānaumokuākea as a marine sanctuary on top of its current status as a National Monument. Should Papahānaumokuākea lose its status as a National Monument, it would still be considered a marine sanctuary, which would continue its protection against commercial uses. National marine sanctuaries are governed under a different law that allows protection of a marine system as a whole and also allows NOAA to involve more stakeholder groups, including state and local governments, to participate in protecting the sanctuary. National Monuments are typically managed by the federal government only. Protecting marine species from overfishing may also help to improve commercially important stocks into the future. This region also has cultural significance and Native Hawaiians should be invited to play a significant role in its</p>

Submitter	Comment
	<p>management and stewardship. The Monument is administered jointly by four Co-Trustees—the Department of Commerce, the Department of the Interior, the State of Hawai`i, and the Office of Hawaiian Affairs. I suggest that should this rule become official, that groups representative of the diverse views of Native Hawaiians be involved in the planning and promulgation. Native Hawaiians have depended upon and cared for the ocean, this particular section of ocean, for centuries and know it best. I appreciate the opportunity to comment on this proposed rule and look forward to seeing the protection for this vital area increased. I truly hope to see a return of the species I once saw in abundance during my childhood for my son's sake and for all of the children of Hawai'i. Sincerely, Chelsea Tanimura</p>

Submitter	Comment
Lydia Garvey	<p>Strongly urge Alternative 1 - the preferred alternative - which would designate boundaries that are co-extensive with the marine portions of the Papahānaumokuākea National Marine Monument. The preferred alternative acknowledges the deep discussions, thoughts and opinions expressed by hundreds and thousands of people who came forward during the Monument expansion effort. It rightfully does not expand the area's specific boundaries any further than what is currently in place. The proposed rule and Draft EIS also establish an additional layer of regulations over the existing boundaries of the current Marine Monument that would maintain and enhance existing protections. The proposed management plan appropriately incorporates Mai Ka Pō Mai, which was informed and created by the Native Hawaiian community, and the vision of how Papahānaumokuākea should be cared for now and in perpetuity. Papahānaumokuākea deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahānaumokuākea is also a place for Native Hawaiian cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature. A sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today's uncertain political climate, ensuring added safeguards regardless of who becomes President. A sanctuary can also attract additional public and non-profit funding, which could strengthen the public's appreciation of Papahānaumokuākea and support a more consistent budget for operations, research, citizen science, education, and emergency response. The National Marine Sanctuary Act provides clearer regulations and guidance for enacting civil penalties for permit and regulatory violations than what is currently available with the Monument Proclamation alone and imposes liability for damage to sanctuary resources. Regarding industrial fishing, Wespac's proposal to have large-scale fish extraction in Papahānaumokuākea is not beneficial to the resource or to the communities of Hawaii and the greater Pacific and only seeks to benefit a select few. I/we oppose any sale, barter, or trade of this large-scale extraction and the cost recovery proposed by Wespac for these trips. Because the fishing rules are being developed under a separate process not aligned with Sanctuary designation, NOAA should ensure it has protective regulations consistent with the Monument Proclamations. This process should include an EIS, with a public comment period. With only 3% of the global ocean fully protected, we must support additional protections for Papahānaumokuākea that will help to mitigate against possible negative impacts from changes in political administrations. Your attention to this most urgent matter would be much appreciated, for all present & future generations! TY Lydia Garvey Public Health Nurse</p>

Submitter	Comment
Calley O'neill	<p>Aloha and greetings from Waimea,I am sharing today that my ohana and team and I strongly and ully support the designation of Papahanaumokuakea as a National Marine Sanctuary.This is in alignment with Native Hawaiian ecological knowldege and science. We must have our monument be a sanctuary.Or...[I am from (share your location) with knowledge and experience in (x or your ties to Papahanaumokuakea)].Specifically [I, we] are in support Alternative 1 - the preferred alternative - which would designate boundaries that are co-extensive with the marine portions of the Papahānaumokuākea National Marine Monument.The preferred alternative acknowledges the deep discussions, thoughts and opinions expressed by hundreds and thousands of people who came forward during the Monument expansion effort. It rightfully does not expand the area’s specific boundaries any further than what is currently in place.The proposed rule and Draft EIS also establish an additional layer of regulations over the existing boundaries of the current Marine Monument that would maintain and enhance existing protections.The proposed management plan appropriately incorporates Mai Ka Pō Mai, which was informed and created by the Native Hawaiian community, and the vision of how Papahānaumokuākea should be cared for now and in perpetuity.Papahānaumokuākea deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahānaumokuākea is also a place for Native Hawaiian cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature.A sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today’s uncertain political climate, ensuring added safeguards regardless of who becomes President.A sanctuary can also attract additional public and non-profit funding, which could strengthen the public’s appreciation of Papahānaumokuākea and support a more consistent budget for operations, research, citizen science, education, and emergency response.The National Marine Sanctuary Act provides clearer regulations and guidance for enacting civil penalties for permit and regulatory violations than what is currently available with the Monument Proclamation alone and imposes liability for damage to sanctuary resources.Regarding industrial fishing, Wespac’s proposal to have large-scale fish extraction in Papahanaumokuakea is not beneficial to the resource or to the communities of Hawaii and the greater Pacific and only seeks to benefit a select few. I/we oppose any sale, barter, or trade of this large-scale extraction and the cost recovery proposed by Wespac for these trips.Because the fishing rules are being developed under a separate process not aligned with Sanctuary designation, NOAA should ensure it has protective regulations consistent with the Monument Proclamations. This process should include an EIS, with a public comment period.With only 3% of the global ocean fully protected, we must support additional protections for Papahānaumokuākea that will help to mitigate against possible negative impacts from changes in political administrations.We urge you to make this your highest priority and let us know of your decision.Mālama Papahānaumokuākea !Calley O'Neill and Ohana</p>

Submitter	Comment
Megan Dalton	<p>Aloha,I am sharing today that I, Megan Dalton, fully support the designation of Papahanaumokuakea as a National Marine Sanctuary.I have several years experience in working in Papahanaumokuakea and have seen first hand its biological and cultural importance.Specifically, I am in support Alternative 1 - the preferred alternative - which would designate boundaries that are co-extensive with the marine portions of the Papahānaumokuākea National Marine Monument.The preferred alternative acknowledges the deep discussions, thoughts and opinions expressed by hundreds and thousands of people who came forward during the Monument expansion effort.The proposed rule and Draft EIS also establish an additional layer of regulations over the existing boundaries of the current Marine Monument that would maintain and enhance existing protections.Papahānaumokuākea deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahānaumokuākea is also a place for Native Hawaiian cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature.A sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today’s uncertain political climate, ensuring added safeguards regardless of who becomes President.A sanctuary can also attract additional public and non-profit funding, which could strengthen the public’s appreciation of Papahānaumokuākea and support a more consistent budget for operations, research, citizen science, education, and emergency response.The National Marine Sanctuary Act provides clearer regulations and guidance for enacting civil penalties for permit and regulatory violations than what is currently available with the Monument Proclamation alone and imposes liability for damage to sanctuary resources.Regarding industrial fishing, Wespac’s proposal to have large-scale fish extraction in Papahanaumokuakea is not beneficial to the resource or to the communities of Hawaii and the greater Pacific and only seeks to benefit a select few. I oppose any sale, barter, or trade of this large-scale extraction and the cost recovery proposed by Wespac for these trips.Because the fishing rules are being developed under a separate process not aligned with Sanctuary designation, NOAA should ensure it has protective regulations consistent with the Monument Proclamations. This process should include an EIS, with a public comment period.With only 3% of the global ocean fully protected, we must support additional protections for Papahānaumokuākea that will help to mitigate against possible negative impacts from changes in political administrations.Mahalo.</p>

Submitter	Comment
<p>Timothy Teleso</p>	<p>The fact that this bill doesn't have a Samoan name but is trying to control Samoan waters is one reason this bill should not be passed. To have what I'm guessing is a Hawaiian name and try to sanction our waters is just not right. Hawaiians unlike Samoans are a weak people who have been exploited for as long as history has been recorded. Who are these people who think they know about our island? Have they lived here? Are they raising their families here? Why do you think you know about our island and most of all why do you think you should decide what happens with our oceans. You want us to just sit back and let illegal Chinese fishing boats take advantage of our bountiful EEZ? People who do not live on this island should not be allowed to make these types of decisions. Ask any local person about this issue and they will not agree with this bill. This bill has been proposed by a bunch of hippies who have nothing better to do but try to do what in their eyes will "save the planet," but at what cost? If this bill passes I would love for the people who are pushing this bill to leave their federal salaries and come live in American Samoa to see experience the hardship they're going to cause. American Samoa needs the tuna industry, it is our one and only export and is the foundation of our economy. They say we can resort to tourism. How? We have only one airline here that operates 2 regular flights a week and at certain times of the year is completely booked for months. We only have a few hotels and only so much land that would actually be suitable for new hotels. Building supplies at minimum are tripled in cost compared to the mainland US due to shipping and duty which will only increase if the canneries aren't exporting tuna. Weigh the damn pros and cons and you'll see this bill should not be passed. Come to American Samoa and have an in person town hall meeting and we will show you.</p>
<p>Roger McManus</p>	<p>May 6, 2024 This comment letter responds to the Federal Register Notice - Proposed Papahānaumokuākea National Marine Sanctuary, dated March 1, 2024. The proposed rule would establish a new National Marine Sanctuary to protect nationally significant resources that overlays a large portion of the current National Marine Monument. NOAA is currently a partner of the established management regime with the Department of Commerce through the National Oceanic and Atmospheric Administration's Office of National Marine Sanctuaries, the U.S. Department of the Interior through the U.S. Fish and Wildlife Service's Pacific Islands Regional Office, and the State of Hawaii through the Department of Land and Natural Resources Division of Aquatic Resources and Division of Forestry and Wildlife, and the Office of Hawaiian Affairs. My initial question for the proposal is why, exactly, NOAA considers designating a marine sanctuary as its preferred alternative? The draft EIS says a major purpose of the proposal is to improve coordination and management. In my view this need is not justifiable. The sanctuary would add to the current management regimes already in the identical area; two national wildlife refuges, the Coral Reef Reserve, and the Marine National Monument. How does adding another layer of bureaucracy to the same area help coordination and management? According to the draft EIS, management of the proposed sanctuary would leave out two of the Co-Trustees: the Department of the Interior and State representation. How does this help management and coordination? I understand that in the original Monument area fishing activities are significantly curtailed, but that certain specific fishing for "non-commercial" purposes was to be allowed in the expanded Monument established in 2016 as long as catch did not enter commerce. I understand too, that no regulations have been issued for the expanded Monument area almost a decade after the expanded designation. Why were new regulations not issued with the new authority?</p>

Submitter	Comment
	<p>It would seem this would have been a priority for NOAA ?We now have a proposal to establish a new marine sanctuary within the boundaries of the existing Monument, but the proposal in the new Federal Register notice does not explain why that is desirable and what is lacking in the current protective management regime administered for the Monument. How would the new Sanctuary improve management? Why is the proposed management of the new Sanctuary exclude some of the partners in Monument management. There appears to be no convincing rationale that this seemingly illogical proposal will be beneficial or administratively justifiable.We now have a proposal to estab a new marine sanctuary within the boundaries of the existing Monument, but the proposal in the Federal Register does not explain why that is desirable and what is lacking in the current protective management regime administered for the Monument. How will it provide better management fo the Sanctuary? Why will all of the original government participants not be retained in managing the Sanctuary?Essentially why do we need an additional management regime for the same area that already has an established management regime? What are the deficiencies in the current management regime that need to be fixed and cannot be adequately addressed under the current management regime? Cannot the public be effectively engaged in management decisions that includes the expertise and experience of the existing team of experts?This proposal should not go forward for further public review until a plan and an accompanying EIS addresses the administrative and substantive issues that are outstanding. If there is a need demonstrated to amend the current management regime that need should be the subject of substantive review with proposed options. Such an approach would inspire public confidence which is lacking in the current process.In all my decades of service in the Federal government and in the private sector working with Federal management agencies, including the Council on Environmental Quality in the Executive Office of the President - this is the strangest DEIS I have ever read. It does not inspire confidence in NOAA policy development or implementation.It would be appreciated if NOAA worked more constructively with its government partners in the management of the Monument.Sincerely Roger E. McManusredwardmcmamus@gmail.com</p>
<p>Birgit Winning</p>	<p>Comments on the proposed Papahānaumokuākea National Marine Sanctuary documentThank you for the opportunity to submit comments on the proposed designation of a Papahānaumokuākea National Marine Sanctuary, which would include marine areas of the existing Papahānaumokuākea Marine National Monument. The monument is home to over 7,000 species, including many threatened or endangered birds, plants, seals, and sea turtles. Beyond its biological significance, the area also holds a rich cultural history and is of great importance to Native Hawaiians. The monument embodies the importance of preserving a place that holds both biological and cultural significance.As the draft DEIS acknowledges, most living resources in the monument appear to be in healthy condition, owing in part to years of layered protections by the co-managing agencies. Further, NOAA expects that implementation of the No Action Alternative would not result in any change to existing management or uses of the area. Therefore, no beneficial or adverse impacts would occur from the No Action Alternative.The National Oceanic and Atmospheric Administration (NOAA) has proposed Alternative 1 as its preferred option. While this option includes some additional resource protections, it also has the potential for long-prohibited fishing to be allowed again. The Marine Mammal Commission considers fishing in the MEA to be a significant threat to a number of marine mammals. As noted in the draft DEIS, NOAA anticipates that the additional protection measures provided under Alternative 1 provide negligible impacts for protected species. This conclusion must mean that NOAA does not plan to allow fishing since if they did, there would be</p>

Submitter	Comment
	<p>impacts; as part of the designation, NOAA should commit to continuing the no-fishing provisions of the Monument. NOAA anticipates that the No Action Alternative would continue the existing impacts, including ongoing impacts of climate change, marine debris, derelict fishing gear, and deteriorated seawalls, primarily impacting corals, sea turtles, and Hawaiian monk seals. However, it is unclear how preferred Alternative 1 would alleviate the existing impacts. What are the options for effectively addressing the threats to marine mammals, sea turtles, and their ecosystem from marine debris and global warming? Should NOAA decide to move forward with the Sanctuary designation, I respectfully recommend the following: Preserve existing Monument protections. The designation should include a provision to permanently ban all commercial fishing. Almost all fishing is currently prohibited in the Monument, and any marine sanctuary alternative should include a complete and permanent ban on all commercial fishing. Sustainance and traditional fishing by Native Hawaiians are addressed through the Monument's permitting process. Remedy the entrapment of wildlife, including sea turtles, seabirds, and monk seals, at Lalo's Tern Island. More than 300,000 seabirds breed and nest on the atoll, while the critically endangered Hawaiian monk seals give birth on the shores. More than 90 percent of the sea turtles in the Hawaiian Archipelago, which stretches for roughly 1,500 miles, nest on the atoll. The rusted seawall on Tern Island is an enormous hazard for the island's wildlife, as are other entrapment hazards, including decaying buildings. Any action Alternative for the proposed marine sanctuary and management plan should include funding mechanisms to remove the seawall and decaying buildings. This action should take place even if the No Action Alternative is selected.</p> <p>5.6.2 Past, Present, and Reasonably Foreseeable Future Projects, Table 5.1 All Actions listed have a projected timeline. Is the projected timeline for the seawall removal at French Frigate Shoals listed as unknown because there are no funding appropriations for the priority, or is there another reason? Marine Debris—Expand efforts led by the National Fish and Wildlife Foundation and Papahānaumokuākea Marine Debris Project. Marine debris, mostly derelict fishing gear, degrades reef health and entangles fish, marine mammals, sea turtles, and other mobile species. All alternatives commit to integrating Native Hawaiian culture into all areas of management informed by Mai Ka Pō Mai. Over a period of 7 years, I volunteered and worked on several Northwestern Hawaiian Islands. As a result, I gained some familiarity with the conservation issues in this area. Thank you for your consideration,</p>

Submitter	Comment
Chloe Berridge	<p>John Armor, Director of the Office of National Marine Sanctuaries/o PMNM-Sanctuary Designation, NOAA/ONMS1845 Wasp Blvd., Bldg 176, Honolulu, HI 96818 From: Chloe Berridge RE: Public Comment on National Marine Sanctuary Designation for the Northwestern Hawaiian Islands My name is Chloe Berridge – I am a law student, lover of marine life, and community advocate. I support Alternative 1 of NOAA-NOS-2021-0076 the Proposed Papahānaumokuākea National Marine Sanctuary. The coral reef ecosystem in this area supports 98% of the breeding population, serving as an important place for reproduction and continuing life. Papahānaumokuākea serves as an endemic hotspot and is necessary to keep the flow of endangered species that go through this area and use it. We are already experiencing the effects of the climate crisis in the form of coral bleaching, coastal erosion, and loss of threatened and endangered species due to habitat destruction and invasive species. While the United Nations and national goal is to reserve 30% of our waters for marine sanctuaries, only 3% of the global ocean is fully protected. Safeguarding our natural and cultural resources is an issue that requires comprehensive, immediate action and the federal and state governments have an obligation to provide long-term protection for this sacred area for the benefit of future generations. Designation as a national marine sanctuary will strengthen existing protections for the PMNM, further the goals of resource protection and conservation of nationally significant ecosystems, and fill gaps in existing PMNM management activities through adoption of a sanctuary management plan. A sanctuary can also attract additional public and non-profit funding, which could strengthen the public’s appreciation of Papahānaumokuākea and support a more consistent budget for operations, research, citizen science, education, and emergency response. In tandem with enhanced environmental resource protection, designation must also protect Native Hawaiian cultural resources, heritage, and traditional and customary practices. To this end, please consider making the Office of Hawaiian Affairs a co-trustee of the monument and remove the exemption on non-commercial fishing to allow for more input from the Native Hawaiian community. Once again, I strongly support designating Papahānaumokuākea as a national marine sanctuary. It will help expand the protection of Hawaii’s unique and priceless marine life, protected species, and ecosystems, while also making strides towards the important goal of reserving 30% of our waters for marine sanctuaries.</p>

Submitter	Comment
Hawai'i Goes Fishing	The isolated nature of the Papahānaumokuākea National Marine Monument, and its vast expanse, has provided a great deal of natural protection ever since the end of WWII. The only vessels that can access that area reliably and safely are larger ocean-capable boats in excess of 50 feet. The cost to get to reach that area in terms of fuel, food and time exceeds the personal resources of most fishermen in Hawai'i. The area has repeatedly been described as "pristine". This is before the monument was established, and before the area was closed to the few remaining bottomfish fishermen who were permitted to operate in that area. By definition, "pristine" mean no evidence of human interaction could be observed. And that was while fishing was still taking place. Since no harm could be detected at that time, even the monument status is superfluous and needlessly deprives Hawai'i of a valuable cultural resource. It should be noted that if an area is to be truly protected, it needs to be constantly monitored. No state or federal agency has the resources to do that. Even the Coast Guard acknowledged during a WPRFMC meeting a few years ago that it didn't have the ability to regularly send assets to maintain watch throughout the expanse of the monument. The only ones who were in the area, and could have reported unpermitted incursions, were the longline fishing boats and, prior to that, longer-range bottomfish fishermen. But with the establishment of the monument, the only eyes in the area are gone. There's no need to add yet another expensive layer of protection to an area that has already been proven to be well-protected for more than 79 years. Ever since the end of WWII, what was known as the Northwestern Hawaiian Islands have been an isolated refuge for fish and wildlife. And they have thrived ever since.
Pacific Whale Foundation	Please see attached file in support of Alternative 1.
Anonymous	If the islands have some kind of significant meaning, such as cultural or historical and we close it off to maintain that meaning, then I understand closing it off to the public. If it's just a fishing advantage and it's being taken advantage off, then opening it to the public shouldn't be too harmful.
Anonymous	leave it closed we will lose our fish and it's allowing more illegal fishing
Anonymous	leave it closed we will lose our fish and it's allowing more illegal fishing
Anonymous	Absolutely Not. Allowing fishing in the proposed Papahānaumokuākea National Marine Sanctuary would endanger fragile marine ecosystems and jeopardize the biodiversity of one of the world's most pristine environments. The sanctuary serves as a crucial habitat for endangered species and supports a delicate balance of marine life. Permitting fishing would disrupt this balance, leading to irreversible damage and threatening the long-term sustainability of the entire ecosystem. Conservation efforts must prioritize protecting these valuable habitats rather than exploiting them for short-term gain.
Kanoa Semas	Do not open the national marine sanctuary because itll lead to overfishing
Anonymous	I personally believe that we should keep the fish sanctuary enclosed from the public and let the fish build and have a sustainable coral reefs that's will help rebuild our oceans and our damaged ecosystems.

Submitter	Comment
T.S.	I oppose this rule change because a sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today's uncertain political climate, ensuring added safeguards. As a student in marine science, we have learned about the significant positive impacts this sanctuary in the northwestern Hawaiian island have had and if this sanctuary is imposed upon it will have wide reaching negative consequences.
Anonymous	Aloha, I am sharing today, that I fully support the designation of papahanaumokuakea as a national marine sanctuary. I am currently in a marine science course and we are learning so much about the importance of marine life and how these sanctuaries are a necessity to help sustain our oceans. Opening this sacred sanctuary up will in turn lead to a depletion of our marine life and will completely stir up the ocean and the marine life living in it.
Anonymous	I oppose this rule change because opening these areas will make people do more illegal fishing. Also buying more quotas means more fishing, but it's in our waters not from the areas that we bought it from.
Anonymous	I don't want them to open the fish sanctuary to the public because it's allowing people and fishermen access to this fish sanctuary which could cause them to lose their population and amount a lot very fast. Having this sanctuary keeps a stable balance and an amount of fish because it's a place that fish can be bred and grow without fishermen or people killing and catching them. Keeping the population stable. Having it open could unblablize the population.
Anonymous	I oppose to that proposal because it be a gamble on opening up the sanctuary and exploiting our resources and stock
Emmanuel Salinas	we can use the people to hepl use tthat would be a big help because of how we take care of the land. we can help th people out.
Markus Faigle	I fully support the designation of Papahanaumokuakea as a National Marine Sanctuary. Specifically I am in support Alternative 1 - the preferred alternative - which would designate boundaries that are co-extensive with the marine portions of the Papahānaumokuākea National Marine Monument. The proposed management plan appropriately incorporates Mai Ka Pō Mai, which was informed and created by the Native Hawaiian community, and the vision of how Papahānaumokuākea should be cared for now and in perpetuity. With only 3% of the global ocean fully protected, we must support additional protections for Papahānaumokuākea that will help to mitigate against possible negative impacts from changes in political administrations. Regarding industrial fishing, Wespac's proposal to have large-scale fish extraction in Papahanaumokuakea is not beneficial to the resource or to the communities of Hawaii and the greater Pacific. It only seeks to benefit a select few. I oppose any sale, barter, or trade of this large-scale extraction and the cost recovery proposed by Wespac for these trips. Best regards,

Submitter	Comment
Anonymous	I am writing today as I fully support Papahānaumokuākea being designated as a protected marine sanctuary. The proposed rule to open Papahānaumokuākea to commercial fisheries would be detrimental to the environment and culture of Hawai'i. By opening more areas to fisheries they may deplete the diverse aquatic species that are found within the ecosystem.
Anonymous	This sanctuary is a vital resource when it comes to commercial fishing in Hawaii because its surplus of replenishment regarding the fish populations allows for some of its numbers to “spillover” into legal fishing grounds within the state; simultaneously, increasing catch rates of desired species like bigeye tuna by 54%. However, not only does this landmark ensure that our fish populations and species will not go extinct, it also provides a valued sanctuary to other organisms such as our green sea turtles, monk seals, and other marine species as they utilized this closed off area to safely reproduce and nurse their young. In a cultural light, long before Hawaii had modernized, those who inhabited the land before us have taught invaluable lessons as they believed “if we provide for the land, the land shall provide for us;” therefore, as we’ve witnessed and fallen victim to the mass issue of pollution both on our lands, shores, and oceans, it’s time we provide for the land and ocean that has so lovingly provided for its people food, a sense of home, opportunities, and a place where they can safely create memories with their families and loved ones. It is within the great interest of the islands to ensure the safety and the protection of the original boundaries of this national monument: Papahanaumokuakea
Anonymous	According to what I’ve reviewed on behalf of NOAA’s recommendation for altering the privileged basis of Papahanaumokuakea’s National Monument and thus establishing a National Marine Sanctuary, I have concluded to oppose the attempt keeping in mind the possible conflicting potentials that would arise by extending the privilege of the area, quotas, considerable regulations, etc. Though, there are benefits and intervening advantages, the amount of harm committing to the plan can do has extensive ability to conflict the important relationship between Hawai’i’s land and people, the effective measure of the land itself and the emotional connection that subsides Kanaka’s and residents whom rely on the flow amidst the already present and difficult established system.
Alohilani Antoque	save our island.
Anonymous	I support the plan the designation of Papahanaumokuakea as a National Marine sanctuary.
Anonymous	I support the plan the designation of Papahanaumokuakea as a National Marine sanctuary.
Emily Ilaoa	I do not support the expansion of the Papahanaumokuakea National Marine Sanctuary.
Gary Beals	The Papahanaumokuakea National Marine Sanctuary should not have been created in the first place and certainly not expanded. The 'Permitted fishing' that occurred in the past was sustainable and allowed a degree of 'over-watch' preventing illegal fishing and other activities from occurring.

Submitter	Comment
Roy Morioka	<p>As a small boat fisher (non-longline) of Hawaii, based in Honolulu, I would probably never go the proposed Papahānaumokuākea Sanctuary. But am concerned that the traditional artisanal small boat fishery as was practiced by the indigenous community for generations will be lost. I object to the misinformation citing the introduction of "industrialized" fishing in the proposed sanctuary. For years there were limited entry fisheries in what was formerly known as the "leeward islands" or "Northwest Hawaiian Islands - NWHI". Regulated traditional small boat fisheries have a place in Hawaii and must be culturally perpetuated.</p> <p>Additionally, at a minimum there is a needs a provision for an exemption should a natural disaster occur since the majority of our airports are at or near sea level and ports leaving us vulnerable to a tsunami or a hurricane occur severing our lifeline for food and goods, that the Sanctuary be opened for access to those fisheries by the small boat community for sustenance and community sharing.</p> <p>Mahalo for this opportunity to comment.</p>
Anonymous	<p>Aloha, I am sharing today, that I fully support the designation of papahanaumokuakea as a national marine sanctuary. I am currently in a marine science course and we are learning so much about the importance of marine life and how these sanctuaries are a necessity to help sustain our oceans. Opening this sacred sanctuary up will in turn lead to a depletion of our marine life and will completely stir up the ocean and the marine life living in it.</p>
Anonymous	<p>I greatly support the rule so that it provides more homes to marine life. Many species could be of use for the sanctuary.</p>
Anonymous	<p>i propose we help them find a better place to fish where there is a better number of catch so that both parties can be happy. They can fish with better catch and we can continue to have the sanctuary.</p>
Anonymous	<p>I am sharing today that I do not support the rule because it is home to other marine animals that are important to the Hawaiian Islands.</p>
Anonymous	<p>Brah...Das Unko Grays gulch. No touch um brah cause he gon be all angry. If u no get mana no touch um. Please ;)!</p>
Anonymous	<p>I oppose the rule against Papahānaumokuākea because it's the only place where wildlife can live freely without the existence of humans. There's already so much trash that exists on that island and if fishermen are allowed to fish there, there will be even more trash and less fish will be there, which could potentially lead to extinction.</p>
Anonymous	<p>i disagree for this rule because i think that it could be not beneficial for the animals as it is a home for them.</p>
Anonymous	<p>I disagree. This is a bad idea because we should keep the fishing grounds private to the other living organisms that need the food.</p>

Submitter	Comment
Anonymous	Papahānaumokuākea is a none fishing zone and should continue to stay that way. Fish get to reproduce there causing an over spill so those fisherman can catch those fish. Go fish somewhere else, there's plenty other fish in the sea for you guys to catch.
Anonymous	I disagree with this choice because not only are you taking land that's being used as monk seal and native hawaiian birds nesting grounds, but endangering our fish populations, the only reason why Hawaii's Big eye tuna is doing good is because of the spill over from the protected areas but if the area is no longer protected the Big Eye tuna populations will dwindle.
Anonymous	I disagree nobody should be able to be on that land and should be kept native land. nobody should be able to fish or even step foot on the property. We don't want other people to ruin and or even be there
Anonymous	I disagree cause I feel like it should protect the fish and other native animals. So we should save all of the animals over there. For the further generations to enjoy .
Anonymous	I disagree because it protects the fish. If it's protected then the fish can be reproduce and there would be more.
Anonymous	I disagree because the environment will be negatively affected. The endangered species might be wiped out and our ecosystem will change for the worse. Although the fishermen will get more money, the population of the fish will be in danger.
Anonymous	<p>While the Papahānaumokuākea Marine National Monument is currently closed to tourism, tourism's impact on the marine environment can't be forgotten when protecting these species. Hawaii had 10 million visitors in 2019 alone and with that, marine life is significantly impacted.</p> <p>This sanctuary needs to have protections in place from tourist activities that could potentially harm marine habitats and ecosystems like wake activities and scuba diving. These impacts need to be evaluated and accounted for. Currently, since there are no visitors, there are virtual tours and other places suggested to visit and these may need to stay permanently in place in order to protect the marine life around the monument.</p>
Anonymous	Please keep Papahānaumokuākea has a non fishing zone. If we keep it as a non fishing zone it will help the fishers more but letting them keep their job.
Anonymous	I disagree because the environment might be harmed and slightly negatively affect the people around us jobs , and species might be cleared, also limited species
Anonymous	I disagree with the designation of Papahānaumokuākea because the number of illegal fishing will rise and the marine life ecosystem will plummet. Fishermen want money but it doesn't mean you should disregard sacred land that is very important to the people of Hawaii.
Anonymous	I disagree because I think that we should protect the native fish this is important so we don't kill off the population. This will allow fish to reproduce and keep the population alive.

Submitter	Comment
Anonymous	<p>Aloha, today I will be supporting the designation of Papahānaumokuākea as a National Marine Sanctuary. Papahānaumokuākea being a National Marine Sanctuary has been the main factor of having the amount of fish that's been given out to are committee and being shipped elsewhere, with that being said reducing the size of the sanctuary along with the increased quota would be short sided if we were to go with the reduction of the sanctuary with it reducing the amount of fish catches in the future.</p>
Northwestern Hawaiian Islands Hui	<p>There are only two purposes for a sanctuary designation to overlay existing protected areas, 1) to provide a political safeguard to prevent an unscrupulous US president from weakening existing protections or worse, and 2) to supplement and complement existing protections.</p> <p>If US Department of Commerce agencies aim is to provide an open door for US interests' exploitation of natural resources, the US should do so in their own country, not in Hawaii. To do so in Hawaii, which retains its status as a co-equal State and remains under a globally recognized belligerent US military occupation, is distasteful, dishonorable, and clearly of a criminal nature.</p> <p>The United States claims its authority over the Hawaiian Islands derives from the joint resolution of annexation of July 7, 1898. However, the joint resolution is not customary international law nor is it a treaty. Rather, it is congressional legislation, which the United States Supreme Court, in <i>United States v. Curtiss-Wright</i>, stated "Neither the Constitution nor the laws passed in pursuance of it have any force in foreign territory unless in respect of our own citizens, and operations of the nation in such territory must be governed by treaties, international understandings and compacts, and the principles of international law."</p>

Submitter	Comment
Na Iwi Kupuna	<p>RIMPAC EFFECTS• Military readiness activities may adversely impact cultural resources within the boundary alternatives. With regards to maritime heritage resources, the Navy’s EIS notes that “stressors, including explosive and physical disturbance and strike stressors, associated with the” Navy Hawaii-Southern California Training and Testing action “would not affect submerged prehistoric sites and submerged historic resources in accordance with section 106 of the National Historic Preservation Act because mitigation measures have been implemented to protect and avoid these resources” (U.S. Department of the Navy, 2018).• Military readiness activities may adversely impact cultural resources within the boundary alternatives. With regards to maritime heritage resources, the Navy’s EIS notes that “stressors, including explosive and physical disturbance and strike stressors, associated with the” Navy Hawaii-Southern California Training and Testing action “would not affect submerged prehistoric sites and submerged historic resources in accordance with section 106 of the National Historic Preservation Act because mitigation measures have been implemented to protect and avoid these resources” (U.S. Department of the Navy, 2018).• Military readiness activities may adversely impact cultural resources within the boundary alternatives. With regards to maritime heritage resources, the Navy’s EIS notes that “stressors, including explosive and physical disturbance and strike stressors, associated with the” Navy Hawaii-Southern California Training and Testing action “would not affect submerged prehistoric sites and submerged historic resources in accordance with section 106 of the National Historic Preservation Act because mitigation measures have been implemented to protect and avoid these resources” (U.S. Department of the Navy, 2018).Yet, hundreds of aircraft, and several other aircraft carriers and destroyers from the battle, remain to be discovered in Papahānaumokuākea. Pg.178The EPA placed Tern Island on the Federal Agency Hazardous Waste Compliance Docket in 2004 due to legacy military waste and associated hazardous substances buried on the island. EPA and FWS completed a CERCLA Preliminary Assessment (PA) of Tern Island in 2014, confirming that PCBs, lead, hydrocarbons, dioxins/furans, and heavy metals from onsite buried military wastes have been released in sensitive marine and terrestrial environments based on elevated levels of polychlorinated biphenyls (PCBs) in monk seals inhabiting the area. In 2019, EPA completed a removal assessment for hazardous substances on the island. Data from the report demonstrated elevated concentrations of metals, PCBs and PAHs in soil, groundwater, and surface water in the vicinity of the legacy “Bulky Dump” and the SE corner of the island. Pg 253Help rebuild Hawaii and the world. Stop the wars. Understand Aloha. Keep the military out of Hawaii. The US military Industrial Complex needs to understand peace and stop the raping of lands , children worldwide.</p>
Nahshon Lealofi	<p>As a resident of American Samoa, and as a person of Samoan descent, I do not support this proposal. Telling indigenous peoples what to do with what was handed to them from their ancestors reeks of colonialism and white supremacy.</p>
Anonymous	<p>Protect the islands.</p>
Anonymous	<p>I am against the rule change because we need to preserve the fish and ecosystems in the northwestern Hawaiian Islands because they are one of the last thriving ecosystems in the ocean. We need the oceans Ecosystems to survive.</p>

Submitter	Comment
Charlie Blaney	As a resident of Kauai, I wish to state my opposition to the Proposed Papahanaumokuakea National Marine Sanctuary designation. It is unnecessary and adds an unjustified layer of bureaucracy to existing Monument conservation and monitoring measures already in place. By all factual accounts, they are working well. The proposed extra layer of oversight will cost us all, in terms of lost opportunity to fund far more relevant ocean and cultural science and monitoring. Fishermen are always the last persons protected from over zealous, and sadly, uninformed individuals and organizations that seek to vilify them. I guess these folks buy their seafood from unregulated, foreign fisheries, and simply don't care. Enough already! Don't waste our money on redundant federal actions which seem to be purposely undertaken to garnish their "legacy" without consideration of impacts on the local communities they harm.
Warren Osako	I fully support the designation of Papahanamokuakea as a National Marine Sanctuary. We must preserve as much of our natural environment for the future generations.
Ken Gill	I would like the FWS to consider a visitation program for prior service military and dependants. Most of us have spent the prime of our lives volunteering to defend our country. Most of us are well into our senior years and have a small window of opportunity to visit a base that meant so much to us, and our country. There needs to be something done to allow this. I have written to the president, Congress, and the Senate with no luck. I just wish I could share a week with my wife on the island. Thank you.
Anonymous	I am a 70 year old local fisherman and come from a family of the same. We have always fished from small boats and the catch that we get is usually to recover the expense of the trip, add some small income to our household and share our catch with family and friends. We are not part of an industrialized fleet but part of a group of local fisherman who enjoy the sport. I support Westpac suggestion.
Anonymous	The Papahanaunokuakea is a sanctuary that needs to stay as a no fish zone. Fish and other animals like birds and monk seals use this place as a to stay protected and reproduce. If we fish there, our fish supply will be depleted due to no spill over.
Anonymous	I think that people shouldn't fish in no fishing zones so that fish can reproduce. Fish are important so it is important to protect our marine habitats so that we don't run out for future generations.
Anonymous	I think that we should keep no fishing zones so that the future generations would be able to experience what we did and be able to eat fish too. Another reason why we shouldn't fish there is because it prevents overfishing and if we were to over fish, there wouldn't be anymore jobs and people would loose money and we would loose a part of our culture.
Anonymous	We should keep the Sanctuary because off all of the benefits. This will make sure we have food for our future generations and that it will ensure we have somewhere that fish can reproduce. Another thing it showing how much fish populations have increased after the sanctuary made
Anonymous	By protecting our ocean we should implement a regulation in the amounts of fish we can catch and boundaries. Protect with off boundaries around the island and keep it isolated to grow more of the ecosystem.

Submitter	Comment
Anonymous	I'm aiming towards marine data access for my fishing industry commissions, and other entities that need such information for fishery conservation and management purposes. But I think making it all a commercial show is unnecessary because the more the world knows about it, the more unsecured our marine and animals get, which isn't safe for our environment.
Anonymous	I think that it's a bad idea to fish there because it's not an area where you are supposed to fish. It is an off limits area that people aren't supposed to fish by.
Anonymous	Protecting Hawaii ecosystem is important because it helps protect unique marine animal life. And without these animals our marine ecosystem will not be as vibrant and fresh.
Anonymous	I disagree because this will probably hurt the sea life there, and eventually hurt us.
Anonymous	This decision will destroy our fishing environment in Hawai'i. Us Hawaiians depend on our fishing, massive fishing company will destroy our reefs.
Anonymous	I think that is a bad idea because native fish and new species environment could possibly be damaged or harmed by commercial fisherman
Anonymous	I am sharing today that I don't support the designation of Papahanaumokuakea as a National Marine Sanctuary. This is because we need to think about our future generations. If we make this sanctuary a fishing zone again, people can tend to overfish. With the overfishing, it will cause the fish to lose specific species and can reduce reproduction which is not healthy for our future generations. With species gone, it can also interfere with the food chain itself and it is not healthy for our oceans and environment. We need to take a stand and make sure our future generations will be taken care of and not have a world that doesn't have that much fish in the oceans.
Anonymous	I am writing to express my full support of expanding the current Papahanaumokuakea National Marine Monument and establishing it as a Marine Sanctuary. After having the opportunity to volunteer as an Albatross Census Volunteer in 2022 on Kuaihelani, I was able to witness firsthand how ecologically critical the NWHI are and they absolutely need to be protected. Expanding these protections and increasing both outreach and involvement specifically to involve the Native Hawaiian community across the islands is so important. I would, however, like to address the suggestion of opening Kuaihelani to the public being made by other commenters. While I can obviously see the potential financial benefits from this kind of visitation, I don't believe that allowing this kind of visitation would be beneficial to the atoll or the precious wildlife that depend upon it. Resources are significantly limited, and the existing infrastructure is certainly not suitable to host a significant tourism operation. The resources that do exist should be focused on much needed conservation efforts across Papahanaumokuakea, and not creating an exclusive tourist experience that would ultimately exclude most potential visitors due to costs and how remote Kuaihelani is. There are many factors to consider, but the most important is the potential impact to the wildlife.

Submitter	Comment
Aidan Sanders	<p>My name is Aidan Sanders, I am a law student at the William S. Richardson School of Law here in Hawai'i. I became interested in this matter after colleagues introduced me to it. Moreover, being an avid enjoyer of nature I have always had a passion for the conservation of our nation, for both personal and posterity reasons. I want those who will come after us to enjoy the same sublime beauties that nature has to offer. As such, I SUPPORT NOAA's Proposed Rule to designate Papahānaumokuākea as a National Marine Sanctuary. Firstly, it is incumbent upon NOAA to make this designation, pursuant to the National Marine Sanctuaries Act. Congress found that this nation has recognized the importance of protecting special areas of public domain. This can be seen in the protection of national parks and forests. However, this protection, prior to the adoption of the NMSA, was not yet extended to marine environments. As such, Congress found that certain areas of marine environment possess historical, cultural, conservational, and scientific qualities that give them a special significance. Congress found that the need to designate certain areas as sanctuaries, to control activities within them, was necessary to conserve these qualities. Thus, it empowered the Secretary of Commerce with the ability to designate certain marine areas as sanctuaries and consequently regulate the activities within these areas. Here, Papahānaumokuākea demonstrates all of these qualities: it has rich historical quality, cultural significance to the Hawaiian people, and is home to a number of endangered species which contribute to our world's ecosystem. As such, the designation of Papahānaumokuākea as a sanctuary will enable NOAA to protect these interests. Moreover, this designation would be consistent with past Executive Orders which aimed to protect Papahānaumokuākea as an environmental, cultural, and historical treasure trove. Thus, NOAA's rule would remain consistent with past administration's desire to protect this area for its inherent quality. We have a privilege to experience the aesthetic beauty that the current world offers us. We also have an ethical duty (and opportunity) to preserve these beauties to future generations. Though Papahānaumokuākea will not become something experienced purely for its aesthetic beauty, its conservation could lead to a healthier ecosystem—enabling future generations to enjoy the same beauties of wildlife we get to enjoy today. Thank you again for your time, your efforts to preserve this ecosystem, and for listening.</p>
Anonymous	<p>We can protect our ecosystem by having designated places for the public to do what they wish. And if they were to go to other places we should fine them 1,000 U.S.D.</p>
Anonymous	<p>I think that this is not right and that we should keep it how it is due to its effectiveness and the way it helps our ecosystem remain healthy and productive.</p>
Anonymous	<p>I support designating the NWHI as a sanctuary because it would provide us with more fish because there would be less plastic debris and trash in the water the economy would be better too.</p>
Anonymous	<p>I support designating the NWHI as a sanctuary because it would provide us with more fish because there would be less plastic debris and trash in the water the economy would be better too.</p>
Anonymous	<p>I disagree to allow WecPac to fish at the NEHI because it is a sanctuary and to help fishes to be able to re populate.</p>

Submitter	Comment
Anonymous	I disagree with allowing WecPac to fish in Papahanaumokuakea instead we should focus on removing the marine because it's something that we should focus on and is more important than fishing there and adding into the pollution and downfall of our marine life.
Anonymous	I disagree with allowing WecPac to fish in Papahanaumokuakea instead we should focus on removing the marine because it's something that we should focus on and is more important than fishing there and adding into the pollution and downfall of our marine life.
Anonymous	I support this decision to make this place a sanctuary because i believe they should not be allowed to fish at this monument. I also believe this should become a sanctuary because it is an important monument to Hawaiian culture and i believe it should be preserved and protected
M.C.	I disagree with allowing WecPac to fish in Papahanaumoku National Marine Sanctuary because the whole point of a sanctuary is to keep things safe and protect it. Allowing fishing there would defeat the purpose of a sanctuary. It would also drop the big eyed tuna even more and exploit the fishing areas.
Anonymous	The north western Hawaiian islands provide spillover for the main Hawaiian islands this is especially important because we are already over fishing and buying more quotas from other countries. The northwestern Hawaiian islands also provide a safe space for monk seals if we have commercial fishing in the area it would endanger the monk seals even further.
Anonymous	I support making a sanctuary because as an animal lover, I feel like that some animals need to be protected because there are some animals that are nearing extinction and they are one of the few that can't be found anywhere else the world.
Anonymous	I support designating the North Western Hawaiian Islands as a sanctuary. I believe that by banning fishing in this area, fishing will increase rather than decrease. The national monument will act as a breeding ground for the fish to thrive and reach higher populations, which means overall more fish caught.
Anonymous	I support designating the NWHI as a sanctuary because it's saves the animals vital to our islands.
Anonymous	I support designating the NWHI as a sanctuary because i believe having this area protected will not only help keep more species alive and healthy but, it will protect the land as well. This is beneficial because as we know overfishing and climate change plays a big part into what we leave behind for future generations and the impact we can make with having these lands protected will leave a better future for other generations to come.
Anonymous	I support designating the NWHI as a sanctuary.
Anonymous	Don't have much to say but that it's not a topic that I'm not really interested, I'm not oppose to learning a bit more but I am very truthful to say that this topic held no significant meaning to me. So it is very hard to say anything because I didn't care enough nor did the material persuade me to care about it.
Anonymous	i support designated the NWHI as a sanctuary because it helps the ecosystem and it also helps the fish

Submitter	Comment
Anonymous	I disagree with WECPAC allowing to fish in papahaunamoku. I believe that papahaunamoku has a significant part in Hawaiian history and it should remain untouched so that the generations to come can have the experience of being able to see a part of the sea with many moololo thrive with life.
Anonymous	I support designating the NWHI as a sanctuary because it helps the economy. I also I believe that this plan will be beneficial to help with fish population & a healthier ecosystem.
Anonymous	I agree designating the NWHI as a sanctuary because there is a lot of cultural ties to Native Hawaiians and letting in non-natives to over fish is very disrespectful. Papahānaumokuākea holds a lot of significance and lets cultural practitioners reconnect with their culture which guarantees the education of Hawaiian practices for the future Native Hawaiian generations.
Anonymous	I support designating the NWHI as a sanctuary because this will help grow nations of fishing, healthy for the ocean, and protect our cultural resources.
Anonymous	I support the idea of making these islands an NWHI as a sanctuary because it will allow the island's population of fish thrive. As well as make it a safe place to allow them to use as a place to repopulate safely and efficiently.
Anonymous	i support the designating the nwhi as a sanctuary because it helps the economy. it helps the fish environment. it helps with the fish being able to have growth and not be extinct.
Anonymous	I am sharing that I fully support the designation of Papahānaumokuākea as a National Marine Sanctuary. The proposed sanctuary is a place of unique environmental resources that provide large-scale ecosystem services for the region and the world. The addition of a national marine sanctuary would provide regulatory and management tools to augment and strengthen existing protections for Papahānaumokuākea ecosystems, wildlife, and cultural and maritime heritage resources.
Anonymous	I support designating the NWHI as a sanctuary because it will help growth of fish grow in the marine environment.
Anonymous	I support the proposed sanctuary because it is a necessary step to protecting the biodiversity of our islands. It is vital to preserve our marine ecosystem to maintain the health of both the community and the environment for years to come, as well as preserving our culture for future generations.
Anonymous	I agree in designating the NWHI as a sanctuary because it provides as a valuable ecosystem for endangered and native species. Overfishing is a massive problem in the world, and by creating safe spaces for these fish and other marine organisms that get caught up in fishing practices, their populations can continue to survive and continue providing for Hawaii's fish consumption.
Anonymous	Aloha, I am sharing today that I fully support the designation of Papahānaumokuākea as a National Marine Sanctuary. I say this because as a sanctuary can also attract additional public and non-profit funding, which could strengthen the public's appreciation of Papahānaumokuākea and support a more consistent budget for operations, research, citizen science, education, and emergency response.

Submitter	Comment
Anonymous	The proposed sanctuary would include the marine portions of the existing Papahānaumokuākea Marine National Monument. Marine Sanctuary would not change the area's status as a marine national monument
Anonymous	I disagree with allowing WecPac to fish in Papahanaumokuakea. I disagree because it's important to keep all the fish in it. I believe we should keep it save and help out the environment
Anonymous	I support the north western islands because it's not only important but it's been there for centuries. It's not only a good place for sanctuary but it's also a good place to learn the history of its plants.
Anonymous	I disagree with allowing wepac to fish in papahanaumokuakea
Anonymous	I disagree with allowing Westpac to fish in papahanaumokukea because we do not want to run out of fish and go over the fishing limit. We want to save our fish.
Anonymous	I disagree with allowing WePac to fish in Papahanaumokukea since it will potentially harm the ecosystem and the marine life that lives there. And we want to savor our fish and not go over the fishing limit.
Glenn Metzler	I support Alternative 1 and strongly support Marine Sanctuary Status for the current Monument. We know that Monument status cannot assure that an area will not be withdrawn from this status and will remain protected, based on past actions by the federal government. There is also the danger that extractive practices can occur under Monument status as has been proposed under what was termed "customary exchange". As NOAA itself has said: "Increased size and abundance within MPAs may lead to a spillover effect, potentially increasing fish abundance and fishery yield in nearby waters outside of the MPA boundaries (Russ and Alcalá, 1999; Crowder et al., 2000) and dispersing larvae that replenish more distant fishing grounds (Bohnsack 1998; NRC, in press)." Monument-only status cannot guarantee this benefit

Submitter	Comment
Craig Severance	<p>For the record I serve the WPRFMC's SSC, SSPC and Education Committee. I am also a very part-time commercial fisherman who cares about the fishing community and perpetuation of their traditions. I support the Sanctuary Designation Process, because it requires comprehensive economic, social and cultural impact assessments on the affected communities before finalizing regulations. These are required under NMSA, MSA and NEPA etc. and use of EOs and the Antiquities Act is a top down approach that circumvents that process, I also support Sanctuary development because of the public educational benefits that will come if adequate support is provided. And I support the intent of allowing sustenance, subsistence and indigenous fishing, and the perpetuation and enhancement of Hawaiian fishing practices. However I find it hard to imagine that very much, if any, of that kind of culturally important activity will even be safe or possible in the MEA without extensive subsidy or some means of partial cost recovery. Customary Exchange, when it is correctly understood, is a possible means of doing that. I strongly oppose the proposed prohibition on "commercial fishing" in the MEA and hence prefer option 2. The continuation of surface commercial fishing from 50-200 nmi around the vulnerable island based ecosystems will have comparably little impact on those resources. It is likely to have significantly greater adverse impact on the fishing industry, and the communities like Hawaii that they serve. Recent refereed scientific papers (Hampton et.al., Pons et. al., Hilborn et.al.) call into question the assumed effectiveness of such blue water Large scale MPA, since pelagic resources move. For this reason, static, rather than more flexible systems of closed areas are more likely to be ineffective in the context of climate change. Two recent papers (Lynham et. al. , and Chan et.al.) have done preliminary assessments of economic impacts of the proposed closed area of the MEA. Lynham's paper uses a small and less representative sample, and has methodological flaws. Chan's paper uses a larger data set and looks at more direct potential economic impacts, suggesting they are not insignificant. Neither fully addresses the cumulative effects of restrictions on long term viability of certain vessels, on fuel costs, and potential cumulative effects on the distribution chain, the fishery system (processing and marketing, imports offsetting) and ultimately to the public consumer and the public. I hope that the process will lead to fair, comprehensive and equitable SIA and cultural impact assessment.</p> <p>Craig Severance Prof Emeritus, Anthropology, U H Hilo</p>
Lynn Ryan Ryan	<p>Ms Lynn Ryanpop 1237Kailua Kona Hawaii 96745My comments are to accept option 1 to support national marine sanctuary status.Sincer5e4ly, Lynn Ryan pop 1237 kailua kona hi 96745</p>
Dawn Marie Barraza	<p>I lived on Midway Island as a little girl. I attended George Cannon School for 1st, 2nd, and 3rd grade. I am now 64 years old and I have such fond memories of my time I Midway. I would love to see it opened for visitors. I hope this can happen so I can visit this special place one more!</p>

Submitter	Comment
Shark Stewards	<p>Superintendent Papahānaumokuākea Marine National Monument and UNESCO World Heritage Site 1845 Wasp Blvd, Building 176 Honolulu, HI 96818 Re: NOAA-NOS-2021-0114</p> <p>Dear Superintendent Clark, We strongly support designating parts of the Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment. Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site. It preserves sacred places, stories, artifacts, and strong Polynesian cultural ties to the land and seas, dating back more than a thousand years. Coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. The Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain. The National Marine Sanctuaries Act established the National Marine Sanctuary System to protect areas of the marine environment that have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities. The monument is an area of national significance that merits this protection in addition to the protections provided by the Antiquities Act. It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts should include integrating traditional Hawaiian knowledge systems, values, and practices into management. We oppose any regulatory or management measures that would decrease the current level of protection within the Monument and Monument Expansion Area. In the attached letter, we support the "Papahānaumokuākea Marine National Marine Sanctuary. Thank you for the opportunity to comment on the proposed sanctuary designation.</p>
Taulapapa William Sword	<p>I am opposed to the sanctuary because the people of Hawaii and the Pacific island territories do not benefit from closures of key fishing areas. There is no benefit to the nation. The areas outside of 600 feet should be managed by the Magnuson Stevens Act which has a better history of getting community feedback and allows sustainable fishing for the national good. Rules should not be made by only a few people.</p>
Lupe Malele	<p>I disagree with the proposed rule for Papahanaumokuakea National Marine Sanctuary.</p>
Anonymous	<p>No action, in opposition of any new management measures in the sanctuary</p>
Kelly Ikeda	<p>My name is Kelly Ikeda and i am against the sanctuary".</p>

Submitter	Comment
Nana-Hanua Manuel	<p>I am Nana-Honua Manuel of Waikahekaheiki, Puna, Moku o Keawe. My political national status is that of an American Citizen as a child born in the USA occupied country of Hawaii takes on the political national status of her parents. My husband is kanaka maoli and we have 4 children and 7 grandchildren. My testimony in this forum does not represent my free and informed consent.</p> <p>The USA does not have jurisdiction in the Northwestern Hawaiian Islands due to the overthrow of the Constitutional Hawaiian Kingdom government in 1893 facilitated, in an Act of War, by the US Navy Marines. The USA does not have a treaty of annexation with Hawaii and therefore does not have title to the lands & waters of Hawaii. The USA does not have the free and prior informed consent of the Hawaiian people. These issues are 131 years overdue to be addressed and all other considerations are irrelevant without addressing them.</p>
Kekoa Seward	<p>Aloha , As a native hawaiian and full time commercial bottom fisherman I oppose any additional government regulation of the North Western Hawaiian Islands. The current regulations and any additional proposed regulations are a direct attack against my families culture and way of life. As a small boat , hook and line fisherman our by catch is next to zero and carbon footprint extremely low. Local hawaii caught fish is some of the highest quality protein in the world and we provide a valuable service to the people of hawaii and the local economy. Being shut out of some of our most prolific fisheries is a complete slap in the face to the fishing community and the entire state of hawaii. As a Kanaka Maoli and Lawaia no one cares about our resources more than we do, NO ONE! This resource needs to be accessible for mine as well as future generations to come. Any and all current and future regulations are a slap in the face to the hawaii fishing community and the people of hawaii. KU I KA MANA! - I am rooted in the knowledge passed on from my ancestors Capt Kekoa Seward FV/ KUMANA</p>
Anonymous	Aloha, my name is Tia and I do not support a sanctuary in the NWHI. Mahalo.
Anonymous	This is an outstanding proposal. I commend NOAA for this positive and necessary work. I hope this marine sanctuary will be approved and successfully protected. Thank you.
Karie Wakat	As a Hawaiian resident, I fully support the sanctuary designation. This is one of the wildest areas still left in the USA. Keeping it so will ensure the existence marine life for future generations to come.

Submitter	Comment
Les Welsh	<p>I am writing to express my full support for the designation of Papahanaumokuakea as a National Marine Sanctuary. Specifically I support Alternative 1 - the preferred alternative - which would designate boundaries that are co-extensive with the marine portions of the Papahanaumokuakea National Marine Monument. Papahanaumokuakea deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahanaumokuakea is also a place for Native Hawaiian cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature. A sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today's uncertain political climate, ensuring added safeguards regardless of who becomes President. Regarding industrial fishing, Wespac's proposal to have large-scale fish extraction in Papahanaumokuakea is not beneficial to the resource or to the communities of Hawaii and the greater Pacific and only seeks to benefit a select few. I strongly oppose any sale, barter, or trade of this large-scale extraction and the cost recovery proposed by Wespac for these trips. With only 3% of the global ocean fully protected, we must support additional protections for Papahanaumokuakea that will help to mitigate against possible negative impacts from changes in political administrations. Thanks you for the opportunity to comment and offer my support for this sanctuary designation. Les Welsh</p>
Matthew Murasko	<p>Preferred sanctuary boundary area - maximum sanctuary area alternative 582K square miles (smaller alternative areas in consideration)</p> <p>Strict Monitoring & Enforcement on marine debris, fishing line, fishing gear to eliminate entanglement of endangered marine life in marine protected area; NO longline fishing; NO non-commercial fishing, NO sustenance fishing.</p> <p>NO exemptions for marine mining activities or other human impact damaging activities; NO submarine activity.</p> <p>Maintain access for sacred cultural practices, not in any way affecting ecosystems; integrate Mai Ka Pō Mai.</p> <p>Create extra protection regulations, monitoring & enforcement for keystone marine life like manō (sharks), corals, cetaceans; NO unnecessary/harmful to life type scientific research. Mahalo Nui Loa, Matthew Murasko / Haiku-Maui-Hawaii</p>

Submitter	Comment
Samuel Meleisea	<p>Talofa,My name is Samuel Meleisea from American Samoa. I serve as the Representative for a district of 22,000 people in American Samoa. The expansion of this monument and any other in the Pacific is a threat to Pacific people's way of Life. The view point of indigenous Hawaiians and local Hawaiian people is important in driving conservation efforts for this proposed expansion. There is no need to expand this monument for any other reason but to satisfy the selfish needs of a few individuals in Washington, DC. Individuals who have no idea what the people need in these affected areas. These monument expansions will eventually affect American Samoa's ability to freely fish in our own local waters. Hawaiian locals and its indigenous people should be asked if these efforts are indeed for their benefit. I can say that such efforts hinder more than help those who rely on the resources within these proposed expansion areas. I do not want Hawaii to fall victim to what looks on the surface as harmless conservation efforts, but are political moves to limit our ability as Pacific people's to access the ocean and the resources within. The Alaskan and Atlantic fisheries are not as heavily regulated as we are here in the Pacific. Why is that? Are we less of a People than our Alaskan and Atlantic counterparts?If this proposed expansion goes through in Hawaii, similar efforts will be proposed for our waters in American Samoa. The people of American Samoa rely on our fisheries. We don't need it to be heavily regulated for conservation. We have been stewards of our own land and ocean for Millenia. We do not need the federal government to tell us what we can and cannot do on our own land and ocean. Our political framework ensures we have the freedom to dictate our own affairs. We do not want any monument expansion. It will hurt our already fragile economy. I advise caution and strongly recommend that the federal government return to the stakeholders and have earnest, frank, honest discussions about what conservation efforts will work and how to balance that with the needs of the surrounding communities who rely on those fisheries. Hawaii is a case study for the rest of the Pacific. And I would hate for our Hawaiian brothers and sisters to lose out. More dialogue is needed instead of making hasty decisions that will have an adverse impact on the livelihoods of people thousands of miles away. Pacific lives matter!Samuel Ioka MeleiseaTualauta Representative, American Samoa LegislatureAmerican Samoa ResidentIndigenous Samoan</p>
Neil Frazer	<p>Aloha,The Papahānaumokuākea National Marine Sanctuary should include Middle Bank, located between Kauai Island and Nihoa Island.The preponderance of scientific evidence indicates that the benefits of sanctuaries increase disproportionately with size, especially when the extra area is ecologically rich, like Middle Bank.Subsurface volcanoes provide habitat for a great diversity and density of marine species, and when such areas are protected they increase fisheries catches outside their borders.In short, the scientific, ecological and commercial benefits of including Middle Bank outweigh any possible benefit from excluding it.Thank you for your unselfish service to our nation.Sincerely,Neil Frazer, PhDProfessor of Earth SciencesUniversity of Hawaii at MānoaHonolulu, HI 96822For a list of my peer-reviewed publications see:https://www.soest.hawaii.edu/earthsciences/people/faculty/faculty-pubs/pubs_neil.pdf</p>
Genevieve Davis	<p>Aloha. I am a Hawai'i island resident in favor of making Papahānaumokuākea Marine National Monument a national marine sanctuary</p>

Submitter	Comment
Archie Soliai	I staunchly oppose this proposed sanctuary. It is one of many examples of federal overreach, a spit, not a slap, in the face and disregard for the rights of indigenous people that basically own these waters. The sad thing about this all is that the federal government does not give a rat's ass in any of the voices from the local people that are opposed to this proposal. I have heard several Hawaiian indigenous people speak in opposition on this proposal, however, being pitted against well-funded NGO's is almost impossible to overcome. Fishing access for indigenous people must be a priority for federal policies. Majority of the US EEZ in the Western Pacific are already closed from fishing access due to federal policy (sanctuaries, monuments, etc). The question is: who benefits and who loses from these sanctuaries? Certainly, the US citizens, nationals and populace do not benefit. Our Pacific communities rely on these fisheries for food, livelihood and cultural sustenance. Denying them of these necessities will also deprive them of their way of life. The majority of our Pacific oceans / EEZ are already closed to commercial / subsistence fishing, and we do not want any further prohibitions that will not benefit our Pacific people nor the environment. NO to the proposed sanctuary!!
Tee & Kathy Jimenez	I am 76 yrs old, soon to be 77. Hawaii has always been my home. Growing up in Hawaii, I have seen the results and destruction of areas that were not protected. The plants, animals, and sacred places are often seen by new comers as opportunities to " Sell Hawaii". They may have intentions of "sharing" the wonders they have "discovered" but often our treasures are "Loved " to extinction. We must do all we can to preserve the untouched areas of our world for all people to know and enjoy for all time. Aloha and Mahalo for your attention to this important matter.
Isaac/Paka Harp	Aloha Kakou (everyone), My name is Isaac Harp, also known as Paka. I am a kanaka maoli lawai'a (Hawaiian fisherman) and I am deeply concerned with a Department of Commerce/NOAA proposal to designate an extremely weak Sanctuary in the Northwest Hawaiian Islands. Everyone who fishes in the main islands should be concerned with this! Please see the attached file for more information. Mahalo!
Luwella Leonardi	Aloha, I had attended both meetings on Oahu. Let me say first, that I am in opposition to this Sanctuary from a Monument. Over the years, I have attended many meetings and too, showed up to opposed this process from its start. I'm basing my argument on traditional customary practices as well as ancient practices as not being fully respected. As a child, I sat on my dad's lap encircled all around us with elder's, although, my only interest was the comfort of my dad, I have a sense of my ancestors. My second reason's are —studying Kiribati's plans, and too— meeting their President, I've formed my conclusion to oppose. Thirdly, 'sustenance' is not our practices of Ku and Hina. My argument here is the natural boundaries of Pacific Oceania, it's Biosphere and the crust that we sit on are more than 'Industrial Wars'! Why are all of you designing an underwater village to destroy all living things on earth? For this reason, I am opposed to your designing of a village under the sea. Mahalo

Submitter	Comment
WhoPoo App	<p>The National Marine Sanctuary must include prohibitions on wind turbine activity in order to be effective and not violate the ESA. Only Hawaii requires bird and bat death data to be gathered by an independent third party and to be made available to the public on request. The “US Fish and Wildlife Service has encouraged wind developers to avoid prosecution for killing eagles by applying for licenses to cover the number of birds who might be struck by wind turbines,” reports Joseph Goldstein in The New York Times. In the rare circumstances when governments require the wind industry to mitigate their impact, such as by setting aside land elsewhere, there is often little to no enforcement, scientists say. In other circumstances, wind developers do not follow through on their promises and in some cases lie. When wind developer “Apex submitted its application to [New York] state in late 2017 to build the wind farm, it said there were no known bald eagle nests on the island, according to public documents reviewed by The Times.” Later, Apex flew a helicopter over the eagles nest, even though doing so posed a direct threat to the birds. “They destroyed an active eagle’s nest,” said a local conservationist. While the wind industry has hyped technical fixes, none have proven successful at even demonstration levels. Curtailment, which is the intentional halting of turbine blades, is the only proven way to reduce the killing of birds, bats and insects. For example, scientists have found that curtailing wind turbines when wind speed is low can reduce bat fatalities 44% to 93%. However, very few wind farm developers are willing to commit to curtailment as a means of reducing their impact on the environment, notes Scott Cashen, a biologist that has been reviewing wind farm applications over the past decade. One US government study found that curtailment levels are lower than 5% of total wind energy generation. And curtailment often isn’t enough to stop the killings. “In fact, red-tailed hawk fatalities peaked at the 50% of turbines that never operated during the three years of monitoring,” reported Sean Smallwood, another leading scientist studying the impact of wind turbines on bird populations. Smallwood calls the most-studied wind farm in California, Altamont Pass, a “population sink for golden eagles as well as burrowing owls.” While Smallwood helped improve the siting of wind turbines to modestly reduce their death toll, he also discovered that scientists had been significantly undercounting bird deaths, in part because scavengers like coyotes quickly eat them, and because body parts were outside the search radius. “I recently found two golden eagles mortally injured by modern wind turbines just after I had been watching them,” wrote Smallwood in an extensive critique of the methods relied upon by the US Fish and Wildlife Service. Both eagles “ended up outside the maximum search radius, and both left no evidence of their collisions within the search radius.” As such, the mainstream practice of limiting death counts to search radii “is analogous to excluding highway fatalities,” he writes, “when fatalities are found beyond the road verge.” Environmental journalists deserve a significant amount of blame for suggesting the problem is either small or has been solved. “Wind farm works to reduce eagle deaths from old turbines,” reads the headline of a PBS Newshour story that typifies journalistic bias. But greater responsibility for the threatened extinction of birds and bats lies with environmentalists who promote wind energy as good for the environment. Against the best-available science, Sierra Club claims that “the toll from turbines is far from a major cause of bird mortality.”</p>

Submitter	Comment
WhoPoo App	<p>This National Marine Sanctuary must include prohibitions on wind turbines for the safety of fish schools and whales. Nor do governments require that wind developers disclose when they kill birds and bats, or count the dead. Wind developers have even sued to prevent the public from accessing data about bird kills. Incredibly, wind developers are allowed to self-report violations of the Migratory Bird Treaty Act, the Endangered Species Act, and the Bald and Golden Eagle Protection Act. Only Hawaii requires bird and bat death data to be gathered by an independent third party and to be made available to the public on request. The “US Fish and Wildlife Service has encouraged wind developers to avoid prosecution for killing eagles by applying for licenses to cover the number of birds who might be struck by wind turbines,” reports Joseph Goldstein in The New York Times. In the rare circumstances when governments require the wind industry to mitigate their impact, such as by setting aside land elsewhere, there is often little to no enforcement, scientists say. In other circumstances, wind developers do not follow through on their promises and in some cases lie. When wind developer “Apex submitted its application to [New York] state in late 2017 to build the wind farm, it said there were no known bald eagle nests on the island, according to public documents reviewed by The Times.” Later, Apex flew a helicopter over the eagles nest, even though doing so posed a direct threat to the birds. “They destroyed an active eagle’s nest,” said a local conservationist. While the wind industry has hyped technical fixes, none have proven successful at even demonstration levels.</p>
Greg Gordon	Please approve this marine sanctuary. We need places that protect marine life for the health of our planet.
Anonymous	<p>Papahānaumokuākea needs to be protected. The world has far too few places where nature can be allowed to be itself, without humans screwing it up. It’s a necessary step to have somewhere that can act as a reservoir of wildlife that can repopulate their original range, once humans finally stop making the rest of their range uninhabitable. Please protect Papahānaumokuākea.</p>
John Morrison	I believe protection and preservation of our reefs is of the utmost importance
N. Hornxx	<p>strongly support designating parts of the Papahānaumokuākea Marine National Monument that I may never get to visit, but will find hope in and strongly support designating portions of Monument as a national marine sanctuary to enhance protections and safeguard resources.</p>

Submitter	Comment
Mary Shanahan-Reitz	<p>Aloha,I strongly support the goal of providing the strongest possible protections for the Northwestern Hawaiian Islands (NWHI).The current Sanctuary proposal fails to utilize the strongest existing protections (NWHI Reserve and NWHI State Refuge) and represents a direct threat to the sacred and fragile NWHI pu'uhonua.I am deeply concerned about plans by the Department of Commerce to designate a "Commerce Sanctuary" in the NWHI that :- opens up this sacred and fragile ecosystem to fishing and commercial activities- creates loopholes that allow the Department of Commerce to violate rules that apply to everyone else- reverses existing strong protection measures of the NWHI Reserve and NWHI State Refuge- eliminates the existing checks and balances of the existing Co-Trustee management that currently includes agencies dedicated to protecting Native Hawaiian rights (Office of Hawaiian Affairs) and biodiversity preservation (the U.S. Fish and Wildlife Service),This shocking reversal of 24 years of protections will have devastating impacts on the NWHI ecosystem.The Northwestern Hawaiian Islands are NOT FOR SALE. They are not for commercial gain, commercial use, "development", or fishing.Instead, regulations for the EXISTING strong protections must be issued, strongly enforced with tough penalties for violators.Mahalo nui loa.</p>
Donald Schug	<p>According to the Western Pacific Regional Fishery Management Council, Middle Bank is a well-known fishing site for commercially-important deepwater bottomfish species. NOAA is currently incapable of monitoring the location of commercial fishing activity at Middle Bank, and it is likely that it will be unable to enforce the commercial fishing prohibition in the portion of the seamount within the proposed sanctuary. Moreover, there are no existing federal or state regulations to prevent a commercial fishing vessel from severely depleting the bottomfish resources on Middle Bank. We know this type of local depletion is possible because it has occurred on other fishing grounds in the Main Hawaiian Islands. Consequently, some bottomfish species populations in the sanctuary will be vulnerable to intense fishing pressure and could experience sharp declines. The analysis for the preferred alternative should describe these potential adverse biological/ecological effects to sanctuary resources.</p>
Jackie Milligan	<p>I support the designation of a National Marine Sanctuary for Papahānaumokuākea. As the Marine Science Educator for Ke Kai Ola, The Marine Mammal Center, my job is to teach keiki in our community about the importance of ocean conservation through the lens of endangered Hawaiian Monk seals. Our various education programs highlight the critical habitat found within Papahānaumokuākea for not only monk seals but numerous other endangered species that are found nowhere else in the world. These kūpuna islands are extremely significant to the indigenous Hawaiian community and represent the ancestral ties to the pae 'āina that has grown and changed for millennia in the Pacific. My hope is that our governing bodies can continue to emphasize this importance and validate these indigenous voices by created a sanctuary to help protect both the cultural and biological aspects of this sacred place. I hope that as we transition from current residents of this 'āina to future ancestors, we leave a legacy for our descendents that we are proud of. I hope that the National Marine Sanctuary holds these values close, and considers making sure that indigenous people and voices are represented in the staff that help manage this area.</p>

Submitter	Comment
Anonymous	<p>I am in full support of the protection of Papahānaumokuākea. I support it because it is connected to my home land. Papahānaumokuākea is of great importance to Native Hawaiians and Hawaiian culture is a foundational element in management. The name Papahānaumokuākea commemorates the union of two Hawaiian ancestors – Papahānaumoku and Wākea – who gave rise to the Hawaiian Archipelago, the taro plant, and the Hawaiian people. Papahānaumokuākea is also home to a variety of post-Western-contact historic resources, such as those associated with the Battle of Midway and 19th century commercial whaling. NOAA is proposing a sanctuary area approximately 582,250 square miles. The agency’s preferred boundary overlaps with the marine portions of the monument. The boundary includes the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline of the islands and atolls seaward to 200 nautical miles, including all state waters and waters of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, Midway Atoll and Hawaiian Islands National Wildlife Refuges, and state of Hawai’i Northwestern Hawaiian Islands Marine Refuge. Large-scale conservation areas such as this are important to protect highly mobile species, such as sharks and marine mammals. They also protect entire ecosystems, preserving critical ecological functions and conserving biodiversity.</p>
Susannah Biggs	<p>there is no reason NOT to protect them!!!</p>
Anonymous	<p>I fully support the decision of giving Papahanaumokuakea more protection. I have three reasons for why I think this, because there are some species there that live only on Papahanaumokuakea, Native Hawaiian’s need this land, and because this is important for future generations. The first reason why I think this is because of endangered species. In Papahanaumokuakea there are plenty of exotic creatures, and maybe there are even some species that live there that we don’t know about. These creatures need good habitats to grow up, which is what Papahanaumokuakea is giving. Since it has a unique and delicate ecosystem, we need to protect the ecosystem even better because not many places have one like this. My second reason for adding more protection is because not only do creatures need Papahanaumokuakea, Native Hawaiians do too. Papahanaumokuakea is a rare place that’s barely touched by humans (excluding Native Hawaiians), making it the perfect place for rituals and traditions that the Native’s might do, such as hula. My final reason is for future generations. Future generations need to remember the past mistakes like war, because if we forget we will make the same mistakes, over and over again. These are the reasons why I fully support the added protections to Papahanaumokuakea.</p>

Submitter	Comment
Anonymous	I support the designation of Papahānaumokuākea as a National Marine Sanctuary because it is of great importance to the natives and the Hawaiian culture. One reason I support the designation of Papahānaumokuākea is because this sacred place is grounded with native language and culture. It is important to keep this place designated so we can keep the Hawaiian language and culture alive. Another reason to keep Papahānaumokuākea designated is because this place has rare species and thriving biodiversity. These animals on Papahānaumokuākea can go extinct if we don't let them thrive on their own. If we let this place thrive maybe people will make it open to the public, but if we don't let this sacred place thrive it will never be open to the public. Papahānaumokuākea is a beautiful place that future generations should be able to learn about and maybe even see. If future generations learn or see this sacred place they can teach others what they can do to keep Papahānaumokuākea a healthy and thriving place. This is why I support the designation of Papahānaumokuākea.
Anonymous	I support the designation of Papahanaumokuakea as a National Marine sanctuary. Papahanaumokuakea is sacred to native Hawaiians. We should respect the Hawaiians culture. Papahanaumokuakea needs more protection to save the animals. It's a place scientists can study. If we study more we can learn more and help the plants and animals and keep them safe.
Jeffery Zankel	<p>In a time when most of the world's coral reefs are severely degraded it is important to help protect those few that are still in tact. The Proposed new Papahanaumokuakea National Marine Sanctuary regulations would be an important step in keeping the USA's healthiest reef healthy.</p> <p>Jeffrey Zankel Sebastopol CA</p>
Anonymous	I support the designation of Papahanaumokuakea as a national marine sanctuary. We should help preserve this marine sanctuary because this sanctuary means a lot to the native Hawaiians and people who are Hawaiian today. These islands are part of Hawaiian culture and if we don't act or help this sanctuary it could not be a sanctuary anymore. This would mean that we would also be forgetting parts of this culture. To protect this sanctuary means to protect the animals in it. Protecting our native plants and animals is important. Today there are not as many native animals and plants as there used to be back in the older days. We need to protect them so we can keep our ecosystem. Different animals come to Papahanaumokuakea to live or for migration. Lots of native animals live on these islands. There are not many sanctuaries to help the native plants and animals. We need to help this place so pollution from humans does not enter this sanctuary. Although there might not be many sanctuaries left we can still help this one and preserve the animals and plants. In conclusion, I support Papahanaumokuakea as a national marine sanctuary.
Risa Mandell	Let's recognize the inherent value, dignity and uniqueness of the living beings who will inhabit the Papaanaumokuakea National Marine Sanctuary.

Submitter	Comment
Joan Diamond	<p>The proposed sanctuary is an essential piece of our past and our future. Protecting plant and animal life and species, teaching the importance of o, I ask</p> <p>NOAA, please act to protect our oceans.</p>
Justin Smith	<p>Please protect Papahānaumokuākea from further destruction by making it a protected area. As a young 4 year cancer survivor due to polluted water, it is extremely important to me to protect natural water sources, especially the ocean which is rapidly changing as a result of irresponsible human behaviors.</p>
Doug Krause	<p>We strongly support designating parts of the Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment.</p> <p>Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site. It preserves sacred places, stories, artifacts, and strong Polynesian cultural ties to the land and seas, dating back more than a thousand years.</p> <p>Coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. The Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.</p> <p>The National Marine Sanctuaries Act established the National Marine Sanctuary System to protect areas of the marine environment that have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities. The monument is an area of national significance that merits this protection in addition to the protections provided by the Antiquities Act.</p> <p>It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts should include integrating traditional Hawaiian knowledge systems, values, and practices into management. We oppose any regulatory or management measures that would decrease the current level of protection within the Monument and Monument Expansion Area.</p>

Submitter	Comment
Lino Tenirio	I honestly feel there are way too many sanctuaries already and it's hurting the local fishermen. Pretty soon they'll starving to death as there is hardly any good fishing grounds to fish at. So am inclined to say "No" to any proposal in having more sanctuaries.
Jeff Carrillo	Save our oceans with the largest boundless boundary
Anonymous	Aloha, I am sharing today that I fully support the designation of Papahānaumokuākea as a National Marine Sanctuary because it helps our ocean remain diverse and fruitful. If we allow commercial fishermen to fish in these waters and exploit these resources, there will be little to no resources for future generations. The immediate availability of fresh fish is extremely important to our Hawaiian culture and will be important for future generations.
Anonymous	If we fish in no fishing zones, there will be no reproduction which leads to no more fish. There will not be any fish that will also cause business to go bad and worse for our environment.
Wesley Murakane	I Wesley A Murakane is in full support of Proposed Papahānaumokuākea National Sanctuary designation.
Tiare Ka'ōlelopono	<p>Please protect Papahānaumokuākea archipelago, it is of great ecological, cultural & sacred importance to Native Hawaiians. Papahānaumokuākea is under threat from marine debris, fishing gear, climate change & needs increased protections for its marine waters, ecosystems, wildlife & cultural heritage. We humbly request the following:</p> <p>Strict Monitoring & Enforcement on marine debris, fishing line, fishing gear to eliminate entanglement of endangered marine life in marine protected area; NO longline fishing</p> <p>Implementation of strict regulations and the protection of Papahānaumokuākea including:</p> <p>ZERO non-commercial fishing and commercial overfishing. ZERO sustenance fishing in marine protected area. ZERO exemptions for marine mining activities or other human impact damaging activities. ZERO submarine and war games activity. ZERO unnecessary/harmful to life scientific research.</p> <p>MAINTAINED access for sacred cultural practices that are not in any way affecting ecosystems including integrating Mai Ka Pō Mai CREATE protection regulations, monitoring & enforcement for keystone marine life like manō (sharks), corals, cetaceans, etc.</p> <p>Mahalo nui for your consideration.</p>

Submitter	Comment
Nonu TuiSamoa	I am a Samoan and Polynesian. I am from the Poly branch of the Nesian Archipelago of the this vast Pacific Ocean. I strongly support my Polynesian cousins in Hawaii; and strongly oppose any Sanctuary expansion in the NWHI. My generation and others who are here now, rightfully deserve the right to harvest and enjoy these marine resources in our Pacific region. Just let Nature regulate itself. It is the best regulator we have.
Shark Stewards	This beautiful underwater sanctuary needs us to help it thrive for our next generation for the amazing sharks, turtles, monk seals and indigenous fish that live there
Paul Moss	I strongly support designating parts of the Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. Sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment. Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site. It preserves sacred places, stories, artifacts, and strong Polynesian cultural ties to the land and seas, dating back more than a thousand years. Coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. The Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain. Thank you for your consideration of these comments.

Submitter	Comment
<p>The Rainbow Warriors Collective</p>	<p>The Rainbow Warriors Collective stands in unwavering solidarity with Native Hawaiians and all who seek to protect the ecological and cultural sanctity of Papahānaumokuākea. We applaud President Obama's visionary designation of this precious archipelago as a Marine National Monument. Now, as NOAA, the State of Hawai'i, and partner agencies collaborate towards its elevation to a National Marine Sanctuary, we strongly urge the Biden Administration to take the boldest action possible. As a collective dedicated to environmental justice and the interconnectedness of life, we recognize that the Earth and her oceans face unprecedented threats. Climate change, pollution, and unsustainable practices imperil the very web of life upon which we all depend. Papahānaumokuākea offers a beacon of hope, a sacred place where regenerative solutions can be modeled for the world to follow. We implore you to consider the following critical points in your decision-making: Maximum Ecological Protection: We advocate for the largest possible sanctuary boundary (582K square miles) to provide comprehensive protection for Papahānaumokuākea's irreplaceable ecosystems and biodiversity. Zero-Tolerance for Harm: A true sanctuary demands absolute protection. This means the prohibition of all fishing activities (longline, commercial, sustenance), the elimination of marine debris and entanglement threats, and a ban on harmful activities like marine mining, submarine operations, and disruptive scientific research. Honoring Ancestral Wisdom: We support the integration of Native Hawaiian knowledge and the principle of Mai Ka Pō Mai into all management practices. Sacred cultural practices must be allowed in ways that prioritize ecosystem health. Keystone Species as a Priority: Let's establish additional protections, robust monitoring, and strict enforcement to safeguard keystone species like manō (sharks), honu (turtles), kohala (whales), seabirds, shorebirds, corals, and cetaceans, recognizing their crucial role in ocean health. A Blueprint for Global Conservation: Papahānaumokuākea has the potential to serve as an international model for true marine conservation. Let this sanctuary demonstrate the power of prioritizing regeneration and ecological integrity. The Rainbow Warriors Collective believes that a thriving Papahānaumokuākea is essential to a healthy planet for all living beings. We urge you to seize this extraordinary opportunity to create a legacy of hope and healing, not just for Hawai'i, but for generations to come. Your commitment to the boldest, most protective measures will safeguard the future of Papahānaumokuākea and inspire the world. Mahalo nui loa for your leadership and dedication. In solidarity for Earth and Ocean, The Rainbow Warriors Collective</p>

Submitter	Comment
DJedi Alliance	<p>The DJedi Alliance stands in unwavering solidarity with Native Hawaiians and all who seek to protect the ecological and cultural sanctity of Papahānaumokuākea. We applaud President Obama's visionary designation of this precious archipelago as a Marine National Monument. Now, as NOAA, the State of Hawai'i, and partner agencies collaborate towards its elevation to a National Marine Sanctuary, we strongly urge the Biden Administration to take the boldest action possible. As a collective dedicated to environmental justice and the interconnectedness of life, we recognize that the Earth and her oceans face unprecedented threats. Climate change, pollution, and unsustainable practices imperil the very web of life upon which we all depend. Papahānaumokuākea offers a beacon of hope, a sacred place where regenerative solutions can be modeled for the world to follow. We implore you to consider the following critical points in your decision-making:</p> <p>Maximum Ecological Protection: We advocate for the largest possible sanctuary boundary (582K square miles) to provide comprehensive protection for Papahānaumokuākea's irreplaceable ecosystems and biodiversity.</p> <p>Zero-Tolerance for Harm: A true sanctuary demands absolute protection. This means the prohibition of all fishing activities (longline, commercial, sustenance), the elimination of marine debris and entanglement threats, and a ban on harmful activities like marine mining, submarine operations, and disruptive scientific research.</p> <p>Honoring Ancestral Wisdom: We support the integration of Native Hawaiian knowledge and the principle of Mai Ka Pō Mai into all management practices. Sacred cultural practices must be allowed in ways that prioritize ecosystem health.</p> <p>Keystone Species as a Priority: Let's establish additional protections, robust monitoring, and strict enforcement to safeguard keystone species like manō (sharks), corals, and cetaceans, recognizing their crucial role in ocean health.</p> <p>A Blueprint for Global Conservation: Papahānaumokuākea has the potential to serve as an international model for true marine conservation. Let this sanctuary demonstrate the power of prioritizing regeneration and ecological integrity.</p> <p>The DJedi Alliance believes that a thriving Papahānaumokuākea is essential to a healthy planet for all living beings. We urge you to seize this extraordinary opportunity to create a legacy of hope and healing, not just for Hawai'i, but for generations to come. Your commitment to the boldest, most protective measures will safeguard the future of Papahānaumokuākea and inspire the world. Mahalo nui loa for your leadership and dedication. In solidarity for Earth and Ocean, DJedi Master Lion Chief Executive Officer of DJedi Alliance</p>

Submitter	Comment
Cha Smith	<p>I have serious concerns about NOAA's proposal to overlay a weak and flawed Department of Commerce "Sanctuary" over the already protected waters of the Northwestern Hawaiian Islands, including the NWHI Coral Reef Ecosystem Reserve, the NWHI State Refuge, USFWS Refuges, and the Papahānaumokuākea Monument. The proposal as written could easily allow commercial exploitation and open new fisheries throughout this fragile pu'uhonua. It is not clear to me how this could be construed as a legal effort. It is abundantly clear that the mandatory requirement that any proposed sanctuary MUST complement and supplement the existing comprehensive protections of the NWHI Reserve as defined by Executive Orders 13178 and 13196. It is clear there is a "do no harm" standard in place for any proposed protections. This means no recreational or commercial fishing, commercial use; public hearings mandatory on all permit applications, no multiple-year permits allowed, bans for permit violators. The NWHI Reserve and State NWHI Refuge - with the overlay of Monument Co-Trustee Management - represent the strongest protections which must be replicated in any proposed NWHI designation. Any proposal for a Sanctuary MUST overlay USFWS Refuges or the State Refuge. PLEASE KNOW: The State rejected proposed violations and loopholes in NOAA's previous failed attempt to establish a Sanctuary and demanded that Commerce match the stringent state Refuge protective requirements. The current proposed Sanctuary could pose a serious threat to the sacred and fragile NWHI pu'uhonua. The Department of Commerce proposed a legally flawed and devious plan that would weaken existing protections and potentially open the area up to commercial plunder. Profits and revenue are the core mission of Commerce Department--not a good match for overseeing a fragile ecosystem that needs forever protection. It is not complicated. If there is to be a sanctuary designated in the Northwestern Hawaiian Islands, there can be only one approach. A proposed sanctuary MUST BY LAW, expand and strengthen the existing protections. Cha Smith</p>
Anonymous	<p>A significant breeding site for endangered monk seals and sea turtles, thousands of nesting seabirds such as the magnificent Laysan Albatross, and home to the Manō (sharks), these are the healthiest and largest intact reef system in the N. Pacific.</p> <p>Need we say more?</p>
Anonymous	I don't support this proposal.
Robyn Puletasi	SAY NO TO SANCTUARIES
Joe Hamby	<p>The stated purpose of the proposed sanctuary is to protect nationally significant biological, cultural, and historical resources and to manage this special place as part of the National Marine Sanctuary System. As the Magnuson Stevens Act already provides for the management of fisheries in all U.S. waters including those in the proposed Sanctuary area, any new protection should be limited to those relating to the seafloor and islands within the expansion area. Regardless, with respect to fishing, rule makers need to recognize the historical importance of fishing in the proposed sanctuary area to the indigenous population. Any proposed expansion of the current sanctuary should allow fishing for cultural practices. Considering the high cost of fuel, fisher folk given permission to fish in the proposed area should be allowed to sell catch to recover the cost of fuel.</p>

Submitter	Comment
Mike Fleming	Sanctuary is an evil thing for old school fishers ..it automatically put restrictions & so much bureaucratic jargon to ordinary people that made us feels unwanted...even if there's co-management in the process it's all filled with red tapes...that makes us very reluctant to be in involves in their processes...I say NO to Sanctuary in the Hawaiian Isles & in the CNMI.. thk-u
Anonymous	Papahanaumokuakea should be much more protected as a marine sanctuary because it is so important to the world. For example, Papahanaumokuakea is home to so much wildlife, and you can't find that wildlife there anywhere else. This is so important because wildlife is so special to the earth and as far as we know Earth is the only planet that has it. Also, Papahanaumokuakea is an area that has been through so much and is still being threatened by rising sea levels. Finally, if Papahanaumokuakea was a sanctuary it would be way easier to do research without threatening wildlife. That is important because Papahanaumokuakea would be way more well studied, making it so we can learn more ways to protect the area. This is also good because then Papahanaumokuakea would be more well known and we would have more people dedicating their lives to protecting it. This is why Papahanaumokuakea is so important to our earth.
Anonymous	Did you know that places in the ocean are in danger because of trash? So this is why we should protect Papahanaumokuakea. I think that it should be protected because it teems with rare species and thriving biodiversity. We can help the animals by finding the problem and then finding a solution for that problem. Another reason why I think it should be protected is because it protects the wisdom for generations to come. I also think this because it can teach generations about a sacred place. My last reason why Papahanaumokuakea should be protected is because it gives us hope for our role to safeguard our ocean and future generations. This means that we can make differences for the oceans and also human life. This is why I think this place should be protected.
Anonymous	I support the designation of Paphānaumokuākea as a National Marine Sanctuary. One reason why I support this is so native plants and animals can stay alive and not go extinct as they are important in native history. Another reason is so Paphānaumokuākea can continue to have a biocultural seascape where native species and culture are one. My last but not least reason is because Paphānaumokuākea is a very sacred place, and it's important to Hawaiians. These are the reasons why I support the designation of Papahānaumokākea as a National Marine Sanctuary.

Submitter	Comment
Susan Kiskis	Papahānaumokuākea archipelago is of great ecological, cultural & sacred importance to Native Hawaiians. Subsequently, it is under threat from marine debris, fishing gear, climate change & needs increased protections for its marine waters, ecosystems, wildlife & cultural heritage. I am writing to support Papahānaumokuākea marine waters being designated as a National Marine Sanctuary and World Heritage Site to a National Marine Sanctuary. This location is key for protecting endangered keystone marine life like manō (sharks) & unique ecosystems. Additionally, there should be strict monitoring and enforcement on marine debris, fishing line, fishing gear to eliminate entanglement of endangered marine life in marine protected area; no longline fishing; no non-commercial fishing, and no sustenance fishing. There should be no exemptions for marine mining activities or other human impact damaging activities, and no submarine activity. This designation and protection is essential for sacred cultural practices, and should integrate Mai Ka Pō Mai. I am requesting the creation of protection regulations, monitoring & enforcement for keystone marine life like manō (sharks), with no unnecessary/harmful to life scientific research. For marine life regeneration, for future generations, for ocean health, and cultural preservation, there should be zero human impact.
Scott Greenberg	I support the protection of our coral reefs
Anonymous	As a concerned citizen and advocate for marine conservation, I am writing to express my support for the proposed marine sanctuary for Papahānaumokuākea. Preserving this unique and biodiverse marine ecosystem is crucial for the health of our oceans and the countless species that call it home. However, while I commend the efforts to establish this sanctuary, I believe there are important amendments that need to be made to ensure its effectiveness. Specifically, I am concerned about potential loopholes that could allow commercial fishing activities to continue unabated. It is imperative that the wording of the sanctuary's regulations is clarified and strengthened to unequivocally prohibit all forms of commercial fishing within its boundaries. Furthermore, it is essential to ensure that native Hawaiians have a meaningful voice in the management and governance of Papahānaumokuākea. Their traditional knowledge and cultural perspectives are invaluable in shaping policies that will truly protect and honor this sacred place. I urge the relevant authorities to consider these amendments seriously and to work collaboratively with stakeholders, including native Hawaiian communities, to ensure that the proposed marine sanctuary for Papahānaumokuākea achieves its intended goals of conservation and preservation for generations to come. Thank you for considering my input on this important matter.
Aidan Greenwald	It is vitally important that we protect Papahānaumokuākea and Hawaiian Monk Seals.
Anonymous	I fully support the designation of Papahānaumokuākea as a National Marine Sanctuary. The species that these ecosystems home deserve a protected space that does not see direct impact from humans. The Native Hawaiians that call these spaces sacred deserve a place to worship and hold close for themselves. There are few too many places left like Papahānaumokuākea and we should do all that we can to protect it.

Submitter	Comment
Mariana Loaiza	<p>I respectfully request</p> <ul style="list-style-type: none"> -preferred sanctuary boundary area (maximum sanctuary area alternative 582K square miles) -Strict Monitoring & Enforcement on marine debris, fishing line, fishing gear to eliminate entanglement of endangered marine life in marine protected area; NO longline fishing -Strict regulations / NO non-commercial fishing, NO sustenance fishing in marine protected area -NO exemptions for marine mining activities -NO submarine activity <p>Thank you.</p>
Leah Evans	<p>As tourists visiting Hawaii, we were unaware of this proposal for sanctuary designation until today. We support full inclusion of the proposed area to full sanctuary status. Increased clarity of rules, more protections for wildlife and limits to fishing and human use of the area seem to outweigh any development value in the face of the increasing threats of climate change.</p>
Anonymous	<p>As a Pacific Islander, I say NO to sanctuaries</p>
Chris Jones	<p>I support making Papahānaumokuākea a National Sanctuary. My daughter is a marine biologist and has increased my awareness of the need for healthy, unspoiled ocean ecosystems. Thank you for your work to protect this area.</p>
Brandon Mindoro	<p>Protect endangered keystone marine life like mano (sharks) & unique ecosystems. Advocate a global model marine pristine NO fish zone sanctuary. Choose the big boundary alternative (582K square miles). 山山 Strict regulations monitoring & enforcement NO fishing, NO mining, NO submarines or other damaging activity.</p>
Shelly Ericksen	<p>I wholeheartedly support! We must do everything we can to protect the coral reefs.</p>

Submitter	Comment
Mark Giese	<p>I strongly support designating parts of the Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. I believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment.</p> <p>Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site. It preserves sacred places, stories, artifacts, and strong Polynesian cultural ties to the land and seas, dating back more than a thousand years.</p> <p>Coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. The Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.</p> <p>The National Marine Sanctuaries Act established the National Marine Sanctuary System to protect areas of the marine environment that have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities. The monument is an area of national significance that merits this protection in addition to the protections provided by the Antiquities Act.</p> <p>It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts should include integrating traditional Hawaiian knowledge systems, values, and practices into management. We oppose any regulatory or management measures that would decrease the current level of protection within the Monument and Monument Expansion Area.</p> <p>Thank you.</p>
Anonymous	<p>I am sharing today that I fully support the designation of Papahanaumokuakea as a National Marine Sanctuary. As a student of marine biology, I believe that it is important to have strong regulations and protections set to keep nature safe and thriving. As an official site, it will help to inspire interest in the cause and hopefully more fuel to the fire.</p>

Submitter	Comment
National Parks Conservation Association	Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our more than 1.6 million members and supporters nationwide, we write to express our strong support for designating Papahānaumokuākea Marine National Monument (Papahānaumokuākea or PMNM) as a national marine sanctuary and applaud the National Oceanic and Atmospheric Administration (NOAA) for leading the designation process for this globally important ocean area. Please see the attached comments.
Steven Adcock	Protect Papahānaumokuākea marine sanctuary. Please protect this beautiful place. Do not destroy like we do all else

Submitter	Comment
Ann Bell	<p>I, Ann Bell, am a retired former Visitor Services Manager for the National Park Service and the U.S. Fish and Wildlife Service who served at ten different units within the Department of Interior and was formerly stationed within Papahānaumokuākea Marine National Monument on Midway Atoll National Wildlife Refuge/Battle of Midway National Memorial. I fully support the proposed Papahānaumokuākea Marine National Sanctuary and its inclusion of Midway Atoll National Wildlife Refuge (Midway Atoll NWR) in the proposed National Marine Sanctuary boundary only if the following additions or clarifications are incorporated in the EIS. It is essential that human beings who don't work directly for government agencies or affiliated contractors, be able to visit Midway Atoll NWR so they can be inspired, impassioned and therefore ultimately gift their time and energy including monetary support to Papahānaumokuākea National Marine Sanctuary. Midway Atoll will always be the window for this proposed Sanctuary because Midway is undoubtedly the most accessible and it is the only place a significant number of humans can experience the Monument firsthand. Without sufficient human access and support by key constituents and potential constituents then the ecosystem's health and well being will undoubtedly suffer because of the inability of just the government agency personnel and their contractors to stop the spread of invasive species and ultimately as well become political and staunch, passionate supporters. Under Recreation" - Page 80 emphasizes "bringing the place to the people." Page 83 states "Access for general visitation purposes was previously allowed at Midway Atoll National Wildlife Refuge. However, due to recent reductions in refuge staff and operational capacity, historical and eco-tour access is currently not offered." The Draft EIS mentions the 2021 Midway Atoll Comprehensive Master Plan, but does not mention the fact that this plan proposes future visitation to Midway Atoll NWR. Recommendation: Ann Bell recommends describing the previous visitation to Midway Atoll as a robust program that included cultural education, college field courses, leadership workshops, WWII veteran groups, and wildlife-dependent recreation. Proposed future public visitation, as described in the 2021 Midway Atoll Comprehensive Master Plan, was not evaluated in the cumulative effects section of the Draft EIS and should be included in the cumulative effects assessment in the Final EIS. I, Ann Bell supports future visitation at Midway Atoll NWR which would include access for community leaders, cultural practitioners, environmental education, research, historical interests and wildlife-dependent recreation. If designation of a sanctuary would preclude or restrict future visitation to Midway Atoll NWR, I would not support designation of a sanctuary that overlays Midway Atoll NWR. In addition, the Draft EIS states that fee-for-service recreation would not be allowed in the sanctuary. Midway Atoll NWR has authority to charge fees for services including public visitation [50 CFR Part 25 Subpart E; Refuge Rules and Policies at https://www.fws.gov/refuge/midway-atoll/visit-us/rules-policies]. Charging fees for services is necessary for the FWS to be able to afford to host visitors, including for any future public visitation that would access the proposed sanctuary. The Final EIS should recognize this authority of the FWS and clarify how future visitation to the marine waters of Midway Atoll NWR would be permitted under a sanctuary designation. I would support future visitors being able to experience the refuge, Monument and sanctuary through water-dependent activities including but not limited to snorkeling and boat travel among islands. Mahalo for all the excruciating hard work and years of effort to provide adequate protection to this extraordinary life and cultural sustaining place. I am honored to be able to comment and be apart of this globally significant and powerful place on many tangible and intangible levels than words can describe.</p>

Submitter	Comment
Tammy Harp	<p>Aloha Everyone, My name is Tammy Harp. My concern is having the DOC designated as the governing entity. The primary objective of the NMSA is to protect the resources of the NMSSystem. Special national significance: conservation scientific aesthetic qualities recreational cultural ecological archaeological historical educationall am ma'a to all the above but will share on aesthetic qualities and how this provides me the opportunity to protect this special near pristine place from a distance. To me, it's like a reward to go up to the NWHI. I have no need to go up there. I'd rather be in Lahaina. wink Special national significance. Department of Commerce wants full custody. I support the current management scheme of joint administering between the DOC, DOI, SofHI, and OHA. If we are to bring continuum in "supplement to compliment" of a "place like no other" in the management of the NWHI; then, sharing the load is needed. The current management entities involved are not broken to me, maybe need oiling every now and then, but why do we want to dismantle the trust gained? Rogue politics and consumerism had and continues to have impacts on native communities throughout the NMSSystem. Former Maui County Mayor/SofHi Governor Linda Lingle always reminded us that it is a risk to do business in Hawaii. Besides, we do have an awkward relationship with the United States. Strong protections should not be relaxed to accommodate federal government fiddling. Our ancestors, our grandparents and parents as well as ourselves have experienced belittling by peoples who have history of civilization and commerce for centuries continue to miscommunicate with us. Our ancestors, just as other native peoples under the jurisdiction of the United States, had no use for the written word and no use for money. Generational miscommunication. I cannot support any type of fishing. Maybe in the unforeseen future; for now, fishing should continue to be kapu/forbidden. Longline fishery in Hawaii is not our tradition and technique. It is a fishing style from the Orient. Lastly, you see, I do not want to experience a potential repeat of how commerce and lies overthrew its blanket upon our Queendom (17jan1893). Mahalo for your time and consideration. Tammy Harp</p>
Ocean Cooperative	<p>Please listen to the ocean and its protectors. Papahānaumokuākea is under threat from marine debris, fishing gear, climate change & needs increased protections for its marine waters, ecosystems, wildlife & cultural heritage.</p>
Anna Kozlowski	<p>The ocean desperately needs protection and marine sanctuaries are the utmost of importance.</p>
National Wildlife Federation Action Fund	<p>Attached are a total of 13,385 individual comments from National Wildlife Federation Action Fund members in support for the designation of marine portions of Papahānaumokuākea Marine National Monument and the Monument Expansion Area (collectively called the Monument) as a national marine sanctuary. The proposed sanctuary area extends 1,200 miles across the northwestern region of the Hawaiian archipelago, starting approximately 140 miles from the main Hawaiian Islands, and roughly 3,000 miles from the nearest continental land mass. The addition of the national marine sanctuary would provide important regulatory and management tools to strengthen existing protections for Papahānaumokuākea ecosystems, wildlife, and cultural and maritime heritage resources. On behalf of our members, thank you for doing all that you can to ensure maximum protections for this national Hawaiian treasure for fish, wildlife, Pacific Island communities, and those who love this area, now and into the future.</p>

Written Comments – Original Copies

To: John Armor, Director of the Office of National Marine Sanctuaries
From: Andrea Eshelman
RE: Public Comment on National Marine Sanctuary Designation for Papahānaumokuākea Marine National Monument

As a longtime resident of the State of Hawai'i, educator, student, community advocate, and parent, I fully support the proposal to designate portions of the Papahānaumokuākea Marine National Monument as a National Marine Sanctuary. I fully support Alternative 1, encompassing the largest geographic area for the sanctuary's creation.

While I have not had the opportunity to visit the Papahānaumokuākea Marine National Monument area, I have experienced the joy and wonder of visiting many of the other national parks and marine sanctuaries around our country. Each represents a critical natural resource that must be protected for future generations.

In particular, the Papahānaumokuākea Marine National Monument has a critical role in serving as host to multiple endangered species, such as the Laysan duck, green sea turtles, and Hawaiian monk seals, as well as coral reef habitat that serves a multitude of sea life and species found nowhere else. These species can teach us how to evolve and adapt in a world impacted by climate change. For example, recent voyages to the island of Nihoa in Papahānaumokuākea discovered a 'opihī that may be more resilient to climate change.

In addition, the historical implications of protecting this area are also critical; modern history has seen countless shipwrecks and aircraft lost in the area, especially near Midway Atoll, where the Battle of Midway and the first transpacific cable station was established. More importantly, this area of the world plays a vital role in the ancient history of Polynesian migration. While I am not a member of the native Hawaiian community, I strongly support their rights to spiritual and cultural practices within the wahi pana of the Papahānaumokuākea Marine

National Monument. I have many friends who have been blessed with the opportunity to travel to the area for cultural reasons, and they have all shared the great importance of preserving this precious area of the earth.

I fully support the proposed list of activities subject to regulation in the proposed sanctuary area. In recent years, remote and unusual tourism has become increasingly popular; this area could become a magnet for tourism that could cause long-lasting harm or even destroy cultural areas. I especially support any efforts to prohibit drilling, dredging, or altering the submerged lands, something that often happens with development around tourism and the need to have facilities and resources to support such activity.

Thus, establishing the Sanctuary is even more important to ensure the management of things like boating, snorkeling, SCUBA, and fishing is regulated to protect the area from overuse and misuse. However, I do believe limited opportunities for the public to visit the area, within reason and for scientific research, are imperative to ensure the world is aware of the area's importance.

Thank you for the opportunity to submit testimony and the important work NOAA does to continue to protect areas of ecological, recreational, historical, and scientific importance. I hope to see "Alternative 1" adopted when the Papahānaumokuākea Marine National Monument is designated as a National Marine Sanctuary.

Brock Henderson

MY OPINION WRITING

In my opinion I think Papahanaumokuakea should be a sanctuary. The islands are older than the islands we live on. They need to be protected from other things. These are the reasons why, I will tell you in this paper.

My first reason is that they are our Kupuna islands. What if they are forgotten and our future generations don't know what Papahanaumokuakea is. If they were forgotten that would be bad because they are history. Also if it is a sanctuary we could study all the animals and debris.

Another reason is they are impacted heavily by lots of different things. They are impacted by tons and tons of trash. We need to help out our Kupuna islands because they are trashed. The beaches are filled with trash and animals are harmed by it. Animals are always dying from trash because they eat it and it kills them.

My last reason is they are impacted by invasive species. The invasive species impact on the native animals. The invasive sometimes kills the native animals. That is bad because they are going extinct. There is algae that gets on ships and ~~gets~~ on the coral and it kills the coral. The invasive species also eat the native species' food. So that makes it harder for the native species to get food and survive.

In conclusion I think that it should be a sanctuary. All of those reasons aren't even close to how many more reasons there are. It will be sad to watch these historic islands suffer. Also the native animals will be harmed by everything happening. This is why I think it should be a sanctuary, so we can save it.

Evan McDonnell

I SUPPORT

I support Papahānaumokuākea turning into a national marine sanctuary. I believe it will help their ecosystem thrive. Papahānaumokuākea turning into a national marine sanctuary will help all the animals thrive and live a peaceful life without getting stuck in fishing nets or suffocating on trash. Here are some reasons why.

Biodiversity Preservation

By establishing it as a sanctuary, we can protect the rich biodiversity of this unique region. Papahānaumokuākea is home to a wide variety of marine species, including endangered and endemic ones. Preserving their habitat ensures their survival and contributes to global biodiversity.

Ecosystem Health

A sanctuary status would allow for stricter regulations on fishing, pollution, and other human activities. This would help maintain the health of the ecosystem, including coral reefs, seamounts, and deep-sea habitats. Healthy ecosystems benefit not only marine life but also our planet as a whole.

Reducing Bycatch

Fishing nets and other gear often unintentionally trap non-target species (bycatch). Designating Papahānaumokuākea as a sanctuary would limit fishing activities, reducing the risk of bycatch and allowing marine animals to thrive without unnecessary harm.

Trash Mitigation

Marine debris, especially plastics, poses a significant threat to ocean life. By safeguarding this area, we can prevent trash accumulation and protect animals from ingesting or becoming entangled in harmful materials.

Cultural Significance

Papahānaumokuākea holds immense cultural importance for Native Hawaiian communities. Recognizing it as a sanctuary would honor their ancestral connections and promote sustainable practices that align with their values.

In summary, turning Papahānaumokuākea into a national marine sanctuary is a crucial step toward preserving its unique ecosystem, safeguarding marine life, and respecting its cultural significance. Let's work together to ensure a peaceful and thriving future for this remarkable place!

Sources

Papahanaumokuakea overview
News articles
youtube

I support Papahānuamokuākea By Lindsay Fannon

As you may know, Papahānuamokuākea is becoming a national marine sanctuary. But if you don't, basically what is happening is that Congress is directing a federal agency, the National Oceanic Atmospheric Administration, to begin to designate Papahānuamokuākea as a national marine sanctuary. It being a national marine sanctuary would protect the marine environment of Papahānuamokuākea. I feel like that it's a good idea to make it a national marine sanctuary, these are my reasons.

Firstly, When Papahānuamokuākea becomes a national sanctuary, it will designate rules to stop marine debris from getting there. You might be asking, what's so bad about marine debris? Well, first off, marine debris traps the native marine animals, a lot of the animals there might not be so smart, they might just run straight into the marine debris. Some types of marine debris includes: fishing nets, plastic bottles, metals, tissue paper, fishing gear, rubber and lost objects. A lot of these items might get the native animals tangled up and unable to escape, resulting in death as they can't get the food and water they need and sometimes not being able to breathe. Another thing bad about marine debris is that animals might digest it, as I said, a lot of them aren't so smart, they could end up digesting something not so edible as they could have mistaken it as something that they usually eat! Stuff like fishing hooks might end up damaging the animals digestive system as it is sharp and indigestible.

Next thing I will talk about is how there is a major threat in Papahānuamokuākea, invasive species. Invasive species are organisms that are brought from a foreign place, they threaten the native species, most of the time, they destroy or kill the native species. Algae brought in by foreign fishing boats can smother and kill coral reefs in Papahānuamokuākea. If this keeps happening, the native species will be slowly wiped out. Making Papahānuamokuākea a national marine sanctuary will significantly reduce this amount as people (not including people doing research there) will not be allowed to be near there.

Last reason on my list is if Papahānuamokuākea does become a national marine sanctuary, native Hawaiian people would have a right to vote to make laws. I feel like this would be a great rule because, as of now, not many or maybe no Native Hawaiian people would have a right to vote and make laws for Papahānuamokuākea. Another reason why this would probably be a good rule is that non-native Hawaiians can vote while native Hawaiians can't. I feel like that this is very unfair, people that live and originate there don't get a right to vote in their own land, that feels very wrong.

In conclusion, this is what I think about Papahānuamokuākea becoming a National Marine Monument. I think that these are valid reasons to think that Papahānuamokuākea

deserves to become a National Marine Monument. Thank you for reading my paper. I hope you have changed your mind about Papahānaumokuākea becoming a National Marine Monument.

Protecting the Papahānaumokuākea National Monument

By: Scarlet L. Jones

5th Grader, 'Aikahi Elementary School

Northwest of the Hawaiian Islands there is a place called Papahānaumokuākea. Papahānaumokuākea is treasure that cannot be forgotten or replaced by anything. It is a national monument and politicians are trying to make it a national marine sanctuary because it needs more protection. In my opinion, I support the designation of Papahānaumokuākea as a national marine sanctuary. Here are my reasons why I believe that this place like no other, Papahānaumokuākea is worth protecting.

One reason Papahānaumokuākea is worth fighting for are the things already happening we have to change now. Papahānaumokuākea is home to many native species. It is home to many plants and animals that live nowhere else on Earth. Sadly, it is also home to many invasive species, algae that can smother and kill coral, harming the reef and its inhabitants, and ants that can kill native birds in their nests. Invasive species are one of the three major threats to Papahānaumokuākea, along with marine debris and climate change, global warming. Invasive species are one of the things we can only stop if everyone pitches in and things happen, big or small.

This needs to stop and even though we don't know what will change if the designation does or does not go through, we still should do what we can do for the cause. Papahānaumokuākea is already protected, yes, but if we truly want it to become less polluted, drenched with marine debris and trash, and/or going extinct because of invasive species, then we have to work harder and help this sacred place.

Another reason is how it is our responsibility to reserve these sacred atolls and island chains. As humans we did, and still do, make things better and/or worse for our environment around us. As makers of the plastic trash that is killing our planet we should take full responsibility for our actions

affecting these places. This plastic washes from all around the world to our sacred islands and breaks the balance of life. This fragile place is in need of help and protection, if we cannot provide any, then we aren't doing our parts. Everyone should step in to fix this earth before it becomes a long term disaster. Our earth is in need of life, without it, there's no life at all.

Some may take no responsibility for this problem we've created. It's true, not all of the trash in the ocean is from one place, so not everyone is blamed. In fact, no one is blamed for the mistakes of all humankind. But, we should still try our very best to fix this life and death problem we as humans created. And I take full responsibility for my actions, because if nobody does, how are we going to survive?

My final reason is that we owe it to the animals and plants struggling to survive in Papahānaumokuākea. They lived there first, Papahānaumokuākea is their only home, they only exist there. For me and many others fighting for their survival understand that we should keep them living because they are part of our islands just as much as us. Native Hawaiian families call Papahānaumokuākea a sacred place, the animals and plants are important to them.

People might not care, it is in their choice. We have no right to accuse others for their choices, we should fight for this cause though. Standing taller than the others, fighting for Papahānaumokuākea and the living things adapting to these dying islands. We should understand the real things harming our home, and change it.

" Dear Politicians,

Please try harder than others who failed or made the difference but didn't help as much as their hopes. I lived here all my life and want the Hawaiian islands to change for the better, not the worst. I understand you are trying as much as you can, please do it for us. If I was eighteen you would have my vote, anytime. Please fight for our home.

*Your Friend,
Scarlet L. Jones"*

March 3rd 2024

Dear Eric Roberts, Papahānaumokuākea Marine Monument Superintendent

I would like to voice my support for the creation of The Papahānaumokuākea National Marine Sanctuary. It is vital to protect our marine resources particularly those like the Hawaiian seamounts which are extremely fragile and contain a high quantity of endemic organisms. In addition creation of this sanctuary would help set a continuing example for the international community of the importance and feasibility of marine protections.

However I would like to particularly emphasize the importance of the additional proposed use permits. Although the proposed protected area would provide significant indirect benefit to the American public, without available public access there is a high chance of public disapproval. By creating the recreational permit, the sanctuary would be able to showcase the benefits of the program in a more transparent and direct way. This is especially important for such a large Sanctuary, where any recreational regulations will have a profound affect.

Thank you and best wishes,

Jonluke O'Ca'in
 -Jonluke O'Ca

RE: Proposed Papahānaumokuākea National Marine Sanctuary within Papahānaumokuākea Marine National Monument
Document ID: NOAA-NOS-2021-0114-0076

To Whom it May Concern:

I am writing in SUPPORT of the National Oceanic and Atmospheric Administration's (NOAA) proposal to designate marine portions of Papahānaumokuākea Marine National Monument as Papahānaumokuākea National Marine Sanctuary to protect nationally significant biological, cultural, and historical resources and to manage this special place as part of the National Marine Sanctuary System. I am a resident of Hawai'i that has a strong interest in protecting and preserving the 'āina. On multiple occasions, I have volunteered my effort and personal resources to aid in the restoration of the Oneula Beach Park in Ewa Beach, locally referred to as Hau Bush. It is because of my time spent at the Oneula Beach Park that I know firsthand the destruction that can be caused by unmonitored and unrestricted human activities. Pollution and illegal fishing have devastated the Oneula Beach Park's natural ecosystem, and I want to prevent the same from happening to the Papahānaumokuākea Marine National Monument.

This rule, if implemented, would improve the Papahānaumokuākea Marine National Monument's ability to bring in resources and subject-matter experts to better protect and conserve the designated area, as well as the ecosystems within it. The Papahānaumokuākea Marine National Monument spans a stretch of 587,578 square miles of North Pacific Ocean territory and is comprised of basaltic islets, seamounts, banks, shoals, coral atolls, coral reefs, and underwater volcanoes (Douglas, 2023). Within the bounds of the Papahānaumokuākea Marine National Monument, there resides over 7,000 species - many of which are endemic and endangered (Douglas, 2023). If we are to preserve the incredible display of ecology and the biodiversity within this area, then the Papahānaumokuākea Marine National Monument must be granted sanctuary status.

Furthermore, I strongly urge that the monument boundary be expanded southward to enclose Middle Bank entirely to ensure that a significant buffer be created between the monument and the closest island, Niihau, to prevent illegal commercial fishing. This better aligns with NOAA's mission to "conserve and manage coastal and marine ecosystems and resources," as the Middle Bank is a critical site for coral and deep-water species that are currently at risk of being overfished or damaged by future mining activities.

Sanctuary status would also persevere the cultural and genealogical ties that Native Hawaiians have with the Papahānaumokuākea Marine National Monument. Papahānaumokuākea refers to the traditional Hawaiian creation story as told in the Kumulipo, the longest-recorded ancestral oli (Douglas, 2023). In this traditional chant, Papahānaumoku represents the Earth and is a mother figure, which is why the Papahānaumokuākea Marine National Monument is a deeply revered place for its connection to Native Hawaiian spirituality (Douglas, 2023). Additionally, archeological evidence of human occupation around 300 AD was discovered on two of the islands within Papahānaumokuākea Marine National Monument's boundary, which for many Native Hawaiians marks the beginning of their genealogy (Douglas, 2023).

As a Public Health graduate student at the University of Hawai'i at Mānoa, my research and the research of my colleagues and peers has concluded that a reciprocal relationship exists between the Native Hawaiian people and the 'āina (Keli'iholokai et al., 2020). It has been found that, "Healthy 'āina and a healthy connection to the 'āina [is] a clear indication of the health of Kānaka (Keli'iholokai et al., 2020)." Not only does the Papahānaumokuākea Marine National Monument give Native Hawaiians a history of their people, but it also provides them with a feeling of belonging to the 'āina and to their community, which fosters stability and wellbeing (Aluli & McGregor, 2006).

Mahalo nui loa for your time as you consider the comments that I have made, as well as your continued efforts in protecting and restoring the 'āina.

Sydney Warren
Graduate Student of Public Health
University of Hawai'i at Mānoa
swarren4@hawaii.edu

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April 22, 2024

To: Department of Commerce, Office of National Marine Sanctuaries
 From: Roxane Keli'ikipikāneokolohaka, Ed.D.

RE: Written comment regarding the Proposed Papahānaumokuākea National Marine Sanctuary Designation

I provide this written comment as an individual *in **SUPPORT** of the National Marine Sanctuary designation* for Papahānaumokuākea. My comments are based on knowledge and practice through my lived experience as a kia'i loko of over 20 years, a kia'i Kanaloa of over 15 years, and as a marine biologist of over 20 years. I also bring my experience and insight as a HIHWNMS SAC member into this comment but I am in no way speaking on behalf of the SAC.

The EIS describes the “globally significant” cultural, biological, and ecological function of Papahānaumokuākea. It also identifies ongoing and on-the-horizon threats and impacts that have the real potential to irreversibly change the function of this sacred space. Hence, the need to intervene on its behalf and the behalf of the broader realm of Kanaloanuiākea through sanctuary designation.

It is crucial to frame all considerations and decision-making in a way that is reflective of the function and intention of Papahānaumokuākea. Special interests and individual greed are looking to go beyond the waters that have been depleted to the momona of another space. We should not view Papahānaumokuākea as a ko'a that we can freely take from with no prior, current, or future obligation to feed. Instead, we should be thinking of Papahānaumokuākea more like a loko i'a. If we think of Papahānaumokuākea as a much larger-scaled loko i'a, that if nurtured to reach its highest potential, will eventually contribute significantly to the re-stocking and re-balancing of the larger Kanaloanuiākea, then we work to actualize the intentions of the name Papahānaumokuākea. That rejuvenation and balancing is an akua function, not a kanaka one. The kanaka function ensures that man does not interfere with what the akua needs to do. The akua must be given the extensive time and space to do what they do without man's short-sighted and extractive intentions and behaviors. We must change our perspective of time from kanaka time to akua time and know that for some of us, the momona spillover from this loko i'a will not happen in our lifetime. Those who embrace individual, immediate want, and ownership will take issue with not reaping benefits for themselves and those they represent. In comparison, those who embrace collective kuleana and collective benefit that is not at the expense of the elder environment have no problem with this, as you are contributing to future states of balance and momona.

Through this framing, I support the prohibited and otherwise regulated activities, particularly fishing. I *DO NOT support the proposed “customary exchange” fishing* brought forth by WESPAC. In addition to the mischaracterization of lawai'a practices, the extraction of 350,000 lbs. of i'a from the sanctuary (with room for cost recovery through the sale of fish) amounts to authorizing the continuous assault and violation of someone else's ko'a.

Although I support sanctuary designation, I know that designation, in itself, does not equate to protection or an improved state. In serving as the native Hawaiian representative for the Hawaiian Islands National Marine Sanctuary (HIHWNMS) I see the many limitations and obstacles of sanctuary designation. Below, I briefly describe some of my major sanctuary-related concerns that should be addressed to pave a successful pathway for this and all sanctuaries.

I am incredibly concerned about *exemptions and exceptions related to non-commercial fishing* as I do not see effective monitoring and oversight practices. Unless there is an extraordinary amount of funding for 24-hour surveillance, monitoring, etc., of sanctuary waters, you cannot catch all the activities (permitted or otherwise) happening in the sanctuary. ONMS should look at better management models like those in the Bahamas, where sanctuary enforcement is funded and aided by technology. Unlike in the Bahamas, giving this kuleana to the military would not work here in Hawai'i. But ONMS could develop enforcement programs that train and deputize Hawaiian lawai'a to step into Konohiki kuleana such as this. Such genuine partnerships could exemplify the co-stewardship intentions set forth in JSO 3403.

Another major concern I have regarding sanctuary designation lies within *NOAA's and ONMS' capacity to adequately serve as kia'i of this space* in their current state. Although the five-pillar structure of the plan is a welcomed and much-needed shift in organizational practice, we cannot only see the Hawai'i in the plan; we need to see the Hawai'i in the actions of NOAA, ONMS, and the State of Hawai'i. To say that there is a lack of equity within NOAA, ONMS, and the State of Hawai'i when it comes to the knowledge & rights of Indigenous people is severely downplaying the current state. Federal and state governments and agencies must place the rights of Indigenous People at the forefront, which in this case is to fulfill their ancestral duty to care for entities such as Papahānaumokuākea. Some ways in which *equity should be built into the proposed sanctuary designation* include:

- Hawaiian worldview leads – A reputable and experienced native Hawaiian who exemplifies Hawaiian thinking, and ancestral duty should be leading this effort as the sanctuary superintendent
- Permanent full-time positions – attract and hire native Hawaiians who have credible knowledge, skills, and experience to ensure the actualization of the Hawaiian cultural objectives and strategies
- Authority over permits – the insight of the Cultural Working Group must be the authoritative voice in reviewing and approving permits to access the sanctuary
- Developing your kahua – require all ONMS, State leads and staff to engage in ongoing professional development conducted by qualified and credible native Hawaiians to begin building a foundational understanding of kuana'ike Hawai'i, a critical lens needed to properly care for our kūpuna islands
- Prioritization - Hawaiian-focused research done by and with Hawaiians should be prioritized by adding it specifically and unequivocally in the Exemptions & Exceptions section
 - The current verbiage can be interpreted to exclude or minimize Hawaiian scientific exploration and research.
 - Equity in funding should also be afforded to Hawaiian scientific exploration and research.

As is the case with the HIIHWNMS, Strategy 4.1 identifies the Sanctuary Advisory Counsel (SAC) as the oversight entity for the proposed Papahānaumokuākea National Marine Sanctuary. It is my experience that in reality, *the SAC has minimal influence as it has no legal authority to act*. Here again, lies the misleading narrative that sanctuary designation equates to more protections. Additional protections for Papahānaumokuākea may be “written on paper,” but the effectiveness of those protections is dependent upon compliance with those protections. ONMS should conduct a study to understand and remedy the current flaws in the HIIHWNMS SAC structure and function to establish and support a more effective SAC for Papahānaumokuākea. Some critical flaws include:

- Lack of authority to address non-compliance, proactive strategies, etc.
- Inequity of positions on the SAC, which are heavily skewed to exclude the Hawaiian perspective and voice
- Inadequate funding is a constant obstacle (not enough funding for the SAC to meet in person, run specific programs, get out into the sanctuary, train existing staff, hire much-needed staff, etc.).

Funding is perhaps one of the most critical variables in the success of sanctuary designation. You can have all the best intentions, ideas, objectives, and strategies, but if the funding to actualize all of that is not there, then you don’t actually have a viable management plan. If the annual cost projections for the Sanctuary Management Plan are based on existing budgets (HIIHWNMS or PMNM) and those budgets fall short of the actual need, then the budget needs to be recalculated to account for actual funds required (as mentioned above) to reach the desired, more effective state. Advocating for and acquiring additional, sustained funding and enforcement authority is vital to the effectiveness of a SAC and the success of this and every sanctuary.

In closing, *Kanaloa consciousness* is what needs to be activated in these decision-making and implementation processes. What is required is thinking that it is long and deep, not short and shallow, which is easy. What is needed is contemplation, which requires examining the interconnectedness of multiple factors across multiple generations. What is needed is a lens that is reflective of the original and most effective stewards of this space - a Hawaiian lens. What is needed are intentions that place the Kanaloa, the element, in the center of all thought and action, not man.

Ola i ke au a Kanaloa! E ola loa!

Roxane K. Keli'ikipikāneokolohaka

Roxane Keli'ikipikāneokolohaka, Ed.D.
Waiākea Waena, Hilo, Hawai'i

April 17, 2024

PMNM Sanctuary Designation

NOAA / ONMS

1845 Wasp Blvd., Bldg. 176

Honolulu, Hi. 96818

Re: Proposed Designation of Papahānaumokuākea National Marine Sanctuary

I am a private citizen and resident of Kailua-Kona, Hawaii with a long history of environmental activism and the protection of our natural resources and wildlife on planet Earth.

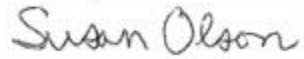
I would like to add my vote for **“Action Alternative 1”** to convert Papahānaumokuākea Monument into a permanent National Marine Sanctuary. The entire original area plus extended boundaries should be included with no exceptions even for subsistence fisherman. This should be an all or nothing action to avoid future conflicts and resolutions with all parties who might want to make “exceptions to the rules”. **There should be no exceptions.**

Language for the proposed Sanctuary should include the tightest regulations. This includes **no exceptions for Military sonar testing** which has been proven to have harmful effects on whales, dolphins, seals and other marine animals.

Language for the proposed Sanctuary should include the tightest regulations. Furthermore, there needs to be provisions and funding for **ENFORCEMENT** to prevent commercial interests and the Military from causing harm. There needs to be **strong language for sanctions and harsh penalties for rule-breakers.**

Thank you to all who have contributed in the past and present, to making this proposed National Marine Sanctuary a reality. Know that each of you has made a difference in the world and the legacy of your lives.

Sincerely,

A handwritten signature in cursive script that reads "Susan Olson".

Susan Olson

Kailua-Kona, HI 96740

Email: susankukana124@gmail.com

**WRITTEN TESTIMONY OF
RYAN KING**

**HEARING ON
THE PROPOSED PAPA HĀNAUMOKUĀKEA NATIONAL MARINE SANCTUARY**

**BEFORE THE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

APRIL 26, 2024

My name is Ryan King, and I am a Hawaii State resident. I appreciate the opportunity to offer written testimony on The Proposed Papahānaumokuākea National Marine Sanctuary.

As the National Oceanic and Atmospheric Administration (“Agency”) proposes to designate marine portions of Papahānaumokuākea Marine National Monument as Papahānaumokuākea National Marine Sanctuary (“Proposed Sanctuary”), I write to highlight considerations that the Agency should take into account before promulgating the final rule:

- 1) Due to the cultural and substantive relationship between Native Hawaiians and the waters of the Proposed Sanctuary, the Agency should afford deference to the opinions of Native Hawaiian groups and agencies of the State of Hawaii when reviewing the objectives, actions, safeguards, exceptions, permits, and penalties of the Proposed Sanctuary.
- 2) With respect to co-management between the State of Hawaii and the Federal Government, on all matters pertaining to the management of the Proposed Sanctuary, the Office of Hawaiian Affairs should be consulted when collecting the unique insight and cultural values of Native Hawaiians.
- 3) The Agency should develop a detailed report outlining the access rights of the Department of Defense (“DOD”), and the practical ramifications of any national defense exceptions awarded to DOD with respect to military training within and around the Proposed Sanctuary.
- 4) The Agency should seek the professional guidance and recommendations of the U.S. Fish and Wildlife Service when conducting the notice and comment review to determine and quantify the positive effect on native and endemic species in the Northern Hawaiian Islands.

Thank you for your consideration.

April 27, 2024
 Julia Bloechl
 SUBMITTED VIA: FederalRegister.gov
 Involved Agencies: Department of Commerce, National Oceanic and Atmospheric Administration
 Re: Docket No. 240213-0047
 Comment Period Due Date: 05-07-2024

To Whom it May Concern:

Following various federal, state, and public recommendations to redesignate Papahānaumokuākea National Monument as a marine sanctuary, the National Oceanic and Atmospheric Administration has posted a proposal to do so for public comment. This redesignation is important and ought to encompass the broadest feasible scope – both in area and management authority – as presented in Alternative I of the draft Environmental Impact Statement. I urge NOAA to prioritize the adoption of Alternative I over the other two options or the “do-nothing” alternative.

Papahānaumokuākea is the first and only mixed natural and cultural world heritage site in the United States.¹ Papahānaumokuākea National Monument currently faces various threats to its marine and terrestrial ecosystems. The presence of marine debris such as fishing gear, nets, plastics, and other debris poses risk for marine habitats.² Global ocean acidification and rising surface temperatures greatly impact the health of local reef systems.³ Marked rising sea levels are estimated to endanger up to 69% of terrestrial habitats in the next 80 years.⁴ This invaluable ecological and cultural space is in need of a revitalized approach to conservation. I support NOAA’s proposal to redesignate Papahānaumokuākea National Monument, in the Northwestern Hawaiian Islands, as a Marine National Sanctuary. This designation would implicate stronger means of management and regulation, while involving community participation through Sanctuary Advisory Councils.⁵

In particular, I would like to highlight why it is important that NOAA follows through on selecting Alternative I of the designation options that it considered in its Draft Environmental Impact Statement. NOAA considered three options but Alternative I is clearly the best and selecting either of the others (or the no-action alternative) would forgo important benefits of this designation.

¹ Frances Kai-Hwa Wang, *Activists Push for Hawaii National Monument Expansion After Public Meetings*, NBC NEWS (Aug. 4, 2016), <https://www.nbcnews.com/news/asian-america/activists-push-hawaii-national-monument-expansion-after-public-meetings-n622166>.

² *General Challenges to Conservation in Papahānaumokuākea Marine National Monument Development Pressures*, PAPAĀHANAUMOKUĀKEA MARINE NATIONAL MONUMENT (Dec. 5, 2022) <https://www.papahānaumokuākea.gov/wheritage/challenges.html>.

³ *Climate Change and Ocean Acidification*, NOAA, <https://sanctuaries.noaa.gov/science/sentinel-site-program/papahānaumokuākea/climate-change-ocean-acidification.html> (last visited Apr. 22, 2024).

⁴ *Supra* note 2.

⁵ *What’s the Difference? National Marine Sanctuaries vs. Marine National Monuments*, NATIONAL MARINE SANCTUARY FOUNDATION, (Nov. 2, 2020) [https://marinesanctuary.org/blog/whats-the-difference-national-marine-sanctuaries-vs-marine-national-monuments/#:~:text=The main differences between sanctuaries, and applications in doing so.](https://marinesanctuary.org/blog/whats-the-difference-national-marine-sanctuaries-vs-marine-national-monuments/#:~:text=The%20main%20differences%20between%20sanctuaries,%20and%20applications%20in%20doing%20so.)

First, I wish to emphasize the fact that sanctuary designation is an important tool to strengthen protections that are not available under National Monument Designation. To designate a Marine National Monument, the president issues a Presidential Proclamation under the Antiquities Act. These monuments are then managed by federal and state agencies, but management does not require public participation.⁶

On the other hand, NOAA or Congress can designate Marine Sanctuary under the National Marine Sanctuaries Act. NOAA then administers management of a National Marine Sanctuary. The enabling act allows NOAA to develop management plans, issue regulations, and enforce regulations. Importantly, Marine Sanctuaries require a Community Advisory Council with local stakeholders. These individuals offer recommendations for management.⁷ Thus, sanctuaries uniquely call for local public participation.

Sanctuary designation also allows for different, more stringent means of regulation. It allows NOAA to impose liability for loss or damage of sanctuary resources. It also requires interagency consultation regarding actions likely to destroy or injure sanctuary resources.⁸

Many of the arguments against monument and sanctuary designations come from fishermen. They complain that restrictions on the region force them out of the areas where they conduct their expeditions. They are forced to move into the high seas where they compete with foreign vessels.⁹ There are, however, mixed reports on the impact the designation and expansion of protected areas have had on fishermen. One study found that the designation has had minimal impact.¹⁰ It is important for us to consider the fact that protecting marine areas means protecting the species in them. This allows them to replenish. Without such protections, fishermen may suffer in the long term from the lack of supply in a deteriorating ecosystem.

Evaluating Alternatives

Alternative I is the best and most effective of those the agency has considered. NOAA opted for this alternative after considering public input. Native Hawaiian communities, scientists, and agency officials collaborated to come up with this proposal. It encompasses 582,570 square miles which is the largest area proposed by any of the alternatives. Regulations would be very similar to those under the National Monument designation. This alternative would provide consistency across the region. Vessels passing through this large space would need to comply with discharge regulations. This area hosts important seamounts and protects the habitats of the threatened green turtle and endangered monk seal. The boundary extends to 200 nautical miles seaward which accounts for highly mobile activity of species.¹¹

⁶ *Id.*

⁷ *Supra* note 5.

⁸ *Id.*

⁹ Aaron Orlowski, *Hawaii Marine Monument Expansion's Impact on Fishing Debated 5 Years Later*, SEAFOODSOURCE, (Apr. 15, 2020) <https://www.seafoodsource.com/news/environment-sustainability/hawaii-marine-monument-expansion-s-impact-on-fishing-debated-5-years-later>.

¹⁰ Lynham, J., Nikolaev, A., Raynor, J. *et al.* Impact of two of the world's largest protected areas on longline fishery catch rates. *Nat Commun* **11**, 979 (2020) <https://doi.org/10.1038/s41467-020-14588-3>.

¹¹ *Proposed Papahānaumokuākea National Marine Sanctuary Draft Environmental Impact Statement*, NOAA (March 2024).

Alternative II omits the Monument Expansion Area. The Monument Expansion Area (MEA) was added to the Monument in 2016 via a presidential accord delivered by President Obama. The MEA includes seamounts, submerged reefs, and sunken islands. Protecting this valuable area means protecting rare marine mammals, fish, and coral reefs.¹²

By leaving the MEA out of this new designation, regulation will become confused. The lack of consistency will hinder effective protective measures. Additionally, leaving the MEA out would, once again, signal that some of the region deserves greater protection than other areas. The addition of the MEA in 2016 was an explicit effort to rebuke that suggestion.

Alternative III contains a total area of 581,263 square miles. It leaves out the waters in the Midway Atoll and Hawaiian Islands National Wildlife refuges. Although the total area encompassed by the Alternative III boundaries is not much less than Alternative I, the areas left out are significant.¹³ Midway Atoll faces the highest amount of human activity in the Monument which has caused a significant amount of ecosystem destruction. The area experiences a lot of vessel traffic and hosts an airport runway that brings in anywhere from 22 to 41 flights each year.¹⁴ Midway Atoll has cultural and historical significance as it was the site of a historical WWII battle – Battle of Midway.¹⁵ The Atoll is home to a number of threatened and endangered species. It hosts 21 breeding sea bird species.¹⁶ One of the just two remaining colonies of the Laysan Duck is located on Midway Atoll.¹⁷ NOAA scientists believe that there are more fish species endemic to this refuge than anywhere else on the planet.¹⁸ It is critical that we protect this unique region and, therefore, reject Alternative III.

Only Alternative I encompasses all of the regions deserving and in need of these enhanced protections.

Conclusion

NOAA and allied agencies and actors worked long and hard to ensure that the Papahānaumokuākea area was given proper protections. Converting the monument into a sanctuary would be the right decision for several reasons including the fact that it will allow for even greater protection and will ensure that native Hawaiian communities are given a role in management. To ensure that this designation has the desired effect, NOAA should follow through on its proposal to adopt Alternative I. All of the area encompassed in the boundaries of

¹² *Celebrating the Expansion Anniversary of Papahānaumokuākea Marine National Monument*, NATIONAL MARINE SANCTUARY FOUNDATION, (Aug. 26, 2019) <https://marinesanctuary.org/blog/celebrating-the-expansion-anniversary-of-papahānaumokuākea-marine-national-monument/>.

¹³ *Supra* note 11.

¹⁴ *Id.*

¹⁵ Bill O'Brian, *The Midway Atoll You Might Not Know*, U.S. FISH & WILDLIFE SERVICE, <https://www.fws.gov/story/midway-atoll-you-might-not-know>.

¹⁶ *Id.*

¹⁷ *Midway Atoll*, PACIFIC ISLANDS BENTHIC HABITAT MAPPING CENTER, <https://www.soest.hawaii.edu/pibhmc/cms/data-by-location/northwest-hawaiian-islands/midway-atoll/> (last visited Apr. 22, 2024).

¹⁸ *Hawaiian Islands National Wildlife Refuge*, THE ARMCHAIR EXPLORER – HAWAII, <https://www.thearmchairexplorer.com/hawaii/hawaiian-islands-national-wildlife-refuge.php> (last visited Apr. 22, 2024).

that alternative has a significant cultural and natural value. Each square foot is worthy of protection. On top of that, this alternative allows for a unified means of control and management. Alternatives II and III will cause confusion as some regions would only retain monument status while others become sanctuaries. We strongly believe that adopting Alternative I is in the best interest of the agency and the impacted Hawaiian communities.

Please accept my comments on the proposal to establish the US Marine Sanctuary at the Papahānaumokuākea Marine National Monument (PMNM). I wish to question some of the restrictions proposed on fishing and implications of this proposed sanctuary for decisions on other fisheries management approaches on other Pacific Islands' marine resources. I send my comments from my residence on Guam. However, I have spent the last fifty-four years residing in Hawaii and other Pacific Islands. During those years I have researched, taught, planned, developed and managed fisheries and marine resources, including teaching current managers and elected decision makers in Pacific Island countries that share pelagic fisheries resources with the United States.

Over the years I have seen the value and practicality of marine sanctuaries, particularly in providing support for research, education, management and enforcement to sustain ecological resources for continued and future values. While marine monuments have been protecting resources from damage of marine mining, pollution, destructive fishing such as bottom trawling and from over-fishing, etc., the sanctuary status can better serve to maintain and support scientific resources for monitoring, management and protection of natural resources. Current National Monument status can accomplish some of this but it can be eliminated by any US President by Executive Order as his/her personal decision. Sanctuaries do not have this same vulnerability. However, broad exclusion of sustainable fishing and resources uses should not be the objective of marine sanctuaries, even though it simplifies their administration. US Marine Sanctuaries must be created to include co-management authority of local stakeholders. Those existing sanctuaries can and do allow sustainable commercial fishing. This is evident in other US Marine Sanctuaries that have monitored and managed their resources for decades.

Appropriate management of long-line fishing and trolling for pelagic species should be considered for management and allowed in the proposed PMNM. The Department of Commerce employs and benefits from advice from experienced excellent fisheries scientists as do the Western Pacific Regional Fisheries Management Council, the Secretariate of the Pacific Islands, the Pacific Forum Fisheries Agency, the Western and Central Pacific Fisheries Management Commission, the Parties to the Nauru Agreement and others, all providing best advice on management of especially the Pacific highly migratory pelagic fish stocks targeted for world supply of sustainable, healthy fish protein. Such management applies to the pelagic fish that pass through the PMNM area.

While ever-improving technologies are allowing better management of impacts of activities in marine monuments and protected areas, these technologies and evolving recognition of traditional knowledge of marine resources should contribute to the best uses of the natural resources. Uses can include scientifically managed harvest of pelagic species done on a regional basis by countries and territories sharing the migratory fish resources and having the history of sustainably using the resources for many thousands of years.

Protection from impacts of proposed deep sea-bottom mining for minerals, which can potentially devastate the populations of living organisms and the area's ecology, is an important feature of sanctuary and monument status. This is likely not a threatened use at PMNM but is a serious threat to the Marianas Trench MNM which appears to contain some of the most valuable cobalt crusts for ocean mining as well as many possibly valuable marine minerals that are related to volcanic vents. The Pacific Remote Island Area proposed sanctuary may also risk marine mining threats. But both of those monuments deserve consideration of allowing managed commercial fishing of pelagic species and have the same scientific management resources as the pelagic species moving through the PMNM.

Decisions on management of a National Marine Sanctuary in Hawaii will influence the decisions for other proposed sanctuary areas. Decisions should be derived separately for each area with co-management by local stakeholders and sustainably managed traditional, subsistence, commercial and recreational fisheries. The influence of Hawaii-based stakeholders in Hawaii sanctuary management is expected. But the dominance of those from Hawaii and from the US Mainland affecting decisions on marine resources management in other Pacific US Territories seems to be counter to equitable justice. Monuments or sanctuaries in the Mariana Islands and the PIRIA lack stakeholder powers to control decisions through lacking elected US Senators and lacking equitably powered US Congress members (not to mention lack of ability to vote for US Presidents). But traditional marine environmental knowledge in the US Territories, the US Freely Associated States in Micronesia and neighboring countries with histories of sustainably using and managing of the Pacific marine resources for literally thousands of years should not be over-shadowed by decisions on the sanctuary status of Hawaiian Islands.

Thank you for attention to my concerns and I expect to see many issues besides mine addressed in the EIS for the Sanctuary.

Michael Gawel



**NATIONAL
WILDLIFE
FEDERATION**

NWF.ORG

May 6, 2024

PMNM-Sanctuary Designation
NOAA/ONMS
1845 Wasp Blvd.
Bldg. 176
Honolulu, HI 96818

Re: Docket No. 240213-0047

Submitted via the Federal eRulemaking Portal (www.regulations.gov)

Dear Superintendent Roberts,

The National Wildlife Federation strongly supports designation of marine portions of Papahānaumokuākea Marine National Monument and the Monument Expansion Area (collectively called the Monument) as a national marine sanctuary. Dedication of this national marine sanctuary would honor the legacy of these islands and atolls, their significance to Indigenous Hawaiians, and protect abundant populations of wildlife such as coral, fish, sharks, turtles, rays, whales, dolphins, birds, and other important marine ocean species in the face of threats like deep-sea mining, climate change, and overfishing.

With over 7 million members and supporters, the National Wildlife Federation is the nation's largest conservation organization. Our unique Federation model means we have affiliate partners in 52 states and territories, including Hawai'i. We cannot complete our mission of uniting all Americans to ensure wildlife thrive in a rapidly changing world without addressing threats facing ocean health and marine biodiversity. We are eagerly employing our science-based advocacy, community partnerships, and engagement of diverse stakeholders, to build community and political support for the protection of additional offshore areas around the nation. This includes supporting the added protections and management needs for Papahānaumokuākea that will be afforded through sanctuary designation that are crucial to strengthening the existing resource protections.

The proposed Papahānaumokuākea sanctuary area extends 1,200 miles across the northwestern region of the Hawaiian archipelago, starting approximately 140 miles from the main Hawaiian Islands, and roughly 3,000 miles from the nearest continental land mass. This vast ecosystem is one of the largest wild, pristine marine sites in the world, encompassing 582,578 square miles of the Pacific Ocean. The monument protects traditional Hawaiian habitation sites, heiau (temples), ko'a (fishing grounds and shrines), culturally significant species such as sharks, sea turtles, and other 'aumākua (ancestral family gods), and the flight paths and foraging habitat of seabirds essential to traditional navigators during ocean voyaging by canoe. The addition of the national marine sanctuary would provide important regulatory and management tools to complement and

enhance existing protections for Papahānaumokuākea ecosystems, wildlife, and cultural and maritime heritage resources.

We urge that NOAA act swiftly to designate the new sanctuary by finalizing and approving the associated draft environmental impact statement (EIS) (Alternative 1) and draft sanctuary management plan that are currently out for public comment. Specifically, this proposed action and national marine sanctuary designation would:

- Maximize benefits for the largest proposed sanctuary of the three alternatives that NOAA is evaluating, and provide critically needed guidance for management, a top priority of which should be species protections.
- Protect this coral reef ecosystem that is a global marine biodiversity hotspot, providing essential habitats for rare species such as the threatened green turtle and the critically endangered Hawaiian monk seal, the Hawaiian humpback whale, sharks, millions of seabirds, and others. There is a high degree of endemism in this area, and it is crucial to safeguard these species and actively manage these habitats so they not only survive, but thrive.
- Provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources. By adopting a co-management model NOAA and partners will help ensure that traditional ecological knowledge (TEK) and Western science can be at the forefront of ongoing and future protections for the Pacific. This includes enhancing management of the proposed sanctuary by having a Native Hawaiian program specialist on staff and the sanctuary advisory council including Native Hawaiian seats, and outreach to the Native Hawaiian Community.

While there is still more work to be done to expand the National Marine Sanctuaries Program so that there are geographically representative, ecologically connected, and climate-resilient marine areas off all U.S. coasts, the Papahānaumokuākea designation is critically needed and demonstrates meaningful progress toward these broader goals. Thank you for doing all that you can to ensure maximum protections for this national Hawaiian treasure for fish, wildlife, Pacific Island communities, and those who love this area, now and for generations to come.

Sincerely,



Jessie Ritter
Associate Vice President, Water and Coasts
National Wildlife Federation National
Wildlife Federation



Lindsay Gardner
Director of Marine Conservation
National Wildlife Federation National
Wildlife Federation

**National Oceanic and Atmospheric Administration Proposed Papahānaumokuākea
National Marine Sanctuary**

To: John Armor, Director of the Office of National Marine Sanctuaries
c/o PMNM-Sanctuary Designation, NOAA/ONMS
1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818

From: Ashley Wong
Wonga3@hawaii.edu
05 May 2024

RE: Public Comment on National Marine Sanctuary Designation for the Northwestern
Hawaiian Islands

Aloha e Mr. John Armor,

I am writing to express my **SUPPORT** for the proposed designation of the Papahānaumokuākea National Marine Sanctuary Alternative 1 boundary. I appreciate the opportunity to contribute to the regulatory process and commend NOAA's efforts to protect this area's nationally significant biological, cultural, and historical resources. I am aware of the importance of protecting our oceans and the species that inhabit them. The Papahānaumokuākea region is an area of immense historical significance and its protection is crucial for the long-term health and sustainability of our oceans. I firmly believe that the proposed designation of Papahānaumokuākea National Marine Sanctuary will not only protect this unique and valuable ecosystem but also pave the way for a brighter future for our oceans and the generations to come. I commend NOAA for its efforts to protect this area's nationally significant resources and for its commitment to engaging with stakeholders to ensure that the needs of all parties are considered.

First, I am in full support of the establishment of Papahānaumokuākea National Marine Sanctuary as part of the National Marine Sanctuary System. Papahānaumokuākea is a place of deep reverence for Native Hawaiians, a living cultural landscape that sustains their cultural identity, practices, and way of life. According to Papahānaumokuākea Government (2024), It is believed to be the origin of all life and the destination for spirits after death, as recorded in the Kumulipo, the longest-known genealogy chant. The islands and surrounding waters of Papahānaumokuākea are rich in cultural resources, including traditional fishing grounds, gathering sites for culturally important plants, and archaeological sites that tell the stories of

Indigenous ancestors. In this endeavor, NOAA's role is crucial. By establishing clear terms of designation and implementing regulations to support conservation efforts, NOAA demonstrates its commitment to responsible stewardship of our marine resources, for which we are deeply grateful.

As a concerned citizen and advocate for marine conservation, I urge NOAA to prioritize the following considerations in the final designation and management of Papahānaumokuākea National Marine Sanctuary. It is imperative that the sanctuary includes Native Hawaiian representation, as this will significantly enhance and ensure the long-term preservation of this culturally significant Wahi Kapu (sacred place). The proposed sanctuary aims to establish supplementary regulations that would reinforce the current boundaries of the Marine Monument and enhance the protection of its resources. I am also in support that these regulations would include adding additional permit categories regarding Native Hawaiian Practices within the proposed sanctuary and limiting recreational activities to the Midway Atoll Special Management Area.

To ensure the adequate protection of environmental and cultural resources in Papahānaumokuākea, it is essential to incorporate ancestral knowledge and ways of knowing into stewardship practices. Winter, K.B. et al. (2021) emphasize the importance of a community-driven collaborative management approach that empowers Indigenous peoples and local communities (IPLCs) to govern themselves. This approach aligns with Indigenous values and conservation strategies and involves working together with government agencies, non-government organizations (NGOs), and IPLCs. International policy recognizes the value of Indigenous Community Conserved Areas (ICCAs) and Community-based Conserved Areas, which empower IPLCs and support sustainability goals. For a more comprehensive representation of Native Hawaiian interests in the management and decision-making processes, it is strongly recommended that the Office of Hawaiian Affairs be appointed as a co-trustee of the monument. This collaborative partnership will not only foster mutual respect, trust, and cooperation between NOAA and Native Hawaiian communities but also ensure that cultural values and traditions are not just respected but fully integrated into conservation efforts. The active involvement of Native Hawaiians in sanctuary management and decision-making that affects it is not just beneficial but crucial for the success of these efforts. I respectfully urge you to give these factors the utmost consideration when making your final decision.

In conclusion, I fully Support the proposed designation of Papahānaumokuākea National Marine Sanctuary and applaud NOAA for its dedication to protecting our oceans. It is imperative that we uphold the time-honored knowledge and practices of the Native Hawaiian community. To honor their heritage and ensure the longevity of marine ecosystems, I urge the National Oceanic and Atmospheric Administration (NOAA) to collaborate with the Native Hawaiians and support their local-level management initiatives. By empowering them to make informed decisions tailored to their unique needs and perspectives, we can promote their well-being and sustainable development. By developing effective and culturally appropriate management strategies, we can not only benefit the environment but also support the self-determination of the Native Hawaiian community. Organizations and individuals can play their part by offering financial support, comments, and recommendations to ensure that the Native Hawaiian community has the resources and knowledge they need to make the best decisions for themselves and their

community. We must take proactive measures to preserve and manage the unique ecological and cultural significance of the Northwest Hawaiian Islands and the surrounding Pacific Ocean waters for the present and future generations.

Thank you for considering my comments on this matter.

Ke aloha nui,

Ashley K. Wong



May 5, 2024

Aloha,

The members of the non-profit Hawaii Fishing & Boating Association would like to add our enthusiastic support the designation of Papahānaumokuākea as a National Marine Sanctuary.

We support Alternative 1, which would designate boundaries that mirror the marine portions of the existing Papahānaumokuākea National Marine Monument. We believe that the preferred alternative acknowledges the opinions and desires of the many individuals and organizations who showed their strong support for further protections, during the Monument expansion effort.

We concur with the preponderance of international scientific opinion that we must protect at least 30% of our oceans to assure their health and resilience, and we believe that the additional protections provided to Papahānaumokuākea, by becoming a National Marine Sanctuary, will contribute substantially to that 30% goal.

It appears to us that Sanctuary designation is likely to result in additional public and non-profit funding for Papahānaumokuākea, which would likely support a more consistent budget for operations, research, citizen science, education, and emergency response.

The proposed rule and its associated Draft EIS establish an important additional layer of regulations, over the existing boundaries of the current Marine National Monument, that would also maintain and enhance existing protections.

The National Marine Sanctuary Act provides more concise regulations and guidance regarding civil penalties for permit and regulatory violations than what is available under the Monument Proclamations alone, and imposes liability provisions for damage to sanctuary resources.

We do not support the Wespac proposal to allow fishing in Papahānaumokuākea as that would likely prove detrimental to its fragile resources, its ecosystem, and to the fishing communities of Hawaii. That fishing proposal only seeks to benefit a very select few. We therefore oppose sale, barter, or trade, and the cost recovery provisions proposed by Wespac.

Because fishing rules are being developed under a separate process not aligned with Sanctuary designation, NOAA should ensure it has protective regulations consistent with the Monument Proclamations. This process should include development of an EIS.

In 2010 UNESCO uniquely recognized and inscribed Papahānaumokuākea as a World Heritage Site, for its unique biological, cultural and historic attributes and significance. The Northwest Hawaiian Islands have been similarly respected and protected by six Presidents from both political parties.

The local, national and international communities have supported maximal protection of Papahānaumokuākea since President Theodore Roosevelt created the Hawaiian Islands Bird Reservation in 1909. The creation of a National Marine Sanctuary overlay of Papahānaumokuākea is the appropriate next step to assure continued protection of this very special place.

Mahalo.



Rick Gaffney,
President

Aloha,

I am sharing today that Hui o Kuapā 501c3 fully supports the designation of Papahānaumokuākea as a National Marine Sanctuary.

Education is the kua or backbone of the Hui o Kuapā mission. Hui o Kuapā educates the local and global community about Native Hawaiian resource management and innovations through hands-on experience in the fishponds or loko i'a as well as through advocacy of native rights and issues. The organization has been instrumental in raising awareness about the need to care for our planet and food security in rural communities. It proudly continues to carry out that mission today.

- Specifically, we are in support of Alternative 1 - the preferred alternative - which would designate boundaries that are co-extensive with the marine portions of the Papahānaumokuākea National Marine Monument.
- The preferred alternative acknowledges the deep discussions, thoughts, and opinions expressed by hundreds and thousands of people who came forward during the Monument expansion effort. It rightfully does not expand the area's specific boundaries any further than what is currently in place.
- The proposed rule and Draft EIS also establish an additional layer of regulations over the existing boundaries of the current Marine Monument that would maintain and enhance existing protections.
- The proposed management plan appropriately incorporates Mai Ka Pō Mai, which was informed and created by the Native Hawaiian community, and the vision of how Papahānaumokuākea should be cared for now and in perpetuity.
- Papahānaumokuākea deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahānaumokuākea is also a place for Native Hawaiian

cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature.

- A sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today's uncertain political climate, ensuring added safeguards regardless of who becomes President.
- A sanctuary can also attract additional public and non-profit funding, which could strengthen the public's appreciation of Papahānaumokuākea and support a more consistent budget for operations, research, citizen science, education, and emergency response.
- The National Marine Sanctuary Act provides clearer regulations and guidance for enacting civil penalties for permit and regulatory violations than what is currently available with the Monument Proclamation alone and imposes liability for damage to sanctuary resources.
- Regarding industrial fishing, Wespac's proposal to have large-scale fish extraction in Papahānaumokuākea is not beneficial to the resource or to the communities of Hawaii and the greater Pacific and only seeks to benefit a select few. We oppose any sale, barter, or trade of this large-scale extraction and the cost recovery proposed by Wespac for these trips.
- Because the fishing rules are being developed under a separate process not aligned with Sanctuary designation, NOAA should ensure it has protective regulations consistent with the Monument Proclamations. This process should include an EIS, with a public comment period.
- With only 3% of the global ocean fully protected, we must support additional protections for Papahānaumokuākea that will help to mitigate against possible negative impacts from changes in political administrations.

Mahalo,
Hui o Kuapā Chair - Guy Hanohano Naehu

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Honolulu, HI

Shantha Thangiah
Poughkeepsie, NY

Pamela Repp
Lalingsburg, MI

PMNM-Sanctuary Designation
NOAA/ONMS
1845 Wasp Blvd., Bldg. 176
Honolulu, HI 96818

Re: NOAA-NOS-2021-0114

5 May 2024:

The Friends of Midway Atoll National Wildlife Refuge (FOMA) has reviewed the Proposed Papahānaumokuākea National Marine Sanctuary Draft Environmental Impact Statement (EIS) dated March 2024. Overall, FOMA is supportive of the designation of a Papahānaumokuākea National Marine Sanctuary (sanctuary) with the caveats listed below. FOMA provides the following comments and recommendations to be considered in preparing a Final EIS, selecting the final alternative, and developing interagency processes to implement permitting procedures for a new sanctuary, if the new sanctuary overlays Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial (NWR/refuge).

FOMA is a not-for-profit organization established in 1999 to support Midway Atoll NWR in its efforts to preserve, protect and restore the biological diversity and historic and cultural resources of Midway Atoll, while providing opportunity for wildlife-dependent recreation, education, cultural experiences, and scientific research. FOMA plays a pivotal role in the conservation and restoration of Midway's natural and historic and cultural resources through financial and volunteer support; dynamic outreach and education; effective advocacy to support refuge programs; assistance developing an inspirational visitor program; and productive collaboration with diverse partners. All board members have a personal or professional relationship with Midway Atoll NWR and, therefore, bring a wealth of knowledge and well-rounded experiences to their advocacy for the refuge, memorial and monument.

General Comments

1. When referring to the Battle of Midway in the Final EIS, it should be clear that the battles occurred both at Midway Atoll as well as at sea.
2. The Draft EIS makes reference to the unique role Midway Atoll NWR plays as the "window to the Monument". In addition to Midway Atoll NWR providing an emergency airfield for transpacific flights, it also plays a critical role in supporting search and rescue operations and emergency maritime medical evacuations conducted by the USCG, and provides a base of operations, access

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to, and a safe harbor for researchers and other agency/partner personnel conducting activities in the Papahānaumokuākea Marine National Monument (Monument). Midway Atoll NWR is also the only place in the Monument and proposed sanctuary that can support *in situ* environmental education, and historical and wildlife-dependent recreational uses of the refuge.

Recommendations: The Final EIS should strengthen the description of what is meant by the “window to the Monument” and how Midway Atoll NWR provides critical support to other agencies and partners in the Monument, including but not limited to USGS; DoD; US Navy; USCG; seabird, marine mammal and invasive species researchers; State of Hawaii; NOAA (Tides and Charts and others); marine debris cruises; etc. The Final EIS should clearly state how those operations might be affected if a sanctuary is designated under each alternative. Midway Atoll NWR provides a harbor, airfield, and other infrastructure that make it a lifeline as much as a “window” to the Monument. The Final EIS should articulate the ways in which Midway Atoll NWR would enhance and support management of the proposed sanctuary.

The 2021 Midway Atoll Comprehensive Master Plan (Master Plan), as described briefly in the Cumulative Effects section of the Draft EIS, describes the actions needed to maintain current and proposed future uses of Midway Atoll NWR. These infrastructure improvements are necessary to support FWS operations, and to maintain an emergency airfield and harbor that are used by the FWS and other agencies and partners, as well as the public. FOMA supports implementation of the 2021 Midway Atoll Comprehensive Master Plan and believes maintenance and reconstruction of critical infrastructure such as the seawall, harbor, housing, administrative buildings, and other infrastructure is essential to the continued accessibility of Midway Atoll as an emergency airfield and “window” to the Monument and proposed sanctuary.

The cumulative effects analysis should therefore describe how implementation of the Master Plan would support sanctuary access, scientific research, environmental education, public appreciation of sanctuary resources, human safety, and partner agency operations.

Specific Comments

1. The 2020 Consolidated Appropriations Act directed NOAA to initiate the sanctuary designation process to “supplement and complement, rather than supplant, existing authorities.” This is stated throughout the Draft EIS but there is no clear description of how this will be implemented. Therefore, the description for each alternative in the Final EIS should include a thorough articulation of what is meant by the collaborative management process, including each agencies’ authorities and a dispute resolution process.

Recommendation: The Final EIS should clearly articulate how interagency management of a sanctuary would be achieved including agency authorities, which authorities take precedence in

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distinct areas of the proposed sanctuary (e.g., areas managed by FWS), governance processes, and a dispute resolution process. The Draft EIS states:

- a. Page 24: Through sanctuary designation, NOAA is proposing to supplement and complement existing management of the Monument, and would manage the sanctuary in close collaboration with Monument co-trustees.

The Final EIS should describe how this will be accomplished and the process should receive concurrence from partner agencies.

- b. Page 24: NOAA and the State of Hawai'i *would co-manage the sanctuary* [emphasis added]. NOAA may develop a Memorandum of Agreement with the State to provide greater details of co-management.

This statement in the Draft EIS seems contrary to the statement that the sanctuary would complement existing management of the Monument given that existing management includes more parties than just NOAA and the State of Hawaii. It also implies that NOAA and the State of Hawaii would have precedence over FWS management of refuge waters overlaid by the proposed sanctuary. Since the preferred alternative is a sanctuary that is coexistent with the Monument, this statement implies NOAA and the State will have ultimate management authority over the sanctuary, which would be contrary to the spirit and letter of Presidential Proclamations described in the Draft EIS.

FOMA does not support NOAA and the State of Hawaii superseding FWS authorities in refuge waters. The Final EIS should clarify agency roles, responsibilities and authorities, as well as include a governance document that codifies these relationships and provides clear alignment with all existing proclamations and authorities.

- c. Page 27: The proposed sanctuary includes a permitting system *modeled after* the existing Monument permitting system. The proposed permitting system would not supplant the joint permitting system for the Monument, and *was developed to ensure a continued joint permitting system* administered by Monument co-managers.

The Final EIS should clearly describe the proposed sanctuary permitting system and how it relates to the current Monument permitting system. FOMA further recommends these permitting systems be streamlined to reduce redundant reviews under various regulations and authorities. Streamlined could mean amending the current Monument process to cover actions in the sanctuary that are not already covered by the Monument process or developing a stand-alone sanctuary process for actions not covered by the Monument process. This would reduce another layer of review/permitting for actions in the refuge/Monument/sanctuary and coordinate all agencies reviews at one time rather than

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under a two-permit system. Providing a programmatic review/permit for certain actions, such as routine actions (e.g., accessing Eastern Island via a vessel for conservation work), annual work plans, and conducting activities following Best Management Practices would benefit the proposing agency and reduce agency review timelines. Including a joint programmatic review for such authorities as essential fish habitat, endangered species, marine mammals, and coral conservation would further streamline the review and permitting of actions in the Monument and proposed sanctuary.

In clarifying these implementation and regulatory processes in the Final EIS, FOMA recommends a formal action such as a Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU) be developed and signed by the Secretaries of Interior and Commerce or their designees. Further, FOMA recommends a 3rd party neutral facilitator be selected to oversee implementation of the MOU/MOA. The MOA/MOU should be reviewed and updated, as needed, every 5 years.

FOMA recommends that only one permitting system should apply to the Monument and sanctuary, if a sanctuary is designated. FOMA further recommends that the existing Monument permitting process be amended to incorporate sanctuary specific needs, as required.

Further, proposed annual projects/activities at Midway Atoll NWR should receive an expedited and streamlined or programmatic review to ensure timely and coordinated responses by multiple agencies/authorities.

2. **Alternative 1** - In 2016, Presidential Proclamation 9478 called for the Secretary of Commerce to consider initiating the process to designate the Monument Expansion Area and the Monument *seaward* of the Hawaiian Islands and Midway Atoll National Wildlife Refuges (which include marine waters) as a national marine sanctuary. In addition, Presidential Proclamation 8031 states “[t]he Secretary of the Interior, through the Fish and Wildlife Service (FWS), will have sole responsibility for management of the areas of the monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce.”

Recommendation: Given the above Presidential Proclamations, the Final EIS should describe how the overlay of the proposed sanctuary on Midway Atoll NWR in Alternative 1 would be consistent with these proclamations.

3. **Alternative 3** - Executive Summary page xiii states “Alternative 3 excludes vulnerable, shallow reef waters, where impacts from land-based legacy pollutants, relatively higher

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human presence, and potential vessel groundings, marine debris, and invasive species introduction pose a threat.” On page 117 of the Draft EIS, it is stated “Under Alternative 3, the waters with the greatest need for comprehensive protection would not be included within the boundary area, and therefore would obtain fewer beneficial impacts than waters of the surrounding ecosystem within the boundary area.”

Recommendation: The Final EIS should document the means and mechanisms by which the “land-based legacy pollutants” are currently threatening marine resources given the remediation that has occurred under the Comprehensive Response, Compensation, and Liability Act (CERCLA) over the past several decades. The Final EIS should state that the U.S. Navy is responsible for monitoring and maintaining Land Use Control Areas (the Draft EIS describes these as landfills) on Midway Atoll that are in place in certain areas where legacy contaminants remain below soil caps after remediation to CERCLA standards to be protective of human health and the environment.

It is FOMA’s understanding that existing refuge regulations and policies, Monument permitting processes and other regulatory authorities (e.g., Clean Water Act, CERCLA, Oil Pollution Act, Marine Mammal Protection Act, and Endangered Species Act) address many of the threats described above at Midway Atoll NWR. Thus, the Final EIS should clearly describe how Alternative 1, as compared to Alternative 3, would provide enhanced protection of the marine waters of the Midway Atoll NWR from each of the threats described in the Draft EIS, including how such protection would be provided above and beyond that provided by existing laws, policies and regulations.

FOMA recognizes the most important benefit to sanctuary designation under Alternative 1 to Midway Atoll NWR would be the authority to seek damages and penalties for physical injuries to sanctuary resources in the marine waters of Midway Atoll NWR.

4. Sanctuary General Permits page xvi states: Three categories of national marine sanctuary general permits, Research, Education, and Management, would apply to the proposed sanctuary. NOAA is proposing to add two additional permit categories to 15 CFR 922.30, Native Hawaiian Practices and Recreation, to be consistent with the types of activities permitted for the Monument under regulations at 50 CFR part 404. The general regulations in 15 CFR 922, subpart D relating to the permit application process, review procedures, amendments, and other permitting stipulations would apply. These national permitting regulations include a list of factors NOAA considers in deciding whether or not to issue the permit, such as whether the activity must be conducted within the sanctuary, and whether the activity will be compatible with the primary objective of protection of sanctuary resources and qualities. NOAA would be able to impose specific terms and conditions through a permit as appropriate.

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Recommendation: The Final EIS should clarify how these permits would be reviewed, approved and conditioned as the above language implies NOAA would have sole authority to review, condition, and approve these permits throughout the sanctuary. NOAA having such sole authority would be contrary to the collaborative management process described elsewhere in the Draft EIS and, in some cases, may be contrary to the provision in Presidential Proclamation 8031 that gives the Secretary of the Interior, acting through the FWS, sole authority over management of the areas of the existing Monument that overlay the Midway Atoll NWR, in consultation with the Secretary of Commerce. Furthermore, the FWS has an existing process to review and issue special use permits and to evaluate and regulate uses of the refuge for research, education, management, and recreation. Alternative 1 should explicitly acknowledge that the FWS maintains sole authority for certain decisions in the refuges. A MOU or similar document could be established among the FWS, NOAA, and State of Hawaii to clarify permit requirements in the areas managed by FWS in order to avoid imposing duplicative regulatory processes and to ensure consistency with the 2020 Consolidated Appropriations Act and Presidential Proclamation 8031. Such a document should also include provisions for dispute resolution and emergency situations when actions are necessary to protect human health and safety on Midway Atoll.

5. Contaminants - Page 37: The Draft EIS states there is ongoing environmental remediation (NOAA ONMS, 2020) at Midway Atoll.

Recommendation: The Final EIS should include a statement that the U.S. Navy has ongoing responsibilities to monitor and respond to any degradation of Land Use Control areas that have been previously remediated to CERCLA standards. The Final EIS should clarify what is meant by “ongoing environmental remediation.”

6. Recreation - Page 80 emphasizes “bringing the place to the people.” Page 83 states “Access for general visitation purposes was previously successfully allowed at Midway Atoll National Wildlife Refuge. However, due to recent reductions in refuge staff and operational capacity, historical and eco-tour access is currently not offered.” The Draft EIS mentions the 2021 Midway Atoll Comprehensive Master Plan but does not mention the fact that this plan proposes future visitation to Midway Atoll NWR.

Recommendation: FOMA recommends describing the previous visitation to Midway Atoll as a robust program that included cultural education, college field courses, WWII veteran groups and wildlife-dependent recreation. Proposed future public visitation, as described in the 2021 Midway Atoll Comprehensive Master Plan, was not evaluated in the cumulative effects section of the Draft EIS and should be included in the cumulative effects assessment in the Final EIS. FOMA supports future visitation at Midway Atoll NWR which would include access for community leaders, cultural practitioners, environmental education, research, historical

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interests and wildlife-dependent recreation. If designation of a sanctuary would preclude or restrict future visitation to Midway Atoll NWR, FOMA would not support designation of a sanctuary that overlays Midway Atoll NWR.

In addition, the Draft EIS states that fee-for-service recreation would not be allowed in the sanctuary. Midway Atoll NWR has authority to charge fees for services including public visitation [50 CFR Part 25 Subpart E; Refuge Rules and Policies at <https://www.fws.gov/refuge/midway-atoll/visit-us/rules-policies>]. Charging fees for services is necessary for the FWS to be able to afford to host visitors, including for any future public visitation that would access the proposed sanctuary. The Final EIS should recognize this authority of the FWS and clarify how future visitation to the marine waters of Midway Atoll NWR would be permitted under a sanctuary designation. FOMA supports future visitors being able to experience the refuge, Monument and sanctuary through water-dependent activities including but not limited to snorkeling and boat travel among islands.

7. Page 98: Under all of the alternatives, NMSA section 304(d) would require consultation for any federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource.

Recommendation: The Final EIS should describe how this consultation process would occur for the FWS when managing the refuges and memorial in the Monument/sanctuary and whether such a process would be in addition to the existing Monument process. In addition, the Final EIS should describe what the elevation or dispute resolution process would be if a permit is denied by NOAA or the action agency believes that certain permit conditions imposed by NOAA are unacceptable or impossible to achieve.

In conclusion, FOMA is supportive of the designation of a Papahānaumokuākea National Marine Sanctuary. If Alternative 1 is selected, a clear process for collaborative management of the sanctuary that is supported by all partners is imperative and the ability for Midway Atoll NWR to host visitors should not be diminished. If this cannot be achieved, FOMA supports Alternative 3. FOMA does not support the No Action Alternative or Alternative 2 as the benefits of sanctuary designation would not be realized.

Respectfully submitted,

Wayne Sentman
President
Friends of Midway Atoll National Wildlife Refuge

Friends of Midway Atoll National Wildlife Refuge
Battle of Midway National Memorial
17 Katrina Lane, San Anselmo, CA 94960
www.friendsofmidway.org

May 5, 2024

Cindy Freitas
P.O. 4650
Kailua Kona HI 96745
makainanqi@gmail.com

U.S. Department of Commerce
Gina Raimondo

Secretary National Oceanic and Atmospheric Adm.
Richard W. Spinrad, Ph.D.

Under Secretary of Commerce for Oceans and Atmosphere and NOAA
Adm. National Ocean Service
Nicole LeBoeuf

Assistant Administrator Office of National Marine Sanctuaries
John Armor, Director

VIA email
<https://atlrptaais.commentinput.com/?id=AZ5WkUQaC>

RE: Commit Period due May 7, 2024 for “**PROPOSED PAPAHA NAUMOKUAKEA
NATIONAL MARINE SANCTUARY
DRAFT ENVIRONMENTAL
IMPACT STATEMENT**”

He Mele komo a he mele aloha no na kupuna o ke au i hala Aloha mai kakou.

Aloha,

My name is Cindy Freitas and I'm a Native Hawaiian descended of the native inhabitants of Hawai'i prior to 1778 and born and raised in Hawai'i.
I am also a practitioner who still practice the cultural traditional customary practices that was instill in me by my grandparents at a young age from mauka (MOUNTAIN TO SEA) to makai in many areas.

I'm in OPPOSITION in Part for Proposed Papahanaumokuakea National Marine Sanctuary Draft Environmental Impact Statement for the following reasons:

From Beginning

The history of PAPAHA NAUMOKUAKEA is stated in the Kumulipo. How Po and Ao was created with a male and a female. Also came marine life, marine flora, ect...

Hawaiian Traditional Cultural was the inhabitants/Indigenous of Hawaii.

Native Hawaiians regard the Monument's atolls, islands, and waters as sacred places from which all life springs and ancestral spirits return after death. The Native Hawaiian belief systems regarding this genealogical relationship inform a set of responsibilities, rights, and privileges that Hawaiian people inherited to honor and protect their ancestors. The Kumulipo describes the Hawaiian universe as comprising two realms, Pō and Ao. Ke ala polohiwa a Kāne (the dark shining path of Kāne), also known as the Tropic of Cancer, is considered the border between Pō and Ao. The island of Mokamanamana is located on this boundary and is the center of convergence between the two realms; the island sits near the entrance of Papahānaumokuākea Marine National Monument, as only the second island in the northwestern part of the chain. The Monument's name commemorates the union of Papahānaumoku and Wākea, the divine parents of the island chain, the taro plant, and the Hawaiian people. Some islands have several names: one or more Hawaiian names that highlight a natural feature such as an abundance of sharks or a sacred quality ascribed to the place in traditional teachings, and an English name that often commemorates a historic shipwreck nearby.

Indigenous peoples have the right to their own cultural identity and integrity and to their cultural heritage, whether tangible or intangible, including historic and ancestral heritage; and to the protection, preservation, maintenance, and development of that cultural heritage for their collective continuity.

Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago.

Religion

A Sanctuary status would not only protect the incredible biodiversity listed in the EIS, but would also preserve the incredible cultural and genealogical ties that Native Hawaiians have with this sacred space.

I believe that living in the right relationship with Akua creation means advocating for the best protections possible for each of Akua creatures. I also acknowledge that my ancestor's have been caring for this land for centuries longer than us. As such, I turn to my ancestor's for guidance and knowledge in caring for Papahānaumokuākea Marine National Monument.

It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts need to include integrating traditional Hawaiian knowledge systems, values, and practices into management.

Creators of the sea

Within Papahānaumokuākea Marine National Monument." As home to more than 7,000 species, a quarter of which are endemic, Papahānaumokuākea safeguards key ecosystems and provides protection for organisms ranging from microscopic organisms to large marine mammals. Among these are rare species such as threatened green turtles, endangered Hawaiian monk seals, and false killer whales, as well as 14 million seabirds representing 22 species. We support a sanctuary designation provided it allows for highly or fully protected areas. Furthermore, we support designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary

I Oppose in Part all list below

Impacts

Potential impacts from use of multibeam, split beam, bottom profile, and other sonar techniques in Chapter 4: Affected Environment

Exploration of deep habitats is conducted using various sonar techniques, remotely-operated and autonomous vehicles, and the placement of instruments on the seafloor. (See Chapter 4: Affected Environment)

Researchers customarily divide marine mammals into five hearing groups based on their range of best underwater hearing. (Ketten, 1998): Low-frequency baleen whales like blue whales (7Hz to 35kHz); Mid-frequency toothed whales like most dolphins and sperm whales (150Hz to 160kHz); High-frequency toothed whales like some dolphins and porpoises (275Hz to 160kHz); seals (50Hz to 86kHz); fur seals and sea lions (60Hz to 39kHz).^[32]

Mid-frequency sonar can emit continuous sound well above 235 decibels, an intensity roughly comparable to a Saturn V rocket at blastoff. Marine mammals have extraordinarily sensitive hearing, and there is no scientific dispute that intense sonar blasts can disturb, injure, and even kill them.

Low-frequency active sonar system (LFA)

At lower intensities, sonar can interfere with the ability of marine mammals to navigate, avoid predators, find food, care for their young, and, ultimately, to survive.

Trustees

I oppose the Trustee who is part of this

The National Oceanic and Atmospheric Administration (NOAA) is a science-based federal agency within the Department of Commerce with regulator, operational, and information service responsibilities with a presence in every state and our territories.

NOAA Corps is a uniformed service whose officers carry out a variety of navigational and scientific functions and whose members are covered by a MILITARY-like compensation system. (See [NOAA CORPS DIRECTIVES APPENDIX 14.1 DEPARTMENT ...](#))

This is military base due to various sonar techniques that they will be using. (See 4.2.6 Permitted Activities Summary and Appendix C in the DEIS)

Our ancestors care for this 'aumakua's with the cultural practices and now to bare witness that the creatures of the see will be slaughtered. (Meaning of "AUMAKUA" "ancestor gods" and is derived from the Hawaiian words au which means period of time, and makua meaning parent or ancestor)

CO-Trustee's

Office of Hawaiian Affairs;

In 1978, a State of Hawai'i Constitutional Convention created OHA to address historical injustices and challenges arising out of those circumstances. The convention delegates envisioned an agency and provides a form of self-determination for Native Hawaiians and advocate for their overall well-being.

The Apology Resolution and related state legislation, give rise to the State's fiduciary duty to preserve the corpus of the public lands trust, specifically, the ceded lands, until such time as the unrelinquished claims of the native Hawaiians have been resolved. This did not happen and OHA should be working with the rightful hold as well as the stake holder of the land which is the DESCENDED of the NATIVE INHABITANTS of Hawai'i prior to 1778.

See (a)...*MacKenzie, Melody Kapilialoha (2015). "Public Land Trust". Native Hawaiian Law: A Treatise. Honolulu, Hawaii: Kamehameha Publishing. pp.79–146. ISBN 9780873363426.*

(b)...*Ching v. Case, 449 P.3d 1146 (2019).*

<https://www.courts.state.hi.us/wp-content/uploads/2019/08/SCAP-18-0000432.pdf>

OHA does not have the right to speak on my behalf or any of my OHANA with out our CONSENT.

Therefore the TRUE STAKE HOLDER and RIGHTFUL HOLDERS should be on the TABLE discussing the issues of MILITARY. In all due respect to NOAA and Department of Commerce.

Mahalo,

_____/s/_____
Cindy Freitas

To the Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC),

I am a long-time resident of O'ahu and an environmentalist who would like to offer my **SUPPORT to designate the marine areas of Papahānaumokuākea as a National Marine Sanctuary**. My background in Biology and Public Health have led me to trust that NOAA's Alternative 1 will be in the best interest of the health and balance of the people and animals who rely on this culturally- and historically- significant ecosystem. I would like to also express **support for the addition of regulated, non-commercial fishing exemptions** with the hope that this could allow a form of income that is fed back into funding the conservation of the sanctuary. I am aware that the American Sportfishing Association has advocated for the consideration of the wider Papahānaumokuākea National Monument to be made available for their recreational use, but I feel that the NOAA's decision to limit exemption to only the Outer-Sanctuary Zone (OSZ) will be wise at this time due to the possible negative ecosystem impacts that sportfishing and other non-commercial fishing could have.

Sportfishing and other recreational charter fishing businesses are already largely successful in Hawai'i, even with the current regulations in place. An economic study found that this fishery generated close to \$50 million in gross sales and supported nearly 900 jobs statewide in 2011 (Rollins & Lovell, 2019). A 2020 study from *Frontiers in Marine Science* showed that

recreational catches (not including released catches) around Hawai'i have increased considerably since the early 1990s, and now exceed all other areas other than the East Coast (Figure 1) (Freire et al., 2020). Additionally, since the expansion of Papahānaumokuākea in 2016, a study has shown that the catch rate in nearby waters of yellowfin tuna has increased by 54%, bigeye tuna (also known as 'ahi) increased by 12%, and catch rates for all fish

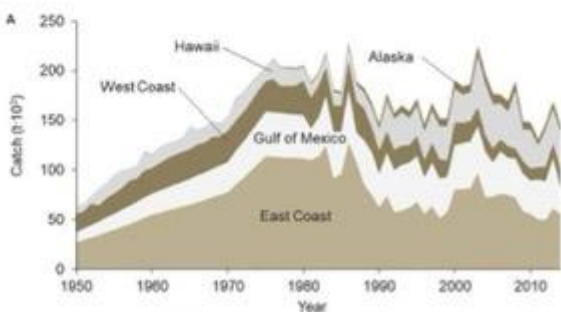


Figure 1. Golden Dots illustrate recreational fisheries in the United States of America from 1950 to 2010 by different regions. Data based on DeGroot et al. (2005), Smith, DeGroot et al. (2006), G. and McCreesh (2008).

species combined increased by 8% (Medoff et al., 2022). Based on this data, I do not feel that this industry requires access to the entirety of the monument to continue to be economically successful.

A 2019 study from *Frontiers in Marine Science* demonstrated that climate change and fishing are two of the greatest anthropogenic stressors on marine ecosystems (Woodworth-Jefcoats et al., 2019). They found that when fishing and climate change are

examined individually, fishing is actually the greater stressor. Although this study focuses on the effects of commercial long-line fishing, the potential impacts of recreational fishing must not be overlooked - especially given that there are more recreational fishers than commercial fishers in Hawai'i. A 2011 survey from The U.S. Fish & Wildlife Service estimated about 157,000 people over the age of 16 fished recreationally in Hawai'i in that year. This far outnumbered the roughly 3,800 licensed commercial fishers in Hawai'i that same year. While the primary motivation for recreational fishing differs from commercial fishing (leisure vs profit), the areas that recreational fishers are permitted may increase the possibility that rare species' populations are disrupted (Shiffman et al., 2014). Often, recreational fishers will focus on targeting the largest individuals of a population, which can in turn have a negative effect on the size structure of some stocks, especially if the species is a threatened species (Shiffman et al., 2014). Larger individuals of a species are likely to have some of the most potential to reproduce so their removal has disproportionate impacts on a given population. There are currently 23 identified endangered species found within the Papahānaumokuākea National Monument as well as hundreds of endemic species that may be particularly vulnerable to the pressures of recreational fishing. I would request the agencies to develop methods or policies that could prevent recreational fishers from aiming only for "trophy" catches. Simple changes such as advising fishers not to measure or take pictures of their catches within the OSZ could prevent people from competing for larger and larger catches. Besides preventing competition, policies like this could reduce post-release mortality.

An increased number of fisheries employ catch & release systems for recreational anglers with the assumption that a large proportion of released fish survive and experience limited fitness consequences (Wydoski, 1977). However, studies have shown that catch & release practices can unintentionally result in significant post-release mortality or reduced fitness of the fish due to fishing-related stressors such as hooking, handling, exhaustive physical exercise, and air exposure (Davis, 2002, Arlinghaus et al., 2007, Cooke and Schramm, 2007). According to a study on the best practices for catch-and-release recreational fisheries, "The fate of an angled fish upon release is



Figure 2: Conceptual diagram of potential stages of a recreational angling event (from Hooking to Recovery) including considerations (angler choices) on angling tools (grey boxes) and tactics (black boxes), ultimately resulting in either the harvest or release of the captured fish. Solid connectors represent obligatory steps; dotted lines indicate potential steps dependent on angler choices. (Brownscombe et al., 2007)

primarily determined by angler behavior (e.g., gear selection, handling time, admiration period) and therefore adopting certain angling practices can improve fish survival and reduce fitness consequences”(Brownscombe et al., 2017). They suggest that in order to reduce the chances of post-release mortality, we must provide these recreational fishers with a guide that outlines the best tools and methods for catch & release. Additionally, differing fish species will be able to handle differing amounts of stressors during catch & release, so creating guidelines on how to effectively handle differing fish species would be necessary. Figure 2 illustrates potential events during fishing that could pose adverse health risks for the captured fish and can serve as a prompt for where to develop specific practice guidelines. I request the agency to consider requiring anglers to attend a catch & release course in order to receive permits for non-commercial fishing exemptions in the OSZ.

Additionally, prior to allowing non-commercial fishing exemptions in the OSZ, I would urge the NOAA and Division of Aquatic Resources (DAR) to update the methods of data collection for recreational fishing. According to the DAR, “non-commercial fishing data has not been collected aside from occasional, short-term surveys.” The Fishing Effort Survey (FES) is mailed to a random sample of households in two-month waves and primarily estimates the number of trips made by shoreline or private boat fishers. The Access Point Angler Intercept Survey (APAIS) is an interview-based survey conducted in-person at randomly-selected boat ramps, beaches, piers, and other accessible fishing sites and is used to estimate catch-rates (DAR, 2024). Occasional survey data objectively does not provide the kind of strong evidence we need to have regarding the frequency of recreational catches and other relevant information that could be used to improve fishing practices so that they pose the least threat to our environment. A possible route for bolstering the current survey methods could be the addition of a self-reporting mobile- and/or web-based application. Studies are beginning to show that self-reporting apps are able to provide data that is at least comparable to the traditional survey methods of recreational-fisheries (Johnston et al., 2022).

The economic and conservational benefits that result from a thriving non-commercial fishing industry are not lost on me. I appreciate the DAR’s various sport fish restoration projects and would like for them to be as successful as possible in protecting the species and ecosystems they aim to protect. The conservation through participation model allows us to somewhat offset the possible negative impacts that non-commercial fishing can have while still allowing people to enjoy this important cultural and recreational activity. I believe it could be beneficial to collect small additional fees for those who wish to fish recreationally in the OSZ so that we can continue to fund the restoration programs and increase awareness of best practices for recreational fishing. I personally have enjoyed recreational fishing since I was a child and I would like for others to continue to be able to enjoy fishing as a pastime. My concerns are based primarily on the potential detriments that a loosely regulated and monitored recreational fishing industry can unfortunately have on an ecosystem.

In conclusion, I offer my full support of designating the marine areas of Papahānaumokuākea as a National Marine Sanctuary and find NOAA's Alternative 1 to be appropriate. I would like for non-commercial fishing exemptions to be allowed only in the OSZ, but ask that the agencies consider additional requirements such as participation in a catch & release course prior to receiving permits. Data collection methods for tracking recreational fishing activities should also ideally be updated prior to allowing recreational fishing within the OSZ - possibly through the development of a self-reporting application. In my opinion, dynamic regulations that promote research and education are our best options for preventing any long-term negative impacts that us humans could cause on this delicate ecosystem.

Thank you for your consideration of these requests,
Madison Young

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May 06, 2024

Mr. Eric Roberts, Superintendent
 Papahānaumokuākea Marine National Monument
 NOAA/ONMS
 1845 Wasp Blvd., Bldg. 176
 Honolulu, HI 96818
 Re: PMNM-Sanctuary Designation, Docket NOAA-NOS-2021-0114

Dear Superintendent Roberts,

On behalf of the Pew Charitable Trusts, I write to express our strong support for the designation of the proposed Papahānaumokuākea National Marine Sanctuary and in response to National Oceanic and Atmospheric Administration's (NOAA) request for public comment.

We commend the Administration for advancing the Sanctuary designation process, continuing the decades long pursuit of the strongest protections possible for these unique, biodiverse, and culturally significant waters. Through the executive orders of Presidents William J. Clinton, George W. Bush, and Barack H. Obama, we have seen the protections for this special place advance, making Papahānaumokuākea a pioneer and global leader in large scale ocean conservation. Now, with the proposed Papahānaumokuākea National Marine Sanctuary, we have an opportunity to build on this conservation legacy with enhancements to strengthen regulations, fill governance gaps, and increase resources available for this iconic ocean ecosystem.

As the largest fully protected marine protected area (MPA) in the United States, and one of the largest in the world, Papahānaumokuākea Marine National Monument (PMNM) is a living classroom. It demonstrates to the world the benefits that MPAs bring to both nature and people. Its waters are home to a unique diversity of life including over 7,000 marine species- many of which are threatened, endangered, and endemic such as Hawaiian monk seals, green sea turtles, and Hawaiian gold corals. There is also a deep cosmological connection that Native Hawaiians share with Papahānaumokuākea. The name Papahānaumokuākea marries Papahānaumoku and Wākea, two Hawaiian ancestors who gave rise to the Hawaiian Archipelago, the taro plant, and the Hawaiian people. As the place where all life begins and where spirits return after death, Papahānaumokuākea is a sacred part of Native Hawaiian culture. In addition to safeguarding biodiversity and cultural heritage, there have also been proven economic benefits to the protection of these waters. One recent study found that the Monument increased the catch rate of yellowfin tuna by 54%, bigeye tuna (also known as 'ahi) by 12% and all other fish species combined by 8% in the waters adjacent to the Monument¹.

A Sanctuary designation would strengthen the durability of the existing Monument through additional protections, tools, and resources afforded under the National Marine Sanctuaries Act. **We strongly support Alternative 1 – the preferred alternative- for a National Marine Sanctuary with boundaries**

¹ Medoff, S., Lynham, J., & Raynor, J. (2022). Spillover benefits from the world's largest fully protected MPA. *Science*, 378(6617), 313-316.



identical to the marine portions of PMNM. This boundary ensures the full extent of existing protections are enhanced, maximizing protections for cultural and natural resources, while also respecting the thoughtful stakeholder engagement process that defined the boundaries for the Monument.

We support the proposed rule which enhances enforcement and addresses governance discrepancies and gaps, particularly the enhanced regulations and guidance to assess civil penalties for permit and regulatory violations as well as the increased ability to impose liability for damage to Sanctuary resources. In addition, we support the management and programmatic benefits of Sanctuary designation, including the potential for public-private partnerships and more consistent budget for operations, research, citizen science, education, and emergency response.

We support the proposed management plan's integration of Native Hawaiian culture into the management of the Sanctuary. Specifically, we support the integration of Mai Ka Pō Mai, which was informed and created by the Native Hawaiian community, as the guide to how Papahānaumokuākea should be cared for now and in perpetuity. Further, we recommend that NOAA elevate Native Hawaiian voices beyond advisory bodies and into its formal co-management structure by making the Office of Hawaiian Affairs a co-manager of the Sanctuary, mirroring the level of decision-making authority granted through the co-trusteeship that the Office of Hawaiian Affairs shares with the Department of Commerce, the Department of the Interior, and the State of Hawai'i for administering PMNM.

Because the applicable fishing rules are being developed outside of the Sanctuary designation process, we call on NOAA to ensure that any fishing regulations developed conform to the protective regulations of the Monument Proclamations. The process should be sure to include an Environmental Impact Statement (EIS) with opportunities for public comment, especially since the potential environmental impacts from even low levels of fishing have the potential to significantly impact Papahānaumokuākea, and these impacts have not been adequately evaluated in the EIS prepared for the Sanctuary designation process.

We look forward to the successful designation of Papahānaumokuākea National Marine Sanctuary to further protect one of our nation's most vibrant cultural and marine ecosystems. We thank NOAA and the Office of National Marine Sanctuaries for their continued conservation leadership to ensure marine resources and scientific and cultural practices continue to thrive in Papahānaumokuākea for generations to come.

Sincerely,

Matthew F. Rand
Senior Director, Marine Habitat Protection
The Pew Charitable Trusts

PMNM-Sanctuary Designation, NOAA/ONMS
1845 Wasp Blvd, Bldg 176
Honolulu, HI 96818

Dear Office of National Marine Sanctuaries,

On behalf of Pacific Whale Foundation (PWF) and its 10,000 supporters and members we are submitting this letter in full support of the sanctuary designation for Papahānaumokuākea National Marine Sanctuary. PWF supports the first alternative proposed by NOAA, with the sanctuary encompassing approximately 582,250 square miles.

PWF was founded in 1980 with a dedication to saving the world's whales from extinction. Today the foundation focuses on the protection of whales, dolphins and all marine life by working to mitigate the five major threats that research has identified. These threats include marine plastic pollution, unsustainable tourism, bycatch, vessel collisions and climate change.

The designation of Papahānaumokuākea as a National Marine Sanctuary would provide whales and dolphins and other marine life with an important area of refugia from the threats of unsustainable tourism and vessel collisions as well as relief from being caught as bycatch due to the absence of permitted industrial fishing in the proposed sanctuary area.

The proposed sanctuary should continue to be managed jointly in collaboration with the State of Hawai'i, the Office of Hawaiian Affairs, the Department of the Interior and the Department of Commerce. The culture and practices of Native Hawaiians should continue to be respected and allowed throughout the proposed sanctuary area. PWF urges that no commercial fishing or any fishing at all, beyond sustenance fishing (defined as catching and consuming the entire catch while within the sanctuary boundaries) be allowed throughout the sanctuary area. Research has shown that fully protected marine areas, where no fishing is allowed, allow fish populations to grow and then spillover outside of the protected area boundary, to the benefit of commercial fishing operators.

PWF encourages that the federal government commit to contributing the needed resources to allow for the full protection, management and restoration of the area encompassed within Papahānaumokuākea. The area is known to receive many tons of derelict fishing gear and other marine debris each year. Organizations such as Papahānaumokuākea Marine Debris Project should be fully supported in their efforts to cleanup this debris and regulations and enforcement should be enacted to prevent the continued accumulation of this debris.

The designation of Papahānaumokuākea as a National Marine Sanctuary to the full extent of Alternative one as described by NOAA is critical to help the United States meet the national goal of conserving 30% of the US lands and oceans by 2030.

Sincerely,
Susan Frett
Programs Director
Pacific Whale Foundation



Protecting the ocean through science and advocacy, and inspiring environmental stewardship

Aloha mai kākou,

I want to be clear that *I support Sanctuary Designation, specifically Alternative 1, the preferred alternative*. As a member of the Papahānaumokuākea Native Hawaiian Cultural Working Group that has been advocating for the protection of the ʻāina kūpuna for the past 20 years, I too believe it will provide greater legal protection for the area, as well as other benefits.

I share with the CWG a most critical issue of concern, however: the potential abuse of a typically benign category of use, non-commercial fishing.

The Northwestern Hawaiian Islands, better known as Papahānaumokuākea Marine National Monument (PMNM), is one of the most important marine protected areas in the world and is considered a conservation and cultural success story in Hawaiʻi. A Sanctuary Designation for Papahānaumokuākea could add a needed additional management layer over the existing boundaries of the current Marine Monument.

Over the years, the industrial fishing industry has been one of the primary threats to the health and well-being of this magnificent place and all of its lifeforms. Currently, commercial fishing is prohibited in the management area of this region, however, non-commercial fishing is allowable.

Under the National Marine Sanctuary Act, WESPAC provided recommended fishing regulations to NOAA, which includes non-commercial fishing in the expansion area. In the newly released draft EIS for the proposed sanctuary, an exemption is included (pg. xvi, executive summary) that coincides with this request. Our Cultural Working Group has grave concerns regarding these proposed regulations—and that they are being promoted by WESPAC as Native Hawaiian Subsistence Fishing Practices. These proposed regulations, as we view it, are a potential loophole that will allow for large scale extraction under the guise of native rights.

Under WESPAC's new recommendations, Native Hawaiian interests are misrepresented for a number of reasons:

- (1) Native Hawaiian Subsistence Fishing as a term is entirely misleading because it is not exclusive to Native Hawaiian Use and would in fact be open for use by the general public.
- (2) There was no *broad based Native Hawaiian Community input* into these proposed fishing ideas, and it was largely shaped by industrial fishing interests.
- (3) Large-scale extraction is being proposed by WESPAC. Specifically, a cap of 350,000 lbs of bottom fish and 180,000 lbs of pelagic fish may be taken annually

from the expanded monument region (p. 210). *There is no Hawaiian cultural or subsistence practice that requires this much fish.*

- (4) WESPAC recommends that permittees be able to bring home the catch for "consumption, including community sharing, bartering, and trade," and implement a cost recovery through the "sale of catch" to cover the cost of the trip (to be determined by National Marine Fisheries Service) (p. 211). This opens the door to *flagrant commercial intent!*

Combined, all of these points call into question the real intention of the recommended fishing regulations that WESPAC claims will help Native Hawaiians. It is clear that there is still a strong commercial intent in these proposed ideas. In order to address this, we believe in principle that the following needs to occur in regarding the proposed Sanctuary:

- (1) The existing Monument Management Area and the Monument Expansion Area need to be managed as a single unit. The proposed Sanctuary needs to overlap in a unified governance structure and not be treated as separate units.
- (2) The permitting for the Sanctuary also needs to be a single coordinated process and not have one component such as non-commercial fishing run separately. Currently it is recommended that non-commercial fishing permits should be evaluated by the National Marine Fisheries Service, while the actual co-trustees (National Oceanic Atmospheric Administration Office of National Marine Sanctuaries, U.S. Fish & Wildlife Service, Office of Hawaiian Affairs, and the State of Hawaii) who manage the region would only be consulted. It is imperative that the co-trustees are accorded the appropriate authority to manage all fishing activities under their area of jurisdiction.
- (3) Any rules created in the name of the Native Hawaiian people (such as Native Hawaiian subsistence fishing) needs to be shaped by Native Hawaiians and be guided by sound cultural values and practices. It is disingenuous and unethical to do otherwise.
- (4) The non-commercial fishing rules should take into strong consideration the option of Native Hawaiian Sustenance Fishing (50 C.F.R Sect. 404.3), a category that was previously developed with the input of kūpuna fishermen in the early 2000's. These were Hawaiian fishermen that had direct experience fishing in the Northwestern Hawaiian Islands. This category of non-commercial fishing is the closest aligned to Hawaiian cultural values and place-based traditions.
- (5) Since NOAA Fisheries has run the development of the fishing regulations separate from the Sanctuary Designation process (the current WESPAC recommendations functioning as a placeholder), then it must run a separate National Environmental Policy Act (NEPA) process for these rules once they are drafted. They must give adequate notice for public input and run public hearings on this matter. Currently, concepts such as "subsistence fishing," "cost recovery"

and “customary exchange” are used too loosely and lack sufficient details and safeguards to ensure large scale extraction and commercial intent is prohibited.

Over the years the Hawaiian community, conservation groups, and the general public have been very vocal and unified in support for the protection of this expansive part of our archipelago. I want to reiterate once more my support of sanctuary designation, but this backdoor conniving on behalf of WESPAC is an insult to Hawaiian customary practices and needs to be thoroughly rebuked before it can be properly consulted with Kānaka Maoli.

Mahalo piha,

Kaipulaumakaniolono Baker

May 6, 2024

Aloha,

I am writing today in full support for the designation of Papahānaumokuākea as a National Marine Sanctuary. I am a resident of Honolulu, Hawai'i and have lived here from 2002-2012 and recently moved back in June 2023. I consider myself at home in Hawai'i and want to make sure I am helping to fight to maintain the beauty and majesty that is the Northwestern Hawaiian Islands. I hold a Bachelor's Degree in Marine and Freshwater Biology from the University of New Hampshire and a Master's Degree in Animal Science from the University of Hawai'i. My career brought me to Honolulu and has kept me tethered to these islands ever since. I worked as the marine mammal specialist at the Waikiki Aquarium from 2004-2012, managing the Hawaiian monk seal program, where I was able to obtain my Master's Degree utilizing our research on these amazing animals. Afterwards, I worked at SeaWorld San Antonio from 2012-2017, where along with the diverse collection of animals housed there, I was able to continue my work with Hawaiian monk seals as they housed 5 female seals on property. These charismatic megafauna are just a portion of the animals, plants, and ecosystems that we need to protect in Papahānaumokuākea.

I am in support of Alternative 1, to support the boundaries of the current Papahānaumokuākea National Marine Monument. Without looking to expand the borders of protections, sanctuary status would merely secure the area with additional protections. As I am not a native Hawaiian, I myself have no ties to this area. However, I am empathetic to the needs and desires of the native community to maintain the sanctity of this location. As a human, I see the value in maintaining this location as a pristine habitat. There are too few areas of the world that are left natural and unharmed by us. We need to do better. This is our chance.

Seeing as our nation's politics have become so tumultuous as of late, securing sanctuary status for Papahānaumokuākea is of the utmost critical importance. This will add future safeguards to protect the area regardless of the next President. As a sanctuary, this area could also draw additional funding or support nationwide. In turn, this will help to strengthen the regulatory guidance of the area, giving support to the entities to properly protect and enforce regulations and penalties.

Regarding industrial fishing in the area, there is no benefit to Papahānaumokuākea or Hawai'i to allow this fishing. I oppose any sale, barter, or trade of this large-scale extraction and the cost recovery proposed by Wespac for these trips.

Mahalo for your consideration and allowing our comments.

Sincerely,

Leah Kocher
waves3810@hotmail.com

Indigenous Peoples have the right to their own cultural identity and integrity and to their cultural heritage, whether tangible or intangible, including historic and ancestral heritage for their collective continuity and that of their members and so as to transmit that heritage to future generations. (American Declaration on the Rights of Indigenous Peoples. Section Three, Cultural identity).

Rise Up and Protect na Kanaloa.

Papahānaumokuākea Marine National Monument is the largest contiguous fully protected conservation, one of the largest marine conservation areas in the world. It should be under the Hawaiian flag and protected by Indigenous Practitioners of Hawaii. We are still sovereign.

The State, DOD and NOAA drafted the EIS which states on pg. 1 “most significant threats to Monument habitats and wildlife arise from human activities beyond its boundaries.” The U.S. Navy is still conducting their testing and training exercises within the southeastern portion of Papahānaumokuākea and ke kai surrounding this area. Their EIS has potential impacts and mitigation measures provided and all six of the actions listed in Table 5.1 are detrimental to our Kanaloa due to Department of Defense war games. Sonar kills na kohola.

The Navy used numerous references to estimate species-specific $g(0)$ s. Those sources were based on scientific surveys of marine mammals that used both vessels and A summary of the status of the Navy’s Lookout effectiveness study and why the data cannot be used in the analysis has been added in Section 5.3.1.2.4 (Effectiveness Assessment for Lookouts). The Navy believes aircraft. It also indicated that various factors are involved in estimating $g(0)$, including sight ability and detectability of the animal (e.g., species-specific behavior and appearance, school size, blow characteristics, dive characteristics, and dive interval), viewing conditions (e.g., sea state, wind speed, wind direction, sea swell, and glare), the observer’s ability to detect animals (e.g., experience, fatigue, and concentration), and platform characteristics (e.g., pitch, roll, yaw, speed, and height above water). In the DEIS, the Navy noted that due to the various detection probabilities, levels of experience, and dependence on sighting conditions, lookouts will not always be effective at avoiding impacts to all species. Yet it based its $g(0)$ estimates on seasoned researchers conducting the associated surveys, not Navy lookouts whose observer effectiveness has yet to be determined. The Commission recommended earlier in this letter that the Navy supplement its mitigation and monitoring measures because the observer effectiveness study has yet to be completed or reviewed. It therefore would be

inappropriate for the Navy to reduce the numbers of takes based on the proposed post-analysis approach because, as the Navy has described it, it does not address the issue of observer effectiveness in developing mitigation effectiveness scores and $g(0)$. Consideration of marine mammal sight ability and activity-specific mitigation effectiveness in its quantitative analysis is appropriate in order to provide decision makers a reasonable assessment of potential impacts under each alternative. A comprehensive discussion of the Navy's quantitative analysis of acoustic impacts, including the post-model analysis to account for mitigation and avoidance, is presented in the Navy's Request for Letter of Authorization under the MMPA submitted to NMFS (77 FR 60678). Additional discussion regarding the use of detection probability, $g(0)$, in the consideration of mitigation in the quantitative analysis is provided in HSTT Final EIS/OEIS Section 3.4.3.1.8 (Implementing Mitigation to Reduce Sound Exposures). Marine Mammal Commission 05 Based on all of these concerns, the Marine Mammal Commission recommends that the National Marine Fisheries Service authorize in the regulations the total numbers of model-estimated Level A harassment and mortality takes rather than reducing the estimated numbers of Level A harassment and mortality takes based on the Navy's proposed post-model analysis. The Navy's general approach has merit and warrants further investigation, but it cannot be deemed reliable at this point. The post model assessment process was developed using the best available science and in coordination with NMFS and is necessary to account for mitigation and avoidance behavior. Relying solely on the output of the Navy Acoustic Effects Model presents an overestimate of acoustic impacts for higher order effects such as injury or mortality, for the following reasons:

(1) Sensitive species (i.e., beaked whales and harbor porpoises) are modeled as if they would remain stationary and tolerate any very close anthropogenic encounters, although these species are known to avoid anthropogenic activity (see HSTT Final EIS/OEIS Section 3.4.3.1.2.6, Behavioral Reactions).

(2) Implementation of mitigation is not currently modeled; however, the Navy has developed mitigation measures in cooperation with NMFS that are considered effective at reducing environmental impacts while being operationally feasible (see HSTT Final EIS/OEIS Chapter 5, Standard Operating Procedures, Mitigation, and Monitoring).

(3) Animals are assumed to remain horizontally stationary in the model and tolerate any disturbing or potentially injurious sound exposure, although animals have been observed to avoid sound sources with high source levels E.2.3.1 Sonar and Underwater Detonations Many comments mentioned concerns about the effect of Navy sonar on marine life, such as marine mammals, fish, sea turtles, and sea invertebrates. Participants frequently requested that the EIS/OEIS consider alternative technologies to mid-frequency active sonar. Read or scan all the way to E-619

**HAWAII-SOUTHERN CALIFORNIA TRAINING AND TESTING FINAL EIS/OEIS
AUGUST 2013 APPENDIX E PUBLIC PARTICIPATION E-620 E.4 FINAL
ENVIRONMENTAL IMPACT STATEMENT / OVERSEAS ENVIRONMENTAL
IMPACT STATEMENT**

The public has the opportunity to review the Navy's responses to their comments in this Final EIS/OEIS. All public comments are considered by the decision-maker prior to making a decision.

E.5 NATIONAL MARINE FISHERIES SERVICE PROPOSED RULE As part of the HSTT EIS/OEIS process, in accordance with the Marine Mammal Protection Act (MMPA), the Navy requested a Letter of Authorization from the National Marine Fisheries Service (NMFS) for the incidental taking of marine mammals during the conduct of training and testing activities in the HSTT Study Area. On 31 January 2013, the MMPA Proposed Rule was published in the Federal Register by NMFS for public comment. After the release of the Draft HSTT EIS/OEIS on May 11, 2012, adjustments were made to the quantified results of the marine mammal acoustic effects analysis and changes were made to the requested take numbers. Adjustments to the requested take numbers in the Draft HSTT EIS/OEIS were presented in the Navy's Letter of Authorization application and reflected in the Proposed Rule. These adjustments were a result of administrative corrections to the modeling inputs for training and testing and the use of more accurate seasonal density for the species (short-beaked common dolphins) having the highest abundance of any marine mammal in the study area. These changes are now reflected in the Final HSTT EIS/OEIS. In consultation with NMFS, the Navy made these post-model adjustments to further refine the numerical analysis of acoustic effects by considering animal avoidance of sound sources, avoidance of areas of activity before use of a sound source or explosive, and implementation of mitigation. Section 3.4.3.1.7 (Marine Mammal Avoidance of Sound Exposures) and Section 3.4.3.1.8 (Implementing Mitigation to Reduce Sound Exposures) of the HSTT Final EIS/OEIS describe in detail the post-model adjustments made to further refine the numerical analysis of acoustic effects.

E.5.1 NOTIFICATION OF THE NATIONAL MARINE FISHERIES SERVICE PROPOSED RULE Because of changes made after the Draft HSTT EIS/OEIS, the Navy provided the public with the opportunity to review and comment on the changes before the issuance of the Final HSTT EIS/OEIS. The Navy sent out letters to stakeholders (Figure E.5-1) and e-mails to interested parties (Figure E.5-2); in addition, the Navy posted a link to the Proposed Rule on the public web site (www.HSTTEIS.com). The Navy advised NMFS and the public that all comments received on the Proposed Rule that addressed the (1) changes to the tempo or location of certain proposed activities, (2) refinement to the modeling inputs for training and testing, and (3) additional post-model analysis of acoustic effects and implementation of mitigation would be considered and addressed by the Navy in the Final HSTT EIS/OEIS.

E.5.2 COMMENTS AND RESPONSES TO THE PROPOSED RULE Table E.5-1 provides a listing of comments received on the NMFS Proposed Rule and the Navy's responses relative to the adjustments that were made after the Draft HSTT

EIS/OEIS was released to the public. Responses to these comments were prepared and reviewed by appropriate subject matter experts for scientific and technical accuracy and completeness. Comments appear as they were submitted and have not been altered. Table E.5-1 contains comments from the Marine Mammal Commission (a federal organization) and Natural Resources Defense Council (a non-governmental organization) that were received during the public comment period on the Proposed Rule.

RIMPAC EFFECTS

- **Military readiness activities may adversely impact cultural resources within the boundary alternatives. With regards to maritime heritage resources, the Navy’s EIS notes that “stressors, including explosive and physical disturbance and strike stressors, associated with the” Navy Hawaii-Southern California Training and Testing action “would not affect submerged prehistoric sites and submerged historic resources in accordance with section 106 of the National Historic Preservation Act because mitigation measures have been implemented to protect and avoid these resources” (U.S. Department of the Navy, 2018).**
- **Military readiness activities may adversely impact cultural resources within the boundary alternatives. With regards to maritime heritage resources, the Navy’s EIS notes that “stressors, including explosive and physical disturbance and strike stressors, associated with the” Navy Hawaii-Southern California Training and Testing action “would not affect submerged prehistoric sites and submerged historic resources in accordance with section 106 of the National Historic Preservation Act because mitigation measures have been implemented to protect and avoid these resources” (U.S. Department of the Navy, 2018).**
- **Military readiness activities may adversely impact cultural resources within the boundary alternatives. With regards to maritime heritage resources, the Navy’s EIS notes that “stressors, including explosive and physical disturbance and strike stressors, associated with the” Navy Hawaii-Southern California Training and Testing action “would not affect submerged prehistoric sites and submerged historic resources in accordance with section 106 of the National Historic Preservation Act because mitigation measures have been implemented to protect and avoid these resources” (U.S. Department of the Navy, 2018).**

Yet, hundreds of aircraft, and several other aircraft carriers and destroyers from the battle, remain to be discovered in Papahānaumokuākea. Pg.178
 The EPA placed Tern Island on the Federal Agency Hazardous Waste Compliance Docket in 2004 due to legacy military waste and associated hazardous substances buried on the island. EPA and FWS completed a

CERCLA Preliminary Assessment (PA) of Tern Island in 2014, confirming that PCBs, lead, hydrocarbons, dioxins/furans, and heavy metals from onsite buried military wastes have been released in sensitive marine and terrestrial environments based on elevated levels of polychlorinated biphenyls (PCBs) in monk seals inhabiting the area. In 2019, EPA completed a removal assessment for hazardous substances on the island. Data from the report demonstrated elevated concentrations of metals, PCBs and PAHs in soil, groundwater, and surface water in the vicinity of the legacy “Bulky Dump” and the SE corner of the island. Pg 253
Help rebuild Hawaii and the world. Stop the wars. Understand Aloha. Keep the military out of Hawaii. The US military Industrial Complex needs to understand peace and stop the raping of lands , children worldwide.

Marine biologists and environmental Lawyers proved over and over again that the Navy’s sonar activities harm more than 60 separate populations of na ohana o Kanaloa; whales, dolphins, seals and sea lions amongst all life in ke kai. If a whale or dolphin can’t hear, it can’t survive.” said David Henkin, Earth Justice attorney. Although na kohala (who been here 50 million years) spend hours gathering enough ha to dive down to their sacred birthing ground. When the sonar hits them, they need to get away. Most die in the process bleeding out or find the beach and die there. They are not able to birth their babies.

NOAA and DOD are NOT the guardians we need. Indigenous Peoples are. We are still here. Our laws, HRS 711-1107, HRS 6E Preservation of Traditional Customary and Cultural , Religious Freedom Restoration Act of 1993 are some of the laws that protect na Kanaloa and Indigenous Peoples. Onipaa kaimi naeauau as our Queen said.

Na Iwi Kupuna
Clare Loprinzi

May 6, 2024

Nicole LeBoeuf, Assistant Administrator
for Ocean Services and Coastal Zone Management
National Ocean Service
National Oceanic and Atmospheric Administration

RE: Proposed Papahānaumokuākea National Marine Sanctuary
NOAA-NOS-2021-0114

Dear Ms. LeBoeuf:

We are responding to the National Oceanic and Atmospheric Administration's (NOAA) solicitation of comments on its proposed regulations, draft environmental impact statement and draft management plan for the proposed Papahānaumokuākea National Marine Sanctuary. As detailed below, the draft environmental impact statement (DEIS) is fundamentally flawed because of significant problems in the discussions of both the alternatives analysis and the effects analysis. These omissions result in analysis that is both legally inadequate and factually ineffective as a basis for NOAA's decisionmaking regarding both the proposed regulations and the draft management plan. Importantly, these problems may well lead to a decision that will make protective management of this vitally important area more difficult, not less difficult – harder to coordinate, not easier – and most importantly, less protective of the ecological and cultural resources. We urge that NOAA to refrain from publishing a final EIS until the agency develops more accurate and legally sound information and analysis presented to the public for review and comment in the form of a supplemental draft EIS.

DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS)

I. PURPOSE AND NEED

We appreciate the acknowledgement in NOAA's response to comments that the purpose and need as stated in the scoping notice needed clarification and that an assumption has not been made that a sanctuary will be designated.¹ This is critically important to avoid both bias in the analysis and a public perception that a decision has already been made. It is also the basis for identifying and analyzing reasonable alternatives to meet the agency's purpose and need and for sound decisionmaking. We note that NOAA's statement in the Comments Section of the DEIS that 76% of respondents favored the sanctuary² is based on a misleading document that identified that sanctuary as the only means to provide affective protections for the important resources here. The choice is really between keeping existing protections in the

¹ DEIS at 346.

² *Id.* at 286.

Papahānaumokuākea Marine National Monument, Hawaiian Islands National Wildlife Refuge, Midway Atoll National Wildlife Refuge, Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve and Kure Atoll State Wildlife Sanctuary while fully implementing the legal authorities associated with those management designations or layering a marine sanctuary on top of these protections. That choice is not made at all clear in the Scoping document and therefore a “survey” based on the scoping document is misleading and not useful.

We understand, of course, that NOAA has been directed by both the executive and legislative branches to initiate the sanctuary designation process. We also understand the need to protect the incredibly rich cultural, historic and ecological resources present within Papahānaumokuākea Marine National Monument. Succinctly put, NOAA’s current articulation of the purpose and need is to provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea Marine National Monument to protect those very resources.³ However, much of the DEIS – specifically, the presentation of alternatives and their effects - badly misses the mark in addressing NOAA’s purpose and need and can lead to faulty decisionmaking.

II. ALTERNATIVES ANALYSIS

A. The No-Action Alternative

The four-sentence description of the no-action alternative is seriously incomplete and therefore inadequate.⁴ Further, in the DEIS discussion of “Approach to Impact Analysis” in Section 5.1, the text states that, “NOAA expects that implementation of the No-Action Alternative would not result in any change to existing management or uses of the area, and therefore no beneficial or adverse impacts would occur from the No-Action Alternative. Impacts presently occurring would continue to occur.”⁵ However, the primary discussion of the impacts of the No-Action Alternative makes it crystal clear that NOAA believes that in fact there would be adverse effects of the No-Action Alternative; for example, the DEIS states that, “The lack of implementing regulations to permit activities in the MEA could lead to future impacts from unregulated activities.”⁶ This statement is also problematic, as explained in the discussion below.

The discussion of effects of the No-Action Alternative focuses almost entirely on the lack of regulations for permit requirements, access restrictions, damage assessment authority, emergency response funds and penalties that the DEIS states exist for the original Papahānaumokuākea Marine National Monument but not in the Monument

³ *Id.* at x.

⁴ *Id.* at 22-23.

⁵ *Id.* at 88.

⁶ *Id.* at 94. The DEIS text goes on to muddy the waters more in the very next paragraph that includes this text: “Threats to Monument resources would continue to be the focus of research and conservation actions. Actions taken to address these threats would still be permitted and undergo comprehensive environmental reviews.” Perhaps this statement is meant to exclude enforcement actions, but that is not clear.

Expansion Area (MEA).⁷ The only other statement about effects in the No-Action discussion is a reference to the fact that such physical effects as climate change would continue, with a reference to the discussion of those issues in the “Affected Environment.”⁸

There are two highly significant and related problems with this treatment of the No-Action Alternative. The first is the failure to explain the core of NOAA’s presumption that it cannot issue regulations or take other actions of a legal nature for the Monument Expansion Area. This belief is an overriding theme throughout the DEIS and in other material describing the benefits of the proposed sanctuary. We have not seen any explanation, anywhere in NOAA’s material about the proposed sanctuary, of why NOAA asserts that it had the authority to issue two sets of regulations for the original Papahānaumokuākea Marine National Monument⁹ and yet does not have that authority for the MEA. That assertion seems improbable at best.

That assertion also appears to be at odds with annual permitting reports posted on the Papahānaumokuākea Marine National Monument website.¹⁰ Those reports document permits issued for activities planned in both in the original Monument and the MEA (two in 2019, two in 2021 and two in 2022) as well as permits granted for activities solely in the MEA (one in 2018, one in 2021) and two permit denials, one in 2019 and one in 2022 which apparently were for proposed activities in the MEA.

Further, completely absent from the DEIS is any explanation of how the numerous legal authorities held by the Co-Managers of the MEA could be used to supplement and complement NOAA’s authorities if NOAA does lack the authority to undertake a particular type of action. A supplemental DEIS must be prepared and include a discussion of each of the current management authorities and provisions and how they relate to the DEIS’ stated purpose and need of providing comprehensive and coordinated management of the marine area. For example, the latest available information reveals that the U.S. Fish and Wildlife Service (USFWS) “manages 284,312,568 acres of marine, submerged, and emergent features as part of the Refuge System” within the Papahānaumokuākea Marine National Monument.¹¹ One searches in

⁷ *Id.* at 94-96.

⁸ *Id.* at 95.

⁹ 50 C.F.R. Part 404 (Joint Regulations to establish a ship reporting system for the Papahānaumokuākea Marine National Monument, NOAA and U.S. Fish and Wildlife Service, 73 Fed. Reg. 73592-73605, Dec. 3, 2008); 50 C.F.R. Part 404, (Joint regulations to codify the prohibitions and management measures, including fishing regulations, set forth in Presidential Proclamation 8031 (2006) establishing Papahānaumokuākea Marine National Monument, NOAA and U.S. Fish and Wildlife Service, 72 Fed. Reg. 51134-51142, Aug. 29, 2006).

¹⁰ Permitting: Permitted Activities Annual Reports, Papahānaumokuākea Marine National Monument Board, all years available here (last checked 5/5/2024): <https://www.papahanaumokuakea.gov/permit/annualrep.html>

¹¹ *Statistical Data Tables for Fish and Wildlife Service Lands* (as of 9/30/2022), https://www.fws.gov/sites/default/files/documents/2022_annual_report_of_lands_with_data_tables.pdf, p 32 (“The Papahānaumokuākea Marine National Monument encompasses 372,848,597 acres that

vain for any analysis in the DEIS of what legal authorities this provides for the management of the Monument. Indeed, given the statement in the DEIS that the USFWS is a cooperating agency on the DEIS,¹² we would have expected the USFWS to have provided that analysis.

Given the heavy reliance in the DEIS on NOAA's assertions about legal authority, the DEIS should provide an analysis of the bundle of management protections and legal authorities available to the Monument Co-Trustees through the multiple legal authorities associated with each of the Monument Co-Trustees, along with specifically identifying the lack of such authority on the part of any of the Co-Trustees. There is no such analysis in the DEIS.

The bundle of legal and management authorities includes the authorizations and establishment mechanisms for the designated management areas within the proposed sanctuary area:

The National Wildlife Refuge System Administration Act and its implementing regulations;¹³

The National Marine Sanctuaries Amendments Act of 2000 and Executive Order 13178 for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve;¹⁴

The Antiquities Act¹⁵ Presidential Proclamations 8031 (2006), 8112 (2007) and 9478 (2016) establishing Papahānaumokuākea Marine National Monument along with the joint NOAA and US Fish and Wildlife Service (USFWS) regulations, including fishing regulations, promulgated to implement the provisions of the Presidential Proclamations 8031 and 8112¹⁶ and the joint USFWS and NOAA regulations to establish a ship reporting system to implement provisions adopted by the International Maritime Organization; and

the Service co-manages with NOAA, the State of Hawaii, and the Office of Hawaiian Affairs. The Service manages 284,213,568 acres of marine, submerged, and emergent features as part of the Refuge System, including the monument expansion, Midway Atoll NWR, and Hawaiian Islands NWR. NOAA has primary management responsibility of the marine areas for the remaining 88,635,029 acres, and the Service manages the submerged lands as part of the Refuge System.”); *see also*, p. 1; Table 10, p 56 and explanatory note at p. 58. *Also see*, *Statistical Data Tables for Fish and Wildlife Service Lands* (as of 9/30/2015) which explains that 88,635,029 acres were added to the Refuge System through the original monument establishment. <https://www.fws.gov/sites/default/files/documents/2015-annual-report-of-lands-data-tables.pdf>, Table 10, p. 54 and explanatory note at p. 56.

¹² DEIS at i.

¹³ 16 USC § 668dd *et seq.* and regulations at 50 C.F.R. §§ 1-199 and Part 404.

¹⁴ 16 USC §1431 *et seq.* and E.O. 13178, (Dec. 4, 2000).

¹⁵ 54 USC Sec. 320301 *et seq.*

¹⁶ 40 CFR Part 404.

The Hawaii State Northwestern Hawaiian Islands Marine Refuge, the Kure Atoll State Wildlife Sanctuary and associated state authorities.¹⁷

The description of the No-Action alternative analysis should also discuss the the Memorandum of Agreement among the Monument Co-Trustees: the State of Hawai'i Department of Land and Natural Resources and the Office of Hawaiian Affairs; the U.S. Department of the Interior/U.S. Fish and Wildlife Service and the U.S. Department of Commerce/National Oceanic and Atmospheric Administration that is specifically for the purpose of "Promoting Coordinated Management of the Papahānaumokuākea Marine National Monument and Expansion (Co-Trustees MOA)."¹⁸ That Memorandum, in turn, establishes a Monument Management Board with representatives of all of the Monument Co-Trustees, as well as an Interagency Coordinating Committee and a Senior Executive Board. The Senior Executive Board has, among other duties, responsibility for developing the management plan for the entire Monument area. It is also intended to serve as an interagency body to resolve disputes.

Finally, besides the authorities specifically associated with the currently-designated management units within the proposed sanctuary area, there are a multitude of legal authorities that are already relevant and potentially operative in the entire area, which is under U.S. management and control.¹⁹ The DEIS includes a list with brief descriptions of various laws, regulations, and management provisions in Appendix E. However, there is no analysis of how those laws, regulations and management provisions and structures, including those that are not under NOAA's purview but are within the authority of co-managers are actually applied or could apply in the entire Monument area.²⁰ Such analysis would certainly provide for a much more complete description of the No-Action Alternative.

Second, contrary to established NEPA case law and some of its own statements in the DEIS, NOAA concludes that the No-Action Alternative will have "neither beneficial nor adverse effects." This statement reflects a misunderstanding of both legal requirements and the purpose of the No-Action alternative, which inevitably has effects of some nature. As a reminder, the No-Action Alternative serves two major purposes. In some situations, after comprehensive analysis of all reasonable alternatives and the impacts of those alternatives, agencies have determined that refraining from taking action

¹⁷ HRS 188-37, HAR 13-60.5, §13-60.5-1 to §13-60.5-7;

¹⁸ Memorandum of Agreement Among the State of Hawai'i, Department of Land and Natural Resources and the Office of Hawaiian Affairs and the U.S. Department of the Interior, U.S. Fish and Wildlife Service and the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for Promoting Coordinated Management of the Papahānaumokuākea Marine National Monument, (*hereinafter*, Co-Trustees MOA), effective Jan. 10, 2017, available here: <https://www.oha.org/wp-content/uploads/FINAL-signed-PMNM-MOA-1-10-17.pdf>

¹⁹ Just a few examples are the Oil Pollution Act, 33 U.S.C. § 2701 *et seq.*, the Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*, and the Native American Graves protection and Repatriation Act of 1990, as amended, 25 U.S.C. § 3001 *et seq.* which includes Native Hawaiian protections.

²⁰ To the extent that there is any analysis in Appendix E, it relates only to the proposed sanctuary, but not to the No-Action alternative.

actually is the best decision. Further, the effects resulting from the No-Action Alternative function as a baseline for comparison with the effects of the other alternatives.

As one federal court stated, “A material misapprehension of the baseline conditions existing in advance of an agency action can lay the groundwork for an arbitrary and capricious decision.”²¹ A valid comparison of the potential effects of the No-Action Alternative and the action alternatives requires an accurate description of the former. As discussed above, the current iteration of the DEIS does not present that; rather, it makes assumptions about NOAA’s lack of regulatory authority that are not substantiated in the document and it fails to identify pertinent authorities of the Co-Trustees that may fill in any gaps in NOAA’s legal authorities. These omissions critically undermine the analysis for all of the alternatives.

In another case with similarities to this situation, a federal court emphasized that, “It is black letter law that NEPA requires a comparative analysis of the environmental consequences of the alternatives before the agency.”²² In that case, involving a proposed land exchange to facilitate proposed mining, the court held that the alternatives analysis violated NEPA because the lead agency assumed that the effects of the proposed mining would be the same whether it took place on federal land or privately held land. The fatal flaw in the lead agency’s analysis was that it did not reflect the potential difference in effects that could reasonably occur if the agency in that case, the Bureau of Land Management, exercised its authority to regulate mining on federal public lands versus the effects of mining on non-federal land. So too, in this situation the DEIS fails to substantiate NOAA’s alleged lack of authority in the MEA and omits relevant authority other Co-Trustees could exercise and therefore makes an unjustified conclusion about the effects of each of the alternatives, including the No-Action Alternative.

B. The Action Alternatives

NOAA makes it clear in the *Federal Register* notice for the proposed sanctuary regulations²³ and the DEIS²⁴ that none of the action alternatives presents alternative management strategies and that the only difference between the alternatives that are analyzed are the geographic boundaries. No justification is presented as to why the proposed regulations and draft management plan are the only possible management for the proposed sanctuary that could possibly meet the agency’s purpose and need. Indeed, given the well-articulated purpose of providing “comprehensive and coordinated management” of the marine areas of Papahānaumokuākea Marine National Monument, it is extremely striking that neither the Department of the Interior/U.S. Fish and Wildlife Service nor the Office of Hawaiian Affairs, both Co-Managers for the Papahānaumokuākea Marine National Monument, are included as Co-Managers of the proposed sanctuary.

²¹ *Friends of Back Bay v. U.S. Army Corps*, 681 F.3d 581, 588 (4th Cir. 2012).

²² *Ctr. for Bio. Diversity v. Dept. of Interior*, 623 F.3d 633, 645 (9th Cir. 2010).

²³ 89 Fed. Reg. 1575, March 1, 2024.

²⁴ DEIS at xi, p. 19.

Besides the Monument, the present management structure for the area encompassed by NOAA's Preferred Alternative, Alternative 1, already includes the Hawaiian Islands National Wildlife Refuge, the Midway Atoll National Wildlife Refuge, the Kure Atoll State Wildlife Sanctuary and the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve. It is inconceivable that adding a sixth management designation over these other five management regimes without including all managers of those five designated protected areas will somehow meet the goal of providing comprehensive and coordinated management of the entire area.

In fact, as noted further above in the discussion of the No-Action Alternative, the Monument Co-Managers that are omitted from the proposed management arrangement for a sanctuary have both jurisdiction and important legal authorities that should be analyzed and considered as an alternative way of providing for protections that NOAA asserts that it does not have authority to impose at the present time. At least one action alternative should include all Co-Trustees of the Monument and analyze effects on management coordination and the manner in which the additional legal authorities could be utilized.²⁵

Problems Common to All of the Alternatives

Additionally, the DEIS analysis of the legal benefits of a sanctuary overlay designation is also incomplete and therefore misleading as specified below. The discussion regarding the effects of the management provisions for all three action alternatives states that a Sanctuary designation would allow the Office of National Marine Sanctuaries (ONMS) to supplement existing authorities through emergency regulations, penalties, and authorities to respond to and hold financially liable those responsible for destruction of or injury to sanctuary resources.²⁶

The DEIS assumes that the effects of a sanctuary designation will be essentially the same for all action alternatives, given that none of the action alternatives vary in terms of management, but rather are differentiated only by their boundaries. Similarly, there are problems that run throughout the DEIS discussion that clearly influence NOAA's choice to constrain the actions alternatives to geographic boundaries. Those problems include the following:

First, the DEIS acknowledges that regulations have been issued on a number of topics for the original Monument, though not for the Expansion area proclaimed in 2016 (approximately 8 years ago).²⁷ There is no information or analysis in this DEIS section about why no regulations for the MEA have been issued. If there is authority to issue regulations –by NOAA, FWS, or the State agencies by agreement—in the original

²⁵ We also note that the Co-Trustees MOA requires a review of the Agreement at least every five years (MOA at V.A). The DEIS does not discuss the results of the latest five year review.

²⁶ DEIS at 98.

²⁷ *Id.* at 94-96.

Monument area, there is authority to do so in the expansion area, and the failure to issue them is a failure of management, not authority.

A good example is regulation of fishing. NOAA and USFWS regulations to implement Presidential Proclamations 8031 and 8112, including the fishing restrictions, were issued reasonably promptly in 2008,²⁸ but in eight years, the agencies have not issued fishing regulations in the Expansion Area. This is not a problem of lack of authority, and adding a sanctuary designation is not going to change the fact that NOAA regulates fishing under Magnuson.²⁹ Both the Secretaries of the Interior, acting through the USFWS, and the Secretary of Commerce, acting through NOAA, are explicitly authorized to issue regulations in the original and expansion monuments by the proclamations.³⁰

Second, as discussed in more detail above, NOAA has not analyzed the legal authorities that it and the other Monument Co-Trustees may have to protect Monument resources by the bundle of other authorities that protect this area.³¹ Any analysis of authority that is not specific about possible federal regulation for protection under those authorities is at a minimum incomplete and misleading. Adding one more layer of complexity to management would be highly likely to be a negative, not a positive.

Third, the Proclamations for both the Original Monument and the Monument Expansion Area specify that management is joint between the Secretaries of Commerce and the Interior. Yet the DEIS does not analyze authority that the USFWS has to regulate the topics that the DEIS specifies sanctuary designation would give to NOAA. In fact, the Fish and Wildlife Service has general authority to issue regulations in areas that are part

²⁸ *Supra* at fn. 9.

²⁹ Both the Sanctuaries Act and the Magnuson Act provide authority to regulate fishing in Sanctuaries. NOAA has issued several papers addressing fisheries regulation in sanctuaries, and in general (though not always) regulation is under the Magnuson Act. These documents are: https://nms-sanctuaries.blob.core.windows.net/sanctuaries-prod/media/archive/library/pdfs/noaa_regs_nmsfishing_2008.pdf (July, 2008); <https://nms-sanctuaries.blob.core.windows.net/sanctuaries-prod/media/docs/20230512-nmsa-304a5-fishing-regulation-faqs.pdf> (5/12/23); <https://www.fisheries.noaa.gov/s3/2023-10/Sanctuaries-presentation.pdf> (11/12/23).

Here, regulations related to fishing in the original Papahānaumokuākea Marine National Monument have been issued under the Magnuson Act. Presidential Proclamation 9478, establishing the MEA, states that NOAA, “in consultation with the Secretary of the Interior, shall have responsibility for management of activities and species within the Monument Expansion under the Magnuson-Stevens Act.” (Similarly, the Proclamation directs NOAA to manage activities and species, in consultation with the Secretary of the Interior, within the MEA under the Endangered Species Act, for species regulated by NOAA, the Marine Mammal Protection Act, “and any other applicable Department of Commerce legal authorities.”)

³⁰ “To the extent permitted by law, the Secretaries, acting through the FWS and NOAA, shall promulgate any additional regulations needed for the proper care and management of the objects identified above.” Pres. Proc. 8031; “The Secretaries shall revise and update any management rules and regulations”, Pres. Proc. 9478.

³¹ *Supra* at pp. 3-5 .

of the National Wildlife Refuge System.³² That authority enables USFWS to issue regulations to protect monuments that are considered parts of the National Wildlife Refuge system. But there is no discussion of such authority or use of that authority to issue the regulations that the DEIS suggests are called for to protect the monument here.

The National Wildlife Refuge System Administration Act³³ confers broad and general authority on the Service for regulating all components of the System. If NOAA were carrying out its obligations to cooperate in Monument management specified in the Proclamations and the Monument management agreements it could assure that there is adequate regulation for the protection it is seeking without any reason for a Sanctuary overlay. Further, the authority of the Fish & Wildlife Service to issue regulations for matters related to the Monument is specific: the Monument and MEA are in some part National Wildlife Refuges, and where they are not refuges, are components of the National Wildlife Refuge System.³⁴

Fourth, the DEIS seems to emphasize the need for “penalty schedules” and implies that NOAA would have authority to issue those schedules only under the Sanctuaries Act. There is no legal basis for that statement. To be sure, when NOAA has authority to penalize actions, it may issue penalty schedules within its authority to make clear penalty ranges (e.g. monetary, or other). So, if people who are not supposed to fish in an area do so, NOAA may seek to punish them under the Magnuson Act and develop penalty schedules for violating specific provisions or issued fishing regulations. Such penalty schedules would apply to fishing in the Monument if NOAA issues regulations related to fishing in the Monument. And, in fact, NOAA has issued at least one penalty schedule for Papahānaumokuākea Marine National Monument.³⁵

Moreover, the National Wildlife Refuge System Act includes authority for FWS to enforce and issue penalties.³⁶ Importantly, with one exception for natural resource damages addressed at “Fifth,” the DEIS does not specify what activities NOAA seeks to punish and what penalties it would propose to do so. There is mention of new tools for violation of sanctuary regulations—but no discussion of what regulations would protect and no analysis of whether those protections are available—through either NOAA or Department of the Interior authorities—under existing law. Throwing around the general words “penalty schedules” and “sanctuary violations” does not provide the analysis needed to evaluate what protections may be provided now and what protections the Monument status and the lists of other applicable statutes do not provide. Moreover, there is no analysis of what matters have occurred since the Monuments were established that have posed unaddressed problems because of lack of authority and that cannot be easily remedied, such as by issuance of fishing regulations for the Monument Expansion Area.

³² See 16 USC Sec. 668-dd, especially Sec. 668-dd (b)(5).

³³ *Id.*

³⁴ *Supra* at fn. 10.

³⁵ <https://www.gc.noaa.gov/gces/2019/PI-SSS-Final-6-27-19.pdf>

³⁶ 16 U.S.C. § 668-dd(f).

The DEIS uses extremely general language like “penalty schedules” without specifying the actual problems at issue.

Fifth, the DEIS states that sanctuary status, unlike Monument status, would provide a way to obtain response costs and hold liable those responsible for destruction of sanctuary resources. Apart from the tautology (“sanctuary resources” do not exist until there is a sanctuary),³⁷ we assume what NOAA means here is that sanctuary designation would give the Monument managing agencies additional authority to address Natural Resource Damages. The DEIS gives examples of potential natural resource damages it is concerned about. These are lost cargo containers, DEIS at 4.6.2; and vessel groundings at 4.3.1. By looking at these two examples, we see that the DEIS conclusion that designating a sanctuary overlay for Papahānaumokuākea and the MEA would provide authority—that NOAA implies does not now exist—for addressed natural resource damages is both incorrect and misleading.

As to the first, the DEIS notes shipping containers lost at sea in February 2020 and 2021.³⁸ These crocs, sippy cups, mason jars and other items were carried by container ships. Though not mentioned in the discussion, googling makes clear that the cited cargo losses were caused by storms at sea.³⁹ The Sanctuary Natural Resource Damages provision is set forth in the footnote.⁴⁰ It specifically provides that injury to a

³⁷ We can assume that NOAA has either unlawfully prejudged the outcome of this process or that it actually means resources protected by the Monument proclamations that would possibly become also sanctuary resources.

³⁸ DEIS at 86-87; § 4.6.2.

³⁹ The DEIS discussion names the ships but not the cause of the cargo losses. In fact, all were lost by storms: <https://www.freightwaves.com/news/maersk-essen-loses-750-containers-still-sails-for-la> (this is for the Maersk Essen; see also <https://www.freightwaves.com/news/260-containers-lost-65-damaged-in-maersk-eindhoven-at-sea-mishap> for the Maersk Eindhoven and <https://www.freightwaves.com/news/ocean-container-losses-topple-annual-average-in-2-months> and <https://www.freightwaves.com/news/risky-business-safety-at-sea-amid-supply-chain-crisis-war-and-covid> for the ONE Apus (1,816 containers lost).

⁴⁰ SEC. 312. [16 U.S.C. 1443] DESTRUCTION OR LOSS OF, OR INJURY TO, SANCTUARY RESOURCES

(a) LIABILITY.—

National Marine Sanctuaries Act

(1) LIABILITY TO UNITED STATES.—Any person who destroys, causes the loss of, or injures

any sanctuary resource is liable to the United States for an amount equal to the sum of —

(A) the amount of response costs and damages resulting from the destruction, loss, or injury; and

(B) interest on that amount calculated in the manner described under section 2705 of title 33.

(2) LIABILITY IN REM.—Any vessel used to destroy, cause the loss of, or injure any sanctuary resource shall be liable in rem to the United States for response costs and damages resulting from such destruction, loss, or injury. The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any district court of the United States that has jurisdiction over the vessel.

sanctuary resource caused solely by an act of God is a defense to liability. While not all storms are sufficiently severe to be considered an act of God, a storm that would upset a big container ship is highly likely to be so considered. Thus, this kind of injury to resources that the DEIS raises would not be addressed by sanctuary status.

The second example is vessel groundings.⁴¹ In fact, the DEIS notes as to those groundings: “In recent years, three National Weather Service buoys have broken free of their moorings and threatened Monument resources. Two groundings occurred at Kapou in 2015 and 2019. The third entered the MEA in 2022.” DEIS at p. 59, Sec. 4.3.1. Since the National Weather Service is part of NOAA, seeking a sanctuary overlay to address its own problems seems unnecessary. As to other potential “vessel groundings”, though it is difficult to speculate about the details of how those would occur, the DEIS notes at these pages that, for example, vessels may spill oil or chemicals. It certainly seems likely that vessels large enough to cause damage would be fueled by oil or diesel. Thus it is important to note that at least two types of injuries to Monument resources may be addressed under existing natural resource damages law without addition of Sanctuary status. Both the Oil Pollution Act,⁴² which provides for addressing natural resource damages caused by oil spills or a “substantial threat” of an oil spill, and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund),⁴³ which provides for addressing natural resource damages caused by discharge or substantial threat of a discharge of hazardous substances, are already available to NOAA and to the Fish & Wildlife Service through the Department of the Interior to address injury to Monument resources. While each is subject to the similar “act of God” defense, if a ship causes some of the injuries outlined at this section of the DEIS, the ship—fueled by diesel—is likely to present a substantial threat of oil discharge and those authorities are already available to trustees NOAA and DOI to hold the ship and its operators liable. Payments would be used for restoring, repairing, or replacing Monument resources. Thus sanctuary status is not likely to enhance significantly the ability of the government to address natural resource damages to Monument resources.

Sixth, the DEIS states that sanctuary status would allow NOAA to issue “emergency regulations”. There appears to be no discussion of what potential problems those regulations would address, and no discussion of what existing authorities could be

(3) DEFENSES.—A person is not liable under this subsection if that person establishes that—

(A) the destruction or loss of, or injury to, the sanctuary resource was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;

(B) the destruction, loss, or injury was caused by an activity authorized by Federal or State law; or

(C) the destruction, loss, or injury was negligible.

(4) LIMITS TO LIABILITY.—Nothing in sections 181 to 188 of title 46, Appendix, or section 192 of title 46, Appendix, shall limit the liability of any person under this chapter.

⁴¹ DEIS, pp. 59, Section 4.3. 1.

⁴² 33 USC § 2701 *et seq.*

⁴³ 42 USC § 9601 *et seq.*

used to provide the opportunity for NOAA or DOI to address those concerns. We also note that the regulations issued jointly by NOAA and USFWS in 2006 for the original Monument contain an exemption from prohibitions for emergency actions.⁴⁴ Moreover, Presidential Proclamation 9478 specifically exempts from prohibitions activities “necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.” The two agencies could easily – and without sanctuary authority – extend this regulation to the MEA. Given the shortcomings in the analysis set forth above, without such more detailed analysis there is little reason to expect that sanctuary status to enable issuance of emergency regulations is needed.

Seventh, the DEIS statements that NOAA needs additional authority to prohibit and address introduced (invasive) species is also faulty. We note that the joint NOAA/USFWS regulations issued in 2006 covering the original Monument expressly prohibit such introduced species.⁴⁵ Using the same authority as in 2006, the agencies could extent that prohibition to the MEA. Again, the failure is one of management, not authority.

As presented in the DEIS, the action alternatives are insufficiently differentiated and fail to recognize obvious alternatives to the proposed management strategy. They are, by the agency’s own description, variations on a single management alternative. This approach is inconsistent with the agency’s purpose and need, inadequate for purposes of compliance with NEPA,⁴⁶ and not helpful to effective and sound decisions. At a minimum, NOAA must issue a supplemental draft EIS that includes alternatives reflecting different management strategies and the environmental and related social, cultural and economic effects of those alternatives. Further, as explained above, the DEIS’ analysis of the legal benefits of a sanctuary overlay designation is seriously incomplete and therefore misleading. Given the centrality of alternatives as the heart of the EIS, NOAA should republish a new DEIS and provides a comprehensive comparison between current management and authorities and differing management strategies.

III. OMISSION OF PROPOSED FISHING REGULATIONS AND EFFECTS ANALYSIS

The DEIS describes the consultation with the Western Pacific Fishery Management Council, explains that the Council developed draft fishing regulations and that NOAA found that one part of the recommendation was inconsistent with the goals and objectives of the proposed marine sanctuary. The DEIS then notes that the Council submitted a revised final recommendation to NOAA in April of 2023, over a year ago.

⁴⁴ 50 CFR § 404.8.

⁴⁵ 50 CFR § 404.6.

⁴⁶ See, e.g., *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 813-814 (9th Cir. 1999) (EIS contained three alternatives; the two action alternatives were basically identical with variations on the preferred alternative and the agency “failed to consider an alternative that was more consistent with its basic policy objectives than the alternatives that were the subject of final consideration.”)

But no draft fishing regulations are included as part of the proposed action and thus there is no analysis of the effects of proposed fishing. The DEIS goes on to say that, “NOAA prepared regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the NMSA to reflect the outcome of the NMSA section 304(a)(5) process.”⁴⁷ The *Federal Register* notice preamble to the draft sanctuary regulations states that, “NOAA has prepared a separate proposed rule under the MSA which shall serve as the primary mechanism for authorizing non-commercial fishing activities.”⁴⁸ But no reference or link to the regulations is provided and a search of NMFS and ONMS websites reveals no such proposed regulations.

The absence of analysis of the effects of the proposed regulations for non-commercial fishing referenced in the DEIS is significantly disturbing and puzzling. The National Marine Sanctuaries Act itself requires that the Secretary prepare both a draft EIS and a resource assessment that documents, among other things, “present and potential uses of the area, including commercial and recreational fishing. . . .”⁴⁹ While NMFS has made it clear that commercial fishing is already banned by regulation in the original Papahānaumokuākea Marine National Monument and that the “proposed NMFS rule would codify a commercial fishing prohibition for the MEA, resulting in its prohibition throughout the Monument,”⁵⁰ it is also clear that recreational fishing is a possibility for the MEA. In fact, although fishing regulations per se are not published in association with the release of the DEIS, the proposed regulations that are published in NOAA’s March 1, 2024, Federal Register notice include the Western Pacific Fishery Management Council’s definition of non-commercial fishing as part of the proposed designation package.⁵¹ Given the breadth of possibilities implied by that definition: “Fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional, indigenous, and recreational fishing,”⁵² it is quite impossible to know what type of fishing might be allowed, let alone understand the ecological and cultural implications of it. The omission of specific, proposed fishing regulations in the DEIS makes it impossible for either the public or the decision-maker to compare the effects of fishing expected under a proposed sanctuary with fishing in the MEA or, alternatively, with the potential effects of fishing if fishing regulations were promulgated for the MEA.

This omission of proposed fishing regulations and their effects is also at variance with the document NOAA has publicly provided to explain the process of developing fishing regulations for national marine sanctuaries.⁵³ The flowchart of the regulatory

⁴⁷ DEIS at 175-1176.

⁴⁸ 89 Fed. Reg. at 15281.

⁴⁹ 16 U.S.C. § 1434(a)(2)(B)(i) (underlining added).

⁵⁰ *Id.*

⁵¹ 89 Fed. Reg. 15272, 15288-89.

⁵² 50 C.F.R. § 665.12.

⁵³ *NOAA’s Regulation of Fishing in National Marine Sanctuaries*, July, 2008, available at https://nms-sanctuaries.blob.core.windows.net/sanctuaries-prod/media/archive/library/pdfs/noaa_regs_nmsfishing_2008.pdf See also, fn. 29.

process in that document clearly shows the developing of the fishing regulations following NEPA scoping and prior to publication of the draft EIS, with the final rule being issued concurrently with the Record of Decision.⁵⁴ That is an appropriate sequence of proposals and analysis but it is not being followed here. No explanation is provided of why that process is not being followed nor is there any indication of the timing for proposed fishing regulations.

In the course of managing the many designations for this ecologically and culturally outstanding area, regulation of fishing has been the source of prominent controversy and concern. Unlike other factors that affect Monument resources such as climate change and plastic debris, whether fishing takes place in the area and if so, the regulatory requirements associated with any permitted fishing as well as issuance of regulations for enforcement of such regulations are uniquely within the purview of the Monument Co-Trustees. Further, a number of statements in the current DEIS may prove to be inaccurate once fishing regulations are proposed. For example, the DEIS states that under the preferred alternative, “there would be no anticipated change in the number of permits issued because permits are required under the current management regime and an increase in permitted activity is not anticipated under sanctuary designation.”⁵⁵ This statement actually seems inaccurate in two respects: 1) the DEIS persistently argues that the biggest impact of the proposed sanctuary would be additional authority by NOAA to, among other things, issue permits, and 2) it does not account for what presumably would be some number of non-commercial permits applied for in the MEA.

In short, omission of the proposed fishing regulations and required analysis of environmental and related social and economic effects is stunning and leaves a highly significant gap in the coverage of the DEIS. It is also noteworthy that while the DEIS emphasizes (somewhat incorrectly—see above) the lack of NOAA’s authority for certain protections, its clear authority to issue regulations and once they are issued to enforce them so that the Monument is protected against certain problematic fishing has not yet been exercised. A supplemental DEIS or a new EIS must include analysis of the effects of the proposed fishing regulations, along with publication of the actual proposed regulations.

IV. PROBLEMS WITH PREPARATION OF THE DEIS

Applicable regulations: The DEIS states that it relied on the Council on Environmental Quality’s 2020 NEPA regulations.⁵⁶ However, those regulations were amended, effective May 20, 2022. While scoping concluded before then, most of the DEIS was likely written after promulgation of the final 2022 regulations.

Cooperating agencies: In the “About this Document” page, the DEIS states that the U.S. Fish and Wildlife Service (USFWS), the State of Hawai‘i, and the Department of

⁵⁴ *Id.*; unnumbered p. 1 following the Executive Summary.

⁵⁵ DEIS at 105.

⁵⁶ DEIS at i.

Defense (DOD) were cooperating agencies.⁵⁷ However, the extent of their involvement, especially the USFWS and DOD, is quite unclear. As noted earlier, the DEIS contains no discussion of the USFWS' legal authorities in the Monument. No preparers are listed from either USFWS or DOD; rather, at the very end of the DEIS, they are listed as agencies consulted.⁵⁸ The role of the Office of Hawaiian Affairs, a Monument Co-Trustee, in the DEIS preparation is not even mentioned. Nor is there any mention of working with the co-management agencies as specified in the Co-Trustees MOA although it is highly likely that adding a sanctuary overlay will affect the management of the Monument(s) and the cooperative approach that is at its core.

VI. CONCLUSION

As explained above, we believe the DEIS accompanying the sanctuary proposal is fatally flawed in several respects. Again, we recognize NOAA's obligation to initiate the process of considering sanctuary designation, but there is no legal bar to NOAA concluding that a sanctuary overlaying the other protective management areas is not the best use of its resources and not the best way to achieve improved management and coordination and may not be the best way to meet the purpose and need.

The DEIS repeatedly identifies enhanced legal authorities as the major benefit of a sanctuary designation,⁵⁹ so it is especially critical that the analysis provides an accurate, comprehensive summary of the current legal authorities. We acknowledge that it is possible – after such an analysis was prepared – that a meaningful gap in legal authorities may be identified. However, the DEIS fails to provide that information in a manner that reflects all applicable legal authorities that attach to each of the Co-Trustees within the Monument. Further, the deferral of fishing regulations and their potential effects to a later time underscores the inadequacy of the DEIS as the basis for both the agency's and the public's understanding of impacts. The DEIS never explains how layering a sanctuary with two co-managers over a monument with four co-trustees plus two national wildlife refuges and a state marine refuge and wildlife refuge will improve management and coordination. Finally, the DEIS does not explain how a sanctuary designation would protect the resources within the Monument, other than relying on what appears to be questionable assertions regarding the need for further legal authority.

CEQ's regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) state that, "To the fullest extent practicable", [a] draft statement must meet the requirements established for final statements in Section 102(C) of NEPA" and in the implementing regulations.⁶⁰ Importantly, they also state that, "If a

⁵⁷ *Id.*

⁵⁸ DEIS at 365.

⁵⁹ "Possibly the most significant difference between No Action and Alternative 1 is the enactment of National Marine Sanctuary Program regulations (15 CFR part 922) allowing ONMS to supplement existing authorities through: 1) emergency regulations; 2) penalties; and 3) authorities to respond to and hold financially liable those responsible for destruction or loss of, or injury to sanctuary resources." DEIS at p. 98.

⁶⁰ 40 C.F.R. §1502.9(b) (2022).

draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and publish a supplemental draft of the appropriate portion.” In regards to this DEIS, NOAA should revise and publish a supplemental draft that truly incorporates the perspective of all Monument co-trustees, provides sound analytical legal analysis and provides analysis of several management alternatives, including the No-Action Alternative, in light of the stated purpose and need.

We conclude with one further observation. The national commitment to protect thirty percent of U.S. ocean areas by 2030 is a vitally important objective and NOAA clearly has a very significant role to play in achieving that goal. We urge the agency to do by identifying ecologically important ocean areas that do not currently have significant protections. Further, we note considerable concern about the strength of marine sanctuary protections as currently administered.⁶¹ Reflection on how to best ecologically and equitably achieve that goal would be highly desirable.

Sincerely,

Dinah Bear⁶²

Lois Schiffer⁶³

⁶¹ See, e.g., *U.S. Plan to Protect Oceans Has a Problem, Some Say: Too Much Fishing*, “The New York Times, April 30, 2024, available here:

<https://www.nytimes.com/2024/04/30/climate/united-states-conservation-30x30.html>; *Has the U.S. Really Conserved a Third of its Waters?*, The Washington Post, April 19, 2024, available here:

<https://www.washingtonpost.com/climate-environment/2024/04/19/protected-oceans-united-states-fishing/>.

⁶² Environmental attorney; General Counsel, Council on Environmental Quality, Executive Office of the President (1983-1993; 1995-2007) (Deputy General Counsel, 1981-1983).

⁶³ Environmental attorney; General Counsel, NOAA (2010-2017); Assistant Attorney General, Environment and Natural Resources Division, U.S. Dept. of Justice (1994-2001).



NOAA/Daniel K. Inouye Regional Center.
NOS/ONMS/PMNM
1845 Wasp Blvd, Building 176
Honolulu, HI 96818

May 5, 2024

NOAA Office of National Marine Sanctuaries
1305 East-West Highway, 11th Floor
Silver Spring, MD 20910

RE: Support for Sanctuary Designation for Papahānaumokuākea

Dear NOAA Representatives,

Aloha mai! My name is Jonnetta "Jonee" Peters, a native Hawaiian and the Executive Director for the Conservation Council for Hawai'i (CCH), which is also the Hawai'i affiliate of the National Wildlife Federation (NWF). The mission of CCH is the protect and save the native species and ecosystems for the future generation. We are in support of the sanctuary designation of Papahānaumokuākea because of the diverse marine life, flora and terrestrial species, some of which are endangered. The vast ocean ecosystem is dynamic and important for species and humans. Some species are yet to be discovered. An area that is teeming with life need a safety net from over-fishing, by-catch from industrial fishing, and other extractive business.

Additionally, we support Alternative 1 - the preferred alternative - which would designate boundaries that are co-extensive with the marine portions of the Papahānaumokuākea National Marine Monument.

Papahānaumokuākea also deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahānaumokuākea is also a place for Native Hawaiian cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature.

Additionally, sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today's uncertain political climate, ensuring added safeguards regardless of who becomes President.

Please protect this precious ecosystem for the future generations by designating Papahānaumokuākea as a sanctuary!

Mahalo for your time and efforts,

Jonnetta "Jonee" Peters
Executive Director

**Telephone/Fax: 224.338-6511 | email: info@conservehi.org
web: www.conservehawaii.org | P.O. Box 2923, Honolulu, HI 96802**

President: Colleen Heyer | **Vice President:** Sunshine Woodford | **Secretary:** Makaala Kaaumoana

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National Wildlife Federation Region 12 Director: Rachel Sprague

National Wildlife Federation Pacific Region Associate Director: Emily Martin

Kō Hawai'i leo no nā holoholona lōhiu – Hawai'i's voice for wildlife | State Affiliate of the National Wildlife Federation

May 6, 2024

To Whom It May Concern,

I am writing to share my thoughts on the proposed Sanctuary for Papahānaumokuākea. I am a conservation planner with the US Fish and Wildlife Service (USFWS), which has allowed me to work alongside managers since sanctuary scoping was initiated in 2021. My thoughts and comments in this letter are my own and are being submitted in a personal capacity.

Papahānaumokuākea holds a special place in my heart. I had the opportunity to visit Midway Atoll in 2010 as a master's student and it changed my perspective on what a healthy Hawaiian ecosystem looks like. This place also sparked something within my spirit that won't allow peace until I share my views on the proposed sanctuary.

In 2016 I served as the Oahu science liaison for the "Expand Papahānaumokuākea" coalition which asked President Obama to expand the Monument to its current size and add the Office of Hawaiian Affairs (OHA) as a co-trustee. We requested that OHA be elevated to a co-trustee to ensure that Native Hawaiian voices were elevated to the highest level of decision making for the realm that is both spiritually and culturally connected to Native Hawaiian people. The National Oceanic and Atmospheric Administration (NOAA) seems to recognize the special cultural and biocultural significance of Papahānaumokuākea to Native Hawaiians and speaks to it in the draft Environmental Impact Statement (dEIS) document. Additionally, outreach and educational materials created and distributed by NOAA tout the unique attributes of the Monument, claiming that nature and culture are one.

It's concerning to me that agency that serves as the voice for Native Hawaiians (OHA) seems to be excluded from many of the management decisions outlined in the dEIS, as is the USFWS. It also includes significant changes to current management, which has not been discussed or approved by the Monument management board (MMB). The dEIS says that NOAA is proposing to supplement and complement existing management, but also says that a proposed sanctuary would be managed in close collaboration with Monument co-trustees, but that NOAA and the State of Hawaii (State) would manage the sanctuary. To the reader of this massive dEIS document, it would appear as though NOAA and the State have primary authority over proposed sanctuary waters, and I have strong concerns about the proposed management of the Monument expansion area (MEA, also referred to as the outer sanctuary zone OSZ).

In dEIS section 4.2.5 (Permitting and Regulated Activities) NOAA discussed current permitting in the Monument and describes the permitting process in place that is currently reviewed by all co-trustees. The existing process is modeled after the USFWS special use permit for public use, which includes a transparent and public process, opportunity for public input during development of compatibility determinations and permit stipulations, as well as equitable review of permit applications by all Monument co-trustees. In the dEIS NOAA says that it does not recognize the authority of the Secretary of the Interior to issue permits in the MEA, despite successful permit issuance since the Monument was expanded in 2016. It is quite concerning that the dEIS proposes to replace the permitting system in the MEA with a sanctuary permit, a decision that has not been discussed or voted upon by the MMB and all its co-trustees.

The proposed sanctuary permit for the MEA/OSZ describes approval by the co-managers of the sanctuary (NOAA and the State) but omits input from all Monument co-managers. The new proposed sanctuary permit also does not allow for appeal of a permit decision and is inconsistent with current Monument rules. Of particular concern in the proposed regulation exemption that would permit the removal of fish from the MEA/OSZ. Current Monument rules state that all fish caught within the Monument in both Federal and State waters must be consumed within the Monument, unless being retained for research purposes. Any extraction of resources should be decided upon by the entire MMB, and not exempted from current Monument prohibitions through sanctuary designation. Any change to the Native Hawaiian practices permit category and permit criteria should be thoroughly vetted by both OHA and its advisory body, the Papahānaumokuākea Cultural Working Group (CWG) and the dialogue must be meaningful and consider the views of the Native Hawaiian community. The sanctuary non-commercial fishing exemption as proposed are counter to Mai Ka Po Mai, which was written after a decade of input from the Native Hawaiian community. The Mai Ka Po Mai guidance document outlines Monument permitting stipulations that must be met when issuing a Native Hawaiian practices permit including that 1. the activity must be “pono,” 2. the activity must benefit the resources of the Northwestern Hawaiian Islands and the Native Hawaiian community, 3. and any resource harvested from the Monument must be consumed in the Monument.

I feel that it is unfair for the public, including the Native Hawaiian community, to approve an exemption for non-commercial fishing in the MEA/OSZ until proposed fishing rules have been released with opportunities for public input. It was alarming on December 8, 2022 when the Western Pacific regional fishery management council (Wespac) posted a press release (that was also published on the front page of the local newspaper) entitled “fishing returns to the Northwestern Hawaiian islands after 15 years” touting fishing regulations that were submitted to NOAA Fisheries (NMFS) as part of the National Marine Sanctuaries Act (NMSA) section 304(a)(5) process as if they’d been approved for implementation. They included plans to recoup up to \$15,000 in associated costs to cover fishing trips by sale of fish caught from the MEA. The draft regulations were not, and still have not, been reviewed, or approved by the MMB. The press release was never rescinded, corrected, or addressed by NOAA to the public. In fact, the only letter condemning the inaccurate press release was from OHA’s CWG, who currently reviews all permit applications and provides recommendations to OHA to ensure that activities are aligned with Native Hawaiian values and principles, including that activities are done in a way that is “pono.”

The revised draft proposed regulations appended to the dEIS are strikingly like the ones that were released in 2022, with the \$15,000 recoup cost removed. The dEIS appendices also include internal correspondence from NOAA regarding the regulation consultation. In a response from NOAA to Wespac on February 22, 2023, NOAA determined that the proposed fishing regulations did not fulfill the purposes and policies of the NMSA for the proposed sanctuary designation, specifically pointing to the ability to “sell” fish caught within the Monument. However, upon examination of the “disposition of Native Hawaiian subsistence practices catch” section in the proposed regulations appended to the dEIS, it states that “permittees may request NMFS consider the ability to recover costs through sale of catch associated with the trip to the MEA.” The letter addressed from NOAA to Wespac on May 31, 2023 concluded the NMSA section 304(a)(5) consultation stating that the recommendations were found to fulfill purposes and policies of the NMSA, even though the “sale” of catch still found within the proposed regulations. It’s quite concerning to me that NOAA allowed the consultation to conclude without revised proposed regulations being developed, especially since Wespac again decided to insert financial

compensation into a different section of the regulations. Those proposed regulations should have been public with this dEIS so that we know what is being proposed, and not analyzed in a different and separate NEPA process that concludes after the public comment period for the sanctuary designation. I have concerns about any attempts to commodify Monument resources, particularly since NOAA is housed within the Department of Commerce.

Despite these draft proposed regulations being submitted and approved by NOAA in May of 2023, it wasn't until the public release of the dEIS when Monument co-managers first saw draft proposed regulations that include permitting the removal of up to 350,000 pounds of bottomfish and 180,000 pounds of pelagic fish from the MEA each year. Cooperating agencies that were allowed review of an early EIS draft in the fall of 2023 did not have an opportunity to review the draft proposed fishing regulations. It is also important to note that OHA was the only Monument co-trustee that was not given an opportunity to review a draft of the EIS before it went public. As the co-trustee that is responsible for representing Native Hawaiian voices throughout Papahānaumokuākea, it's very concerning that OHA was the only management agency to be excluded from the review process, the fishing regulations that are being proposed as a "Native Hawaiian practice," as well as of the development of dEIS sections relating to Native Hawaiian culture and practices. This feels to me like exclusion of OHA from its primary responsibility as a Monument co-trustee to an entity that does not have any management authority within the sanctuary. This suspicion was confirmed in an April 12, 2024 Civil Beat article in which NOAA Monument superintendent Eric Roberts was quoted saying that "The Office of Hawaiian Affairs co-manages the Monument but it wouldn't be able to do so for the sanctuary under the National Marine Sanctuaries Act." Why does NOAA appear to suppress Native Hawaiian voices under this sanctuary proposal when it was directed by President Obama to elevate OHA as an equal voice in co-management? The co-trustees have successfully managed Papahānaumokuākea by collaborating and elevating the voices and concerns of Native Hawaiians. The Secretaries of the Interior and Commerce were both tasked with management of the MEA in the Presidential proclamation that expanded the Monument, and the State of Hawaii is a co-lead in the development of the Sanctuary dEIS, so only OHA has been relegated to having no authority under the proposed sanctuary. If OHA is removed from their management obligations under sanctuary designation then their advisory body, the CWG, will also be excluded. To me this seems unjust, unfair, and exclusionary.

To further add to the injustice of Native Hawaiians being left out of the decision-making process, the public uses described in current Monument rules, and sanctuary rules, do not limit the "Native Hawaiian practices" permitting category to Native Hawaiian individuals. Under current rules, anyone can perform a Native Hawaiian practice despite their genealogical connections to Hawaii. I see the proposed fishing regulations as a way to allow extractive fishing under the guise of a cultural practice, that could allow anyone from the public to apply for a permit as a Native Hawaiian subsistence practice. If NOAA intends to supplement and complement current protections, it should include the protection of Native Hawaiian cultural practices and ideals, which went into the development of Mai Ka Po Mai over a decade of consultation with the Native Hawaiian community. Additionally, NOAA references the E Hoi I Ke Au A Kanaloa Cultural Impact Assessment (a State EIS requirement) in its dEIS multiple times, and upon review of the document it clearly outlines the feelings of the 25 interviewees, and their views on resource extraction from the Monument, including fishing. Why were the findings of this report not incorporated in the development of the dEIS and the draft fishing regulations? Interviewees clearly state their objection to any large-scale extraction of resources from Papahānaumokuākea, and adherence to pono

methods when conducting Native Hawaiian practices. Since the release of the dEIS, I have not spoken to a single Native Hawaiian practitioner that would agree that the extraction of up to 350,000 pounds of bottom fish and up to 180,000 pounds of pelagic fish from the MEA per year could ever be considered a pono practice.

I also find it very concerning that the only virtual public meeting that was held following release of the dEIS occurred during the middle of the Merrie Monarch Festival, the largest Native Hawaiian cultural festival. This would mean that anyone interested in providing public comments would either have to submit written testimony or be able to attend one of the scheduled evening or Saturday meetings across the State. I pointed to this when I gave testimony at the virtual meeting, yet no additional virtual meetings were held. The people of Hawaii should not have to choose between participation in the largest Hawaiian cultural festival and providing comments on this designation.

After review of the dEIS, listening to the testimony of others at public meetings, and a broader review of resource management by the Department of Commerce, I cannot support the designation of a National Marine Sanctuary in Papahānaumokuākea as currently described in the dEIS. I feel that NOAA has conflicting mandates between the Office of National Marine Sanctuaries (ONMS) and NMFS. Where one agency (ONMS) is tasked with protecting marine resources while NMFS manages fisheries that commodify resources that should remain protected in areas of regeneration and cultural importance. I'm still quite disturbed that NOAA has not publicly responded to the inaccurate claim of "fishing returns to Papahānaumokuākea" stated by Wespac in a press release, which needlessly antagonized the Native Hawaiian community. Wespac was responsible for managing fisheries prior to Monument designation and did it so poorly that the subsequent collapsed lobster fishery has never recovered.

I cannot support a sanctuary designation in Papahānaumokuākea that includes the MEA since the exemptions for this area would allow non-commercial fishing and truncate OHA's management authority in this area. Additionally, the proclamations that established and expanded the Monument clearly state that NOAA should consider designation of a sanctuary seaward of National Wildlife Refuge boundaries. Since none of the alternatives analyzed match this scenario I don't believe that a sanctuary should be designated without a more comprehensive analysis in the dEIS, including another round of public review. Sanctuary designation, as currently described in the dEIS, would allow an open back door for fishing to resume in Papahānaumokuākea.

I urge NOAA to reconsider sanctuary designation at this time and instead work with the fishing community, OHA, and the CWG to draft pono fishing rules for the MEA instead of relying on commercial fishers to determine the definition of pono fishing practices. There should not be an exemption to any Monument prohibitions until the fishing regulations have been approved with opportunities for the Native Hawaiian community and the public to provide comments. All Monument co-managers should be included in this process, not just NOAA and the State.

There is a lot more that I want to say about the proposed changes to the Monument but instead I'm going to speak generally about Native Hawaiian representation in management of Papahānaumokuākea. The Monument is a mixed world heritage site. It's important not only biologically but also culturally. It's known worldwide for being the place where culture and nature are one. Managers are doing lots of things to improve and restore biological habitats, but what are they doing to restore the cultural connections to Papahānaumokuākea and create new opportunities for Native Hawaiians to learn how to manage these systems? I believe that managers are neglecting their duties by focusing on biology and

not also culture, since the two are nearly indistinguishable from a Native Hawaiian worldview. A holistic approach to management that includes the strong cultural history of this area should be the approach of managers in this area, and not the exclusion of indigenous voices from a place that is part of our genealogical creation story. Native Hawaiians continue to fight to have a say in how our sacred spaces are managed and federal agencies should be supportive of opportunities to include diverse viewpoints in management, rather than excluding the people who successfully managed natural resources in the Hawaiian islands for over a thousand years before western contact.

Sincerely,

Narrissa Spies (Brown)

Monday, May 6, 2024

Superintendent

Papahānaumokuākea Marine National Monument and UNESCO World Heritage Site

1845 Wasp Blvd, Building 176

Honolulu, HI 96818

Re: NOAA-NOS-2021-0114

Dear Superintendent Clark,

With over 10,000 members in the USA, Shark Stewards strongly support designating parts of the Papahānaumokuākea Marine National Monument as a national marine sanctuary to enhance protections and safeguard resources in the marine portions of the Monument. We believe sanctuary designation will complement the efforts of the Office of Hawaiian Affairs, the state of Hawaii, and other federal agencies to conserve this nationally significant area and its cultural resources and bolster strong and lasting protection for the marine environment.

Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. The Monument is a mixed (natural and cultural) World Heritage Site. It preserves sacred places, stories, artifacts, and strong Polynesian cultural ties to the land and seas, dating back more than a thousand years.

Coral islands, undersea volcanoes, flat-topped undersea mountains, banks, and shoals stretch 1,350 miles. The Monument supports a diversity of life, including over 7,000 species, many found nowhere else on earth. Threatened green sea turtles and endangered Hawaiian monk seals are among the rare species that inhabit the island chain.

The National Marine Sanctuaries Act established the National Marine Sanctuary System to protect areas of the [marine environment](#) that have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities. The monument is an area of national significance that merits this protection in addition to the protections provided by the Antiquities Act.

It is critical that sanctuary designation strengthen and enhance the protection of Papahānaumokuākea, as designated under the Antiquities Act and the Presidential Proclamations. Those efforts should include integrating traditional Hawaiian knowledge systems, values, and practices into management. We oppose any regulatory or management measures that would decrease the current level of protection within the Monument and Monument Expansion Area.

In this letter, the terms "Papahānaumokuākea Marine National Monument" and "Monument" mean both the original Monument's boundaries and the Monument Expansion Area.

- **The role of scoping in the Environmental Impact Statement process.**

Scoping is a critical early step in the EIS process. It sets the boundaries of the analysis, helps to identify information sources, and helps to focus alternatives and identify issues to address within the EIS. A comprehensive scoping process is essential for identifying the "reasonable range" of alternatives in the EIS to address the purpose and need of proposed agency action. Each reasonable alternative must be rigorously explored and objectively evaluated, and each alternative considered in detail so that reviewers may evaluate their comparative merits. NOAA has an obligation under NEPA to compare the protections currently in place with the complexities of managing a national marine sanctuary. The environmental impact statement should comprehensively explain the current protections and compare them to what would be changed by a sanctuary designation.

- **The spatial extent of the proposed sanctuary and boundary alternatives.**

The existing boundaries of Papahānaumokuākea Marine National Monument cover 582,578 square miles. We recommend that NOAA's preferred alternative for the sanctuary's boundaries follow the current Monument boundaries, including the Monument area originally designated in Presidential Proclamation 8041 of June 15, 2006, and the Monument Expansion Area as specified in Presidential Proclamation 9478 of August 26, 2016. The sanctuary should include all the waters, submerged lands, and living and non-living resources within these areas. The shoreward boundary should extend to the mean high tide.

- **The location, nature, and value of the resources to protect by a sanctuary.**

In 1999, President William J. Clinton established the Northwestern Hawaiian Island Coral Reef Ecosystem Reserve by Executive Order 13178. In 2006, President George W. Bush established Papahānaumokuākea Marine National Monument by Presidential Proclamation 8031. The proclamation included the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway National Wildlife Refuge, the Hawaiian Islands National Wildlife Refuge, and the Battle of Midway National Memorial. In 2010, UNESCO designated the monument as a mixed World Heritage site for its natural and cultural significance. In 2016, President Barack Obama expanded the monument to protect historic and scientific interest objects, geological and biological resources part of a highly pristine deep-sea and open ocean ecosystem, and an area of cultural significance to the Native Hawaiian community. The monument has significant living and non-living resources, cultural and natural seascapes, and geological features which deserve protection through sanctuary designation.

Critical geological features include seamounts and a non-volcanic ridge that extends southwest towards the Johnston Atoll, which are biodiverse hotspots that provide habitat for deep-sea species. Seamounts, ridges, and other undersea topographic features enable marine organisms to range throughout the Hawaiian Archipelago and between Hawaii and other archipelagoes.

Further, these features are home to species unknown to humans, with possible implications for research, medicine, and other uses.

The Monument provides critical foraging habitats for marine species and birds. Laysan albatross, Black-footed albatross, Bonin petrels, shearwaters, petrels, tropicbirds, Short-tailed albatross, and other seabird species forage in the Monument, along with five species of protected sea turtles. Twenty-four species of whales and dolphins have been sighted in the Monument.

Three species are threatened or endangered: sperm whales, fin whales, and sei whales. Acoustic evidence also shows that endangered blue whales visit the area and may migrate past the Hawaiian Islands twice a year. Sharks, including tiger sharks and Galapagos sharks, are key species in the Monument's ecosystems.

Native Hawaiians regard the Monument's atolls, islands, and waters as sacred places from which all life springs and ancestral spirits return after death. The Native Hawaiian belief systems regarding this genealogical relationship inform a set of responsibilities, rights, and privileges that Hawaiian people inherited to honor and protect their ancestors. The Kumulipo describes the Hawaiian universe as comprising two realms, Pō and Ao. Ke ala polohiwa a Kāne (the dark shining path of Kāne), also known as the Tropic of Cancer, is considered the border between Pō and Ao. The island of Mokamanamana is located on this boundary and is the center of convergence between the two realms; the island sits near the entrance of Papahānaumokuākea Marine National Monument, as only the second island in the northwestern part of the chain. The Monument's name commemorates the union of Papahānaumoku and Wākea, the divine parents of the island chain, the taro plant, and the Hawaiian people. Some islands have several names: one or more Hawaiian names that highlight a natural feature such as an abundance of sharks or a sacred quality ascribed to the place in traditional teachings, and an English name that often commemorates a historic shipwreck nearby.

Long-distance voyaging and wayfinding is a unique and valuable traditional practice that the Native Hawaiian community developed and advanced. Wayfinding relies on celestial, biological, and natural signs, such as winds, waves, currents, and the presence of birds and marine life. The Monument's open ocean ecosystem and its natural resources continue to be important in the Hawaiian Archipelago's cultural voyaging seascape and training ground for new generations of wayfinders.

Shipwrecks and aircraft in the Monument are of great historical interest and importance. The Monument is the final resting place of thousands of people lost during World War II battles. The submerged sites and scattered artifacts tell the stories of sailors and navigators who ventured throughout the Pacific. Interpretation of these shipwreck sites and the broader maritime heritage of Papahānaumokuākea Monument further our understanding of our connection to this place and our role in protecting its natural and cultural resources.

The sanctuary designation should protect all living, non-living, cultural, and maritime resources of the Monument and the cultural and natural seascapes of which they are an integral part.

- **Management measures for the sanctuary and any additional regulations that should be added under the NMSA to protect Monument Resources.**

Overall - Resource protection is the highest priority of the Monument, and the designation document, management plan, and regulations must be consistent with this priority. The sanctuary designation must augment and strengthen existing resource protections, increase regulatory compliance, ensure enforceability, and provide natural resources damage assessment authorities and interagency coordination of activities as provided in the National Marine Sanctuaries Act.

Presidential Proclamations 8031 and 9478 include prohibited activities which NOAA should incorporate into the sanctuary designation document, management plan, and regulations.

Further, Presidential Proclamation 9478 provided a framework for managing the Monument Expansion Area, and NOAA should codify those protections in the designation document, regulations, and management plan.

Integration of Native Hawaiian cultural values and principles – "*Mai Ka Pō Mai* is a collaborative management framework intended to guide the Monument's co-trustees integration of traditional knowledge systems, values, and practices into management. Based on Hawaiian cosmology and worldview, the framework includes five management domains, four of the management domains are referred to as Kūkulu, and the central management domain is the Ho'oku'i. We strongly urge NOAA to embrace the framework and work with the Native Hawaiian Cultural Working Group, OHA, and the Native Hawaiian community to include the *Mai Ka Pō Mai* framework into the designation document, management plan, and regulations.

Fishing - The Magnuson-Stevens Fishery Conservation and Management Act (MSA) is the primary law that governs marine fisheries management in US federal waters. Its objectives are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable seafood supply. ONMS Director John Armor's letter of November 19, 2021, to Chairperson Soliai of the Western Pacific Regional Fishery Management Council stated that the MSA is the appropriate statute for managing fisheries within the proposed sanctuary. *We strongly disagree and urge NOAA to adopt a joint regulatory approach at a minimum.*

As mentioned above, the cultural and natural landscape of Papahānaumokuākea, their services, and the living and non-living resources in the Monument deserve protection under the sanctuary designation. Fish species are a critical part of the landscape, and their management must be part of the ecosystem. The National Marine Sanctuaries Act is the only ecosystem-based act that can achieve this goal through regulation. *The ONMS regulations should be in addition to MSA regulations and not a backstop.*

Should ONMS choose not to regulate fisheries under the NMSA (a point we strongly disagree with), then the Secretary of Commerce must ensure the proposed regulations from the Western Pacific Fishery Management Council are consistent with Executive Order 13178 and Presidential Proclamations 8031 and 9478. If they are not, the Secretary of Commerce must reject the draft regulations.

Maritime Transportation - In 2008, the International Maritime Organization (IMO) designated the Monument a "Particularly Sensitive Sea Area." The Monument Management Board put

additional domestic measures and best practices into place to protect the original Monument area. We recommend that the IMO designation applies to the Monument Expansion Area.

Further, as part of the sanctuary designation process, ONMS should determine if additional regulatory and management controls are necessary.

Thank you for the opportunity to comment on the proposed sanctuary designation.

David McGuire,

Director shark Stewards

Kona HI

PHONE (808) 594-1888

FAX (808) 594-1938



STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
 560 N. NIMITZ HWY., SUITE 200
 HONOLULU, HAWAII 96817

May 6, 2024

PMNM-Sanctuary Designation
 NOAA/NOS/ONMS
 1845 Wasp Blvd. Bldg 176
 Honolulu, HI 96818

Re: Proposed Papahānaumokuākea National Marine Sanctuary Designation

Aloha:

The Office of Hawaiian Affairs (OHA) is in receipt of your March 1, 2024 letter seeking comments on the proposed designation of marine portions of the Papahānaumokuākea Marine National Monument and the Monument Expansion Area (collectively called the Monument) as a national marine sanctuary as well as a draft environmental impact statement.

OHA offers the following comments for your consideration:

Background

Papahānaumokuākea Marine National Monument (the PMNM or the Monument), which was originally established in 2006, includes the Northwestern Hawaiian Islands that were ceded (with the exception of Midway atoll, Kuaihelani) after the overthrow of the Hawaiian Kingdom in 1893. On August 26, 2016, President Barak Obama issued Presidential Proclamation 9478¹ to expand the boundaries of PMNM out to the United States Exclusive Economic Zone (EEZ) furthering the protection of Presidential Proclamation 8031. The Proclamation further references the Monument Expansion Area as being a highly pristine deep sea and open ocean ecosystem with unique biodiversity that constitutes a sacred, cultural, physical and spiritual place for the Native Hawaiian community.² President Obama, recognizing The Office of Hawaiian Affairs' (OHA's) role in protecting the rights and resources of the Native Hawaiian peoples, justly elevated OHA

¹ 3 CFR 9478 - Proclamation 9478 of August 26, 2016. Papahānaumokuākea Marine National Monument Expansion

² Office of Hawaiian Affairs, National Oceanic and Atmospheric Administration, US Fish and Wildlife Service and State of Hawaii (2021). *Mai Ka Pa Mai: A Native Hawaiian Guidance Document for Papahānaumokuākea Marine National Monument*. pp.17&18

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to co-trustee and co-manager of PMNM. OHA thus entered into a co-trustee/co-manager agreement with the above listed co-trustees/co-managers and the Hawai'i State Governor.³ Since 2017, OHA became part of the Monument co-trustee agencies and the Senior Executive Board of Co-managers, and Monument Management Board (MMB) of the PMNM.

The monument is now an area approximately 582,578 square miles. The Office of Hawaiian Affairs (OHA) has been a co-manager of the PMNM along with the Department of Commerce (through NOAA), the State of Hawai'i (through the Board of Land and Natural Resources (BLNR)) and the Department of Interior (through U.S. Fish and Wildlife Service (USFW)) for over a decade. The four co-trustees rely on a group of seven co-managers, which include two offices from NOAA, two from Fish and Wildlife Service, two divisions of DLNR and OHA. Co-managers carry out the management plan, which includes care for the monument and its many inhabitants, permitting of human uses of and in the Monument, preservation and conservation of the area and more.

On March 1, 2024, NOAA released its Notice of Proposed Rulemaking. This notice functioned to inform the public and interested parties of NOAA's intent to designate Papahānaumokuākea as a marine sanctuary under authority granted by the National Marine Sanctuary Act. The notice provides an overview of the numerous changes that a sanctuary designation will bring. It is important to note that in this notice and in subsequent conversations, it has always been the intent that a sanctuary designation is meant to enhance rather than strip away protections that the monument designation currently provides. Below we provide highlights of sections where we would like to provide comments:

Co-Trustee/Co-Management Structure

OHA Administration's greatest concern with the proposed rulemaking is that it causes enormous confusion over the legitimacy of the co-management structure that has been in place for more than a decade. This is of utmost setback because OHA's role as a co-trustee of the monument—side-by-side as equals with NOAA, the U.S. Fish and Wildlife Service (FWS) and the State of Hawai'i—was a position that OHA and the Native Hawaiian community fought hard to achieve for years. We are disappointed that in elevating protections with Sanctuary designation, the rightful role of OHA, the state's indigenous government agency, as a decision-maker and co-trustee, is completely absent.

OHA's standing to take its proper place as co-trustee and co-manager of PMNM was a necessary step to support and fulfill the federal government⁴ and State's trust

³ State of Hawaii, Office of Hawaiian Affairs, US Department of Interior- US Fish and Wildlife, US Department of Commerce - National Oceanic and Atmospheric Administration; Memorandum of Agreement (2017)

⁴ State of Hawai'i Organic Act of April 30, 1900, c339, 31 Stat. 141, § 2; and Hawai'i Admission Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4, § 2

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obligations and fiduciary duties to "... better the conditions of Native Hawaiians"⁵ and protect Native Hawaiian rights and interests. It is the State's duty to protect Native Hawaiian traditional and customary cultural and religious rights and practices.⁶ OHA advocates, protects, and stewards cultural and natural resources from ma uka to ma kai (from the mountains to the sea) and promotes protections of rare, threatened, and endangered lifeforms that reside on the lands or in the waters surrounding from the main Hawaiian Islands out to the farthest reaches of the PMNM.⁷

The indigenous Native Hawaiian peoples never directly relinquished their inherent sovereignty or their right to self-determination and this was affirmed again and again in federal and state laws and actions. To effectuate the Native Hawaiians unique trust relationship and compact with the United States pursuant to the 1959 Admissions Act⁸ and under the Hawai'i State Constitution⁹ and related statutes, it is OHA's position that both government bodies must honor their trust obligations to the Native Hawaiians with regard to Papahānaumokuākea. OHA's co-trusteeship and co-management positions within the PMNM therefore are preserved and should not be eliminated nor diminished under Sanctuary designation.

The Notice of Proposed Rulemaking states that "NOAA and the State of Hawai'i would collaboratively manage the sanctuary." There is no specific identification of OHA and its role in management, which causes serious alarm.

OHA acknowledges that both the notice and accompanying management plan make mentions of honoring existing management structures. The notice states, "co-management of the proposed sanctuary with the State of Hawai'i would not supplant the existing co-management structure for the Monument." Additionally, the accompanying management plan mentions that the sanctuary designation will "support and maintain existing co-management functions." However, the co-management entities are not explicitly named in the rules, which causes us grave unease.

We acknowledge that the Monument governance structure will remain. Sanctuary designation does not directly nullify the many years of advocacy and collaboration that has built the PMNM governance structure. However, OHA has concerns that the overlapping sanctuary designation causes confusion with regard to how important it is that we maintain the PMNM and its corresponding governance structure even if sanctuary designation is granted.

We recognize that the National Marine Sanctuaries Act restricts which parties can

⁵ Hawai'i Admission Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4, §5(f)

⁶ *Ka Pa'akai O Ka 'Aina v. Land Use Commission*, 7 P.3d 1068, 94 Haw. 31 (2000)

⁷ Submerged Lands Act, Pub. L. No. 31, ch. 65, title I, § 2, 67 Stat. 29 (1953) (codified as amended at 43 U.S.C. §§ 1301-1315 (2013))

⁸ Hawai'i Admission Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4, § 2

⁹ Hawai'i Constitution, Article XI, §§ 1, 2, 6, and 9; and Article XII, §§ 5, 6 and 7

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be named explicitly as managers. This means that there is no place for indigenous governing bodies to have a named role as managers when it comes to any marine sanctuary, not just Papahānaumokuākea. While we understand the statutory and regulatory constraints, we fear that the lack of explicit commitment to OHA's status as co-trustee and co-manager in either the proposed rules or the draft management plan leaves too much up to interpretation.

OHA believes that establishing the sanctuary designation—absent a clearly stated intention to maintain both the co-trustee and co-management model of the monument—usurps the sovereignty of OHA as well as the lāhui o Hawai'i, given that OHA was elevated to protect the rights of our Native Hawaiian people and places. We believe that the most appropriate action moving forward is to **pause sanctuary designation until federal law can be changed to allow for explicit co-management structures that include native governing bodies as equal decision-makers**. OHA urges NOAA to consider temporarily halting sanctuary designation and to work with our agency and the Native Hawaiian community to achieve the ability for indigenous governing bodies to be eligible to be named as co-managers for marine sanctuaries under the National Marine Sanctuaries Act. OHA supports greater protections for our sacred Papahānaumokuākea under sanctuary designation, but these protections cannot occur at the expense of Native Hawaiian self-determination. We cannot support the diminishment of Native Hawaiian leadership with regard to Papahānaumokuākea.

Bifurcation of the EIS process

National Marine Fishery Service (NMFS), also an arm of NOAA, has not published or released the draft fishing regulations. This means that no one can review or provide public comments on the fishing regulations for the proposed sanctuary during this public comment period. We understand that NMFS will publish a draft environmental impact study (DEIS) notice and hold public hearings and a comment period later this year. OHA believes that this sequencing is out of order and creates confusion, as well as unnecessary burden to Native Hawaiian and fishing communities.

Without complete information the process is bifurcated. OHA believes this information should have been completed prior to the process for Sanctuary Designation otherwise it creates an incomplete, bifurcated, confusing and burdensome process on the Native Hawaiians and fishing community.

Prohibition on Exploring for, Developing, or Producing Oil, Gas or Minerals, or Any Energy Development Activities

OHA Administration supports that the sanctuary designation would "prohibit exploring for, developing, or producing oil, gas, or minerals to protect sanctuary resources." We especially support the addition of "any energy development activities." This makes clear that the prohibition will protect against any form of mining or exploration that may not yet be contemplated for energy. We appreciate the contemplation that exploring, developing and producing oil, gas, minerals and other energy in the sanctuary

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boundaries should be one of the few activities that is completely banned in the sanctuary area.

The prohibitions named in the draft environmental impact statement align with the Office of Hawaiian Affairs' advocacy efforts for protection of Hawa i'i's natural resources and current State Law prohibiting deep sea mining. Hawa i'i's waters, biodiversity, and vibrant marine ecosystems, provide sustenance and have for centuries. OHA, as co-trustee of Papahānaumokuākea, has long supported the creation, maintenance, and management of marine protected and designated areas to ensure we adequately care for these waters and ecosystems. Our agency has supported community-based subsistence fishing areas, marine life conservation districts and fish replenishments areas. These types of management models provide a way to bring forth the 'ike (wisdom, knowledge) of our ancestors in managing and these vital ecosystems so they may thrive in perpetuity, for future generations. Accordingly, OHA supported recently passed State legislation regarding deep sea mining prohibitions which provides for the complete banning of this extractive activity in State waters.¹⁰

Other Prohibitions

There are several more prohibitions that the proposed rulemaking recommends. Many of these would allow prohibited activities only if they are done pursuant to a permit or incidental to a permitted activity. Generally, OHA is supportive of protections that maintain the biological and ecological vibrancy of Papahānaumokuākea. However, we cannot support any prohibition language that may limit the traditional and customary practices that Native Hawaiians are entitled to by both state and federal laws. There is a permit for Native Hawaiian practices both currently with the monument and in the proposed sanctuary designation. However, OHA wants to be sure that Native Hawaiian traditional and customary practices not be diminished.

OHA also has concerns about how these prohibitions may intersect with subsistence-based fishing. While the sanctuary designation should not overlap with any existing community-based subsistence fishery areas (CBSFA), we do not agree with any prohibitions that may have impacts on existing and prospective CBSFAs. Community- and cultural-based subsistence fishing practices honor the ways in which our oceans are connected. This means that both the kapu on and harvesting of certain species during certain times of year play integral roles in maintaining the ecological balance of our waters. OHA strongly urges this body to ensure that both current and future community- and cultural-based subsistence fishing practices are enhanced rather than negatively impacted as you consider advancing sanctuary designation. NOAA must incorporate language that explicitly includes community- and cultural-based subsistence-based fishing practices as part and parcel of protected Native Hawaiian customs and practices.

¹⁰ SB2575 Thirty-Second Legislature 2023-2024; Environmental Protection; Seabed Mining; Permits; Prohibition.

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U.S. Armed Forces Exemption

OHA does not support both the current and proposed “broad exemption to allow activities and exercises of the U.S. Armed Forces, including those carried out by the U.S. Coast Guard.” We have consistently elevated the harmful impact of military exercises in the monument, including the effect of sonar training on the koholā (humpback whales) in the monument. We believe that if the federal government truly believes extensive protections of the sanctuary areas are necessary then they must hold their own military to the same standards. We note that there is an emergency provision that the sanctuary designation looks to continue. This means that if national security is truly required, the U.S. military will not be allowed unregulated access to Papahānaumokuākea. We cannot accept this provision. What we take issue with is the way that the broad exemption allows the U.S. military unfettered and unmonitored access to Papahānaumokuākea in times of peace and for training exercises without any true oversight, accountability or liability.

The above being said, OHA does acknowledge and appreciate that sanctuary designation may allow for slightly greater accountability of the U.S. military in the ways the rules are currently written. We appreciate increased accountability, however, OHA strongly believes NOAA must hold the U.S. military to the same standards as all other government agencies to truly honor the sacredness of Papahānaumokuākea as noted in the proposed rulemaking.

Sanctuary Permit Procedures and Criteria: Native Hawaiian Practices

OHA appreciates that there will continue to be permits issued for Native Hawaiian practices. However, the vague and confusing definitions for these practices creates ongoing difficulties with appropriate issuing of permits.

The proposed rule refers to Presidential Proclamation 8031 (2006)¹¹ for the definition. This proclamation defines “Native Hawaiian practices” as “cultural activities conducted for the purposes of perpetuating traditional knowledge, caring for and protecting the environment, and strengthening cultural and spiritual connections to the Northwestern Hawaiian Islands that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of monument resources for direct personal consumption while in the monument.” OHA believes this definition provides a solid foundation.

However, OHA is concerned that Native Hawaiian is not defined. We have heard anecdotally that there is confusion at the federal level of what constitutes Hawaiian culture. We believe it must narrowly reference our indigenous practices and only those practices of the kānaka maoli, who lived and thrived in Hawai‘i prior to European and American arrival. We recommend the following standard definition and language be adopted and integrated by ONMS/NOAA: Native Hawaiian is defined as “any individual who is a

¹¹ 3 CFR 8031 - Proclamation 8031 of June 15, 2006. Establishment of the Northwestern Hawaiian Islands Marine National Monument

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descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawai‘i.”¹² Native Hawaiians also self-identify using many other names including but not limited to: Kānaka Maoli, Kānaka ‘Ōiwi, and indigenous peoples or indigenous Native Hawaiians. These self-identifications should also be included and respected regarding any processes, protocols and requests, especially to ensure the permitting process will be carried out in a way that upholds the ‘ike (knowledge, wisdom) of kānaka maoli and only our culture.

EIS Documentation:

It is our understanding that this is a HEPA/NEPA process. ONMS/NOAA and the State of Hawai‘i conducted pre-meetings and consultations prior to the release of the current DEIS’s (both the federal and state). OHA expresses concern about this sequencing because it may impact interested parties’ abilities to comment on the sanctuary designation if the federal notice and relevant documents were not released or available for review at the time of those consultations.

According to Hawai‘i Administrative Rule (HAR) 11-200.1-24(s)(1), the draft EIS shall include “reproductions of all written comments submitted during the consultation period required in section 11-200.1-23.” The current DEIS (Appendix F) does not provide reproductions or copies. Rather, comments are “recreated” in NOAA’s DEIS without original letterheads or formatting. Typically, state level DEISs or DEAs will provide copies of all written comments as they were originally received. NOAA has not done that here. Further, providing actual reproductions/copies demonstrates what exactly each party was responding to. As part of the DEIS process, comments can be received as part of the Notice of Intent for the EIS Preparation Notice (EISPN) or as part of the public scoping. Currently, Appendix F provides comment recreations in Section 3 under “public scoping;” thus, it is understood that all comment recreations are from the public scoping process and not the EISPN. This is problematic though as the HARs require that EISPN comments be provided in the DEIS.

Furthermore, according to HAR 11-200.1-23(c): Written comments and responses to substantive comments in response to an EISPN shall be included in the draft EIS. There are no specific comments or responses pertaining to the EISPN within the DEIS. Some of the public scoping comments provided in Section 3 of Appendix F may contain the EISPN comments, however, because NOAA chose to do recreations of comments, we cannot determine this and are left to understand they are solely from public scoping. This needs to be clarified.

Moreover, according to HAR 11-200.1-24(s)(6): The draft EIS shall include “a representative sample of the consultation request letter”. There is no representative sample consultation letter within the DEIS. Typically, a DEIS or DEA will provide the sample letter in an appendix followed by copies of all the written comments received. Written

¹² 107 STAT. 1510; Public Law 103-150, NOV. 23, 1993

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comments are provided as copies and not recreated in a summary type format. This is done to demonstrate that requests for consultations and specific comments are specific to the HRS 343 process and that comments from other non-HRS 343 consultations are not being utilized for HRS 343 compliance purposes.

Accordingly, these documents must be available for review prior to finalizing the comment process.

Closing Remarks

OHA believes Papahānaumokuākea is not just a sacred place but an example of how management of natural and cultural resources must be co-managed in ways that respect indigenous knowledge. We appreciate the many ways sanctuary designation enhances existing protections. We look forward to continuing our work to further solidify co-management structures that honor the need for indigenous governing bodies to have decision-making parity with federal and state partners. Mahalo for the opportunity to comment. Should you have any questions, please contact OHA's Director of Advocacy, Ke'ōpū Reelitz at (808) 829-0090 or by email at keopur@oha.org.

'O wau iho nō me ka 'ōia 'i'ō,



Stacy Ferreira
 Ka Pouhana, Chief Executive Officer

SF:kr

CC: Carmen Hulu Lindsey, OHA BOT Chairperson and Maui Island Trustee

To Whom It May Concern.

My name is Janet Britt and I have lived in Kailua-Kona Hawaii for 14 years. I have worked in conservation much of my life, twenty years with the Nature Conservancy in Wyoming and six years with the former Hawaiian Islands Land Trust (HILT). I would like to strongly encourage decision makers to support Alternative 1 for the Papahānaumokuākea National Marine Monument.

With the proposed rule and Draft EIS, an additional layer of regulations over the existing boundaries of the current Marine Monument would maintain and enhance existing protections. It also incorporates Mai Ka Pō Mai, which was informed and created by the Native Hawaiian community, and the vision of how Papahānaumokuākea should be cared for now and in perpetuity. A sanctuary designation would also help strengthen the durability of existing protections provided through the Monument, which has been threatened by today's uncertain political climate, ensuring added safeguards regardless of who becomes President.

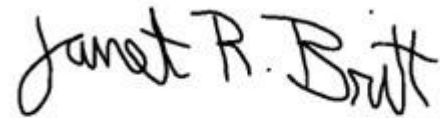
Papahānaumokuākea deserves the highest protection, as it has deep cosmological and traditional significance for living Native Hawaiian culture. It is the place where it is believed that life originates and to where the spirits return after death. Papahānaumokuākea is also a place for Native Hawaiian cultural practitioners of today to reconnect with their ancestors and gods, who they believe are manifested in nature.

A sanctuary can also attract additional public and non-profit funding, which could strengthen the public's appreciation of Papahānaumokuākea and support a more consistent budget for operations, research, citizen science, education, and emergency response.

With only 3% of the global ocean fully protected, we must support additional protections for Papahānaumokuākea that will help to mitigate against possible negative impacts from changes in political administrations.

Mahalo for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Janet R. Britt". The signature is written in a cursive, flowing style.

Janet R. Britt
77-213 Mahiehe St.
Kailua-Kona, HI 96740

Janetbritt50@gmail.com

Roberta Hickey
Papahānaumokuākea Sanctuary Designation Public Comment

My name is Roberta Hickey, and I am a law student at the University of Hawai'i at Mānoa, William S. Richardson School of Law. I have also worked at the University of Hawai'i in the School of Ocean and Earth Science Technology for the last year and a half. In addition, I am a resident of Hawai'i and a concerned citizen, very interested in ensuring government accountability and respect for the environment, including the preservation of ocean resources.

I am writing to voice my concern over the proposed Papahānaumokuākea National Marine Sanctuary. While I tentatively support a sanctuary designation for the Papahānaumokuākea area in the South Pacific region, I do so with qualifiers.

One of these qualifiers is that this designation provides the most environmental protections for the area as a primary concern, taking into account the cultural practices of Indigenous groups in the area. Wrapped within this is the impact that could affect environmental research with global and long-term implications regarding climate change and sustainability efforts. It is also of crucial concern, given the importance of the natural environment to cultural practice to Native Hawaiians (the Indigenous population of the region), that this be taken into account alongside environmental protections because environmental preservation does not occur in a vacuum.

Another qualifier in my support is the protections granted for cultural practice fishing. On the surface, this seemingly innocuous position in the proposed sanctuary designation would seemingly support Indigenous practices concerning subsistence fishing, valuing cultural practices and environmental concerns. Yet, some concern has been voiced in other public testimony that this may be a loophole for more commercial interest practices rather than protection of cultural practice.

Roberta Hickey
Papahānaumokuākea Sanctuary Designation Public Comment

Furthermore, I understand the protections assigned as a monument in the region are far more robust and stringent. This would prevent commercial interest loopholes from being exploited, and my understanding is that sanctuary designation would be laxer in this regard.

I would also like to voice the concern that some of the latest proposed changes of approximately 400 pages were released shortly before the notice and comment period. This has not allowed sufficient time to review this information for a more robust and thoroughly informed public commentary.

Lastly, I also understand that Native Hawaiian stakeholders are not centralized in the decision-making process regarding this designation, as was the case with the original monument status recognition in the past. This is a vital concern that Indigenous voices and leadership be centered in this decision-making process. Native Hawaiians, as stewards of the environment, particularly when it revolves this region of the world, need to be at the forefront of the conversation and the decision-making process and not merely in consultation.

Again, while I support what is seemingly the interest in preserving the environment and cultural practice of the Papahānaumokuākea area if monument status protections are more robust and stringent to ward against commercial interest fishery, my support is swayed not to sanctuary status but the preservation and extension of monument status to offer the most protection to both environment and Indigenous cultural practice.

I thank the agency for providing this forum for the public to express its support, concerns, and commentary regarding the Papahānaumokuākea sanctuary designation. I can be reached via email associated with my commentary submission for this issue.



REGION 9

SAN FRANCISCO, CA 94105

May 6, 2024

Eric Roberts
Superintendent
Papahānaumokuākea Marine National Monument
1845 Wasp Blvd., Building 176
Honolulu, Hawaii 96818

Subject: Draft Environmental Impact Statement for the Proposed National Marine Sanctuary Designation for the Papahānaumokuākea Marine National Monument, Honolulu County, Hawaii (EIS No. 20240032)

Dear Eric Roberts:

The U.S. Environmental Protection Agency has reviewed the above-referenced document pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA. It requires EPA to review and comment on the environmental impact on any proposed federal action subject to NEPA's environmental impact statement requirements and to make its comments public.

The National Oceanic and Atmospheric Administration Office of National Marine Sanctuaries proposes to designate marine portions of the Papahānaumokuākea Marine National Monument as a National Marine Sanctuary. Proclamation 9478 expanded the Monument by an additional 442,781 square miles from 139,793 square miles to a total 582,574 square miles, becoming the largest National Monument in the world. This Draft Environmental Impact Statement analyzes the impacts on the environment of the proposed action and a range of alternatives for sanctuary designation. Action alternatives differ by proposed boundaries and the Agency-Preferred Alternative is Alternative 1, with 1 being the largest and most comprehensive and Alternatives 2 and 3 smaller.

Review Summary

EPA did not identify significant public health, welfare, or environmental quality concerns to be addressed in the Final EIS.

Thank you for the opportunity to review this Draft EIS. If you have any questions, please contact me at (415) 947-4167, or contact Laney Gordon, the lead reviewer for this project, at (415) 972-3562 or gordon.laney@epa.gov.

Sincerely,

**JEAN
PRIJATEL**

Digitally signed by
JEAN PRIJATEL
Date: 2024.05.06
15:11:55 -07'00'

Jean Prijatel
Acting Manager
Policy and Operations Branch

Middle Bank

A Review of the Current Scientific Information¹

March 18, 2024

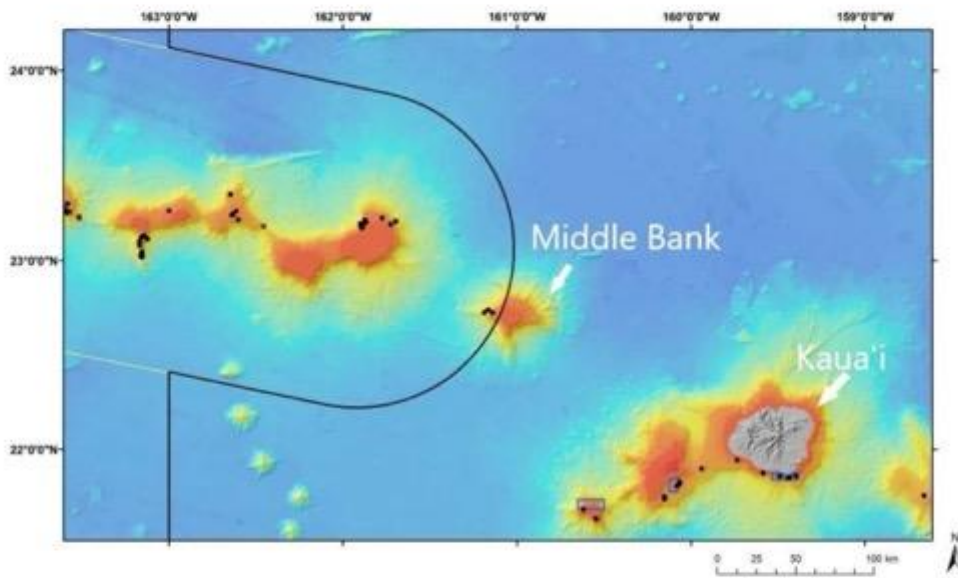
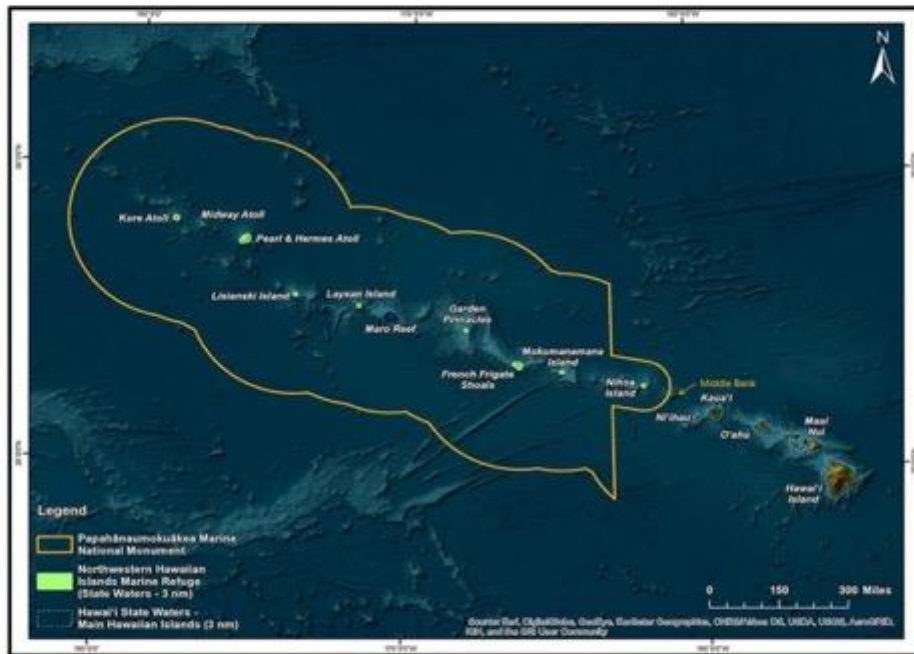
Introduction

Middle Bank is a small seamount located in federal waters approximately 90 miles northwest of Kaua'i. The seamount straddles the far eastern boundary of the Papahānaumokuākea Marine National Monument (hereafter, PMNM or Monument). The inclusion of the western portion of Middle Bank in the PMNM appears to be an unintentional result of boundaries drawn during the creation of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (hereafter, Reserve) in 2000 under Executive Order 13178. In 1991, the Western Pacific Regional Fishery Management Council established the 50-nm protected species study zone in the Northwestern Hawaiian Islands (hereafter, NWHI) to prevent interactions between Hawaiian monk seals and the Hawai'i-based longline fishery. According to the Western Pacific Regional Fishery Management Council (2016a), the zone "is a contiguous area extending 50 nm from named features in the NWHI and connected by corridors between those areas where the 50-nm-radius circles do not intersect." One of the referenced "named features" is Nihoa Island (50 CFR § 665.201), and a 50-nm radius from the geographic center of this island passes through Middle Bank. When the Reserve was established its seaward boundary followed that of the protected species study zone (Van Trump 2002; Golden 2021). In turn, when the PMNM was established in 2006 under Proclamation 8031 its seaward boundary followed that of the Reserve.

After the PMNM's seaward boundary was modified in 2016 under Proclamation 9478, the fraction of Middle Bank outside the Monument boundary did not change. In accordance with a proposal by U.S. Senator Brian Schatz (HI), all federal waters east of 163° W. were excluded from the boundary expansion out to the full 200 nm of the U.S. EEZ in order to preserve access by local fishermen on Kaua'i and Ni'ihau to a particularly active fishing spot near NOAA Weather Buoy 51101 (Schatz 2016), which is located at 24°21' N. and 162°04' W.

Although Middle Bank lies partially within the Monument, the geographic coordinates of the seamount (22°43' N. and 161°02' W.) situates it within the boundaries of the Main Hawaiian Islands (hereafter, MHI) fishery management area according to the federal regulatory definition at 50 CFR § 665.202(a)(1), which states that the MHI includes the U.S. Exclusive Economic Zone (EEZ) around the Hawaiian Archipelago lying to the east of 161°20' W. The location of Middle Bank relative to the boundary of the Monument is shown in the figures below.

¹This literature review was compiled by Donald Schug with the assistance of Robin Baird, Brian Bowen, Alan Friedlander, Mark Hixon, Christopher Kelley, Michaela Kratofil, and William Walsh.



Source: Adapted from Hawai'i Division of Aquatic Resources (2024) and Kelley (2016)

One of the most noteworthy geographic features of Middle Bank is its relatively shallow summit. Middle Bank's flat-top summit lies between 35 and 75 m beneath the sea surface and is about 18 km long (northwest-southeast axis) by about 15 km wide (northeast-southwest axis) (Uchida and Uchiyama 1986). Its steep rise from the surrounding seafloor (from approximately 3,000 m deep) disrupts bottom currents, causing them to accelerate as they flow westward. The speed of ocean currents around Middle Bank is more variable than in most other parts of the MHI, changing by up to 0.06 m/s over the course of the year (Costa et al. 2016).

Numerous studies have demonstrated that seamounts with summits less than 400 m deep have the potential to substantially affect the pelagic ecosystem by enhancing local biological productivity (e.g., Boehlert and Genin 1987; Genin 2004; Pitcher and Bulman 2007; Morato et al. 2010b). The mechanisms that support these ecosystem changes include localized upwelling along a seamount's sides caused by the change in speed and direction of surface and subsurface currents as they flow around the seamount, together with topographic blockage of zooplankton and micronekton undergoing daily vertical migration (Genin 2004; White et al. 2007; Costa et al. 2016). The overall result is that a single seamount can become a "hotspot" of biological diversity, biomass, and abundance in a relatively barren open-ocean seascape, and this biological enhancement can extend 30 to 40 km from the seamount's summit (Morato et al. 2010b; Clark et al. 2012; Gove et al. 2016). This feature of shallow seamounts may be especially notable in the open ocean areas surrounding the NWHI, which consist largely of deep waters that lack an abundance of phytoplankton and zooplankton that typically underlie dynamic and productive ecological communities (Kratofil et al. 2023).

Conservation Concerns

The following sections examine the conservation concerns raised by the salient biophysical features of Middle Bank described above. These concerns include the sustainability of fishing, maintenance of population and genetic connectivity, protection of marine mammals, and protection of deep-sea coral communities.

Sustainable Fishing

Seamounts may be important aggregating locations for demersal and pelagic species targeted by fisheries (Holland and Grubbs 2007; Pitcher and Bulman 2007; Pitcher et al. 2010; Gilman et al. 2012). In the portion of Middle Bank within the boundaries of the Monument only sustenance fishing is allowed, which is defined as fishing for bottomfish or pelagic species in which all catch is consumed within the Monument, and that is incidental to an approved and permitted activity (50 CFR § 404.3). In contrast, the area of the seamount outside the Monument boundary is subject to both commercial and non-commercial (subsistence and recreational) fishing.

Middle Bank is a well-known fishing site for commercially-important deepwater bottomfish species, including *Etelis coruscans* (local name: onaga) and *Pristipomoides filamentosus* (local name: opakapaka) (Western Pacific Regional Fishery Management Council 2016b). The seamount is reportedly an area of high catch rates for these bottomfish species (Siceloff et al. 2016), which are often associated with underwater headlands and areas of high relief (Oyafuso et al. 2017). The species are caught at mesophotic depths (100–300 m) using hook-and-line gear (Haight et al. 1993). In addition, Middle Bank is reported to be a popular fishing site for *Aprion*

virescens (local name: uku) during the two to three months when they form spawning aggregations on the bank (Ayers 2022).

The only fishing occurring on the portion of Middle Bank outside the Monument that is not subject to federal or state permitting and reporting requirements is non-commercial (i.e., recreational and subsistence) fishing for pelagic species. The Hawai'i Division of Aquatic Resources administers a mandatory permitting/reporting program for the commercial bottomfish fishery and commercial small boat pelagic (i.e., non-longline) fishery in both the state and federal waters around the MHI. There is a federal permitting/reporting program for the non-commercial deepwater bottomfish fishery in the federal waters around the MHI, including the waters over Middle Bank. In addition, the number of deepwater bottomfish federally-permitted non-commercial fishermen are allowed to catch, possess, and land is limited to five per person per fishing trip.

Enforcement of fishing regulations at Middle Bank on either side of the Monument boundary is problematic due to its relatively remote location. The Hawai'i Division of Aquatic Resources reported that even in bottomfish fishing areas closer to the populated MHI it had concerns about possible underreporting of catch and effort, particularly in areas that had previously been closed to bottomfish fishing (Western Pacific Regional Fishery Management Council 2021).² The isolation of Middle Bank makes it even more difficult to monitor fishing activity. As a consequence, the populations of some species of bottomfish on the seamount are vulnerable to local depletion by fishing activity (Kelley et al. 2010; Western Pacific Regional Fishery Management Council 2016b). The threat of local depletion of deepwater bottomfish populations at Middle Bank is compounded by the relatively late age at maturity, long life span, and slow growth rate of most of the species targeted by fishermen (Moore et al. 2013). For example, the expected lifespan of onaga is 55 years, while the longevity of the endemic grouper *Hyporthodus quermus* (local name: hapu'upu'u) is estimated to be 76 years (DeMartini 2019).

It is also important to note that bottomfish such as onaga and opakapaka on Middle Bank are likely moving across the Monument boundary (Kelley 2021). Consequently, even if fishermen comply with fishing regulations in the portion of Middle Bank outside of the Monument, the seamount as a whole could experience a decline in the populations of some species, thereby affecting the Monument ecosystem.

In addition to deepwater demersal species, pelagic fish of high commercial value aggregate at Middle Bank. The density of tuna, billfish, oceanic sharks, and other large, highly migratory pelagic fish around seamounts has been observed to be higher relative to the open ocean, and

² In 1998, it was determined that overfishing was occurring on the deepwater bottomfish complex around the Hawai'i Archipelago, with the primary problem being excess fishing effort in the MHI (Ikehara 2006). In response, the State of Hawai'i created a network of reserves in state and federal waters around the MHI that excluded bottomfish harvest while leaving surface waters open to fishing for pelagic species. The network was revised in 2007 to better protect selected bottomfish habitats. Despite a lack of rigorous enforcement and reports of illegal fishing in some reserves (Hospital and Beavers 2011; Drazen et al. 2014; Western Pacific Regional Fishery Management Council 2016b), an evaluation of the effectiveness of the amended reserves found positive local effects of protection, with mean fish length, and in some cases abundance, increasing for one or more bottomfish species inside nearly all the reserves studied. Moreover, relative abundance, fish size, and species richness declined with distance from the reserves, signifying that the recovering bottomfish communities inside the reserves had begun to spillover the boundaries of the areas, and that the reserves were a source of more and larger fish to fished areas (Drazen et al. 2014; Sackett et al. 2014; Sackett et al. 2017). In 2019, four of the 12 reserves were re-opened to bottomfish fishing; in 2022, the remainder were re-opened.

some seamounts have been documented to have positive effects on the catch rates for commercially-important pelagic species (Holland and Grubbs 2007; Morato et al. 2010a; Gilman et al. 2012). Holland and Grubbs (2007) report that two general hypotheses have been proposed to explain the high densities of large pelagic fish associated with seamounts. First, there may be enhanced food availability at seamounts relative to the surrounding areas. Second, seamounts may play a role as navigational ‘waypoints’ in the larger movement patterns of these species. According to these authors, “there is little doubt that seamounts are very important in the life history strategies of tunas and in shaping their distribution patterns.” In addition, the authors note that pelagic fish catches from seamounts should be closely monitored given that the known locations of seamounts increase the vulnerability of species to targeted harvesting and because, for unknown reasons, seamounts seem to attract disproportionate amounts of sub-adults.

Information on the types of pelagic fish species frequenting Middle Bank and the extent to which they are targeted by fishermen is limited. Catch data published by the National Marine Fisheries Service (2022) for the Hawai‘i-based longline fishery indicate that many pelagic species that have been associated with seamounts were caught in the U.S. EEZ offshore off the NWHI prior to the expansion of the Monument in 2016. These species include bigeye tuna, yellowfin tuna (*Thunnus albacares*), blue marlin (*Makaira mazara*), shortbill spearfish (*Tetrapturus angustirostris*), swordfish (*Xiphias gladius*), silky sharks (*Carcharhinus falciformis*), and mako sharks (*Isurus* spp.). This longline fishing activity included occasional sets at Middle Bank (Gilman et al. 2012).

The impacts of fishing on aggregations of tuna at Middle Bank may be similar to those at Cross Seamount, a shallow seamount situated to the southwest of the island of Hawai‘i. Researchers have documented large schools of tuna at Cross Seamount, and it is a well-known site of high catch rates of bigeye tuna (*Thunnus obesus*) (Itano and Holland 2000; Sibert et al. 2000; Holland and Grubbs 2007). Sibert et al. (2000) reported that tag-and-recapture experiments suggest that the Cross Seamount tuna aggregation represents a highly labile population in which individuals arrive, remain a few days or weeks, and then leave. The authors concluded that while fishing mortality at Cross Seamount is substantial, the high emigration, together with a high rate of natural mortality, makes it unlikely that fishing is adversely impacting the tuna population at this seamount.

Maintenance of Population Connectivity

Population connectivity is the exchange of individuals among geographically-separated sub-populations that comprise a metapopulation, primarily via larval dispersal in marine species, yet also by occasional movements of adults. This connectivity plays a fundamental role in local and regional population dynamics, community structure, genetic diversity, and resiliency to human exploitation (Cowen et al. 2002). Moreover, protecting areas with high population connectivity could confer resilience to climate change (Lopazanski et al. 2023).

Many seamounts show limited population connectivity and a high level of endemism due to geographical isolation and complex hydrographic processes (Shank 2010). However, some seamounts can create pathways of habitat “stepping stones,” thereby connecting metapopulations and creating avenues for larval dispersal (Hubbs 1959; Rowden et al. 2010; Mazzei et al. 2021).

There is growing evidence that the bottomfish populations at Middle Bank are important for biological connectivity between the MHI and NWHI. Larval and egg dispersal modeling

indicates that the seamount may act as a critical stepping stone and ecological corridor, connecting the Monument and the MHI through the dispersal of bottomfish larva and eggs (Kobayashi 2008; Drazen et al. 2012; Vaz 2012). Eggs released around Middle Bank stay around the MHI (Drazen et al. 2012; Wren et al. 2016), but eggs spawned in other areas of the NWHI do not contribute to the MHI populations of bottomfish due to distance and ocean current flow (Toonen et al. 2011; Drazen et al. 2012).

Large, mature fish are especially important to Middle Bank's capability to serve as a recruitment source, as these individuals tend to produce higher quality eggs and more of them when compared to younger fish of the same species (Drazen et al. 2012; Hixon et al. 2014). Since fishing frequently targets larger, older individuals, the reproductive success of a species can be disrupted (Weng 2013), leading to a decline in overall fish populations and a reduction or loss of population connectivity.

Given the potential importance of Middle Bank in maintaining the connectivity of bottomfish stocks in the MHI and PMNM, a report prepared for the NMFS Pacific Islands Regional Office ranked Middle Bank the highest among 16 candidate bottomfish Habitat Areas of Particular Concern (HAPC) in the MHI (Kelley et al. 2010). However, the Hawaiian Archipelago EFH/HAPC Working Group rejected the inclusion of Middle Bank as a HAPC, stating that the larval dispersal modeling was scientifically interesting but did not provide compelling evidence that the seamount is a significant stepping stone with respect to population connectivity between the MHI and NWHI (Hawaiian Archipelago EFH/HAPC Working Group 2011).

Marine Mammal Protection

Cetaceans and pinnipeds are widely reported as more abundant in the vicinity of abrupt topographies like seamounts (Kaschner 2007). For example, humpback whales (*Megaptera novaeangliae*) are known to associate with seamounts in numerous areas around the globe, including the southwestern Pacific Ocean (Garrigue et al. 2010; Derville et al. 2020), southwest Indian Ocean (Trudelle et al. 2016; Dulau et al. 2017), the Revillagigedo Archipelago off Mexico (Lagerquist et al. 2008), the north Atlantic Ocean (Kennedy et al. 2014), and the southeast Atlantic Ocean (Ross-Marsh et al. 2022).

The reason for this localized movement at seamounts is unclear. It has been hypothesized that it could represent a continuation of breeding behavior; indicate opportunistic foraging since the bathymetric features also serve to affect nutrient flow and aggregate prey; and/or aid in navigation, as seamounts could be areas of increased geomagnetism that further facilitate orientation along migration routes (Henderson et al. 2022).

There is evidence that Middle Bank may be important to the protection of populations of marine mammals as well as fish. In the Hawaiian Archipelago, Henderson et al. (2022) reported that humpback whales equipped with satellite telemetry tags from 2017 to 2019 found that different humpback whales followed similar paths in all three years, transiting west from Ni'ihau to Ka'ula Island and Middle Bank. Moreover, they displayed consistent behavior when over the seamount, changing movement behavior to "area-restricted search" (characterized by slower swimming speeds and localized movements). The authors noted that the whale transit paths between Ni'ihau, Ka'ula Island, and Middle Bank overlapped with the paths used by tagged humpback whales in studies by Mate et al. (1998), Mate et al. (2019), and Palacios et al. (2019).

More recently, the Wave Glider mission that acoustically surveyed areas within the PMNM affirmed earlier observations that the banks, shoals, and seamounts of PMNM are occupied by humpback whales during the winter breeding season (Lammers et al. 2023). The survey revealed that humpback whale song prevalence was highest at Middle Bank. This seamount was also noted to be important in a recent updated assessment of the Biologically Important Area (BIA) boundary for humpback whales in the Hawai'i region (Kratofil et al. 2023). BIAs represent areas and times in which cetaceans are known to concentrate for activities related to reproduction, feeding, and migration, as well as the known ranges of small and resident populations (Harrison et al. 2023). Based on the spatial distribution of sightings and occupancy pattern of satellite-tagged humpback whales, the BIA boundary in Hawai'i was extended farther west to include Middle Bank (Kratofil et al. 2023).

Although marine mammal survey effort has been limited on Middle Bank, researchers have noted that a wide array of other marine mammal species may also be attracted to the bank. Baird et al. (2013) and Kratofil et al. (2023) recorded tagged false killer whales (*Pseudorca crassidens*) from the northwestern Hawaiian Islands population at Middle Bank. Oleson et al. (2010) note that bottomfish found on the deep reef slope of seamounts could be potential forage for the species. Short-finned pilot whales (*Globicephala macrorhynchus*) and melon-headed whales (*Peponocephala electra*) satellite tagged off Kaua'i have been documented skirting the edges and slopes of Middle Bank (Baird 2016; Baird et al. 2022). Common bottlenose dolphins (*Tursiops truncatus*) have been sighted on Middle Bank during NOAA surveys (Baird 2016; Bradford et al. 2017). Individuals from Middle Bank are likely part of a currently unrecognized insular population in the northwestern Hawaiian Islands (Baird 2024).

Additional marine mammal species may be attracted to Middle Bank, although this has not been confirmed by visual and acoustic surveys, satellite tagging, or other types of data collection. Based on spatial predictive modelling, Pittman et al. (2016) expected Middle Bank to have a high relative abundance of sperm whales (*Physeter macrocephalus*) during the winter, and a high relative abundance of pantropical spotted dolphins (*Stenella attenuata*) during the summer and winter. Kaschner (2007) noted that the Hawaiian spinner dolphin (*Stenella longirostris*) is an example of a marine mammal species which may utilize seamount areas as feeding posts. The author observed that the regular inshore-offshore movement of spinner dolphins around Hawai'i matches the diurnal vertical and horizontal migrations of prey organisms in the mesopelagic zone (200–1000 m depth) around islands and seamounts. However, given the distance of Middle Bank from any nearshore areas where these dolphins could rest during the day, the attractiveness of the seamount as a feeding ground is uncertain (Baird 2024). Foraging studies employing satellite-linked dive recorders indicate that the Hawaiian monk seals (*Neomonachus schauinslandi*) at all colonies in the NWHI routinely commute to forage on the deep slopes of neighboring seamounts (Parrish 2009). While Middle Bank is relatively distant from the major monk seal colonies in the NWHI, seals from Nihoa and/or Ni'ihau may be using the seamount as a foraging area (Papahānaumokuākea Marine National Monument 2016).

The effects of fishing on Middle Bank for the marine mammals that are attracted to the seamount are largely unknown. In the Endangered Species Act status review for the Hawaiian insular false killer whale, interactions with fisheries were ranked as one of the most important current and future threats for this population, while recognizing that the level of certainty regarding these threats was low (Oleson et al. 2010). Lammers et al. (2023) note that for humpback whales the

NWHI provide protections from anthropogenic stressors (e.g. vessel noise, collisions, etc.) because of their remoteness and restricted access.

Preservation of Deep-sea Coral Communities

Deep-sea corals are often associated with seamounts (Miller et al. 2009). As described by NOAA Ocean Exploration (2017), ocean currents can: 1) scour sediment on a seamount, exposing the hard substrate that is ideal habitat for deep-sea corals; 2) deliver a constant supply of planktonic food to deep-sea corals living along seamount flanks; and 3) carry deep-sea coral larvae from various geographically distant areas. In turn, deep-sea corals on seamounts have been shown to play a role as “ecosystem biobuilders,” acting as habitats for diverse invertebrate and fish communities (Clark et al. 2006; Sinniger et al. 2013).

Middle Bank has recently been found to host high density beds of deep-sea corals. In 2017, the NOAA ship *Okeanos Explorer* used a remotely operated vehicle to explore the base of one of the volcanic cones on the summit of Middle Bank. The survey revealed aggregations of Hawaiian gold coral (*Kulamanamana haumea*) (Smith et al. 2017), which may be one of the longest-lived species on earth (Roark et al. 2006; Sinniger et al. 2013). In addition, the survey found four black coral species, three of which had not previously been reported in the Hawaiian Archipelago (Molodtsova et al. 2018). One black coral species, *Antipathella* sp. (Myriopathidae), formed a dense monospecific coral garden near the top of the cone feature.

Kelley (2021) notes that the deep-sea corals in some areas of Middle Bank are vulnerable to damage from hook-and-line fishing operations, including anchor damage from vessels attempting to maintain position over productive bottomfish fishing habitat and damage from dropped fishing line weights and fishing line entanglement.

Sanctuary Boundary Implications

Given the above conservation concerns, it is appropriate to ask what boundary would best achieve the mission statement for the draft sanctuary management plan:

Carry out seamless integrated management to ensure ecological integrity and achieve strong, long-term protection and perpetuation of NWHI ecosystems, Native Hawaiian culture, and heritage resources for current and future generations.

With respect to carrying out seamless integrated management, Clark et al. (2012) noted that an important management consideration for seamounts is whether they should be treated as discrete units, supporting faunal assemblages clearly distinct from other deep-sea habitats, or should be evaluated as part of wider ecosystems. The studies cited above suggest that Middle Bank is not ecologically isolated but rather has assemblages of similar species composition to those found in adjacent habitats on nearby seamounts, atolls, and islands and in the surrounding open ocean. Moreover, the seamount may play a key role as an ecological corridor for some species. The current arbitrary boundary separating a large portion of this ecologically important area from the rest of the proposed sanctuary appears to be inconsistent with the mission of ensuring ecological integrity.

As specified in its mission statement, the sanctuary must also help ensure the long-term protection and perpetuation of Native Hawaiian culture. A sanctuary boundary that reduces fishing access to Middle Bank could be perceived as inconsistent with this portion of the mission statement. As stated by the Western Pacific Regional Fishery Management Council (2006):

For Native Hawaiians... who once exercised sovereignty and self-determination in the Hawaiian Archipelago, and whose activities were governed by customary and traditional practices, any curtailment or reduction of access rights and cultural practices reduces their ability to practice and continue their culture. The loss of any access and or traditional practice could be viewed as a permanent loss of culture for Native Hawaiian communities.

On the other hand, greater protection of the bottomfish populations at Middle Bank may benefit fishermen because it would provide a protected recruitment source for the MHI deepwater bottomfish fishery (Kelley 2021). Western Pacific Regional Fishery Management Council (2006) notes that ensuring a sustainable bottomfish resource would provide positive impacts to Native Hawaiians. Furthermore, it has been recommended by the Western Pacific Regional Fishery Management Council that non-commercial fishing, such the removal of fish and other resources for Native Hawaiian cultural practices, be allowed in the Monument expansion area by permit (Western Pacific Regional Fishery Management Council 2023). If the sanctuary boundary encompasses all of Middle Bank, similar fishing regulations could be applied to the portion of the seamount currently outside the Monument.

Harvesting fish and allowing it to be taken back to communities so that it can be consumed by families and shared would be consistent with the sanctuary mission statement. As noted in the report for the Hawai'i Bottomfish Heritage Project (Calhoun et al. 2020), the practice of giving away fish is a primary motivation for fishing in the bottomfish fishing community, demonstrating the critical role of fishing in maintaining social relationships as well as cultural identity. Moreover, studies conducted elsewhere in Hawai'i and in other areas of the world indicate that the establishment of exclusive zones for small-scale fisheries can be an effective way to maintain healthy fish stocks and productive fishing grounds, especially if the zones are adjacent to "no-take" areas where all fishing activities are prohibited, thereby promoting density dependent spill-over processes (e.g., Vaughan and Vitousek 2013; Di Franco et al. 2016; Susanto et al. 2018; Rodgers et al. 2021; Soria et al. 2024).

Given the remoteness of Middle Bank, it is likely that enforcement of fishing regulations will continue to be difficult irrespective of where the sanctuary boundary is drawn. However, Kelley et al. (2010) have suggested that incorporating all of Middle Bank into the Monument (or proposed sanctuary) would facilitate enforcement by creating a buffer between the major commercial bottomfish fishing grounds in the MHI and the seamount. Furthermore, permits for fishing at Middle Bank could be subject to the same Vessel Monitoring System requirement applied to other sanctuary permits.

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May 7, 2024

To: John Armor, Director of the Office of National Marine Sanctuaries
c/o PMNM-Sanctuary Designation, NOAA/ONMS
1845 Wasp Blvd., Bldg 176, Honolulu, HI 96818

From: Linda Paul, Neal Langerman, William Walsh, Mark Hixon, Robin Baird, Rick Hoo,
Thorne Abbott, Doug Fetterly, and Donald Schug

RE: Public Comment on the DEIS, management plan, and regulations for the proposed National Marine Sanctuary Designation for the Northwestern Hawaiian Islands.

Aloha John,

We are members of the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council but would like to offer the following comments as members of the public. We unequivocally support the establishment of a National Marine Sanctuary in the Northwestern Hawaiian Islands as a means of improving the legal protections currently in place to preserve the endemic wildlife and ecosystems of this unique, remote and important marine area. However, we recommend that the Final EIS either fully analyze the biological/ecological, economic, social, and cultural impacts of a sanctuary boundary alternative that encompasses all of Middle Bank or provides a detailed explanation of why this alternative is inconsistent with the stated purpose and need of sanctuary designation and the National Marine Sanctuary Act (NMSA). As you are aware, in a letter dated January 28, 2022, the RAC recommended to ONMS that the EIS include a sanctuary boundary alternative that includes "some larger portion of Middle Bank, that is, incorporate an area that is presently outside of the eastern PMNM boundary."

As stated by the Environmental Protection Agency (see <https://www.epa.gov/nepa/national-environmental-policy-act-review-process>), NEPA regulations require that an EIS consider "a reasonable range of alternatives that can accomplish the purpose and need of the proposed action." The Draft EIS states that the purpose of the proposed action is to provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources through a sanctuary designation. As stated in the Draft EIS, the term Papahānaumokuākea, when used alone, refers to the place, also historically known as the Northwestern Hawaiian Islands, including the land and all waters to 200 nm from shore. Moreover, the Draft EIS affirms that this area is not necessarily the same as the area of the PMNM. Therefore, it is apparent that the purpose and need statement does not preclude a full analysis of the impacts of a sanctuary boundary alternative that encompasses all of Middle Bank.

According to the Draft EIS, NOAA eliminated from detailed study a sanctuary boundary that extends eastward of the Monument boundary because it would not fulfill the purposes and policies of the NMSA, and therefore not meet the purpose and need for the proposed sanctuary designation. Specifically, the Draft EIS states that because of the State of Hawai'i's opposition to

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expanding towards the Main Hawaiian Islands, a boundary alternative that encompasses all of Middle Bank would be inconsistent with the particular purpose and policy of the NMSA that states that ONMS “develop and implement coordinated plans for the protection and management of these areas with appropriate federal agencies, state and local governments, etc.”

We recognize the importance of the referenced purpose and policy of the NMSA. However, in basing its decision to eliminate the Middle Bank alternative solely on that one purpose and policy NOAA fails to take into account other important purposes and policies set forth in the NMSA, including the third purpose and policy, which is “to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes.” Furthermore, as stated in the sixth purpose and policy, any public and private uses of sanctuary resources must be “compatible with the *primary objective of resource protection*” (emphasis added). The decision to eliminate the Middle Bank alternative also did not consider what the Draft EIS reports to be the guiding questions that directed NOAA’s analysis, including the question: How does the spatial extent of the proposed sanctuary affect the resources, natural environment, cultural heritage, and human uses in and around the proposed sanctuary?

Finally, the elimination of a Middle Bank alternative from detailed study because of State of Hawai’i opposition is inconsistent with the guidance in response to Question 2A in the *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations* (46 Fed. Reg. 18026):¹

Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is “reasonable” rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

With respect to the proposed sanctuary EIS, these NEPA guidelines make it clear that while the State of Hawai’i’s preferences may be considered in shaping the alternatives analysis, the alternatives considered may not be entirely driven by those preferences. In doing so, NOAA may have eliminated a sanctuary boundary alternative that is environmentally preferable and better meets the full range of purposes and policies of the NMSA as well as the sanctuary’s vision, mission, and guiding principles.

¹ Since the issuance of the Forty Questions guidance, the Council on Environmental Quality has routinely identified it as an invaluable tool for Federal, state, Tribal, and local governments and officials, and members of the public, who have questions about NEPA implementation (87 Fed. Reg. 23453).

In order to provide NOAA with a better understanding of how the omission of a Middle Bank alternative from detailed study could potentially place biological/ecological resources important to the proposed sanctuary at risk, the Research Subcommittee submitted to the RAC an extensive literature review that synthesizes information on the conservation value of Middle Bank and the implications for a sanctuary boundary decision, including a discussion of the sanctuary uses, resources, and qualities that could potentially be at risk by not considering a Middle Bank alternative (see attached literature review *Middle Bank: A Review of the Current Scientific Information*). This review includes information that was not available during the Monument Expansion in 2016, and it is intended to provide the authors of the Final EIS with fuller documentation of data relevant to potential alternatives. We recommend that a summary of the attached literature review be incorporated in the main text of the Final EIS, and that the entire document be included as an appendix. For the purposes of the administrative record, PDFs of all the literature cited in the document have been made available to NOAA staff.

We further recommend that NOAA periodically evaluate the effect on sanctuary resources of fishing activities in the portion of Middle Bank currently open to fishing. In a letter to ONMS dated July 12, 2016, the RAC made a similar recommendation, but no action was taken. Therefore, we once more request that periodic evaluations of fishing effects at Middle Bank be conducted, similarly to how NOAA has proposed conducting evaluations of fishing effects in the Outer Sanctuary Zone (see Sec. I. Part J in the "Supplementary Information" part of 89 Fed. Reg. 15272). As NOAA states, "Such evaluations would take into consideration the best scientific information available and evaluate whether additional actions are necessary for the proper care and management of Sanctuary resources, including fishery resources, consistent with goals and objectives of the Sanctuary."

In addition, we provide the following recommendations and comments on specific text in Section 3.7 of the Draft EIS (the italicized items are excerpts from the Draft EIS; RAC recommendations and comments are in plain text):

During outreach for this sanctuary designation process, there was significant opposition, including from fishers, to expand the boundary and include all of Middle Bank. State government officials indicated that the State would not support any expansion towards the Main Hawaiian Islands due to the lack of support in the community.

As stated in the Draft EIS, there were also comments suggesting "that sanctuary boundaries should extend beyond the footprint of the Monument to adjacent areas, including nearby seamounts and the entirety of Middle Bank." We recommend that the term "significant" be removed, as it suggests that public opposition to the inclusion of all of Middle Bank outweighs support for inclusion.

Furthermore, the Final EIS should note that only three of the 25 individuals consulted for the Cultural Impact Assessment in *E Ho'i i ke Au a Kanaloa* expressed opposition to the inclusion of

all of Middle Bank within the sanctuary (Nohopapa 2023). Two other consultees expressed preference for the sanctuary designation to encompass the largest area possible (Nohopapa 2023), although the incorporation of all of Middle Bank was not specifically mentioned. Moreover, there was widespread agreement among consultees that the health of Papahānaumokuākea and its ecosystems are connected to and affect the Main Hawaiian Islands. As detailed in the attached *Middle Bank: A Review of the Current Scientific Information*, information in the scientific literature suggests that Middle Bank may play a key role in the maintenance of those connections.

The State of Hawai'i manages fishing activity at Middle Bank and has repeatedly acknowledged the importance of this area for Kaua'i fishers.

We suggest that the Final EIS delete the inaccurate statement that the State manages fishing activity at Middle Bank. Although the State has historically taken the lead in managing the Main Hawaiian Islands bottomfish fishery, Middle Bank is located entirely within federal waters, and management of fishing activity at the seamount is ultimately the responsibility of the federal government. Fishing regulations for this area do not require support from the State of Hawai'i. This point was made by the Western Pacific Regional Fishery Management Council in Amendment 14 to the Bottomfish and Seamount Groundfish Fisheries Management Plan (dated December 19, 2007), which proposed to close the waters of Middle Bank to fishing for bottomfish in order to end the overfishing that was occurring within the Hawaiian Archipelago at that time. The Council recommended the closure of Middle Bank and other areas in the MHI within federal waters as “their closure would not require complementary State regulations” (see p. viii of document at <https://www.fisheries.noaa.gov/resource/document/final-amendment-14-fishery-management-plan-bottomfish-and-seamount-groundfish>).

We note that data to support the statement that Middle Bank is important to Kaua'i fishers is currently incomplete in the Draft EIS. The Final EIS should include a summary of the economic, social, and cultural benefits of maintaining access to the fishery resources in the portion of Middle Bank currently open to fishing. This analysis should be based on published literature (e.g., see references in *Middle Bank: A Review of the Current Scientific Information*), and a research study that includes interviews with fishery participants, observations of fishing practices, comments collected during the public scoping and public review processes, and other qualitative and quantitative social science data.

Decisions that could potentially affect the health of biological resources important to the sanctuary should also be based on quantitative data systematically collected by the state and federal agencies responsible for fisheries management. Data on the level of fishing effort at Middle Bank over the past several years are important for predicting the likelihood and extent to which fishing could have an adverse impact on these biological resources. The only fishing occurring on the portion of Middle Bank outside the Monument that is not subject to federal or

state permitting and reporting requirements is non-commercial (i.e., recreational and subsistence) fishing for pelagic species. The Hawai'i Division of Aquatic Resources administers a mandatory permitting/reporting program for the commercial bottomfish fishery and commercial small boat pelagic (i.e., non-longline) fishery in both the state and federal waters around the MHI. In addition, there is a federal permitting/reporting program for the non-commercial deepwater bottomfish fishery in the federal waters around the MHI, including the waters over Middle Bank. It is possible that some non-commercial bottomfish fishermen have opted to obtain a state commercial marine license rather than the federal non-commercial permit. However, non-commercial catch and effort logbooks are still required for catches of bottomfish made in federal waters around Hawaii. Updated annual data on the number of fishing trips made to Middle Bank and the number of unique vessels that fished Middle Bank can be made publicly available. These data are not confidential, as shown in the tables on p. 3-39 and 3-40 of the document at <https://www.fisheries.noaa.gov/resource/document/final-amendment-14-fishery-management-plan-bottomfish-and-seamount-groundfish>.

Arguments against inclusion focused on socio-cultural and political/jurisdiction aspects, including assurances from NOAA to Kaua'i fishers during public meetings regarding the 2016 Monument Expansion that the Monument boundary would not extend further towards Kaua'i.

We recommend that the Final EIS delete the reference to assurances from NOAA to Kaua'i fishers during public meetings regarding the 2016 Monument Expansion. The statement implies that the sanctuary boundary vis-à-vis Middle Bank was determined by NOAA before the sanctuary designation process began. Such a pre-determination would be inconsistent with the Notice of Intent published on November 19, 2021, and the subsequent public scoping process, during which NOAA specifically requested comments on the spatial extent of the proposed sanctuary and boundary alternatives. No restrictions were placed on the boundary alternatives NOAA would consider. In particular, the RAC was not informed of the reported assurances and their determining effects on the sanctuary boundary when it recommended to ONMS that the EIS include a sanctuary boundary alternative that encompasses "some larger portion of Middle Bank, that is, incorporate an area that is presently outside of the eastern PMNM boundary" (letter dated January 28, 2022).

With respect to the socio-cultural aspects of including all of Middle Bank within the proposed sanctuary, we note that a boundary alternative that encompasses Middle Bank could include fishing regulations that leaves at least some segments of the fishing community better off. In particular, the EIS analysis during the sanctuary designation process offers NOAA a unique opportunity to identify and assess alternative ways to enhance subsistence and indigenous access to the area of Middle Bank currently open to fishing, thereby helping protect Native Hawaiian traditional and customary fishing practices. For example, it has been recommended by the Western Pacific Regional Fishery Management Council that commercial fishing in the Monument expansion area be prohibited, but the removal of fish for Native Hawaiian cultural

practices be allowed in the Monument expansion area by permit. If an alternative boundary encompasses all of Middle Bank, similar fishing regulations could be applied to the portion of the seamount currently outside the Monument. This alternative would be consistent with the Cultural Impact Assessment in *E Ho'i i ke Au a Kanaloa* in which consultees advocated for protecting Papahānaumokuākea from commercial fishing, while ensuring that resources are available for Native Hawaiian subsistence fishing (Nohopapa 2023). Furthermore, this fishing regime would have the added biological and sociocultural advantages of bringing the entirety of Middle Bank under the management guidance of *Mai Ka Pō Mai*. Additional information on how the sanctuary could preserve Native Hawaiian fishing practices is provided in *Middle Bank: A Review of the Current Scientific Information*.

Thank you for the opportunity to submit comments on this important matter.

Aloha Kakou (everyone),

My name is Isaac Harp, also known as Paka. I am a kanaka maoli lawai`a (Hawaiian fisherman) and I am deeply concerned with a Department of Commerce/NOAA proposal to designate an extremely weak Sanctuary in the Northwest Hawaiian Islands. Everyone who fishes in the main islands should be concerned with this!

Several generations of my ohana (family), and that of my wife Tammy, have depended on fishing for their survival. The waters of the NWHI are a nursery for the main Hawaiian islands and it's important to apply and enforce the strongest possible NWHI protections to protect future replenishment benefits in the main islands.

I apologize for the length of this testimony but it's important to understand the background of the struggle to protect the NWHI in a Hawaiian cultural context.

I provide below background information, strong concerns with the proposed Commerce Sanctuary, DEIS concerns and demands to protect our way of life in the main islands.

Background

Because the ocean played a significant role in the lives of our `ohana, in the 1980s I decided to give back to the ocean by volunteering on the State of Hawaii bottomfish task force, gillnet task force, and the Kaho`olawe Ocean Management Advisory Group. I also served on the Hawaiian Islands Humpback Whale Sanctuary Advisory Council (SAC). I represented the SAC at a SAC chairs meeting in the Florida Keys. Over the two days I was in Florida, I met with SAC chairs who shared horror story after horror story about how with Sanctuary designation, military, commercial and extractive activity increased, as did their negative impacts, while little to no protections came with the designation.

I served on the Western Pacific Fishery Management Council (Wespac) advisory panels (AP), including as Chair of the first Native and Indigenous Rights AP, and member of the Pelagics AP, and the Bottomfish AP. I've also been a member of the Native Hawaiian Cultural Working Group of the Papahānaumokuākea Monument for over 20-years.

Longline industrial fishing started invading Hawaiian waters in the early 1990s creating conflicts between longline fishers, many of whom appeared to have arrived recently in Hawai`i, and local fishers. But it wasn't until 2000, when kanaka maoli cultural practitioners and local fishers joined forces with environmental organizations willing to support Native rights, that protection for the NWHI became possible.

In 2000, led by kūpuna (respected elders), 65 people from five islands — including kanaka maoli cultural practitioners and community members, commercial and recreational fishermen, divers, scientists, and environmentalists — met for two days and developed Mālama I ka Moana, a plan to protect the NWHI. Kūpuna led the meeting and described traditional fishing practices including kapu (restrictions) and urged full closure to commercial fishing in the NWHI based on their experience.

As a fisherman, I presented a draft strong protection plan for the NWHI and Dave Raney, a local coral reef expert, diver and environmentalist presented a draft statement of protection principles. After substantial debate and discussion, the group used these documents as the basis for a consensus-based Mālama I ka Moana plan for the NWHI. After garnering massive public support through a series of federal hearings, the plan became the backbone of the NWHI Executive Orders issued in 2000 and 2001, establishing the 84-million-acre NWHI Coral Reef Ecosystem Reserve.

The NWHI hui, or network, emerged from this public participation process as a broad grassroots network of kupuna (some with ties to the NWHI for over half a century), kanaka maoli cultural practitioners, commercial, recreational and subsistence fishers, scientists, divers, and local citizens focusing on the protection of our kūpuna islands, the NWHI.

I was among the founding members of the NWHI hui along with kūpuna (elder) fisherman and former President of the Hawaii Longline Association, the late Louis "Uncle Buzzy" Agard, Kumu Hula Victoria Holt-Takamine, scientific analyst Stephanie Fried, civil rights supporter Cha Smith, and coral reef expert and diver Dave Raney. The hui movement led to a massive outpouring of public support for the strongest possible protections - expressed in over 100 public hearings and over 110,000 letters, faxes and emails sent to federal and state officials. This convinced the White House to issue

Executive Orders in 2000 and 2001 establishing the NWHI Reserve, followed by the State of Hawai'i's 2005 NWHI State Refuge - the greatest protections ever found in a marine area.

The massive outpouring of public support for the strongest possible protection of the NWHI, blocked the 2006 attempt by the Department of Commerce to overturn strong Reserve and Refuge protections and replace them with a weak Commerce Sanctuary, proposing to open up the area to industrial fishing and commercial activity and proposing massive violations of existing Reserve and State Refuge protections.

In place of the failed Commerce Sanctuary, the 2006 Papahānaumokuākea Monument was established, reaffirming and reinforcing the strong Reserve and Refuge protections, forcing the Department of Commerce to share jurisdiction over the vast NWHI region.

Hui members Uncle Buzzy Agard, Dave Raney, Stephanie Fried, and I served on the first Reserve Advisory Council, Uncle Buzzy as kupuna, Dave as Secretary, Stephanie as Alternate Member and I as Vice-Chair. We continually requested that NOAA management develop and implement NWHI Reserve regulations, a penalty schedule, and provide enforcement measures which they refused to do then, and still refuse to do now despite their regulatory authority to do so.

NOAA's Dan Basta repeatedly and bizarrely stated that NWHI Reserve enforcement would be "self-implementing" - and even published a 2004 Federal Register Notice (Vol 69 No. 199) to this effect, and repeating NOAA's refusal to implement the fundamental measures necessary for enforcement - refusing to require Vessel Monitoring Systems or an access permitting system for Reserve waters. This was puzzling to all members of the NWHI Reserve Enforcement Working Group that I chaired. The State and Coast Guard law enforcement members had no idea how enforcement could possibly be "self-implementing" - or implemented at all - when there was no monitoring, no regulations, and no penalty schedule in place.

Commerce Sanctuary Concerns

Once again - despite the 2006 failure of NOAA's effort to designate a weak sanctuary in the world's most strongly protected waters - the Department of Commerce ("Commerce") through NOAA and NOS again propose designating a Marine Sanctuary to overlay

- (1) the strongly protected State Northwestern Hawaiian Islands (NWHI) Refuge (0-3 miles offshore)
- (2) the strong NWHI Coral Reef Ecosystem Reserve (3-50 miles offshore)
- (3) the strong Papahānaumokuākea Monument which overlaps & preserves Refuge & Reserve protections and
- (4) the extremely weak "Monument Expansion Area" (50 to 200 miles offshore) which, instead of using the strong Reserve & State Refuge protections, introduced massive loopholes and the potential for extremely damaging industrial fishing, commercial activities, and no-holds-barred no-permit needed access for self-identified "Commerce research" activities.

By law the proposed Commerce sanctuary must "supplement and complement" – build upon; strengthen not weaken– existing protections, specifically including those of the NWHI CRE Reserve.

Instead of building upon the strong NWHI Reserve rules (as required by law), or strong State Refuge rules, or Monument rules, the latest proposed Commerce Sanctuary proposes to spread the massive loopholes and unbelievably weak language of the "Monument Expansion Area" (MEA) throughout the entire region, to open up industrial fishing (falsely calling it "non-commercial" fishing) and other commercial activities, and to use a secretive permitting process, while exempting Department of Commerce activities from all sanctuary rules, permits, or monitoring if they self-declare their activities to be "research."

During NOAA's 2006 failed sanctuary designation attempt, the State of Hawai'i demanding that any sanctuary must use strong State Refuge rules as a baseline:

- Ban commercial use
- Ban commercial & recreational fishing.
- AUTOMATICALLY PROHIBIT ALL activities, except a short list of "do no harm" activities, and
- require PUBLIC hearings on all permit applications.

NOAA refused, and public outcry blocked their 2006 Sanctuary effort, leading to the establishment of a multi-agency Monument instead of a Commerce Sanctuary. For decades, they refused to issue Reserve regulations, a Monument or Reserve penalty schedule (fines for violations), to use easily available and almost free enforcement technology (AIS, satellite feeds), and to strongly enforce the stringent protections of the Reserve & Monument.

In 2016, a Monument Expansion Area (MEA) was created in the waters 50 to 200 miles offshore in endangered monk seal foraging habitat, but it introduced shocking loopholes in these offshore waters and far weaker protections than the strict rules of Refuge, Reserve and Monument. The weak MEA allows activities that are completely illegal in the Reserve, Monument & Refuge!

Instead of upgrading weak MEA protections to meet strong state Refuge and Reserve requirements, ensuring that its weakness and loopholes are quarantined and zoned separately from all of the other strongly protected areas, NOAA's Draft Environmental Impact Statement (DEIS) - developed without input from the Office of Hawaiian Affairs - proposes to spread MEA loopholes and weakness through the Commerce Sanctuary, overlaying all of the strongly protected areas. NOAA's Commerce Sanctuary also proposes to:

- spread commercial use in this sacred and fragile place, "partnerships with tourism associations", etc.
- open up a so-called "non-commercial" but industrial-scale fishery - Wespac proposes taking **300,000+** lbs of bottomfish annually!
- AUTOMATICALLY ALLOW all activities except for a list of prohibitions (which they exempt themselves from). This is opposite of the State Refuge and Reserve/Monument management requirements that AUTOMATICALLY PROHIBIT all activities. The DEIS fails to analyze the impact of the proposed plan to automatically allow all activities versus the existing management structure in Reserve, Monument and State Refuge of automatically prohibiting all activities.
- issue permits through a secretive process controlled by Commerce with no public hearings, instead of the open public hearings required for the State Refuge.
- sell commercial permits at a price based on the "fair market value" of the use of fragile resources.

Instead of management by EQUAL co-Trustees of the Monument, the Commerce-controlled Sanctuary blocks the Office of Hawaiian Affairs (OHA) and biodiversity-protecting US Fish and Wildlife Service from sanctuary co-management roles and relegates the State of Hawai'i to a subordinate position, a massive change in management approach.

According to the DEIS, all "alternatives" - other than the No Action Alternative - propose that the Commerce Sanctuary may exempt all DOC agencies from regulations and oversight if they self-declare their secretive and potentially damaging activities as Commerce "research," generating substantial concerns for this special place, one of the last predator-dominated marine ecosystems in the world.

The DEIS provides no assessment of the impact of allowing this no holds barred self-declared research or of introducing "research and development" by "any federal agency" which represents a shocking change of management principles compared to the Reserve, State Refuge and Monument. Development, of course, is NOT allowed in the Reserve, State Refuge or Monument.

None of the so-called "Alternatives" in the DEIS provide any analysis of the impact of proposed management structure which differs massively from the management structure of the Reserve, Monument and US Fish and Wildlife Refuges - and which is proposed for all "alternatives" except the "No Action" alternative.

The DEIS fails to provide a comparative analysis of the impact of the proposed new Commerce sanctuary management structure, where Department of Commerce is the permitting authority, where all activities are permitted except those on a list of prohibitions regulated by Department of Commerce - versus the existing multi-Trustee management structure.

No DEIS assessment is made to compare the difference between issuing regulations, penalty schedules and

enforcement measures in EXISTING protected areas - in the Reserve, in the Monument, or taking steps to enhance US Fish and Wildlife enforcement authority, or issuing regulations to close the extraordinary loopholes in the MEA and to bring MEA protections up to the strong level of protections of the Monument, Reserve and Refuge - compared to the Sanctuary "Alternatives".

Despite substantial input to NOAA/NOS by the NWHI hui in 2000 and 2001, the DEIS fails to provide any alternative that would bring the weak protections of the MEA up to the level of the strong protections found in State Refuge, NWHI Reserve or the Monument.

The DEIS also fails to state the magnitude of the proposed penalties for sanctuary violation (usually very light in most Sanctuaries) and fails to compare the magnitude of proposed Sanctuary penalties versus those existing in State waters, in USFWS Refuges, and elsewhere in the NWHI where penalty schedules should be implemented.

In addition to the above it is important to note that:

- The Northwestern Hawaiian Islands are NOT FOR SALE, commercial gain or fishing!
- Regulations, penalties & strong enforcement for the EXISTING Reserve & Monument **MUST BE PROVIDED NOW!**
- Regulations must be issued for the weak Monument Expansion Area (MEA) to ensure that the protections in this region at least as strong as the level of existing strong State Refuge & NWHI Reserve protections!
- ALL activities must be AUTOMATICALLY PROHIBITED, unless specifically permitted as in the Refuge and Reserve!
- All rules & prohibitions MUST APPLY TO EVERYONE; no exceptions, including for "Commerce research"!
- NO COMMERCIAL, "Non-commercial", "Sustenance", "SUBSISTENCE," OR RECREATIONAL FISHING!
- Public hearings MUST be held on all permit applications! NO secretive NOAA permitting process!
- There must be a PERMANENT PUBLIC RECORD of all permits granted!
- INDEPENDENT cumulative impact assessments of permits must be part of the permanent record!
- Implement AIS vessel monitoring and satellite vessel monitoring for enforcement NOW!
- Maintain the existing EQUAL CO-TRUSTEE STRUCTURE – OHA, US Fish & Wildlife, State, & Commerce!
- Federal funding should be distributed EQUALLY AMONGST ALL CO-TRUSTEES!



MARINE MAMMAL COMMISSION

7 May 2024

Mr. Eric Roberts, NOAA Superintendent
 Papahānaumokuākea Marine National Monument
 1845 Wasp Blvd., Building 176
 Honolulu, HI 96818

ATTN: PMNM-Sanctuary Designation

Dear Mr. Roberts:

On 1 March 2024, the National Oceanic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries (ONMS) published a proposed rule to designate marine portions of Papahānaumokuākea Marine National Monument (PMNM) as the Papahānaumokuākea National Marine Sanctuary (PNMS). This announcement also included a draft environmental impact statement (DEIS) on the action and a draft management plan (89 Fed. Reg. 15272). The PMNM, which then extended 50 nm seaward from all islands and emergent lands of the Northwestern Hawaiian Islands (NWHI), was created by two Presidential Proclamations in 2006.¹ In 2016, a subsequent Presidential Proclamation expanded the PMNM to the seaward limit of the U.S. Exclusive Economic Zone, creating the Monument Expansion Area (MEA).² In the PNMS proposal, the PMNM and the MEA together are referred to as "the Monument," while the MEA is referred to as the Outer Sanctuary Zone (OSZ).

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors, has reviewed the proposed rule and DEIS, and offers the following comments and recommendations. The Commission strongly supports the establishment of the PNMS, and in general is satisfied that the proposed sanctuary would provide adequate protections for marine mammals and their habitat. However, the Commission is concerned about a weakening of some of the proposed fishing regulations, as described below. The Commission recommends that NOAA proceed with the Sanctuary designation as described in the preferred option while ensuring that subsequent development and finalization of fishing regulations maintain the full force of all previous monument protections.

The Commission is concerned that NOAA has not fully assessed the potential impacts of fishing activities that may be permitted within the OSZ. The impacts of marine mammal interactions with some gears could be significant. The process for developing regulated fishing activities is separate from and on a different timetable than that of the sanctuary designation. Specifically, the

¹ Presidential Proclamation 8031 (26 June 2006): <https://www.federalregister.gov/documents/2006/06/26/06-5725/establishment-of-the-northwestern-hawaiian-islands-marine-national-monument>, and the amending Proclamation 8112 (28 February 2007): <https://www.govinfo.gov/content/pkg/FR-2007-03-05/pdf/FR-2007-03-05-pg237-2.pdf>, established the PMNM and its boundaries.

² Presidential Proclamation 9478 (31 August 2016): <https://www.federalregister.gov/documents/2016/08/31/2016-21138/papahānaumokuākea-marine-national-monument-expansion>, established the MEA.

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Commission has three concerns regarding fishing activities proposed to be permissible within the OSZ.

Native Hawaiian Subsistence Practices Fishing

The Commission supports sustainable subsistence fishing by native Hawaiians in the OSZ. However, the Commission is concerned that the proposed regulations governing the OSZ would create a loophole that could allow for what would amount to prohibited commercial fishing under the guise of native Hawaiian subsistence fishing.

The MEA Proclamation encompassed all of the protections created under the PMNM Proclamation, including a prohibition on commercial fishing. Importantly, the MEA Proclamation established that NOAA “may permit...non-commercial fishing, provided that the fish harvested ... *cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably* [emphasis added].”³

Under the provisions of the National Marine Sanctuaries Act (NMSA), ONMS invited the Western Pacific Regional Fisheries Management Council (WPRFMC) to draft fishing regulations for the proposed sanctuary that would be consistent with the 2006 and 2016 Presidential Proclamations and the goals and objectives of the proposed PNMS.⁴ After a prolonged exchange,⁵ the WPRFMC conveyed final proposed regulations to NOAA on 14 April 2023.⁶ While NOAA rejected WPRFMC’s proposal to allow the sale of catch for the recovery of trip costs, it found that the proposed regulations “fulfill the purposes and policies of the ... NMSA and the goals and objectives of the proposed sanctuary.”⁶

However, The Commission believes that another element of WPRFMC’s proposed regulations is not consistent with the proclamations described above and the goals and objectives of the proposed sanctuary, and, therefore, should be similarly rejected.

The section of the proposed fishing regulations titled “Disposition of Native Hawaiian Subsistence Practices Catch” states that “an individual holding a valid MEA Native Hawaiian Subsistence Practices Fishing permit may bring catch back to the main Hawaiian Islands for consumption, including community sharing, *barter and trade*” (emphasis added). By definition in federal regulations applying to Hawaiian federal fisheries, ‘non-commercial’ catch includes ‘subsistence’ and ‘traditional indigenous’ fishing, and therefore would include what the WPRFMC has termed “Native Hawaiian Subsistence Practices Fishing.”⁷ As described above, the MEA Proclamation allows for the permitting of non-commercial fishing, but *does not allow catch to enter commerce through barter or trade*. Therefore, the Commission recommends that NOAA limit the

³ See 19 November 2021 letter to the Chairman of the WPRFMC; reproduced at DEIS page 187.

⁴ See DEIS Appendix C.

⁵ Reproduced at DEIS page 210.

⁶ 31 May 2023 letter from NOAA to the Director of the WPRFMC; reproduced at DEIS page 212.

⁷ “Non-commercial fishing means fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, *subsistence, traditional indigenous*, and recreational fishing” (50 C.F.R. § 665.12; emphasis added).

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disposition of Native Hawaiian Subsistence Practices Fishing catch to community sharing,⁸ and reject the portion of the WPRFMC proposed regulations that would allow for the *barter and trade* of such catch.

The Commission recognizes that the phrases “fish harvested ... cannot enter commerce through ... barter, or trade” (MEA Proclamation) and “bring catch back ... for consumption, including ... barter and trade” (WPRFMC proposed regulations), differ in that the latter does not refer to catch “not entering commerce.” If the WPRFMC proposed regulations were modified to guarantee that catch brought back did not “enter commerce” through any mechanism, and that penalties would be imposed otherwise, then the Commission could endorse the proposed regulation.

Prohibited Activities 7-14

The sanctuary proposal would reestablish 14 generally prohibited activities, but allow some activities to be conducted by permit, including non-commercial fishing (Activity 7). The sanctuary proposal states that a non-commercial fishing permit would be “exempt from prohibitions 7-14,” including drilling, dredging, abandoning structures, injuring any living resource, and discharging material.⁹ The issuance of a permit allowing non-commercial fishing activity should not be construed as a blanket exemption from all of the other permissible prohibitions under the MEA Proclamation and hence the sanctuary. Moreover, the proposed non-commercial fishing permit would be inconsistent with goals stated in the DEIS that a permitted activity 1) “be conducted with adequate safeguards for the resources and ecological integrity of the monument” and 2) that “the end value of the activity outweighs its adverse impacts on monument resources, qualities, and ecological integrity.”¹⁰

To maintain consistency with the goals of the proposed PNMS, the Commission does not support the authorization of non-fishing activities in conjunction with non-commercial fishing permits. Therefore, the Commission recommends that NOAA clarify that a non-commercial fishing permit does not exempt permit holders from the prohibitions for Activities 8-14. Thus, applicants for non-commercial fishing in the Monument would be required to obtain a separate permit to conduct any of the other prohibited activities besides non-commercial fishing (i.e., Activities 8-14).¹¹

Environmental Impacts of Non-commercial Fishing

The fishing regulations proposed by WPRFMC would “amend the Hawaii and Pelagic Fishery Ecosystem Plan (FEP) to prohibit commercial fishing and allow for *sustainable* non-commercial fishing” in the MEA [emphasis added]. Further, the proposed regulations would establish annual catch limits that would allow the removal of up to 350,000 lb of bottomfish and 180,000 lb of pelagic fish from the Monument. The bottomfish limit is near the maximum caught in any year in NWHI prior to the establishment of the PMNM when commercial fishing was allowed. Moreover, because the OSZ contains very little area shallow enough for bottomfish fishing, the

⁸ Another portion of the proposed WPRFMC regulations allows for the community sharing of non-commercial catch; at DEIS page 210.

⁹ See DEIS page 26 for the full list; only activities 1-6 would be ineligible for permitting.

¹⁰ DEIS at page 50.

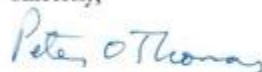
¹¹ While fishing would necessarily violate the prohibition on “injuring any living resource”, a permit should still be required, because a non-commercial fishing permit would allow the “injuring” of only certain species of fish.

Mr. Eric Roberts
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latter would be so concentrated as to create the potential for local depletion. Neither the WPRFMC's letter nor the DEIS describes how these limits were derived or offers analytic evidence that these proposed limits would be sustainable. The letter also lacks an analysis of risk to marine mammals resulting from these activities, as required in the MMPA. Of special concern are ESA listed species and those known to interact regularly with pelagic fisheries. The DEIS does not include a sustainability assessment, which may be because the development, analysis, and environmental compliance of non-commercial fishing regulations for the OSZ are being conducted separately by NMFS and the WPRFMC, in consultation with ONMS.¹² Since the fishing regulations proposed by WPRFMC are being considered separately from, and out of phase with the DEIS, the Commission is concerned that other agencies and the public are unable to comprehensively assess the full and cumulative environmental impact of the proposed sanctuary and fishing regulations prior to designation of the PNMS. Therefore, the Commission recommends that NOAA ensure that NMFS and the WPRFMC expedite the public review of proposed non-commercial fishing regulations and environmental impact analysis to ensure they are consistent with the protections created under the PMNM Proclamation.

We hope these comments and recommendations are helpful. Please contact me if you have questions.

Sincerely,



Peter O. Thomas, Ph.D.
Executive Director

¹² DEIS at page 11.

May 7, 2024

Mr. Eric Roberts
Superintendent, PMNM, NOAA/ONMS
184 Wasp Blvd. Bldg. 176
Honolulu, Hawaii 96818

Dear Mr. Roberts, this testimony is submitted in support of Sanctuary designation and supports Alternative 1. We would ask the testimony of the Cultural Working Group be incorporated into our testimony.

We would like to emphasize the following points:

That the Reserve Advisory Committee become the Sanctuary Advisory Committee.

That The Office of Hawaiian Affairs continue in its role as Co-Trustee. We are unaware of any prohibition in the National Marine Sanctuary Act that prohibits it.

That the WESPAC proposed noncommercial fishing regulations be rejected. In Hawaii there is no evidence that Customary Exchange is a recognized Indigenous Customary Practice.

We have been involved with Papahānaumokuākea from its inception as the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve and State Marine Refuge and support the strongest protection for this sacred area.

Mahalo for the Opportunity to provide testimony in strong and unwavering support. Imua

William J. Aila Jr. and Melva N. Aila
86-630 Luualalei Homestead Road
Waianae, Hawaii 96792



We, the Steering Committee of the Deep Ocean Stewardship Initiative (DOSI), representing a global coalition of deep-ocean experts, would like to express our gratitude for the chance to provide feedback on this draft environmental impact statement (EIS) from the National Oceanic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries. This statement pertains to informing the proposal of designating marine portions of Papahānaumokuākea Marine National Monument and the Monument Expansion Area (MEA) as Papahānaumokuākea National Marine Sanctuary.

We previously offered [input from a deep-ocean perspective](#) regarding several of the themes on which NOAA had requested comments on the scoping procedure. We appreciate your consideration of our input in your deliberations to date and would like to reconfirm our prior statements and assure you that we remain available for further support in the implementation of the new National Marine Sanctuary, in particular around key [deep-ocean topics](#).

We foresee substantial benefits of the new Sanctuary, including setting a precedent for the urgent actions needed within and beyond EEZs that include multi-stakeholder engagement and co-design that includes intangible heritage. An integrative and holistic geographic boundary as set out in **Alternative 1**, which we foresee as the most robust option, will allow funding of research, education, discoveries, and protection of biodiversity while supporting the heritage, knowledge, values, and practices of current and future generations of Native Hawaiians.

Below we provide some considerations for why **Alternative 1** should be the preferred alternative from a deep-ocean biodiversity perspective:

1. **Alternative 1**, which includes the open ocean and deep-water resources of the MEA as well as the shallow reef waters, will provide a wide ecosystem-based management approach that accounts for connectivity between shallow and deep-ocean biodiversity and all the ecosystem processes that both realms support. The additional protection afforded by **Alternative 1** would result in measurable benefits throughout the entire marine region.
2. Minimizing human impacts and avoiding serious harm are essential in any marine environment, but especially in the deep ocean. Deep-ocean habitats and ecosystems are highly vulnerable to impact, often [showing little recovery](#) over decades and centuries. Impacted habitats and ecosystems have reduced biodiversity and hence resilience to counteract risks and impacts. Given our current understanding, restoring habitat and biodiversity in the deep ocean is not feasible and comes with significant financial and technological development costs. Including deep ocean realms in the Sanctuary (**Alternative 1**) will aid the entire system.
3. By establishing the **Alternative 1** Sanctuary space, this deep ocean region will be protected from any future [marine carbon dioxide removal activities that could be damaging to the ecosystem processes in the region](#).

4. In addition to the impacts listed in the draft EIS, climate change also contributes to the demise of sedentary deep-ocean biodiversity and changing species ranges owing to heating of an otherwise stable thermal environment, ocean acidification and deoxygenation. Deep ocean life in both benthic and pelagic realms could also be included in a monitoring programme if included under the Alternative 1 scenario.
5. During permitted scientific exploration and research activities, the use of an established framework for identifying Vulnerable Marine Ecosystems (VMEs) from images could be considered as a non-destructive technique in the Sanctuary.
6. It should be noted that the problem of marine debris also reaches the deep ocean where it can cause ecosystem disruption. A monitoring program would highlight any essential management needs.
7. This EIS and the draft sanctuary management plan could provide detailed information and analysis of the importance of biodiversity associated with deep water corals and related habitats.
8. Alternative 1 could provide important opportunities to explore deep sea genetic materials and promote scientific research and monitoring efforts to enhance understanding of marine genetic resources in the Sanctuary. Further to this, a mechanism could be devised to encourage the sharing of scientific data and information from such activities.

Thank you once again for the opportunity to comment during this important step for the proposed Papahānaumokuākea National Marine Sanctuary.

Sincerely,

The Steering Committee of the Deep Ocean Stewardship Initiative (DOSI):
Maria Baker, Lisa Levin, Elva Escobar, Kristina Gjerde, Maila Guilhon and Diva Amon

With contributions from DOSI Core Team members: Brandon Gertz, Narissa Bax, Michael White, Katy Croff Bell and Leneka Rhoden

Aloha,

Thank you for the opportunity to comment on this matter. I am writing as a member of the public in support of the agency's designating Papahānaumokuākea as a Marine Sanctuary and I am in support of the agency's Alternative 1 plan as far as its geographical bounds. Protecting Papahānaumokuākea as a sanctuary is vital to the survival of the Hawaiian Monk Seal, an endangered mammal endemic to the Northwestern Hawaiian Islands and culturally important to Native Hawaiians. The broad geographic boundaries and enhanced enforcement provisions of Alternative 1 will provide greater protections for the species. In particular, the ability for more agencies to sanction and hold violators financially liable will provide a deterrent effect and greater protection for the area and the species within it.

Having attended the virtual hearing held on April 6, 2024, I observed that some members expressed concern that non-commercial fishing activities would be allowed in the MEA. I share these concerns. Some comments and testimony contained in the Draft EIS are from individuals and organizations that are advocating for the agency to consider allowing recreational fishing (non-commercial) throughout the entirety of the PMNM. This is not compatible with the overarching goals of conservation and protection of the area and its species. Although the Draft EIS indicates that the area's remoteness and inaccessibility means that there is very little human activity within the area, the aggregated activity of multiple non-commercial fishing vessels will undoubtedly harm the Hawaiian monk seal population—who have already been driven close to extinction. For this reason, I advocate for all human fishing activity—commercial, non-commercial, or recreational—to be prohibited throughout the entirety of the PMNM.

Mahalo,

Erika Elona

05-06-24

PMNM-Sanctuary Designation, NOAA/ONMS
1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818

Re: NOAA-NOS-2021-0114

Dear John Armor,

Establishing the Sanctuary's Importance

I am writing to express my support, as well as concerns, for this proposed rulemaking. As a university student pursuing a career in ecosystem science, the potential impacts that this proposed marine sanctuary could impose on the future ecosystem are of concern to me and must be considered. Both the benefits and the risks of this proposed sanctuary must be taken into consideration. This proposed rulemaking by the National Oceanic and Atmospheric Administration, NOAA, intends to dedicate a large marine area surrounding the coast of Hawaii for a conservatory marine sanctuary to protect its ecosystems, as the Papahānaumokuākea National Marine Sanctuary under the National Marine Sanctuaries Act, as well as under additional executive orders.

The preexisting Papahānaumokuākea Marine National Monument is the largest conservation area in the United States, expanding over 100,000 square miles, and covering much of the same area that the proposed sanctuary intends to cover. The proposed sanctuary area will encompass over 500,000 square miles. Papahānaumokuākea encompasses a vast expanse of sensitive and interconnected marine areas. Not only does it include close-to-shore shallows that support coral reef ecosystems surrounding the Hawaiian islands, but also expands over the Northwestern Hawaiian Ridge, encompassing open ocean and deep-sea trench ecosystems as well.¹ This recognized area protects the habitats of many marine species and their delicate ecosystems. 7,000 of these species are considered endangered, and over 1,500 are endemic, found nowhere else in the world². The monument protects over 3.5 million acres of coral reef ecosystems, 14 million seabirds, and, importantly, a nesting ground for green sea turtles.³ Considering the impending threat of potential environmental harms stemming from anthropocentric impacts, such as climate change, coral bleaching, sea level rise and ocean acidification, as well as marine pollution, it can be agreed that the protection of these many habitats are critical to subsequently protecting marine wildlife unique and essential to the Hawaiian ecosystem, and even the entire Pacific Ocean ecosystem.

Cultural and social factors may also be affected by the dedication of this national sanctuary. The entire Papahānaumokuākea area is of great cultural significance to Native Hawaiians, but specifically the island of Mokumanamana, which the sanctuary designation would expand protections for. Otherwise known as Necker Island, this island is just one example

that demonstrates the richness of Native Hawaiian cultural history, prompting protection, with over 50 observed significant cultural sites, including religious shrines, structures and artifacts—the highest density of sacred sites in the entirety of the archipelago.⁴

The many islets of Papahānaumokuākea are also abundant in archeological history, which further urges enhanced protection by sanctuary designation. Archeological sites studied on the Papahānaumokuākea islets closest to Hawaii's main islands are significant agriculturally, religiously and genealogically. There are cultural artifacts, as well as archeological evidence marking the beginning of Native Hawaiian genealogy, suggesting indigenous habitation as early as 1000 A.D.⁵ Many of these important archaeological artifacts, such as ancestral human bones, were unjustly removed from Hawaii in the 1920s, of which some were recently repatriated to Mokumanamana.⁶ Considering the history of unwarranted tampering with these culturally significant artifacts, their protection is extremely important and will prevent this displacement from occurring any further.

In addition to the area's significance to the history of Hawaiian culture, it also encompasses many sites significant to more modern Western history, including many significant maritime heritage sites. These include the shipwrecks and aircraft remains from the historically significant Battle of Midway of World War II⁷, as well as from Polynesian canoes, Japanese ships, and American and British whaling ships from the 19th century era of commercial whaling.⁸ There are over 125 of these known historical sites, and there are likely more to be discovered. The area's preservation is essential to the historical research of these sites and will allow for a deeper understanding of our nation's maritime legacy as well as the continued discovery of these historical sites.

The monument designation of this area also leaves its protection status both susceptible and sensitive to political shifts. Under Papahānaumokuākea's current monument status, its environmental protections are easily able to be revoked by any governmental executive decision, and this nearly occurred under the Trump administration. Papahānaumokuākea's monument status was placed under executive review in 2017⁹, and although its status was left unchanged, this very attempt demonstrated the importance of a sanctuary designation, which would prevent any governmental attempts at change. The long-term protection of this area should not be dependent upon the opinions of our country's changing politics and presidents, but rather, should be withstanding and unpolitical, and a sanctuary designation of this area would ensure that.

Support & Concerns for Proposed Papahānaumokuākea National Marine Sanctuary

Sanctuary Designation would be Largely Beneficial to the Entire Ecosystem

By dedicating the Papahānaumokuākea National Marine Sanctuary, an extensive number of endangered species would be ensured physical protections. Preserving Papahānaumokuākea's unique biodiversity is essential, considering the large population of endangered species, and even endemic species, whose existence is environmentally critical, and urges further protection. The

potential effects of climate change would be less impactful, as these ecosystems would be protected from additional human influence. The more resilient habitat resulting from these added protections would be increasingly able to better weather the impacts of climate change. Because these marine ecosystems are at risk of numerous threats, the conservation of these habitats is essential to the biodiversity and the balance of Hawaiian marine life. The size of the designation is both crucial and beneficial, as the enlarged area covering entire ecosystems allows for species to replenish and protects the entire domain of highly mobile species such as marine mammals.

The primary benefits that must be ensured by the establishment of the sanctuary include the creation of a more resilient habitat, the preservation of unique biodiversity, minimizing human influence, halting excess tourism and all commercialism, protecting large marine preserves, and preserving Hawaiian cultural heritage and history. A healthy marine ecosystem would provide benefit to not only this marine life itself, but also Native Hawaiians whose community, livelihood and human health relies on the health of these ecosystems. For this reason, certain concerns arise around the proposed restrictions for Native Hawaiians in the designated area.

Suggested Reconsideration of Banning Cultural Practices

A major concern that arises with this proposed rulemaking is the part that bans any and all Native Hawaiian practices. This ban is not necessary to ensure the health and conservation of the ecosystem as a whole. Banning the practice of cultural traditions unjustly restricts the same groups that this rulemaking is attempting to support. In certain circumstances, the restriction of any anthropogenic practices is understandable and justifiable when it largely interferes with natural processes, however I would like to advocate for the allowance of Native practices, as I don't believe that these practices create great negative interference or impact. Many of these practices are rooted in respectful relationships with nature, and either concern religious and spiritual rituals or are for sustenance or survival needs. Although commercial fishing should continue to be prohibited, many Native Hawaiian communities who reside on the included islets rely on their surrounding marine areas and natural resources in Papahānaumokuākea for survival. Hawaiian subsistence fishing in the proposed sanctuary should be permitted in the sanctuary, aligning with its goals of supporting local and indigenous communities. Although the sanctuary's proposal outlining the permission of these practices as a "customary exchange"¹⁰ has raised concerns that this will unintentionally allow commercial fishing practices, I believe this will not occur as long as proper regulation is in place. The rulemaking must outline the intended subsistence fishing to a strict legal definition that allows no room for the justification of commercial fishing or fishing of any type that is not for subsistence purposes by local Hawaiians.

Sanctuary Planning should take an Integrated Approach; Considering Unintended Consequences

It is additionally important to consider other potential unintended consequences of establishing a marine sanctuary. The implementation of this protected area may displace fishing

pressure to other areas, encouraging illegal fishing activities. Without integrated management and enforcement measures in place, the sanctuary designation could fail to achieve its intended conservation goals as well as exacerbate other environmental problems initially targeted by this rulemaking. I would like to propose a suggestion for the sanctuary boundary to be expanded southward to Niihau, the closest island, and to enclose the Middle Bank almost entirely to prevent illegal commercial fishing there. The Middle Bank's marine expanse is a critical habitat and feeding area for many deep-water species including coral and the highly endangered Hawaiian monk seal.¹¹ I propose that the boundary is expanded to enclose the Middle Bank almost entirely, rather than entirely, as, since many fishermen are reliant on that specific area, the prohibition of all fishing activities in the Middle Bank's entirety may result in fishing practices consequently migrating closer to shorelines and populated areas, creating scarcity for subsistence fishermen and disrupting shoreline ecosystems. Marine mining activities, as well, can be equally as damaging as fishing to these species should be banned in the entirety of the sanctuary, including in most of the Middle Bank's areas. The sanctuary's expansion into areas of Middle Bank is also essential to the health of bottomfish species, whose habitats stretch far into and through the Middle Bank up past the island of Kauai, and are greatly threatened by the current fishing and mining practices in the area.¹²

I also urge that the required Advisory Council must also continue to include and represent all affected members of the community, especially including Native Hawaiians and local residents reliant on the affected area. Additionally, I would like to advocate for the possibility to encourage limited recreational access allowed for purposes of snorkeling and scuba diving, as these activities can be practiced in a manner that is not intrusive or destructive to local ecosystems considering proper limitations are in place, and can increase public awareness. Some appropriate regulations to outline these practices may include prohibited spearfishing and usage of environmentally-damaging sunscreens (promoting the usage of coral-safe sunscreen instead).

An additional concern I would like to raise is the potential intrusion of international commercial fishing practices into the sanctuary¹³. Many Chinese fishing fleets have begun fishing practices in many areas of Southeast Asia, and have been recently seen to expand these practices not very far from Hawaii's surrounding marine area. In order to ensure that these sanctuary protections are followed internationally, it must be ensured that there is a sufficient enforcement presence in the marine area on a consistent basis.

Conclusion

I urge you to proceed with the implementation of this essential and greatly beneficial marine sanctuary, in its intended plan to be a targeted conservation effort, with an integrated approach. However, I urge you to proceed with considerations in mind of any and all negative consequences that may occur. Proceeding with the sanctuary's designation must include considerations of Native Hawaiians. I strongly suggest a reconsideration of the rulemaking's outlined statement of banning all native practices, to allow for limited subsistence fishing and cultural practices that are minorly invasive to the marine environment. I also urge that Hawaiian

locals are included in the designation process by holding places on the project's Advisory Council, and to eliminate the standards outlined that ban Native Hawaiian practices. My proposed changes I urge you to consider in the sanctuary designation process also include partial enclosure of the Middle Bank, limited allowance of recreational access, as well as adequate marine enforcement to ensure limitations are followed both locally and internationally. Thank you for your consideration.

Sincerely,

Maggie MacMullen

¹US Department of Commerce, N. O. and A. A. (2014, May 19). *National marine sanctuaries*. Papahānaumokuākea 2009 Condition Report. <https://sanctuaries.noaa.gov/science/condition/pmmh/history.html>

²*Papahānaumokuākea Marine National Monument "Marine Conservation Institute*. Marine Conservation Institute. (2020, July 20). <https://marine-conservation.org/blueparks/awardees/papahanaumokuakea/#:~:text=Over%207%2C000%20different%20species%20of,and%20the%20Hawaiian%20monk%20seal>

³Fisheries, N. (2018, September 25). *Papahānaumokuākea Marine National Monument*. <https://www.fisheries.noaa.gov/pacific-islands/habitat-conservation/papahanaumokuakea-marine-national-monument#:~:text=The%20diverse%20ecosystem%20contained%20within,leatherback%20and%20hawksbill%20sea%20turtles>

⁴Team, J. (2020, January 31). *Welcome to Mokumanamana*. Jupiter Research Foundation. <https://jupiterfoundation.org/current/2020/1/24/welcome-to-mokumanamana>

⁵*Cultural history of the northwestern hawaiian islands*. Papahānaumokuākea Marine National Monument. (n.d.). <https://www.papahanaumokuakea.gov/heritage/history.html>

⁶*Necker Island (Mokumanamana)*. Papahanaumokuakea Marine National Monument. (n.d.). <https://www.papahanaumokuakea.gov/visit/moku.html>

⁷*Remembering the battle of midway*. Papahānaumokuākea Marine National Monument. (n.d.-b). https://www.papahanaumokuakea.gov/maritime/battle_midway.html#:~:text=One%20third%20of%20the%20way,th e%20United%20States%20and%20Japan

⁸*Maritime Heritage in Papahānaumokuākea Marine National Monument*. Papahānaumokuākea Marine National Monument. (n.d.-b). <https://www.papahanaumokuakea.gov/maritime/>

⁹Honore, M. (2024, April 12). *Proponents look to create a new Hawaii marine sanctuary ASAP in case of a Trump return*. Honolulu Civil Beat.

<https://www.civilbeat.org/2024/04/proponents-look-to-create-a-new-hawaii-marine-sanctuary-asap-in-case-of-a-trump-return/>

¹⁰Honore, M. (2023, January 16). *Congressman worries Wespac proposal is a gateway to commercial fishing in monument*. Honolulu Civil Beat.
<https://www.civilbeat.org/2023/01/congressman-worries-wespac-proposal-is-a-gateway-to-commercial-fishing-in-monument/>

¹¹Teresa. (2019, April 8). *NWHI Advisory Council supports plan to keep Middle Bank Open to fishing*. environment.
<https://www.environment-hawaii.org/?p=9062>

¹²Kelley, C. (n.d.). Slides - Newly Expanded Papahānaumokuākea Marine National Monument.
<https://nmspapahanaumokuakea.blob.core.windows.net/papahanaumokuakea-prod/media/archive/council/meetings/2016/2016-kelley-rac.pdf>

¹³O'Sullivan, M. (2021, August 5). *Hawaii fishermen concerned over growing Chinese presence*. Voice of America.
https://www.voanews.com/a/usa_hawaii-fishermen-concerned-over-growing-chinese-presence/6209167.html

May 7, 2024

PMNM-Sanctuary Designation NOAA/ONMS
1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Re: NOAA-NOS-2021-0114

Dear Superintendent Roberts,

We applaud the Administration for continuing the designation process of the proposed Papahānaumokuākea National Marine Sanctuary (NMS) and write to express our strong support for designating this national treasure as a national marine sanctuary. We write in response to the National Oceanic and Atmospheric Administration's (NOAA) request for public comment on the proposed Papahānaumokuākea National Marine Sanctuary proposed rule, draft management plan, and draft environmental assessment.

Papahānaumokuākea is a crown jewel of our ocean recognized by UNESCO for its cultural and natural wonders. Uniquely meaningful and sacred to Native Hawaiian culture, it's also incredibly rich in biodiversity. Even as a marine monument, Papahānaumokuākea's ecosystem and its biodiversity are under threat from marine debris and a changing climate. That's why it deserves the utmost protection our laws can provide. The proposed sanctuary would add additional protections to biodiversity hotspots, sacred sites, and productive marine habitats throughout the Hawaiian Archipelago. Sanctuary designation would provide the opportunity to develop a comprehensive and cohesive set of regulations that maintains and enhances existing resource protection.

Papahānaumokuākea is a place of unique environmental resources that provide large-scale ecosystem services for the region and the world. The marine habitat includes several interconnected ecosystems, including coral islands surrounded by shallow reef; deeper reef habitats characterized by seamounts, banks, and shoals scattered across Papahānaumokuākea; mesophotic reefs with extensive algal beds; pelagic waters connected to the greater North Pacific Ocean; and abyssal plains 5,000 meters below sea level. The waters of the proposed sanctuary are home to more than 7,000 marine species and include one of the few intact, large-scale predator-dominated reef ecosystems left in the world. The islands and atolls provide breeding areas for endangered Hawaiian monk seals, nesting habitat for the threatened green turtle, and nesting sites for more than 14 million seabirds. Critical geological features such as seamounts and a non-volcanic ridge are biodiverse hotspots that provide habitat for deep-sea species. At least a quarter of the nearly 7,000 known marine species found in the region are found nowhere else on Earth and researchers continue to encounter new species.

Papahānaumokuākea is as much a spiritual as a physical geography, rooted deep in Native Hawaiian creation and settlement stories. Papahānaumokuākea is a sacred place with deep cosmological significance to Native Hawaiians who have a genealogical relationship to all living things in the Hawaiian archipelago. Native Hawaiians regard the Monument's atolls, islands, and waters as sacred places from which all life springs and ancestral spirits return after death. The ocean waters of the proposed sanctuary were an ancient pathway for traditional voyaging and wayfinding. Papahānaumokuākea is the only intact cultural voyaging seascape in the Hawaiian Islands. Its open ocean ecosystem and its natural resources continue to be important in the Hawaiian Archipelago's cultural voyaging seascape and a training ground for new generations of wayfinders.

Shipwrecks and aircraft in the proposed sanctuary waters are also of great historical interest and importance. There are whaling vessels, merchant ships, 60–80 military vessels, and hundreds of aircraft primarily from the Battle of Midway, a turning point in World War II for the Allies. These waters are the final resting place of thousands of people lost during World War II battles. The submerged sites and scattered artifacts tell the stories of sailors and navigators who ventured throughout the Pacific.

The additional protections and management tools outlined in the draft documents would complement the existing protections afforded to the region by the Papahānaumokuākea Marine National Monument. We urge NOAA to designate the proposed sanctuary to augment and strengthen existing resource protections for this national treasure. Thank you for considering our perspectives, outlined more in depth below.

We strongly support the Alternative 1 proposed boundary which would ensure the strongest and most extensive protections.

Alternative 1 is coextensive with the marine portions of the Monument and encompasses approximately 582,570 square miles. This boundary will offer the most extensive protections for critical natural, cultural, and historical resources.

This alternative includes all the shallow-water coral reef habitats which are most vulnerable to natural and human-caused threats, including impacts from climate change, marine debris, and invasive species. Climate change contributes to the increased erosion of reef habitat from large wave events, the loss of habitat due to sea level rise, and the inability to form reefs due to ocean acidification. Non-indigenous species can be introduced to the environment through vessels or marine debris. Marine debris, which largely consists of plastic, can float from across the Pacific into the waters of Papahānaumokuākea, bringing harmful invasive species, pollutants, and hazards to seabirds and marine life. Alternative 3 excludes these vulnerable, shallow reef waters which should be afforded the maximum amount of protection possible. Alternative 1 also includes open ocean and deep-water resources, such as seamounts that support incredibly productive ecosystems. Activities such as anchoring, deployment of tethered equipment, and unregulated fishing could damage these habitats that support biodiverse

hotspots. The Alternative 2 boundary would not include the open ocean and deep-water resources of the Monument Expansion Area, including seamounts supporting rare oases of life.

The entirety of Papahānaumokuākea is sacred to Native Hawaiians. The area is integral to Hawaiian spirituality and the region and the resources with it correspond to the Hawaiian origin creation story, the Hawaiian's place in the world, and the place beyond, blending the past, present, and future. Only Alternative 1 would encompass the entirety of the Papahānaumokuākea Marine National Monument.

The boundaries of Alternative 1 contain five known whaling vessels lost between 1822 and 1842, five merchant ships dating between 1886 and 1957, 60–80 military vessels, and hundreds of aircraft primarily from the Battle of Midway. The shipwrecks and submerged aircraft of the pivotal Battle of Midway are nationally, and internationally recognized heritage associated with a critical turning point in World War II. There are more than 60 reported vessel losses in the historic record, and hundreds of sunken naval aircraft lost within the proposed sanctuary's boundaries. These tell the stories of our past, an integral part of our national identity that shapes our future. Alternative 2 would not include maritime heritage resources from the Battle of Midway and Alternative 3 would not include many of the known maritime heritage resources.

We support the additional protections and management tools afforded by a sanctuary designation that are necessary to protect the area's environment and ecosystems.

The National Marine Sanctuaries Act established the National Marine Sanctuary System to protect areas of the marine environment that have special conservation, recreational, ecological, historical, cultural, archeological, scientific, educational, or esthetic qualities. Papahānaumokuākea is an area of national significance that merits this protection in addition to the protections provided by the Antiquities Act. Resource protection is the highest priority of the Monument, and the management plan and regulations must be consistent with this priority. The sanctuary designation will augment and strengthen existing resource protections, increase regulatory compliance, ensure enforceability, and provide natural resources damage assessment authorities and interagency coordination of activities as provided in the National Marine Sanctuaries Act.

Sanctuary designation provides the opportunity to develop a comprehensive and cohesive set of regulations that maintains and enhances existing resource protection. The current lack of regulations to permit activities in the monument expansion area could lead to future impacts from unregulated activities. The proposed rule addresses discrepancies and gaps in prohibitions, regulated activities, and permit criteria. Notably, the proposed rule includes explicit language prohibiting any energy development activities, furthering the underlying intent of the prohibition on oil, gas, and mineral development by accounting for technological advances in other forms of energy development. We are supportive of the

proposed rule. Sanctuary designation will also provide enhanced enforcement and allows NOAA to assess civil penalties for violations of sanctuary regulations.

Sanctuary designation also provides additional non-regulatory tools to further manage and protect the area's environment and ecosystems. With sanctuary designation, NOAA would be able to enhance or fill gaps in critical programmatic priorities. Sanctuary designation will provide additional public education, outreach, and community engagement opportunities around the marine ecosystems, wildlife, and cultural heritage of Papahānaumokuākea. Sanctuary education programs have been a powerful force in building stewardship for these unique places and bringing ocean wonders to all Americans. High-quality learning opportunities can provide a pathway toward meaningful connections to this special place for students, educators, policy makers, community leaders, and the public. Sanctuary designation would provide alternative sources of funding through public-private partnerships to support education initiatives and programs in Hawai'i.

We support the draft management plan that helps advance environmental justice by further integrating Native Hawaiian culture, knowledge, and practices into Papahānaumokuākea's management.

The draft management plan calls for managing the sanctuary as a sacred site consistent with Native Hawaiian traditional knowledge, management concepts, and principles articulated within Mai Ka Pō Mai. The draft sanctuary management plan's framework is based upon Mai Ka Pō Mai, a guidance document created by the Native Hawaiian community that uses traditional concepts and cultural traditions to set a foundation for how management should be conducted through a Native Hawaiian perspective. The draft management plan emphasizes the importance of weaving Kānaka 'Ōiwi (Native Hawaiian) knowledge systems, values, and practices together with other knowledge systems and approaches in caring for this sacred biocultural seascape. We wholeheartedly agree that it is important to honor the unique contributions of 'Ōiwi knowledge systems through meaningful inclusivity and engagement of 'Ōiwi practitioners, researchers, and community members in multi-disciplinary research partnerships.

We fully support the designation of Papahānaumokuākea as a national marine sanctuary to safeguard its wonders for the people and wildlife who depend on it, and we thank NOAA and the Office of National Marine Sanctuaries for committing to its protection.

Sincerely,

National Marine Sanctuary Foundation
Blue Nature Alliance
Blue Planet Strategies
Center for American Progress



Conservation International
Creation Justice Ministries
EarthEcho International
Environment America
Friends of the Earth
Friends of the Mariana Trench
Healthy Ocean Coalition
Hispanic Access Foundation
Inland Ocean Coalition
Maritime Museum of San Diego
National Aquarium
National Ocean Protection Coalition
National Parks Conservation Association
National Wildlife Federation
Northern Chumash Bear Clan
Ocean Defenders Alliance
Pacific Whale Foundation
Shark Team One
Shark Stewards
Sustainable Ocean Alliance
The Florida Aquarium
The Ocean Project
Turtle Island Restoration Network
Waitt Foundation
Waitt Institute

Gina Raimondo, Secretary

U.S. Department of Commerce
1401 Constitution Ave. NW, Washington, D.C. 20230

Richard W. Spinrad, Under Secretary of Commerce for Oceans and Atmosphere

National Oceanic and Atmospheric Administration
1401 Constitution Ave. NW, Washington, D.C. 20230

Nicole LeBoeuf, Assistant Administrator

National Ocean Service
1305 East-West Highway, Silver Spring, MD 20910

John Armor, Director

Office of National Marine Sanctuaries
1305 East-West Highway, Silver Spring, MD 20910

May 7, 2024

RE: Strong Support for Sanctuary Status Designation of Papahānaumokuākea

Aloha mai kākou,

Since time immemorial, Native Hawaiians have understood Papahānaumokuākea as a deeply sacred space; it is the pathway for spirits who have passed on and a source of ali'i (chiefly) birthright, authority, and mana (power).¹ The name itself, bestowed by Uncle Buzzy Agard and Auntie Pualani Kanaka'ole Kanahēle, comes from the Kumulipo and represents the regenerative cycle of hānau (birth) and hala (death).² In this modern day, Papahānaumokuākea is also revered for its inimitable ecosystem teeming with life that cannot be found anywhere else in the world. Papahānaumokuākea is a biocultural wonder that gives us a glimpse into what used to be and what still could be, given adequate protection and stewardship. **The undersigned organizations express our strong support for the preferred Action Alternative 1.** The draft environmental impact statement (EIS) for the proposed Papahānaumokuākea National Marine Sanctuary outlines a necessary layer of protection, integrates Native Hawaiian voices into its governance structure, and establishes a system of regulatory safeguards to protect the sacred area's unique biodiversity.

Native Hawaiian ideologies, practices, and traditional environmental stewardship must be part of the management of Papahānaumokuākea. "Equitable conservation, which empowers and supports the environmental stewardship of Indigenous peoples and local communities represents the

¹ Quiócho, Kalani et al., *Mai Ka Pō Mai: applying Indigenous cosmology and worldview to empower and transform a management plan for Papahānaumokuākea Marine National Monument*, *ECOLOGY AND SOCIETY* 28(3):21. <https://doi.org/10.5751/ES-14280-280321>.

² Council for Native Hawaiian Advancement, *He Inoa No Papahānaumokuākea: The Importance And Tradition of Names*, HANO HANO NA 'AINA KUPUNA: EXPLORING PAPA HANAUMOKUĀKEA (2024) [hereinafter HANO HANO].

primary pathway to effective long-term conservation of biodiversity, particularly when upheld in wider law and policy.”³ It is critical for Native Hawaiians to be present, participatory, and empowered in all decision-making aspects regarding Papahānaumokuākea. According to the draft EIS, “creating accessible and diverse opportunities to increase ‘Ōiwi participation in diverse roles as a multi-disciplinary team is crucial to supporting the management of this biocultural seascape through inclusivity of ‘Ōiwi worldviews.”⁴ Native Hawaiian approaches to management are appropriately interwoven throughout the proposed sanctuary designation plan⁵ and are indicative of the bright future ahead for Papahānaumokuākea.

Nihoa i ka moku mana.⁶ Papahānaumokuākea is home to more than 7,000 different species, including many threatened or endangered birds, plants, seals, and sea turtles,⁷ some of whom don’t exist anywhere else in the world.⁸ Among other objectives, sanctuary designation will “provide a pu‘uhonua to protect key habitats, vulnerable, endangered and threatened species, and highly mobile marine species that regularly move across the boundaries of Papahānaumokuākea.”⁹ Protection does not happen passively and the stronger regulations provided by sanctuary designation are necessary to resist against rising threats like alien and invasive species, marine debris, and climate change.

To Auntie Pua Kanaka‘ole Kanahēle, Papahānaumokuākea is our ‘āina kūpuna, an elder sibling of the islands we now live on.¹⁰ It’s a place of immense cultural, ecological, and societal importance that needs all of the protection that we can offer. Alternative 1 has the greatest aggregate beneficial impacts for physical, biological, cultural, and maritime heritage resources¹¹ and would be a welcome step forward into sanctuary status designation. If there are any questions or follow-ups on the contents of this comment, please contact Madelyn McKeague, Policy Manager at the Council for Native Hawaiian Advancement, at madelyn@hawaiiancouncil.org.

³ Dawson, Neil M. et al., *The role of Indigenous peoples and local communities in effective and equitable conservation*, *ECOLOGY AND SOCIETY* 26(3):19. <https://doi.org/10.5751/ES-12625-260319>.

⁴ Office of National Marine Sanctuaries, *Proposed Papahānaumokuākea National Marine Sanctuary Draft Environmental Impact Statement (2024)* at 83 [hereinafter *Draft EIS*].

⁵ See *id.* at 154-163.

⁶ Mary Kawena Pukui, ‘ŌLELO NO‘EAU: HAWAIIAN PROVERBS & POETICAL SAYINGS, #2311 (1983). Translates roughly to “Nihoa, island of birds.”

⁷ U.S. Fish and Wildlife Service, *Papahānaumokuākea National Marine Monument*. <https://www.fws.gov/national-monument/papahanaumokuakea-marine>.

⁸ Papahānaumokuākea National Marine Monument, *Papahānaumokuākea as a Refuge for Rare and Globally Significant Species*. <https://www.papahanaumokuakea.gov/wheritage/refuge.html>.

⁹ *Draft EIS*, supra note 4 at 150.

¹⁰ HANO HANO, supra note 2.

¹¹ *Draft EIS*, supra note 4 at 126.

Me ka ha'aha'a,

American Civil Liberties Union of Hawai'i
'Aha Pūnana Leo
Bishop Museum
Boys & Girls Club of Hawai'i
Council for Native Hawaiian Advancement
Hawai'i Land Trust
'Iolani Palace
Kanaeokana
Native Hawaiian Education Council
Papa Ola Lōkahi
Partners in Development Foundation
Pouhana O Nā Wāhine



BISHOP MUSEUM



To Whom It May Concern,

I am writing in **strong support** the proposed designation of the marine areas of Papahānaumokuākea as a National Marine Sanctuary under the National Marine Sanctuaries Act (NMSA). I am a law student at the William S. Richardson School of Law, and I take interest in conservation efforts. This designation would provide important legal benefits that will enhance the long-term protection and management of the ecological, cultural, and historical resources within this unique and irreplaceable area.

To me, one of the biggest legal benefits of sanctuary designation is coordinated management: the NMSA authorizes NOAA to develop objectives and actions that ensure lasting protection consistent with the existing Monument proclamations. This will allow for coordinated management across the entire area. Additionally, the sanctuary designation would allow NOAA to impose additional regulatory tools to strengthen the existing protections for Papahānaumokuākea's ecosystems, wildlife, and cultural and maritime heritage resources. This includes the ability to assess civil penalties for violations and impose liability for damage to sanctuary resources. The NMSA requires interagency consultation for any federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource. This will help ensure consistent and aligned management across jurisdictions. Unlike the existing Monument designation, which future presidential proclamations can modify, the terms of a national marine sanctuary designation can only be changed through the same rigorous public process used to establish the sanctuary in the first place. This provides for a more permanent form of protection of this unique and irreplaceable area.

The marine areas of Papahānaumokuākea possess unparalleled ecological, cultural, historical, and scientific value that deserve the strongest possible legal protections. Personally, I would love to be able to visit someday, and I hope it can remain as it is until then and long after. By designating this area as a national marine sanctuary, NOAA can build upon the existing Monument framework to implement a comprehensive, coordinated, and enduring management regime befitting this national treasure. I urge NOAA to swiftly complete the designation process and establish Papahānaumokuākea National Marine Sanctuary.

Thank you for the opportunity to testify.

Sincerely,
Jacob Leclerc

Aloha, I am Jim Kastner, one of the many thousands of people who fought for the establishment of the strongest possible protections for the Northwestern Hawaiian Islands - the Coral Reef Reserve in 2000, the State Refuge in 2005 and the Monument in 2006.

I strongly support the goal of providing the strongest possible protections for the Northwestern Hawaiian Islands (NWHI). The existing NWHI Reserve, NWHI State Refuge and Papahānaumokuākea protections are some of the strongest on earth.

The current Sanctuary proposal fails to provide these protections and represents a direct threat to the sacred and fragile NWHI pu'uhonua.

The Sanctuary plan:

- Proposes to spread loopholes and weak language throughout the NWHI.
- Fails to use the language of the strongest existing protections, fails to meet the mandatory requirement to "complement and supplement" NWHI Ecosystem Reserve requirements.
- Reverses the current requirement to automatically prohibit activities in the NWHI, by default, except those on a short list. Instead, it automatically allows all activities, except a list of "prohibited" activities, which the Department of Commerce exempts itself from.
- Reverses the practice of applying all rules equally to federal agencies – and creates huge loopholes that exempt the Department of Commerce from permit requirements and from prohibitions for activities they self-declare to be "research".
- Shows disrespect for Native Hawaiian rights, disrespect for biodiversity protectors:
- Eliminates co-management by the two agencies focused on Hawaiian rights and biodiversity which have held co-management status in the Papahānaumokuākea Monument for almost two decades - the Office of Hawaiian Affairs (OHA) and the US Fish and Wildlife Service.
- Opens the door to long-prohibited fisheries, including a so-called "non-commercial" fishery that can harvest over 300,000 lbs of bottom fish. It is unacceptable to introduce fisheries of any kind – commercial, "non-commercial," recreational, "sustenance".
- Fails to mandate public hearings for permit applications, as in the State Refuge.

These huge flaws threaten to harm the fragile and sacred NWHI.

If a future President decided to weaken Reserve or Monument protections, leaving behind a weak NWHI Sanctuary riddled with loopholes, opening up industrial fishing and commercial activities while eliminating the checks and balances of Co-Trustee management that currently includes agencies dedicated to protecting Kanaka Maoli rights (Office of Hawaiian Affairs), and biodiversity preservation (the U.S. Fish and Wildlife Service), this shocking reversal of 24 years of protections will have devastating impacts on the NWHI ecosystem.

In 2006, the State demanded any sanctuary must apply the strict standards of the state refuge, similar to the Reserve where:

- Access is very limited
- All activities are automatically prohibited except a short list.
- Prohibitions apply EQUALLY to everyone.
- Commercial and recreational fisheries are banned, protecting fish nurseries supplying our main islands.
- PUBLIC hearings are mandatory for state permit applications, unlike the secretive NOAA permit process.

The Monument bans bio prospecting and preserves these protections.

The proposed sanctuary fails to provide protections for the NWHI. It is a threat to this fragile area.

Unlike NOAA's proposed Commerce sanctuary, the Monument is managed by four EQUAL co-Trustees:

- Fish and Wildlife Service which protects biodiversity
- OHA which protects Native Hawaiian rights
- The State of Hawaii
- The Department of Commerce

These three other trustees counterbalance the Department of Commerce which promotes commercial exploitation, which wrong for the NWHI islands.

The 2016 Monument Expansion Area - unlike all other protected areas – introduced shocking loopholes and makes possible activities completely banned in the Reserve, Refuge and Monument. But at least BOTH the Departments of Interior and Commerce have equal status. Interior can act as a brake on the worst of Commerce excesses.

For decades, NOAA has refused to provide Reserve regulations, penalties for violators, and strong enforcement including using easily available AIS and satellite monitoring.

NOAA must issue and enforce Reserve regulations and spread them to the weak Monument Expansion Area (MEA).

NOAA claims that its Commerce "sanctuary" provides new protections – but refuses to apply the strong protective language of the Reserve or State Refuge to the MEA or proposed sanctuary. Instead NOAA copies the worst loopholes from the weak MEA and spreads them through the sanctuary proposal.

They propose a new so-called "non-commercial" Wespac fishery in this fragile ecosystem, which can violate the "ban" on drilling, dredging, waste-dumping or damaging the ecosystem.

NOAA exempts the entire Department of Commerce, including NOAA Fisheries, from prohibitions on fishing, anchoring on coral, harvesting our precious resources, waste dumping, drilling, and apparently even exploring for oil, gas and minerals as long as it is labeled so-called Commerce "research."

NOAA wants to sell "Special Use Permits" based on what they call the "MARKET VALUE" of our pu'u honua. That is what their DEIS says. Words matter.

Papahānaumokuākea IS NOT FOR SALE, not for commercial gain, not for fishing.

Even NOAA's own former General Counsel is raising huge concerns about threats posed by NOAA's Sanctuary plan.

Yet NOAA bulldozes ahead, while their DEIS fails to address these concerns, potentially leading to litigation.

Instead of using taxpayer money on expensive hearings throughout our islands in large venues that few attend and fancy videos promoting the NOAA "sanctuary" which fails to protect precious resources - do your job - issue regulations and a penalty schedule for the Reserve and Monument based on the strongest existing protections and enforce them instead of trying to spread the biggest loopholes to weaken hard won existing protections.

Mahalo for your consideration, Jim Kastner

To Whom It May Concern,

I am an environmental law student at the William S. Richardson School of Law, and I am writing in **support** of the proposed National Marine Sanctuary designation of the Papahānaumokuākea National Monument under the National Marine Sanctuaries Act (NMSA). Given the environmental effects of climate change, commercial activity, and the threat of invasive species, I believe that increased conservation efforts are paramount to maintaining the ecological and cultural resources.

Papahānaumokuākea was originally intended to be a National Marine Sanctuary to protect the area's unique ecosystems, marine life, and cultural and maritime heritage resources. However, the President designated it as a monument instead. While the existing designation does afford the area protections, such designation is subject to Presidential modification, making it a less permanent solution. Sanctuary designation, on the other hand, requires any proposed changes to go through the administrative procedures that ensure public participation in the process.

Additionally, adding the Sanctuary designation will not expand or take away the existing designation, but will add additional protections within the existing boundaries. This includes a coordinated management approach with NOAA and the State of Hawai'i, the ability for NOAA to impose civil penalties for violations, jurisdictional coordinations, and other regulatory tools.

Because of its ecological, cultural, historic, and scientific value, it is important that leadership affords Papahānaumokuākea strong and sustainable legal protection to protect it for present and future generations. Thus, I am in strong support of the sanctuary designation.

Thank you for the opportunity to testify on this important matter.

Sincerely,
Richardson Law Student



**Western
Pacific
Regional
Fishery
Management
Council**

May 7, 2024

PMNM-Sanctuary Designation, NOAA/ONMS
1845 Wasp Blvd, Bldg 176
Honolulu, Hawaii 96818

To Whom It May Concern,

The Western Pacific Regional Fishery Management Council (Council) would like to provide comments on the Proposed Rule for the draft environmental impact statement (EIS) and draft management plan for the proposed designation of a national marine sanctuary for waters of the Northwestern Hawaiian Islands (NWHI). The Council believes that the No Action alternative is appropriate for the area and that the designation of a national marine sanctuary is unwarranted.

In 1984, Congress added sanctuary designation standards as Section 303 of the National Marine Sanctuaries Act. One such standard involves "the manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities." Congress seems to have intended that the size of a sanctuary should be relatively small, geographically discrete marine areas in which the management capability should be carefully considered. The proposed designation would encompass over 580,000 square miles, or nearly 14-times the combined area of the 15 existing National Marine Sanctuaries. The proposed sanctuary designation for the NWHI is neither small nor geographically discrete and would require much more management resources than currently available. The existing management under the Papahānaumokuākea Marine National Monument (PMNM) requires the resources from five different agencies which are already providing adequate management for the area.

The existing management of Papahānaumokuākea, including the Council's fishing regulations, has maintained the NWHI for decades. It is disappointing that the EIS does not reflect all of the existing management, including the Council and National Marine Fisheries Service efforts to provide sustainable use and resource protection/conservation since 1976. The boundary in Alternative 2 replicates what the Council put into place as a Protected Species Zone to protect Monk Seals and other protected species in 1991. The designation of a national marine sanctuary, on top of a marine national monument, on top of an area that was already well-managed by the Council is unnecessary duplication. Together, existing management agencies have authority to meet the proposed need for action.

The EIS identifies climate change, marine debris, invasive species, and international shipping traffic as justification for the sanctuary designation under the Need for Action section. While these activities may play a role in impacting resources of the NWHI, placing boundaries around the islands and designating a sanctuary does not eliminate those impacts. The management activities proposed under Section 2.2, Need for the Proposed Action, can all be addressed through the existing PMNM management or by each of the monument management partners. Interagency consultation, assessing civil penalties, applying additional regulations, safeguarding values, and ensuring lasting protection are activities that PMNM could do by amending its management plan. The addition of a draft Sanctuary Management Plan (SMP) in the EIS, however, muddies the waters between a proposed sanctuary and a monument.

It is unclear in the EIS and draft SMP how the sanctuary functions in coordination with the existing PMNM. While the alternatives in the EIS describe the existing monument management, it is unclear if the draft SMP provides details on how the additional layer of a sanctuary would function in conjunction with the existing PMNM management. A graphic that provides where the sanctuary ends and the PMNM begins would be helpful to understand this proposed system. The EIS seems to indicate that the sanctuary will be nearly identical to the PMNM, using the same terms and regulations, just with a different term for the management system. Therefore, the sanctuary management continues to provide a duplication of effort and the Council again notes that the sanctuary would be unwarranted.

While not required as per the Council on Environmental Quality's 2020 NEPA regulations, the EIS would benefit by identifying any potential cumulative impacts that the alternatives may have on the physical, biological, cultural, and socioeconomic resources. The combined effects of human activities may have moderate beneficial or adverse impacts but cumulatively could result in degradation of sanctuary resources. Cumulative impacts are especially important in this instance as the EIS is proposing a sanctuary on top of a monument, state of Hawaii, US Fish and Wildlife Service National Wildlife Refuge, and existing Council/NMFS fishing regulations. Individually, each of these management frameworks have supposedly been evaluated for impacts but cumulatively, the addition of multiple layers of bureaucracy need to be analyzed and provided to the public for its consideration.

The President identified Native Hawaiian subsistence practices as meriting protection under Presidential Proclamation 9478. The Council provided a recommendation to include cost-recovery for Native Hawaiian Subsistence Fishing. The intent was to provide opportunities to the indigenous people of Hawaii to practice their culture and tradition in their own homeland. To do so requires resources to ensure that the practitioners are safe and successful. Given the time and distance involved in travel to the MEA, the Council's recommendation does not allow limited sale outright, but provides a mechanism through the permit process for requesting and justifying cost recovery on a case by case basis. This would allow NMFS to review and consider the hardships of the Native Hawaiian applicant in order to allow subsistence practice in the NWHI. The EIS would benefit by exploring a range of alternatives that incorporates differences from the existing PMNM management system in order to provide the public with different management activities and ideas that might meet the goals and objectives of the sanctuary. Incorporating existing management without providing alternatives does not allow the public to weigh in on any potential needs for change in management of the NWHI.

The Council's intent with these comments is to point out that a national marine sanctuary is not needed as well as to provide where areas of the EIS might be improved. Fishing regulation recommendations are currently being worked on with the NMFS and await the decision of the sanctuary designation. Thank you for your consideration and if you have any questions or concerns, please contact me at the Council Office at (808) 522-8220.

Sincerely,



Kitty Simonds
Executive Director



Dr. Pualani Kanahale Kanaka'ole
1110 Auwae Road
Hilo, Hawai'i 96720

To the Department of Commerce,

It seems that you want to develop a "Commerce Sanctuary" which term does not compute. Commerce according to the dictionary is to trade, do business, traffic, cohabitation etc. Sanctuary sits on the opposite end of this definition. Sanctuary, again according to the dictionary takes on the definitions of retreat, shrine, preserve, sheltered protection, etc.

The definitions coming from the Dept of Commerce are very politically induced. Money I suppose!

The area was given the nomenclature of Papahānaumokuākea for the reasonable depth of the ideology of "Sanctuary". Papa-hānau-moku-ākea are made up of words which simply means "a place for all the regenerative creatures to grow and multiply in safety. The name suggest very strongly that they will have this habitate to multiple. Commerce will indeed change its functional value. The creatures who occupy the space have been there for aeons and are obviously comfortable and have indeed earned the space.

Have you thought of reciprocation? What do you give back? Do you have face, a name to give in relationship to your consciousness of "Commerce Sanctuary"?

Some of the islands are eroding, as it should, nothing lasts forever. All our volcanic islands will erode and we are happy to live on the ones we call "home". There are thousands of us who are NOT in favor of "Commerce Sanctuary" and who are in favor of protection of creatures that inhabit and reproduce on Papahānaumokuākea to continue their existense safely with a sense of longevity.

Papahānaumokuākea is indeed a shrine for life and living.

Kū mākou e hele me ku'u mau pōki'i aloha
We stand with all our loving creatures

Dr. Pualani Kanahale Kanaka'ole

**COUNCIL for
NATIVE HAWAIIAN
ADVANCEMENT**

Gina Raimondo, Secretary

U.S. Department of Commerce
1401 Constitution Ave. NW, Washington, D.C. 20230

Richard W. Spinrad, Under Secretary of Commerce for Oceans and Atmosphere

National Oceanic and Atmospheric Administration
1401 Constitution Ave. NW, Washington, D.C. 20230

Nicole LeBoeuf, Assistant Administrator

National Ocean Service
1305 East-West Highway, Silver Spring, MD 20910

John Armor, Director

Office of National Marine Sanctuaries
1305 East-West Highway, Silver Spring, MD 20910

May 7, 2024

RE: Strong Support for Sanctuary Status Designation of Papahānaumokuākea and Comments for the Draft Management Plan

Aloha mai kākou,

It is impossible to understate the importance of Papahānaumokuākea to Native Hawaiian culture, scientific exploration and discovery, and ecological conservation efforts. In addition to our joint letter of support for sanctuary designation, the Council for Native Hawaiian Advancement (CNHA) would like to submit additional comments on behalf of our organization alone that we believe would improve the sanctuary plan.

Ua lehulehu a manomano ka 'ikena a ka Hawai'i.¹ **More Native Hawaiian seats should be statutorily included in the management structure.** Currently, the Papahānaumokuākea Marine National Monument (PMNM) is co-managed by four entities: the National Oceanic and Atmospheric Administration (NOAA), the U.S. Fish and Wildlife Service (USFWS), the Hawai'i Department of Land and Natural Resources (DLNR), and the Office of Hawaiian Affairs (OHA). The draft sanctuary plan retains two of these entities: NOAA and the State of Hawai'i, likely DLNR. Reportedly, OHA would not be able to be a managing partner under the current language of the National Marine Sanctuaries Act.² While OHA will still be part of the management of PMNM, it is critical that Native Hawaiians are codified into every layer of protection.³ Since time

¹ Mary Kawena Pukui, 'ŌLELO NO'EAU: HAWAIIAN PROVERBS & POETICAL SAYINGS, #2814 (1983). Translates roughly to "Great and numerous is the knowledge of the Hawaiians."

² Marcel Honore, *Proponents Look To Create A New Hawaii Marine Sanctuary ASAP In Case Of A Trump Return*, HONOLULU CIVIL BEAT (12 Apr 2024). <https://www.civilbeat.org/2024/04/proponents-look-to-create-a-new-hawaii-marine-sanctuary-asap-in-case-of-a-trump-return/>

³ Dawson, Neil M. et al., *The role of Indigenous peoples and local communities in effective and equitable conservation*, ECOLOGY AND SOCIETY 26(3):19. <https://doi.org/10.5751/ES-12625-260319>. "Equitable conservation, which empowers and supports the environmental stewardship of Indigenous peoples and local communities

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immemorial, our kūpuna have stewarded over the area and continue to care for the lands and waters. However, it is important to ensure this connection is never lost and that Native Hawaiians are written into law as management partners. Papahānaumokuākea should still be designated as a National Marine Sanctuary and affirmative steps should be made to include OHA in sanctuary management in the future.

Lilo aku la ka nui a koe ka unahi.⁴ **Prohibitions should be strengthened without infringing on Native Hawaiian cultural and subsistence fishing.** Each layer of protection has been enacted in reaction to a need; the Hawaiian Islands Bird Reservation was issued after reports of large numbers of seabirds were being slaughtered,⁵ stewardship was re-assigned away from the U.S. Navy when priorities shifted to conservation efforts, and the PMNM was established in place of failed Sanctuary efforts at the turn of the millennium. Today, the proposed Papahānaumokuākea National Marine Sanctuary arrives when the world has lost about 14% of its coral reefs in the past decade⁶ and about one-third of fish populations are overexploited or dangerously depleted.⁷ The draft exemptions and exceptions for otherwise prohibited activities have the potential to create unnecessary regulatory loopholes for commercial fishing and military exercises to undermine sanctuary protections. Standards for permitting should be strengthened significantly, prioritizing Native Hawaiian practices without opening the door wide open.

E kanu i ka huli 'oi hā'ule ka ua.⁸ We cannot let this opportunity pass us by without acting. We stand in firm support of sanctuary designation for Papahānaumokuākea and welcome further review of the draft management plan as we envision a bright future for a sacred space.

Mahalo,

Madelyn Lehualani McKeague
Policy Manager, CNHA

represents the primary pathway to effective long-term conservation of biodiversity, particularly when upheld in wider law and policy."

⁴ Pukui, supra note 1 at #2004 (1983). Translates roughly to "Most [of the fish] are taken and only the scales are left."

⁵ Timeline of Protections, PAPAHAANAUMOKUĀKEA MARINE NATIONAL MONUMENT.
<https://nmspapahanaumokuakea.blob.core.windows.net/papahanaumokuakea-prod/media/archive/pdf/timeline.pdf>

⁶ Global Coral Reef Monitoring Network, *Status of Coral Reefs of the World: 2020 Summary for Policymakers* (2022). <https://gcrmn.net/wp-content/uploads/2022/05/Status-of-Coral-Reefs-of-the-World-2020-Summary-for-Policymakers.pdf>

⁷ National Resources Defense Council, *Can Anything Be Done to Stop Overfishing?* (24 Jun 2024).
<https://www.nrdc.org/stories/can-anything-be-done-stop-overfishing>

⁸ Pukui, supra note 1 at #316 (1983). Translates roughly to "Plant the taro stalk when it rains" meaning one ought to do the work when opportunity affords."

UPLIFTING LĀHUI



United States Department of the Interior

FISH AND WILDLIFE SERVICE
911 NE 11th Avenue
Portland, Oregon 97232-4181



In Reply Refer to:
FWS/R1/NWRS

May 7, 2024

Mr. John Armor
Director, Office of National Marine Sanctuaries
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
1305 East-West Highway
Silver Spring, MD 20910

Dear Mr. Armor:

Thank you for the opportunity to comment on the potential designation of a National Marine Sanctuary (Sanctuary) proposed to overlap portions of the Papahānaumokuākea Marine National Monument (Monument), an area currently co-managed by the National Oceanic and Atmospheric Administration (NOAA), the U.S. Fish and Wildlife Service (FWS), the State of Hawai'i (State) and the Office of Hawaiian Affairs (OHA) [collectively, the co-managers]. We recognize that for portions of the Monument, designating a Sanctuary may provide additional protections by implementing new administrative protections to waters within Monument boundaries outside of refuges, and new damage assessment and recovery tools. Of the alternatives proposed, the FWS supports Alternative 3 which includes the marine areas of the Monument, seaward of the two national wildlife refuges. We do not support proposed Alternatives 1 and 2 because: (1) they are inconsistent with Presidential directives; (2) they do not comply with existing law; and (3) a Sanctuary overlay would create more unnecessary process and confusion with the communities that we serve without commensurate conservation benefit.

The attached comments identify FWS concerns regarding:

1. Proposed Sanctuary boundary
2. Description of existing management authorities
3. Permitting
4. Management of the proposed Sanctuary as described in the draft Environmental Impact Statement (DEIS)
5. Proposed fishing regulations
6. Description of current permitting and statutory authorities

PACIFIC REGION 1

IDAHO, OREGON*, WASHINGTON,
AMERICAN SAMOA, GUAM, HAWAII, NORTHERN MARIANA ISLANDS

*PARTIAL

Mr. John Armor

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We appreciate the consideration of our comments and look forward to continuing the co-management of Papahānaumokuākea with NOAA, the State of Hawai'i, and OHA. We recommend a Sanctuary designation proposal specify that:

- Scientific or management activities undertaken by FWS within the Monument are not subject to any additional Sanctuary requirements or authorization from NOAA.
- Sanctuary permits and National Marine Fisheries Service (NMFS) fishing permits for a Sanctuary would be incorporated into the existing Monument permitting processes to ensure that permits are issued consistently with existing practices. A separate Sanctuary or NMFS permitting process will not be required.
- NOAA and FWS would develop a MOU to describe how issues will be resolved, ideally at the lowest level possible.

We look forward to further discussions to reach a mutually agreeable outcome for future conservation in the Monument.

Sincerely,

HUGH
MORRISON

Digitally signed by HUGH
MORRISON
Date: 2024.05.07
17:50:39 -0700

Regional Director

cc:
Governor, State of Hawai'i
Chair, Office of Hawaiian Affairs

Mr. John Armor

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1. NOAA Preferred Sanctuary Boundary Alternative

Inconsistency with Presidential Proclamations:

Alternatives 1 and 2 include all marine portions of Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge. Including national wildlife refuges within the proposed Sanctuary boundary conflicts with the Presidential Proclamations that created the Monument. Because these Alternatives are not in accordance with the Proclamations' direction, we recommend not referring to the proposed action as implementing the Proclamations.

Presidential Proclamation 8031 states, "*The Secretary of the Interior, through the FWS, will have sole responsibility for management of the areas of the monument that overlay the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce.*"

Presidential Proclamation 9478 states that, "*the Secretary of Commerce should consider initiating the process under the National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.) to designate the Monument Expansion area and the Monument seaward of the Hawaiian Islands National Wildlife Refuge and Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial as a National Marine Sanctuary to supplement and complement existing authorities.*"

The FWS recommends NOAA and the State follow the guidance in the Monument establishment proclamations by excluding refuge waters from any proposed sanctuary.

Noncompliance with National Wildlife Refuge System Administration Act:

Throughout NOAA's preparation of the DEIS, we advised NOAA that proposing a Sanctuary within a refuge would not comply with the National Wildlife Refuge System Administration Act (Administration Act). The Administration Act directs that all refuge areas, "shall be administered by the Secretary [of the Interior] through the FWS," (16 U.S. C. §668dd(a)(1)). Senate Report No. 94-593 that accompanied the passage of the Administration Act notes that joint jurisdiction of refuge areas in the past was a source of difficulty for agencies, and intending to resolve such problems, further clarified Congress's direction that dual administration of refuge areas would be prohibited by the Act. The Report states "*there will be no joint administration of any units within the System by the FWS and any other agency.*"

We conclude that both Alternatives 1 and 2 of the DEIS run counter to the requirement in the Administration Act requiring the FWS to have exclusive management authority over the refuges. A Sanctuary overlaid on a refuge could negatively impact our ability to meet the mission and purposes of that refuge, and this is the precise issue that Congress endeavored to avoid. Successful Sanctuary-Refuge collaborations occur elsewhere in the nation, including in American Samoa's Rose Atoll Marine National Monument, owing to abutted boundaries without overlay.

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Furthermore, consideration of both Hawaiian Islands and Midway Atoll National Wildlife Refuges together for inclusion in a proposed Sanctuary does not adequately recognize the significant differences in the purposes and establishment directives of each refuge. The two refuges have different boundaries, special management structures, and jurisdictional authorities (one is considered by the State of Hawai'i to be in state waters while the other is only federal waters). As stated previously, we recommend that the refuges be considered independent of each other.

To remain consistent with the establishing Presidential Proclamations, the FWS recommends excluding the refuge waters from a proposed Sanctuary based on its inconsistency with existing law.

2. Existing Comprehensive Conservation Management

The Administration Act provides for comprehensive protection of resources within all units of the National Wildlife Refuge System (NWRS). NWRS regulations effectively manage activities to ensure actions are appropriate and compatible with the purposes of a refuge and the mission of the refuge system.

The Department of the Interior has more than a century of experience managing and protecting key areas of what is now Papahānaumokuākea Marine National Monument. The area has remained in its wild and nearly pristine state largely because of the effort of the Department of the Interior. The DEIS claims there would be adverse potential impacts on the protection of the resources if refuge areas were excluded from a proposed Sanctuary, yet the DEIS does not mention nor analyze existing comprehensive refuge regulations (50 CFR, subchapter C). We recommend that the final EIS acknowledge and analyze the area being successfully co-managed for more than a decade as part of the Monument, roughly 40 years as part of the Midway Atoll National Wildlife Refuge, and more than a century as part of the Hawaiian Islands National Wildlife Refuge.

The DEIS claims that not including refuge waters in the Sanctuary would jeopardize the continued conservation of the resources in refuge areas; however, the DEIS does not provide evidence to support that claim. We believe that a century of effective management by the Department of the Interior is tangible evidence of effective conservation and should dispel concerns that these areas would be in danger if not included in the Sanctuary. On the contrary, the existence of the Interior Department's successful management demonstrates lasting and comprehensive protections.

Implementing Refuge System and Marine National Monument authorities and regulations are also recognized as effective and lasting by the international community. The conservation laws, legal structure, regulations, operational policies, and co-management governance structure provided much of the rationale and justification for international recognition for Papahānaumokuākea Marine National Monument's inscription as a mixed natural-cultural World Heritage site by the International Union for the Conservation of Nature.

3. Sanctuary Permitting

The Monument has been successfully co-managed by the aforementioned co-trustees for more than fifteen years. During that time, a single permitting system incorporated all the authorities and

Mr. John Armor

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processes of each co-trustee. It remains unclear in the document if permitting for the Sanctuary would be incorporated into the single Monument permit process. Although the DEIS states that *“The proposed permitting system would not supplant the joint permitting system for PMNM, and was developed to ensure a continued joint permitting system administered by Monument co-managers that incorporates the authorities provided through the NMSA that co-managers,”* there is no description of how that would occur. The only reference to developing the new joint system is based on a single unclear statement that, *“Co-managers may develop a Memorandum of Agreement in the future to add clarification on joint-permitting”* (pages 27-28).

Most of the associate topic’s language in the document leads the reader to believe that there would be a separate permitting system for the Sanctuary that would not be a part of the Monument permitting process, and even an additional permitting system for non-commercial fishing in the Monument Expansion Area (MEA) (see pages 28-29; 33). On page 133, where the document states that the exclusion of refuge waters would have an adverse impact on the existing laws and management, NOAA indicates that we should expect a two-permit system with this Sanctuary designation: *“This may potentially require permittees to obtain two permits, one for the activity that falls within the area of the sanctuary, and another for the area that falls outside the sanctuary but within the national wildlife refuge.”* Because the refuges are part of the Monument permitting system, we conclude that the only reason that two permits would be needed is if a Sanctuary permit is required in addition to a Monument permit.

The addition of fee collection for permit processing is also a departure from current practice (pages 29, 33). Because all co-managers work jointly on the permitting process, this section is particularly unclear about whether or not NOAA would keep fees internally, or divide fees received equitably amongst co-managers. Lastly, the DEIS articulates that FWS would need to get permits from the Sanctuary for management activities if the refuge waters are included in the Sanctuary (page 97). This requirement would add an additional regulatory burden and delay essential management activities. The proposed Sanctuary prohibitions are also in direct conflict with some necessary management activities required to manage the refuges, including maintenance of infrastructure around Tern Island and Midway Atoll. This direct conflict would be resolved by excluding refuge waters.

Additional sanctuary permitting would likely increase permit approval and project timeframes for the public and co-managers, while also creating possible disagreement amongst co-managers on what actions are permissible in the Monument.

4. Monument Co-Management

As with the concerns expressed above about permitting, the Sanctuary management discussion throughout the document leads the reader to conclude NOAA and the State of Hawai’i are proposing to be the sole managers of marine areas of the Monument, without input from FWS and OHA. If, as previously indicated by NOAA, the intent of Sanctuary designation is to seamlessly place a layer of protection that enhances current Monument protections, more inclusive language should be used that broadly mentions that Sanctuary decisions and management will be made collaboratively with the existing authorities and Monument co-managers.

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5. Fishing in the Expanded Area of the Monument

We are concerned that the proposed fishing regulations for the MEA (Outer Sanctuary Zone) have been developed without adequate inclusion of the perspectives of the Monument co-managers. Resources in the Monument are a co-management trust responsibility. Presidential Proclamation 9478 clearly states that, "*The Secretary of Commerce, through NOAA, and in consultation with the Secretary of the Interior, shall have responsibility for management of activities and species within the Monument Expansion under the Magnuson-Stevens Fishery Conservation and Management Act.*" Despite our requests to be included and provide input, no such consultation has occurred.

We also are concerned that non-commercial fishing activities are proposed as exempt from the regulations that protect the Monument resources (Page 26) because there has been little public engagement on this fishing issue and this approach is inconsistent with the Presidential Proclamations. The proposed regulations would create another permit that would not come before Monument co-managers, but rather would be issued by NOAA's NMFS without input from other co-managers. The proposed guidelines also establish new fisheries for pelagic fish and bottom fish, and any such level of proposed extractive use has not been evaluated in any publicly available analysis. The recommendations also include a Native Hawai'i Subsistence Practices Catch permit, which would violate the current protections in the Monument by allowing fishers from Hawai'i (not only those of Native Hawaiian descent) to bring fish catch back to the main Hawaiian Islands for use or sale. There does not appear to have been meaningful engagement about proposed fishing regulations that are being issued as a Native Hawaiian Practice.

6. Inaccurate Description of Current Permitting and Statutory Authorities

Throughout the document, the claim is made that "*At present, there are no regulations to authorize permitting or enforce the prohibitions in the MEA as outlined in Presidential Proclamation 9478.*" (e.g., page 15), and similarly, "*Sanctuary designation provides the authority for a permitting system to manage waters of PMNM and the MEA in coordination with the Monument permitting system, eliminating potential gaps in management*" (e.g., page 16), or that, "*the MEA currently has no access restrictions*" (page 32). We do not believe that this characterization of the management abilities under co-management is accurate.

The Monument has permitted activities and access, and enforced prohibitions under the authorities cited in Presidential Proclamation 9478 which states "*The Secretary of the Interior, through the FWS, and in consultation with the Secretary of Commerce, shall have responsibility for management of activities and species within the Monument Expansion under its applicable legal authorities, including the National Wildlife Refuge System Administration Act, the Refuge Recreation Act, and the Endangered Species Act (for species regulated by FWS), and Public Law 98-532 and Executive Order 6166 of June 10, 1933.*" The Monument co-managers have used these authorities over the past eight years to permit or deny activities, provide access in the MEA, and to enforce prohibitions. While we agree that NOAA may not have statutory authority to permit or enforce Proclamation non-fishery related prohibitions in the MEA, to say that these abilities do not exist presents a false picture of the current management and, thus, the benefits of the proposed

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Sanctuary. The DEIS should reflect that these gaps or lack of authorities are NOAA-specific, and not reflective of Papahānaumokuākea's co-management as a whole.

1365 Memorial Dr #230,
Coral Gables, FL 33146

05/03/2024

Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC)
1845 Wasp Blvd, Bldg. 176
Honolulu, HI 96818

Re: Document ID #2024-03820

Dear Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration, and Department of Commerce:

Thank you for the opportunity to provide a comment on this proposed rule. My name is Mariana Gamboa. I am a student at the University of Miami studying Ecosystem Science and Policy and am currently in my senior year. I am particularly interested in environmental sustainability and conservation. This proposed rule adheres to environmental conservation as it protects a marine area rich in biodiversity and filled with ecosystem services. The National Oceanic and Atmospheric Administration has published a proposed rule to designate marine portions of Papahānaumokuākea Marine National Monument as Papahānaumokuākea National Marine Sanctuary. This sanctuary would protect significant biological, cultural, and historical resources. The area consists of 582,570 square miles of Pacific Ocean waters located around the Northwest Hawaiian Islands. A draft environmental impact statement is also being published by NOAA, in coordination with the state of Hawai'i, as well as a draft management plan. I fully support this rulemaking.

I have learned about the importance of conservation and sustainability and what it encompasses. Sustainable development ensures the well-being of people around the world, while ensuring that future generations will have access to that same well-being. When defining well-being, it is found to contain a variety of factors. However, when measured closely in social science, it is normally divided between a few sectors: Ecological well-being, good governance, a healthy economy, and social inclusion. Maintaining a balance between all pillars of sustainability is crucial in the development and well-being of the people and the planet. This area is important in its conservation due to the fact that the United States

has one of the largest ecological footprints in the world. By conserving this area, we are ensuring the well-being of that community, as well as the well-being of the entire planet. We can lower the U.S. ecological footprint. The U.S. social programs are pretty high compared to the rest of the world, but must do its homework on the ecological side. By Hawaii being part of the U.S., we can aid in our development. By ensuring the ecological conservation of Hawaii, we can ensure its economic well-being, due to the large movement of tourism and how much they depend on it. NOAA's products and services support economic vitality and affect more than one-third of America's gross domestic product.

There has been a years-long effort to get the area designated a Marine Sanctuary. Papahānaumokuākea is very important to Hawaiian culture and Native Hawaiians. The name itself is a combination of the two mythological ancestors, Papahānaumoku and Wākea, who are believed to give rise to the Hawaiian Archipelago, the taro plant, and the Hawaiian people. Additionally, there is post-Western-contact historic significance as the area is associated with the Battle of Midway and 19th century whaling.

The consideration for the area to be a national marine sanctuary is not new. The effort started all the way back in 1909 with President Roosevelt's creation of the Hawaiian Islands Bird Reservation through Executive Order 1019 in response to the overharvesting of seabirds. Then, in 2000, President Clinton ordered Executive Order 13178 for designating the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve as a national marine sanctuary under the National Marine Sanctuaries Act, including the initiation of a public scoping process. This was followed by George W. Bush's designation of Papahānaumokuākea as a Marine National Monument under the Antiquities Act in 2006 and President Obama's expansion of the territory 4 times larger in 2016. In 2020, the Senate Committee on Appropriations directed NOAA to initiate the sanctuary designation process. This marks twenty four years since the consideration.

Although National Monuments take large efforts in the protection of historical and cultural sites, there are a number of differences in their administration compared to National Sanctuaries, which benefit specific needs of an area. The National Marine Sanctuaries Act is the only federal law written specifically for oceanic protection. This law grants NOAA the authority to develop management plans, issue regulations, and enforce those regulations for each sanctuary and the System as a whole. The sanctuary designation process involves public engagement, including local community outreach, stakeholder involvement, and citizen participation before and after a sanctuary is designated. All national marine sanctuaries require a community Advisory Council composed of local stakeholders representing citizen, expert, and industry perspectives. These site-focused, community-based groups

provide guidance and make recommendations to their sanctuary superintendent on issues including management, science, service, and stewardship. It takes much longer for Sanctuaries to be designated due to the required public participation process, in comparison to National Monuments, which are only done through presidential proclamation and occur a lot quicker through the Antiquities Act of 1906. The Antiquities Act does not require a participatory process. Monuments can be designated fairly quickly depending on how a president chooses to develop and sign their proclamation. There is no obligation under the Antiquities Act for a monument to have education programs, an advisory council, or public and community engagement. Additionally, friends groups and chapters of the National Marine Sanctuary Foundation act as community partners, and thousands of volunteers dedicate themselves to citizen science, monitoring, outreach, and education programs. science-based federal agency within the Department of Commerce with regulatory, operational, and information service responsibilities with a presence in every state and our territories.

New Rule Streamlines Protections of Area

The proposed sanctuary would only add to, not diminish, the management measures and protections provided by the presidential proclamations. The proposed rule unifies management of the area by removing discrepancies and gaps in prohibitions, regulated activities, and permit criteria, providing clarity and comprehensive protection for the proposed sanctuary.

The draft management plan reflects five priority areas of sanctuary management: (more on the rules)

- resource protection and conservation
- research and monitoring
- governance and operations
- partnerships and constituent engagement
- education, interpretation, and mentoring

While each sanctuary has its own unique set of regulations, there are some regulatory prohibitions that are typical for many sanctuaries such as discharging material or other matter into the sanctuary, disturbance of, construction on or alteration of the seabed, disturbance of cultural resources, and exploring for, developing or producing oil, gas or minerals (with a grandfather clause for preexisting operations). Dedicated scientists use cutting-edge research and high-tech instrumentation to provide citizens, planners, emergency managers and other decision makers with reliable information they need, when they need it.

Papahānaumokuākea Provides Many Ecosystem services

Scientists have found that, in some cases, mesophotic reefs act as potential sources to reseed or renew shallower coral reefs as well as important habitats of many fish species. Bringing to light the existence of healthy mesophotic coral ecosystems provides insights on the devastating declines and opportunities for management and restoration of both shallow-water corals and the newly recognized mesophotic ecosystems. They also protect entire ecosystems, preserving critical ecological functions and conserving biodiversity.

This includes at least 145 species of endemic arthropods, six species of endangered endemic plants (including an endemic palm), and four species of endemic birds, including remarkably isolated species such as the Nihoa Finch, Nihoa Millerbird, Laysan Finch, and the Laysan Duck, one of the world's rarest ducks Search Our Facts

The proposed sanctuary is a place of unique environmental resources that provide large-scale ecosystem services for the region and the world. Large-scale conservation areas like this one are important to protect highly mobile species, such as sharks and marine mammals. Top predators like sharks are very important to Papahānaumokuākea because they shape the ecosystem communities inside the region. Science-based management of fish resources led to a project, led by Dr. Carl Meyer and Dr. Kim Holland, conducting data quantifying long-term movements and habitat use of sharks, which has also been used to help understand monk seal predation at French Frigate Shoals. The results also indicated that tiger sharks (*Galeocerdo cuvier*) are the most wide-ranging top predator in the Monument. Sharks stand at the pinnacle of the food chain and maintain the balance of marine life regulation of prey populations. They control species distribution, abundance, and diversity, which affects the health of marine habitats. Currently, overfishing poses an immense threat to oceanic life. Besides the rise in global temperatures induced by the climate crisis, this is another primary factor driving the rapid deterioration of overall ocean health. About 100 million sharks are slaughtered annually for their fins, meat, livers, and gills, and almost a third of all shark species are endangered.

Over a billion people rely on seafood as their main food source, and the industry provides over 780 million jobs globally. Without shark conservation, job loss, food insecurity, and income loss can lead to an economic catastrophe. They shift their prey's spatial habitat, which alters the feeding strategy and diets of other species. Through the spatial controls and abundance, sharks indirectly maintain the seagrass and coral reef habitats. The loss of sharks has led to the decline in coral reefs, seagrass beds and the loss of commercial fisheries. By taking sharks out of the coral reef ecosystem, the larger predatory fish, like groupers, increase in abundance and feed on the herbivores. With less herbivores, macroalgae expands and coral can no longer compete, shifting the ecosystem to one of algae dominance, affecting the survival of the reef system.

The marine habitat also includes several interconnected ecosystems, including coral islands surrounded by shallow reefs. Coral reefs are important because they provide various services for the world, such as protection from storms and erosion. They are beneficial for the economy because they offer jobs for local communities, as well as recreational activities. Additionally, they are also a source of foods and new medicines. Over half a billion people depend on the reefs for protection, income, and food. They are also culturally important to various indigenous cultures throughout the world.

Fishing, diving, and snorkeling on and near reefs add hundreds of millions of dollars to local businesses. The net economic value of the world's coral reefs is estimated to be nearly tens of billions of U.S. dollars per year. Coral reefs provide habitat for a variety of species, tourism, cultural heritage, and social connectedness through a sense of place. However, increasing population growth rates along with economic and industrial development, unsustainable fishing, land-based pollution, global forces from climate change, coral bleaching, coral disease, among others, have resulted in unprecedented pressure on coral reefs.

Low-light mesophotic reefs with extensive algal beds are another type of ecosystem found in the area. These reefs serve as an essential habitat for economically and ecologically important fish. These species use these reefs for spawning, feeding, breeding, and growth to maturity. They also contain organisms with special defenses for microbial infections and warding off predators. A lot of research is being done on these species because they have been found to contain multiple health benefits for humans. The algal beds living in the mesophotic reefs also play an important role because they provide food for arthropods, herbivorous fish, and other invertebrates, and also act as a layer for gull nesting. Open ocean (pelagic) waters connected to the greater North Pacific Ocean. The pelagic zone is an area that is critical for oxygen production, climate regulation, and economic activity.

Deep-water habitats such as abyssal plains 16,400 feet below sea level, and deep reef habitat characterized by seamounts, banks, and shoals. The abyssal plains cover ~70 percent of the global seabed and are the biggest habitat on Earth's surface. These topographic features alter currents and near-bed flows, causing the winnowing of sediment and enhanced deposition of organic matter (food for deep-sea animals). Diversity and abundance of animals are linked to environmental differences between different abyssal habitat types. The animal communities living on seamounts and abyssal hills are diverse and different from those on the nearby abyssal plains. While some organisms live in both places, there are many animals that appear to occur only on seamounts and abyssal hills. In general, more suspension feeders, such as corals, live on hills and seamounts than on the adjacent plain. In other regions, overall biomass has been found to be higher on seamounts and abyssal hills than on the plain. So, studying abyssal hills and seamounts in addition to the flat parts of the abyssal plains will give a better picture of

the full range of habitats and animal communities in an abyssal region. The seabed on seamounts will likely not be mined for polymetallic nodules because their slopes are too steep for mining vehicles. However, the life and habitats on seamounts could be impacted indirectly by mining, through the plumes (clouds) of sediment that may be disturbed by mining activities on the plain nearby. Some in the deep-sea mining industry have also speculated that seamounts could be refuges for animals during mining activities. These possibilities provide more reasons to us to study seamounts and the habitats and fauna found there.

Somewhat like continental slopes, ocean bank slopes can upwell as tidal and other flows intercept them, sometimes resulting in nutrient-rich currents. Because of this, some large banks, such as Dogger Bank and the Grand Banks of Newfoundland, are among the richest fishing grounds in the world. There are approximately 30 submerged banks in the Northwestern Hawaiian Islands. Up until recently very little was known about the banks beyond that they were shield volcanoes formed at the hotspot. Some scientists believe that many of the banks act as 'stepping stones' for marine organisms to migrate in the region. The bank areas provide extensive habitat for bottomfish and a few are known to provide foraging habitat for endangered Hawaiian monk seals. Large precious corals, such as gold, pink and black are also found in the deep waters of the banks. Unlike shallow reef corals which are able to harness sunlight as an energy source due to photosynthesizing symbiotic dinoflagellates in their tissues, deep-water precious corals live in near-total darkness and are completely dependent upon capturing plankton from the water column with their tentacles. The first Hawaiian coral reefs originated around the oldest islands. Many of these islands are now seamounts sunken to great depths. Other seamounts have never emerged above the ocean's surface. Guyots are sunken volcanoes that became flat topped seamounts. Fish and precious corals may be concentrated near the tops of seamounts or guyots. St. Rogatien, Brooks Banks, and other unnamed banks surrounding French Frigate Shoals. Little is known about these bank areas, except that Hawaiian monk seals have been observed foraging in these areas, probably for eels. The Hawai'i Undersea Research Laboratory plans to visit these banks in several deep sea dives beginning in 2002 to build a greater understanding of the areas.

Raita Bank is just west of Gardner Pinnacles. The crest or top of Raita Bank is about 60 feet from the ocean surface. Bottom habitats of relatively shallow banks such as Raita tend to be barren when compared with more sheltered coral reef environments. Recent surveys revealed less than 1% live coral cover in the shallow portions of Raita Bank, with the bottom scoured by wave action and strong currents. Raita is one of the larger banks in the NWHI, and there is much yet to be discovered about this area. Pioneer Bank is only 22 nautical miles from Neva Shoals, and the features combine to form a major coral reef ecosystem rich in biodiversity and with a variety of marine habitats

Because these rocky features extend up into the water column, they provide ideal habitat for attached sessile invertebrates that depend on currents to deliver their food. The hard substrate is also favorable for settlement of larvae from the water column

Conclusion

I am immensely grateful towards the NOAA for proposing this rule, and I hope for it to succeed.

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May 7, 2024

Nicole LeBoeuf, Assistant Administrator
for Ocean Services and Coastal Zone Management
National Ocean Service
National Oceanic and Atmospheric Administration

Dear Ms. LeBoeuf:

On behalf of the Hawaii Longline Association (HLA), thank you for the opportunity to provide comments on the Draft Environmental Impact Statement (DEIS) for the Proposed Papahānaumokuākea National Marine Sanctuary.

HLA is composed of the Hawaii-based longline fleet and other members, including the iconic Honolulu Fish Auction (United Fishing Agency). The Hawaii-based longline fleet is the largest food producer in the State of Hawaii and the fleet's landings represent around 85% of the volume and value of commercially landed seafood in Hawaii. Hawaii's commercial fishing and seafood industry has been estimated by the US Department of Commerce to annually generate around \$867 million in sales impacts, \$269 million in income impacts, \$392 million in value-added impacts, and 9,900 full-and part-time jobs.¹ The fleet is subject to an extraordinarily comprehensive and rigorous regulatory regime encompassing federal and state laws and international fisheries treaties. The Hawaii-based longline fleet is among the most comprehensively regulated and highly monitored commercial fisheries in the world.

Prior to the establishment of the Papahānaumokuākea Monument Expansion Area (MEA), Hawaii-based longline vessels targeted tuna and billfish in pelagic waters of the US Exclusive Economic Zone around the Northwestern Hawaiian Islands (NWHI) from 50 nm to 200 nm and the adjacent high seas. HLA members and others affiliated with the Hawaii longline fishery, which are composed mostly of people from underserved and underrepresented communities, continue to experience direct, indirect, and cumulative impacts from the designation of the MEA.

The most direct impact to the fleet is the loss of fishing grounds (historical and future). Substantial portions of the U.S. EEZ in Pacific Islands Region are already closed to commercial fishing, and significantly more were closed with the MEA designation. EEZ closures means that Hawaii longline vessels must fish outside the EEZ, where they compete with large-scale, subsidized foreign industrial fisheries that are not subject to any of the extensive federal

¹ National Marine Fisheries Service. 2018. Fisheries Economics of the United States, 2016. U.S. Dept. of Commerce, NOAA Tech. Memo. NMFS-F/SPO-187a, 243 p National Marine Fisheries Service. 2018. Fisheries Economics of the United States, 2016. U.S. Dept. of Commerce, NOAA Tech. Memo. NMFS-F/SPO-187a, 243 p

environmental regulations to which the Hawaii fleet is subject. This loss of fishing grounds has significant disproportionate effects on individual vessel owners/operators/crew that historically fished, and had competitive advantages in, the area. Those vessels are forced to leave their known fishing grounds and compete in other waters (including against foreign fisheries). Displacing the fleet out of U.S. waters to the high seas also results in indirect impacts associated with greater travel distances from port, such as much higher trip expenses, more burning of fuel (and associated GHG emissions), and increased safety at sea concerns. Finally, significant cumulative effects have resulted from the loss of fishing grounds within US waters in combination with a strict Federal management and monitoring regime, elimination of US waters to fishing by the expansion of the Pacific Remote Islands Marine National Monument in 2014, competition on the high seas from subsidized foreign fleets, and foreseeable high seas fishing closures as part the United Nation's newly adopted Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ).

None of these significant impacts to the Hawaii-based longline fleet, Hawaii seafood consumers, or Hawaii's food self-sufficiency have been properly analyzed. The MEA was designated under the Antiquities Act of 1906 without any review under the National Environmental Protection Act (NEPA) or any meaningful opportunities for public comment. There were no alternatives analyzed with respect to the MEA and no analysis to ensure that the area designated is consistent with the Antiquities Act requirement to be the "the smallest area compatible with the proper care and management of the objects to be protected."

The DEIS identifies that NOAA's preferred alternative is to overlay a National Marine Sanctuary over Papahānaumokuākea monuments, State of Hawaii waters from 0-3 nm, and all federal waters from 3-200 nm (an area twice the size of Texas). The DEIS further indicates that because the proposed action would be an overlay of monument designations that are already closed to commercial fishing, there is no analysis on impacts to fisheries and no differences among the alternatives in terms of impacts to fisheries. In short, the end-result is that massive closures of the U.S. EEZ to commercial fishing have been accomplished with no NEPA review of the consequences, including no identification or analysis of the significant, adverse socio-economic effects on members of the fleet from underserved and underrepresented communities. Moreover, because the environmental impacts from No Action versus Action Alternatives 1-3 are the same, this begs the question, "is a Sanctuary designation necessary?" HLA is not convinced by the DEIS analysis that a sanctuary overlay is necessary for the conservation and management of natural resources in the area. Nor has any such case been made in the DEIS's purpose and need statement or elsewhere in the DEIS.

The DEIS is not legally sufficient, among other reasons, because the analysis does not properly distinguish among, and analyze, impacts to environmental resources resulting from the No Action Alternative and each of the Action Alternatives. The DEIS is also woefully deficient in its analysis of cumulative impacts. The DEIS should analyze the cumulative impacts to Hawaii longline fishery participants from the alternatives, including the Pacific Remote Islands monument expansion in 2014, the foreseeable future impacts of the proposal to further expand

the fishing closures in the Pacific Remote Islands area via a Sanctuary designation, and reasonably foreseeable future impacts of high seas fishing closures under the auspices of the UN BBNJ convention. The effects of the monument expansion in particular result from a “past” action that, when combined with the effects of the action, cause “collectively significant actions taking place over a period of time.” 40 CFR 1508.1(g)(3).

As a result of the designations of the Pacific Remote Islands monument in 2009, its expansion in 2014, and the MEA in 2016, no fishing vessels of the United States have been subjected to more closure of EEZ waters than the Hawaii-based longline fleet. As described above, these closures didn’t occur through normal rule making processes established by Congress, but rather, relied on a political abuse of an obscure statute to eliminate legitimate federally managed activity and permanently reserve huge areas of land and sea. Now, and after the fact, it seems the administration is proposing use of the National Marine Sanctuaries Act to cover its tracks in the NWHI and the PRI, thereby limiting legal challenges to the monument designations. Being fishers, we know when things smell ‘fishy’ whereby these Sanctuary proposals reek of bureaucratic overreach.

The Hawaii longline fishery produces high quality seafood for local consumption and seafood markets in the United States – approximately 70-80% of our landings are consumed in Hawaii and the other 20-30% of landings are sold in USA mainland retail and foodservice markets. Currently, the United States is experiencing a huge seafood trade deficit, with large amounts of imported seafood believed to be from illegal, unregulated, unreported foreign fisheries. Well-managed fisheries like the Hawaii longline fishery are compatible with environmental and cultural resource protection and there needs to be a balance among these important considerations. Seafood is a healthy food choice, and its sustainable harvests produces less carbon emissions per pound versus farm raised meat production in the US agriculture industry – with the latter provided over \$20 billion per year in Congressionally appropriated subsidies.

Currently, fishermen, seafood producers and processors across the country are facing unprecedented conditions with extreme costs and poor market prices largely in part from vast amounts of subsidized foreign imported seafood into the United States. We humbly implore NOAA to focus on protecting American fisheries, the waterfront and support services jobs they support, and the contribution of our well-managed fisheries to the Nation’s food supply, rather than an adding unnecessary layers of bureaucracy over existing federally managed waters.

Based on the comments above, HLA supports NOAA either taking no action or, alternatively, preparing a new, legally sufficient DEIS for public review and comment.

Sincerely,



Eric K. Kingma, Ph.D.
Executive Director



May 7, 2024

PMNM-Sanctuary Designation NOAA/ONMS
1845 Wasp Blvd., Bldg. 176
Honolulu, HI 96818

Re: NOAA-NOS-2021-0114

Dear Superintendent Roberts,

Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our more than 1.6 million members and supporters nationwide, we write to express our strong support for designating Papahānaumokuākea Marine National Monument (Papahānaumokuākea or PMNM) as a national marine sanctuary and applaud the National Oceanic and Atmospheric Administration (NOAA) for leading the designation process for this globally important ocean area.

Healthy oceans and coral reef ecosystems are incredibly important to the future of our planet. A billion people, including tens of millions of Americans, rely on viable, healthy oceans for nourishment and their livelihood. Federal protections for our nation's marine treasures help preserve biodiversity, ensure the availability of educational and research opportunities, build resilience against the impacts of climate change and ocean acidification, and strengthen the deeply embedded connections between our communities and the oceans. Protecting marine areas is increasingly important because our oceans are becoming degraded due to a multitude of factors, including overfishing, pollution, warming seas, coral bleaching, and ocean acidification.

PMNM is the largest contiguous conservation area in the United States, one of the world's largest marine protected areas, and is larger than all the country's national parks combined. Part of the Hawaiian Archipelago in the Pacific Ocean, PMNM conserves some of our country's most prized underwater resources of natural, cultural, and historic significance. It is recognized as the only mixed UNESCO World Heritage Site in the United States, meaning it has both natural and historic and cultural significance with its unique Northwestern Hawaiian Island ecosystem and Native Hawaiian history, culture, and heritage.¹

This remote ocean region has been a focus of conservation efforts dating back to 1903 when President Theodore Roosevelt sent the U.S. Navy to Midway Atoll to prevent seabirds from being

¹ *World Heritage List: Papahānaumokuākea*, UNITED NATIONS EDUC., SCI. & CULTURAL ORG., <http://whc.unesco.org/en/list/1326/> (last visited May 7, 2024).

killed for feathers and eggs.² In the 120 years since President Roosevelt first took action, multiple presidents – Republicans and Democrats – and the State of Hawai‘i have increased the protections in this area. Indeed, Presidents Theodore Roosevelt, Franklin Roosevelt, Ronald Reagan, Bill Clinton, George W. Bush, Barack Obama, and now Joe Biden—along with the State of Hawai‘i—have seen fit to protect PMNM.³

In 2006, President Bush became the first president to preserve an area in the ocean of this significance by designating the Northwestern Hawaiian Islands Marine National Monument through the Antiquities Act, which set aside 140,000 square miles of islands, atolls, and surrounding ocean. President Bush subsequently renamed the monument Papahānaumokuākea Marine National Monument, a Native Hawaiian name reflecting its historical and cultural significance.⁴ The name Papahānaumokuākea “commemorates the union of two Hawaiian ancestors – Papahānaumoku and Wākea – who gave rise to the Hawaiian Archipelago, the taro plant, and the Hawaiian people.”⁵ In 2016, President Obama expanded PMNM to 582,578 square miles, making it one of the world’s largest marine protected areas.⁶

Protecting Papahānaumokuākea is one of the most broadly supported and bipartisan conservation successes in our country with extensive public input from stakeholders across decades. NOAA’s proposal to designate Papahānaumokuākea as a national marine sanctuary compliments the existing conservation efforts and adds protections and management tools afforded under the National Marine Sanctuary Act.

NPCA strongly supports Alternative 1 – NOAA’s proposal and preferred sanctuary boundary – which would ensure the strongest and most extensive protections.

The Proposed Action Alternative 1 encompasses approximately 582,570 square miles, is the only alternative that overlaps with the current boundaries of PMNM, and contains the objects of natural and scientific importance as well as historical and cultural importance highlighted in President Obama’s Proclamation 9478.

Papahānaumokuākea is home to vibrant and extensive coral reef systems that are “truly the rainforests of the sea.”⁷ PMNM is home to more than 7,000 marine species, with a quarter of those endemic to the archipelago.⁸ One of those is the endangered Hawaiian monk seal, which has an

² *About Papahānaumokuākea*, PAPAĀHĀNAUMOKUĀKEA MARINE NAT’L MONUMENT, <http://www.papahanaumokuakea.gov/new-about/> (last visited May 7, 2024).

³ *Timeline of Protections*, PAPAĀHĀNAUMOKUĀKEA MARINE NAT’L MONUMENT, <http://www.papahanaumokuakea.gov/pdf/timeline.pdf> (last visited May 7, 2024).

⁴ Establishment of the Northwestern Hawaiian Islands Marine National Monument, Proclamation No. 8031, 71 Fed. Reg. 36443 (June 15, 2006); Amending Proclamation 8031 of June 15, 2006, To Read, “Establishment of the Papahānaumokuākea Marine National Monument,” Proclamation No. 8112, 72 Fed. Reg. 10031 (Feb. 28, 2007).

⁵ *About Papahānaumokuākea*, PAPAĀHĀNAUMOKUĀKEA MARINE NAT’L MONUMENT, <http://www.papahanaumokuakea.gov/new-about/> (last visited May 7, 2024).

⁶ Papahānaumokuākea Marine National Monument Expansion, Proclamation No. 9478, 81 Fed. Reg. 60227 (August 26, 2016).

⁷ *About Papahānaumokuākea*, PAPAĀHĀNAUMOKUĀKEA MARINE NAT’L MONUMENT, <https://www.papahanaumokuakea.gov/about/> (last visited May 7, 2024).

⁸ Proclamation 8031, 71 Fed. Reg. at 36443.

estimated population of 1,100 remaining with the majority of them living in PMNM.⁹ Ninety percent of all Hawaiian green sea turtles come to shore and lay their eggs at French Frigate Shoals, the largest atoll in the Northwestern Hawaiian Islands.¹⁰ They migrate to the Main Hawaiian Islands to feed in the shallow, near-shore waters and bask on land, including at national parks such as Pu'uohonua o Hōnaunau National Historical Park. In addition to the Hawaiian green sea turtles, four other species of sea turtles, including endangered leatherbacks and hawksbills, migrate and forage through the monument. There are three endangered whales at PMNM: blue, humpback, and false killer. The monument also provides nesting and foraging habitat for more than 14 million birds, making it the largest tropical rookery in the world.¹¹

PMNM plays an important role in understanding marine habitats that are relatively undisturbed. PMNM is the site of scientific and monitoring activities that are aimed at exploring, mapping and better understanding PMNM's unique ecosystem. Coral reef research and surveys in shallow and deep-water regions are helping scientists understand diversity and abundance of marine life and foraging and migration patterns. Scientific research and monitoring activities have also yielded some of the most extensive databases of seabirds in the world. Research with multibeam sonar and satellite technology is helping scientists understand deep-sea regions that are largely unexplored yet are believed to be highly biodiverse places. The scientific and research efforts within PMNM are participated in by multiple agencies and stakeholders, including the University of Hawai'i and the Hawai'i Department of Land and Natural Resources.¹²

The expansion area added to PMNM in 2016, which is included in the Agency Preferred Alternative 1, contains many significant features of historic and scientific interest.¹³ The expansion area includes more than 75 seamounts, and a non-volcanic ridge extending towards the Johnson Atoll. These features combine to provide habitat for species including sponges, other invertebrates, fish, and colonies of ancient corals. Seamount communities in the expansion area, largely undisturbed, provide the opportunity to discover species previously unknown, with possible implications for research and medicine. Moreover, it is now known that many species that the 2006 proclamation creating PMNM cited as objects to be protected inhabit ranges going well beyond the original boundaries. For example, it is estimated that monk seals travel 80 miles to forage, and birds nesting on atolls journey within a 200-mile range to forage. The expansion provides a larger protected area for animals to forage, reproduce, and raise their young—and will provide broader scientific research and understanding of PMNM's interconnected ecosystem; therefore, NPCA supports Alternative 1's proposed sanctuary boundaries that include the 2016 expansion area.

PMNM has strong cultural and historical connections as well. It is home to sacred places significant to Native Hawaiians, who were traditionally skilled mariners and use the area for

⁹ *Hawaiian Monk Seals Return Home*, PAPAĀNAUMOKUĀKEA MARINE NAT'L MONUMENT, https://www.papahānaumokuākea.gov/news/monk_seal_return.html (last visited May 6, 2024).

¹⁰ *Virtual Visit*, PAPAĀNAUMOKUĀKEA MARINE NAT'L MONUMENT, <https://www.papahānaumokuākea.gov/visit/vfs.html> (last visited May 6, 2024).

¹¹ *UNESCO World Heritage Inscription*, PAPAĀNAUMOKUĀKEA MARINE NAT'L MONUMENT, <http://www.papahānaumokuākea.gov/wheritage/rookery.html> (last visited May 6, 2024).

¹² *Research & Monitoring*, PAPAĀNAUMOKUĀKEA MARINE NAT'L MONUMENT, <http://www.papahānaumokuākea.gov/research/> (last visited May 7, 2024).

¹³ Proclamation 9478, 81 Fed. Reg. at 60227–29.

voyaging and wayfinding by natural elements. Archeological artifacts have been found on islands within PMNM, evidencing the Native Hawaiian's historical, cultural, and religious connections with the protected area. The historical religious sites found on these islands indicate a link to Polynesian culture and history. Indeed, the historical and cultural significance of PMNM is such that Native Hawaiian practices are permitted within the monument's boundaries.¹⁴

PMNM is home to objects of historical significance related to World War II that are interpreted at national park sites like War in the Pacific National Historical Park. The naval portion of the Battle of Midway, a major turning point in World War II just six months after the attack on Pearl Harbor, took place in the vicinity of Midway Atoll, within the expanded PMNM. Important historical artifacts from the Battle of Midway remain in PMNM, serving as reminders of World War II and the sacrifices made by American military personnel. Still within the area are the wreckage of the USS Yorktown, as well as, presumably, the unlocated wreckage of four sunk Japanese carriers and hundreds of downed aircraft. These artifacts serve as a lasting reminder of the more than 3,000 personnel who lost their lives in this battle.¹⁵

NPCA strongly supports the proposed rule's continued prohibition of commercial extraction to ensure the conservation of the scientific and historic objects recognized in the presidential proclamations from Presidents Bush and Obama. Deep sea mining is banned, which reduces negative impacts from sound and chemical pollution and debris. Commercial fishing is also banned, which helps minimize harmful longline fishing impacts to sharks, marine mammals, sea turtles, and birds. Human-generated marine debris from fishing nets and gear and plastics is a major form of pollution at PMNM. Fishing equipment entanglement greatly threatens wildlife, such as the Hawaiian monk seal, sea turtles, marine mammals, birds, and coral reefs. In 2023 alone, the Papahānaumokuākea Marine Debris Project removed 106 tons of marine debris in two expeditions. On one of the expeditions, the project team found seven live green sea turtles entangled in ghost nets that they were able to rescue.¹⁶

NPCA supports the continued management of Papahānaumokuākea as a highly protected marine protected area (MPA), which is one of the most effective tools for improving ocean ecosystems and threatened fish stocks. Highly protected MPAs are managed to allow for minimal or no extractive and other damaging practices, such as fishing, mining, and oil and gas development. They have the capacity to address severe declines in fish populations, leading to a reduction in fishing mortality that can increase the abundance of spawning fish, providing insurance against recruitment failure and maintaining or enhancing yields in fished areas. An additional benefit of highly protected MPAs is that they provide valuable baseline information about the health of marine resources. These marine reserves can be valuable for the study of unaltered ecological processes and serve as important baselines or control areas for harvested populations of fish. Thus, maintaining and strengthening marine protections at PMNM will ensure robust, sustainable

¹⁴See, e.g., *Question & Answers*, PAPAĀNAUMOKUĀKEA MARINE NAT'L MONUMENT, <http://www.papahanaumokuakea.gov/about/faq.html>; *Cultural History of the Northwestern Hawaiian Islands*, PAPAĀNAUMOKUĀKEA MARINE NAT'L MONUMENT, <http://www.papahanaumokuakea.gov/heritage/history.html>.

¹⁵ Proclamation 9478, 71 Fed. Reg. at 60229.

¹⁶ Papahānaumokuākea Marine Debris Project. Team Removes 126,000 lb (63 tons) of Marine Debris from Papahānaumokuākea Marine National Monument Seven Green Sea Turtles Also Rescued. (Sept. 28, 2023) <https://www.pmdphawaii.org/press-releases> (last visited May 7, 2024).

marine populations that not only benefit the ecological health of monument waters, but the larger Hawaiian Archipelago, including the national parks located there.

Papahānaumokuākea safeguards a rich and dynamic reef ecosystem that supports a vast array of terrestrial or marine species, and it further protects objects of significance related to Native Hawaiian culture and World War II. We appreciate the opportunity to comment on the proposed rule and urge NOAA and the Office of National Marine Sanctuaries to move swiftly with the designation of Papahānaumokuākea as a national marine sanctuary, as outlined in the Agency Preferred Alternative 1.

Thank you for your consideration of these comments.

Sincerely,



Sarah Barmeyer
Deputy Vice President, Conservation Programs

May 7, 2024

Mr. Eric Roberts, Superintendent
Papahānaumokuākea Marine National Monument
NOAA/ONMS
1845 Wasp Blvd., Bldg. 176
Honolulu, HI 96818

Re: PMNM-Sanctuary Designation, Docket NOAA-NOS-2021-0114

Dear Mr. Roberts,

I am writing to you today as someone who has been deeply involved with the protection of what is now the Papahānaumokuākea Marine National Monument and UNESCO World Heritage Site for the past 26 years. I first engaged when I was an employee of the Hawai'i Department of Land and Natural Resources, became the second person hired when the NWHI Coral Reef Ecosystem Reserve (Reserve) was established back in 2000, managed the Reserve while simultaneously leading the first 5 year-long effort to establish a National Marine Sanctuary in the area, and then became the founding NOAA Superintendent of the Monument when it was established in 2006, a role in which I served for 9 years. Since then, I have remained involved as a member of the Native Hawaiian Cultural Working Group.

Given my deep experience with the advocacy, establishment, and day-to-day management of this extraordinary ocean area, I am writing to express my support, with reservations, for the establishment of a National Marine Sanctuary. As a longtime advocate for the establishment of a Sanctuary, I want to be clear that while I believe that an overlay of a Sanctuary could provide significant benefits to the durable long-term management of Papahānaumokuākea, I have some concerns about the current proposal and have provided specific recommendations which I believe would address them.

In brief, Sanctuary Designation could provide significant benefits for Papahānaumokuākea by:

Addressing the weakness of the Antiquities Act to secure durable, place-based protections beyond those afforded to the area by E.O. 13174 and E.O.13196, the State of Hawai'i Marine Refuge, and existing regulations and protections offered by the existing Midway and Hawaiian Islands USFWS Wildlife Refuges. Although Papahānaumokuākea was able to dodge efforts by the Trump Administration to weaken or eliminate protections, the ability for the Monument to be repealed by future Administrations remains. The overlay of a National Marine Sanctuary which mirrored and strengthened protections of the current Monument could ensure that even if the Monument was eliminated or weakened in the future, strong protections would remain. Without such an overlay, if the Monument was to be repealed, although the Reserve and State Marine Refuge would remain, the size of the protected area within marine

waters would be significantly diminished and vulnerable once again to potential exploitation.

Supplementing, complementing, and strengthening the regulatory framework for the area, including the establishment of a civil penalty schedule under the National Marine Sanctuaries Act as Amended which would add an additional layer of penalties to violators. In addition, fines received through the issuance of civil penalties could then be collected and used directly for the co-management of the area, something that does not exist currently.

Concerns remain, however about:

The lack of management cohesion across the entire boundary of the Monument/potential Sanctuary area. It is unfortunate that the USFWS is not a cooperating agency on the proposal and that it is stated that the Office of Hawaiian Affairs cannot be a co-trustee or co-manager under the current proposal. The 7 management bodies of the Monument Management Board have been working together since 2006 therefore every effort should be made to include all agencies in the management of any future National Marine Sanctuary in the area. The idea for an overlay of a National Marine Sanctuary across the entire marine area has been a motivation since the early effort to create a Sanctuary and several agreements were reached back then, including having the USFWS as a cooperating agency in the proposal.

The inclusion of non-commercial fishing in the Monument Expansion Area (MEA). Except for sustenance fishing defined as, “fishing for bottomfish or pelagic species in which all catch is consumed within the monument, and that is incidental to an activity permitted under this proclamation” no commercial or non-commercial fishing should be allowed anywhere in the proposed Sanctuary. Although commercial fishing is no longer permitted with the Monument boundaries, the allowance, by permit, of non-commercial fishing should never have been introduced as a potential regulated activity in the Monument Expansion Area.

Specifically, the draft management plan states that, “Consistent with existing management of this area, the access restriction and proposed prohibitions would not apply to the following activities:...Non-commercial fishing in the area of the proposed sanctuary that overlaps with the MEA, the OSZ, authorized under Magnuson-Stevens Fishery Conservation and Management Act regulations is exempt from prohibitions 7–14, provided that no sale of harvested fish occurs[.]”

Non-commercial fishing is inconsistent with the original protections defined by Proclamation 8031 which states that “[e]xcept as otherwise provided in this proclamation, the Secretaries shall prohibit any person from conducting or causing to be conducted within the monument the following activities:...Removing, moving, taking, harvesting, possessing, injuring, disturbing, or damaging; or attempting to remove,

move, take, harvest, possess, injure, disturb, or damage any living or nonliving monument resource...”

Such an activity, even regulated, would be difficult to allow in a way that also meets the ten findings of Proclamation 8031 required for the issuance of permits. In addition, allowing for such permitted activities under a different management body (ie fishery management council) provides a significant management burden, and unnecessarily complicates enforcement within the Monument. Providing adequate support for and enforcement of such activities would increase the cost of both management and enforcement, particularly when compared to any potential benefit such an activity would provide.

Recommendations:

As you finalize the proposal for Sanctuary Designation based on public comment, I encourage you to adhere to the following principles:

- Honor that the Reserve and Monument were established to recognize the inextricable link between nature and culture and protect the tangible and intangible natural, cultural and historical values of the area.
- The final proposal must uphold the management integrity of the existing Reserve, Monument, State Marine Refuge and USFWS refuges and all current management structures that exist. Any final regulations should not reduce or diminish the strong protections that are currently in place and look for ways to close gaps and strengthen levels of protection.
- Levels of protection should be consistent throughout the boundaries of the Sanctuary. Sanctuary designation provides the opportunity to correct the discrepancies between the original monument and the Monument Expansion Area. The non-transparent compromise that was struck in 2006 should be changed through designation. Unfortunately, the current preferred alternative in the draft EIS does the opposite and instead codifies this unwarranted compromise.
- In no way should any definition, change in management structure, or regulation diminish protections or leave from for the potential that commercial fishing in any form (barter, trade) can occur in the future. That would be an abomination of the decades of protection that has been in place and the commitment of the Biden Administration to strong ocean governance.
- Harmonize Sanctuary and Monument management. While under NMSA, only waters can be contained within a Sanctuary, the co-management of the Sanctuary should harmonize with that of the current Monument. Understanding that the Monument co-trustees are responsible for management of the islands and fast lands contained within the boundaries, the co-management and trustees should be consistent. Additionally, Sanctuary management should not become an added administrative burden for the agencies, nor require duplicative management or decision-making structures. The

Monument Management Board could continue to operate as the overall management structure for both the Monument and Sanctuary.

My specific recommendations focus on the continued allowance of non-commercial fishing in the Monument Expansion Area and the consideration of new terms such as “customary exchange”:

1. Do not allow for any change in fishing definitions to allow for “customary exchange” or any other term that could unwittingly or intentionally leave room for expanded fishing in the Monument/proposed Sanctuary. See above.
2. Remove the ability for recreational fishing in the MEA/OMZ. Since a Sanctuary can strengthen protection, use this as an opportunity to demonstrate that the NMSA is not a weak law to protect the ocean but that it actually has the legal authority and ability to also provide strong protection. The problem is not with the Act itself; it is with how the Act has been implemented.
3. Remove the word ‘empower’ as related to Native Hawaiians. This use of the term is out of sync with the standards set forth by the Biden Administration for in terms of equity and justice. Please update the document to align with the various guidance documents that have been produced.
4. RAC should transition to the SAC, ensuring continuity with the Reserve. Any proposed changes to composition should be proposed with the opportunity for public review and input and should only be considered if they supplement, complement or strengthen their ability to advise Sanctuary co-managers and inform the Monument co-trustees. The establishment of a SAC should not limit the engagement or ability to provide advice across the management agencies that the RAC currently enjoys. It should also engage Friends groups from the state and federal refuges and other NGOs that are currently supporting activities within the Monument. It is an opportunity to galvanize support and strengthen intergenerational engagement with Papahānaumokuākea.

The cultural working group will provide recommendations as well, nearly all of which are consistent with these. I have also signed and endorse this shared letter as the comments are aligned with those contained herein.

Please know that my comments provided here are not intended in any way to criticize the hard work and effort of those who have been working on the proposal. I clearly remember the significant level of effort that goes into it, and I sincerely appreciate the sincere intention to strengthen and make more durable safeguards for the protection of Papahānaumokuākea. The opportunity to do that is here. My comments are intended to provide specific recommendations on how to improve the currently described Preferred Alternative in hopes that the final proposal and regulations, however well intended, do not open up the area to increased harm to due compromises that I do not believe need to be made.

If such compromises, like the one put into place when the Monument was expanded which reduced protection of the expanded area from fishing are included or remain, I do not believe a Sanctuary should be approved.

Simply put, the draft is close but still opens the area up to unwarranted and unnecessary exploitation. Any cost-benefit analysis would clearly show that these internal agency compromises are not worth the added management or enforcement costs required to allow for them.

This is the opportunity to do better - and do what Aunty Laura Thompson (one of the founding Reserve Advisory Council members) implored us all to do - establish a management regime truly worthy of the area and future generations. It is indisputably documented and established that Papahānaumokuākea deserves the highest levels of protection for its cultural and ecological significance to the planet and humanity.

Let's please do the right thing.

Mahalo for the opportunity to comment, please feel free to contact me at any time at aulaniwilhelm@gmail.com.

'Aulani Wilhelm
Founding and former NOAA Superintendent,
Papahānaumokuākea Marine National Monument & UNSCO World Heritage Site

13 S Dixie Highway
Coral Gables, FL 33146

05/07/2024

sent to NOAA via www.regulations.gov

Re: Proposed Papahānaumokuākea National Marine Sanctuary, #2024-03820

Dear Eric Roberts,

I agree completely with the designation of certain marine portions of Papahānaumokuākea National Monument as a National Marine Protected Sanctuary. This area is important biologically, culturally, economically, and historically. Adding further protections to this area will help to preserve it for future generations to come. I have a personal interest in this rulemaking because I am a marine biology student with a special interest in environmental policy and Hawaiian culture and history. Therefore, I believe this ruling is especially important because it protects many of these aspects.

Ecological Significance of Papahānaumokuākea Marine National Monument

The Papahānaumokuākea Marine National Monument is home to over 7,000 species, many of which are found nowhere else in the world. These species include whales, seabirds, fish, and sharks. Additionally, it is also home to several endangered species, such as the green sea turtle and the Hawaiian monk seal. About ¼ of these species are only endemic to Hawaii and found nowhere else on Earth (PEW). Due to the large area of the proposed sanctuary, these numerous species' habitats have the capability to be entirely protected.

Maintaining a large and diverse number of species in an area is critical for maintaining biodiversity. This biodiversity has untold positive effects, both on the ecosystem and on human populations. In marine food chains, different species compose different levels, from the energy-producing phytoplankton all the way up through the top

predators, such as tuna and sharks. Without the large amount of biodiversity needed to maintain this food chain, the various ecosystems found throughout the Papahānaumokuākea Marine Protected Sanctuary could be vulnerable to collapse. Since each level of the food chain depends on the others for support, the higher the number of species means the more stable the environment becomes. For example, the coral that composes reefs promotes a huge amount of biodiversity across many different levels of the food chain. It provides small fish, crabs, and other sea life with a place to live and hide from predators and larger fish, rays, and sharks with a source of food (NOAA). Therefore, the coral, and all the species that depend on it during their lifecycle, would benefit greatly from the Marine Protected Sanctuary.

Social Significance of the Papahānaumokuākea Marine Protected Sanctuary

The Papahānaumokuākea Marine Protected Sanctuary is important for social reasons as well. The area is sacred to Native Hawaiians because it is an important location in cultural creation and settlement stories. Retaining this connection that Native Hawaiians have to their home is especially important because of the Hawaiian colonization that occurred in the late 1800s. During this period, Native Hawaiians suffered a decrease in population size due to outbreaks of diseases, pressure to convert from their religion, being forced off their land, and being forbidden from speaking their own language (Haunani-Kay). The proposed sanctuary would allow Native Hawaiians to connect with their heritage and still be able to call Hawai'i their home.

In addition, this area has other cultural significance. The proposed sanctuary includes the location of the battle of Midway, which has great historical importance due to its relevance in WWII. Protecting this area would allow people from all cultures to be able to learn about the significance of the battle. In addition, there are many military aircraft and boats, foreign vessels, and Native Hawaiian fishing boats from 18th, 19th, and 20th centuries sunk in this area. Designating this area as a protected sanctuary will help to protect these important historical vessels for years to come, giving future generations tangible ways to learn about the past.

Economic Significance of Papahānaumokuākea Marine Protected Sanctuary

The proposed sanctuary is also economically important because the animals and habitats are essential for tourism. Whether it's tourists attending chartered fishing trips, dive trips, boat tours, or any of the many available opportunities in Hawaii, tourism serves as a major source of income for the Hawaiian Islands. Therefore, protecting these environments, reefs, fishing stocks, and the wider Hawaiian natural world are important for maintaining this major source of income.

Additionally, the fish species that live in this area serve as an important source of local food, unlike many other goods that must be imported because Hawaii is so far removed from other land masses. The proposed protected area will help to further reduce overfishing and protect the current populations so that these communities of fish are still able to thrive.

In conclusion, this suggested protected Marine Sanctuary would benefit the local and extended communities in many ways, including biologically, socially, and economically. A beneficial addition would be an in-depth study of each species that lives in the protected area to ensure that their entire habitat is protected. This way, each population is at a lowered risk of going extinct and the protected area is as effective as possible. Lastly, another suggestion is the inclusion of Native Hawaiians in all stages of effecting this rule, including drafting, revising, and implementing. This will give them a way to reclaim their land, as well as help the proposed sanctuary fully succeed.

Overall, this added protection is a great step in preserving and protecting biodiversity, which in turn will aid many aspects of human life in the Hawaiian Islands and worldwide. Thank you for your consideration of this and other public comments.

Footnote- Works Cited

“Coral Reef Ecosystems.” *National Oceanic and Atmospheric Administration*, 2019, www.noaa.gov/education/resource-collections/marine-life/coral-reef-ecosystems#:~:text=Benefits%20of%20coral%20reef%20ecosystems,food%2C%20income%2C%20and%20protection.

Haunani-Kay, Trask. “The Struggle for Hawaiian Sovereignty - Introduction.” *Cultural Survival*, www.culturalsurvival.org/publications/cultural-survival-quarterly/struggle-hawaiian-sovereignty-introduction. Accessed 7 May 2024.

“Papahānaumokuākea Marine National Monument.” *The Pew Charitable Trusts*, The Pew Charitable Trusts, 24 May 2016, www.pewtrusts.org/en/research-and-analysis/factsheets/2016/05/papahanaumokuakea-marine-national-monument.

I am writing to voice my support for the designation of marine portions of Papahānaumokuākea Marine National Monument and the Monument Expansion Area (collectively called the Monument) as a national marine sanctuary. The proposed sanctuary area extends 1,200 miles across the northwestern region of the Hawaiian archipelago, starting approximately 140 miles from the main Hawaiian Islands, and roughly 3,000 miles from the nearest continental land mass. This vast ecosystem is one of the largest wild, pristine marine protected areas in the world, encompassing 582,578 square miles of the Pacific Ocean. The monument protects traditional Hawaiian habitation sites, heiau (temples), ko'a (fishing grounds and shrines), culturally significant species such as sharks, sea turtles, and other 'aumākua (ancestral family gods), and the flight paths and foraging habitat of seabirds essential to traditional navigators during ocean voyaging by canoe. The addition of the national marine sanctuary would provide important regulatory and management tools to strengthen existing protections for Papahānaumokuākea ecosystems, wildlife, and cultural and maritime heritage resources.

I urge that NOAA act swiftly to designate the new sanctuary by finalizing and approving the associated draft environmental impact statement (EIS) (Alternative 1) and draft sanctuary management plan that are currently out for public comment. Specifically, this proposed action and National Marine Sanctuary Designation would:

- Maximize benefits for the largest proposed sanctuary of the three alternatives that NOAA is evaluating.
- Protect this coral reef ecosystem that is a global marine biodiversity hotspot, providing essential habitats for rare species such as the threatened green sea turtle and the endangered Hawaiian monk seal, the Hawaiian humpback whale, sharks, millions of seabirds, and others. Many species in the area are found nowhere else in the world.
- Provide comprehensive and coordinated management of the marine areas of Papahānaumokuākea to protect nationally significant biological, cultural, and historical resources.
- Enhance management of the proposed sanctuary by having a Native Hawaiian program specialist on staff and the sanctuary advisory council including Native Hawaiian seats, and outreach to the Native Hawaiian Community.

Thank you for doing all that you can to ensure maximum protections for this national Hawaiian treasure for fish, wildlife, Pacific Island communities, and those who love this area, now and into the future.

Comments for Papahānaumokuākea proposed Marine Sanctuary
from Alisha Shanti Chauhan | Environmental Consultant, Educator & Liaison -Indigenous
Ecological Knowledge

Papahānaumokuākea and its marine waters is one of the last places on the planet that is pristine, with so many opportunities to preserve and regenerate marine wildlife- if the strongest possible protection regulations are put into place.

These enhanced regulatory protections would entail greater regulations, strict permitting, monitoring, enforcement and protections for Papahānaumokuākea waters and marine waters than what the draft Proposal currently entails.

Enhanced regulations, including strict regulations, permitting, monitoring, enforcement of the marine waters of this area for the highest possible protections can lead to the Papahānaumokuākea proposed Marine Sanctuary becoming an important global model for how we conduct stewardship for pristine ecological marine waters, with all endemic species (as this is one of the only marine environments on the planet with solely endemic wildlife species) for perpetuating regeneration of marine life in direct sanctuary waters as well as neighboring marine waters.

For example, a 2022 study on yellowfin tuna, from Science journal has shown that protected areas have increased nearby (non-protected waters) catch rates - showing that the effects of protection ripple into marine waters further than the marine protected area itself.

As well, there is a current global initiative through the United Nations for protection of 30% of the planet's ocean/marine ecosystems by the year 2030. Currently, only 3% of the planet's ocean/marine waters/ecosystems are protected through regulations, including no fish zones. Papahānaumokuākea proposed Marine Sanctuary can be an important global model for joining this initiative if the strongest possible protections are put into place. The health of the Ocean is the health of humanity, especially at this critical moment for the planet, with the climate crisis and otherwise. The Ocean provides many ecosystem services, and bigger areas of marine waters are needed to be fully protected from any negative and damaging human impact, to help in better preserving and protecting and regenerating Papahānaumokuākea waters and wildlife for a better future in the Hawaiian islands archipelago chain, and globally for generations to come.

At one time, the entire Hawaiian chain of islands was as pristine as the Papahānaumokuākea marine waters. Let this opportunity to create strengthened protections be an example of how we can put into place protections holistically and wholeheartedly to steward this area and its surrounding waters for future generations. And these protections need to be put into place with a strong and sufficient attempt to collaborate with, and in conjunction with Native Hawaiian public engagement and public engagement in addition to the proposed Native Hawaiian advisory council. This would

need to allow for the protection documentation for the marine sanctuary to be a living document with ongoing feedback from especially the Native Hawaiian public and elders.

Enhanced protections for the strongest possible protection of Papahānaumokuākea marine sanctuary include a request for:

Maintaining at least the preferred sanctuary boundary area - maximum sanctuary area alternative 1 at 582, 570 square miles.

Strict monitoring & enforcement on marine debris, fishing line, fishing gear to eliminate harm and entanglement of endangered marine life in proposed marine protected area, including no longline fishing.

Strict regulations, monitoring and enforcement for no non-commercial fishing and no sustenance or subsistence fishing (as shown to be exempted on page 10 - I oppose this) in the marine protected area to eliminate entanglement/harm of marine life in this protected area and surrounding marine waters.

For example, at the Marine Institute Maui Ocean Center the sea turtle hospital takes in patients that are treated for entanglement. 80% of these patients are treated because of entanglement due to fishing practices and current local fishing practices that do not retrieve fishing gear once it enters or breaks in the ocean waters. Endangered sea turtle patients are treated from Maui Nui and Island of Hawai'i marine waters and this statistic shows that fishing in the waters affects marine life anywhere as there are no jurisdictions for marine life and the gear, and broken line etc. that entangles them.

Statistics are not yet available for other marine keystone species; however, visual observation confirms that local waters fishing of any sort, commercial or non-commercial even sustenance fishing if not conducted in traditional sustainable Native Hawaiian practice (with traditional non-polluting tools), affects keystone species like mano (sharks) and cetaceans and coral through gear such as hooks, line etc.

No exemptions for marine mining activities. No exemptions for US armed forces and/or military activity or other human impact damaging activities including no submarine activity. Studies have shown that submarine activity is damaging to reefs, and marine life. No exemptions for mining/deep sea mining of any sort at a distance from the protected area as the effects of mining ripple and destroy unique deep sea ecosystems and habitats that took millions of years to form. Page 10 shows exemptions for US armed forces activity and I oppose this as for example, US armed forces activity has shown to negatively impact corals and cetaceans with RIMPAC activity off the shore of Kaua'i, especially in 2014, with 50% of the coral reef bleached within the 2 months of this activity occurring.

Maintain access for sacred cultural practices that are not in any way affecting ecosystems including integrating Mai Ka Po Mai practices.

Create extra protection regulations, monitoring & enforcement for keystone marine life like mano (sharks), corals, cetaceans, etc. Keystone species bring major balance to unique endemic ecosystems, especially sharks and as a fish, enhanced protections are needed to monitor and enforce against any fishing, including tagging, catch and release, type of research.

No unnecessary or harmful to life (in any way, including tagging, biopsy, or catch and release) type of scientific research.

Enhanced education and awareness of Papahānaumokuākea marine waters and the proposed National Marine Sanctuary is needed to the public especially on the Hawaiian islands and to Native Hawaiians, as well as nationally.

Encourage reporting transparently to the public of any kind of activity, permitted or not that is occurring on a biannual basis. With this reporting, public engagement, especially with Native Hawaiians and elders should occur for a continued reassessment of the regulatory and proposed protections document (including regulations, permitting, monitoring needs and enforcement) to have a 'living' protections document or ongoing assessed document with feedback considerations from the public and Native Hawaiians for the Papahānaumokuākea marine sanctuary.

Ensure that permitted activities and monitoring and enforcement activities, if conducted by vessels, to be conducted by traditional and, or electronic vessels, to eliminate noise pollution of any sort to marine life. Noise pollution and fast speeds negatively impact and harm marine life, especially to cetaceans and their intercommunication.

On page 2, 'sustainable use' 16 U.S.C 1431 b4 to require specific definition as to what sustainable use means as to provide enhanced protections for pristine marine waters exempt from a human footprint requires the agency to not allow 'use of the waters or marine ecosystems' of any sort.

On page 5 of the document, 'activities subject to regulation' wording 'as may be necessary' to be changed to incorporate the processes where this can occur 'on an ongoing basis'. 6 of the proposed document to protect Papahānaumokuākea, the co-management of the sanctuary and State of Hawai'i must involve continued public engagement processes as well as including Native Hawaiian elders. Where it is said that 'may' develop a MOA, this language needs to change to 'will' develop a MOA.

Public Comment Period & Continued Public Engagement:

The public and especially Native Hawaiians - as their traditional ecological knowledge is extremely important to protection and regeneration of marine life for generations to come - need more time to integrate this proposal and provide comments.

A sufficient and sustained public education and engagement period has not been conducted and comments are especially difficult for elders to convey by electronic submission. Especially at this time on Maui, where some elders are from the island of Niihau closer to the proposed protected marine area. The wisdom of the Native Hawaiian elders combined with the modern protections are important to be acknowledged and strongly supported and also deemed at least sufficient by the Native Hawaiian community and the public through engagement and a strong feedback process.

NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM RESERVE
RESERVE ADVISORY COUNCIL

Non-Government (Voting)

Douglas Fetterly
 Citizen-At-Large
 Linda Paul
 Conservation
 Robin Baird
 Conservation
 Samuel M. 'Oluokani'ohi'a Gen, III
 Conservation
 Bonnie Kahapea-Tanner
 Education
 Solomon Pili Kaho'ohalahala
 Native Hawaiian Elder
 Felika Andrade
 Native Hawaiian
 Kaluku Steward
 Native Hawaiian
 Thome Abbott
 Ocean Related Tourism
 Risk Hoo
 Recreational Fishing
 Mark Hixon
 Research
 Don Schug
 Research
 Haunani Kane
 Research

Government (Non-Voting)

Eric Roberts
 Papahānaumokuākea MNM
 Kim Hum
 HNW National Marine Sanctuary
 Maile Chow
 NMFS - PIRO
 Brandon Jim Oh
 NMFS - OLE
 Kealoha Pisciotto
 Office of Hawaiian Affairs
 Jared Underwood
 USFWS - Refugees
 Dan Polhemus
 USFWS - Ecological Services
 Brian Neilson
 DLNR - DAR
 Cynthia Vanderlip
 DLNR - DOFAW
 Joshua Delfello
 WESPAC
 Emily Hauck
 US Navy
 Maile Norman
 US Coast Guard
 Peter Thomas
 Marine Mammal Commission

John Armor, Director
 NOAA - Office of National Marine Sanctuaries
 1305 East-West Highway
 Silver Spring, MD 20910

c/o Eric Roberts, Superintendent
 Papahānaumokuākea Marine National Monument
 NOAA/DKJRC/NOS/ONMS/PMNM
 1845 Wasp Boulevard, Building 176
 Honolulu, HI 96818

Re: RAC comments on the Draft EIS and Management Plan for the proposed National Marine Sanctuary for the marine areas of Papahānaumokuākea, the Northwestern Hawaiian Islands

May 6, 2024

Aloha mai Director Armor,

After careful review of the Draft EIS and Management Plan for the proposed sanctuary, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council (RAC) offers the enclosed comments and recommendations. These comments and recommendations were drafted by the RAC's Comment Writing Team, with input from the Research Subcommittee, and were thoroughly discussed and approved by the full RAC at its May 6th meeting.

The RAC previously indicated its support for proceeding with the sanctuary designation process, and we wish to reaffirm that we endorse the designation of a National Marine Sanctuary in the Northwestern Hawaiian Islands. Among the sanctuary boundary alternatives analyzed in the Draft EIS, the RAC supports the preferred alternative (#1), which includes all waters of the existing monument and monument expansion area.

The RAC's specific recommendations on the framework and content for the Final EIS, Management Plan, and regulations are as follows:

- 1. Replace the Acronyms "MEA" and "OSZ" with Full Text: "Monument Expansion Area" and "Outer Sanctuary Zone"**

NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM RESERVE
RESERVE ADVISORY COUNCIL

2. Innocent Passage

Although the United States has not yet ratified the United Nations Convention on the Law of the Sea of 10 December 1982, it recognizes and follows it as customary international law. Of particular concern to the RAC are those activities that take place in the Northwestern Hawaiian Islands under claims of innocent passage. (See *inter alia* UNCLOS Articles 17 to 32.) The RAC urges ONMS to ensure that all activities in the proposed national marine sanctuary in the Northwestern Hawaiian Islands fully comply with UNCLOS and all other applicable international treaties.

3. Socioeconomic Analysis

The RAC requests additional research and information about the social, cultural, and economic impacts of the proposed sanctuary for Native Hawaiian communities and residents of Hawai'i. We find there is a lack of data to help inform our decisions, particularly regarding the potential effects of the inclusion of Middle Bank in the proposed sanctuary on the traditional practices and livelihoods of local fishers.

4. Glossary of Acronyms and Terms

We suggest adding a glossary to the Draft Management Plan. Although a list of Abbreviations and Acronyms are included on page vi of the Draft EIS, it is less accessible to anyone who is reviewing the management plan alone.

5. The RAC did not Reach Consensus on Consideration of a Boundary Alternative that Encompasses all of Middle Bank in the Final EIS

The RAC did not reach consensus that the final EIS either fully analyze the biological/ecological, economic, social, and cultural impacts of a sanctuary boundary alternative that encompasses all of Middle Bank or provide a detailed explanation of why this alternative is inconsistent with the stated purpose and need of sanctuary designation and the NMSA. Thus, no RAC recommendation to do so has been made.

The RAC's Research Subcommittee assembled a literature review outlining biological/ecological resources important to the proposed sanctuary that could potentially be at risk due to commercial fishing activity at Middle Bank. To preserve this record of conservation concerns in a form useful to NOAA, the literature review is included as an attachment to this letter.

The Council is an advisory body to the Reserve/NOAA Monument superintendent. The opinions and findings of this document do not necessarily reflect the position of the Reserve, the Monument, or the National Oceanic and Atmospheric Administration.

NORTHWESTERN HAWAIIAN ISLANDS CORAL REEF ECOSYSTEM RESERVE
RESERVE ADVISORY COUNCIL

In summary, among the sanctuary boundary alternatives analyzed in the Draft EIS, the RAC supports the preferred alternative (#1), which includes all waters of the existing Monument and Monument Expansion Area. In addition, the RAC approved comments regarding acronyms, innocent passage, a socioeconomic analysis, and glossary. However, the RAC did not reach consensus that the final EIS either fully analyze the biological/ecological, economic, social, and cultural impacts of a sanctuary boundary alternative that encompasses all of Middle Bank or provide a detailed explanation of why this alternative is inconsistent with the stated purpose and need of sanctuary designation and the NMSA. Thus, no RAC recommendation to do so has been made.

The RAC is an advisory body to the Reserve/NOAA Monument superintendent. The opinions and findings of this document do not necessarily reflect the position of the Reserve, the Monument, or the National Oceanic and Atmospheric Administration.

Mahalo for the opportunity to provide this additional input on a sanctuary designation for Papahānaumokuākea Marine National Monument. Do not hesitate to contact us if you have questions.

Sincerely,

Linda M. B. Paul

Linda Paul, Chair

The Council is an advisory body to the Reserve/NOAA Monument superintendent. The opinions and findings of this document do not necessarily reflect the position of the Reserve, the Monument, or the National Oceanic and Atmospheric Administration.

*Northwestern Hawaiian Islands hui, Pua'āinahau Foundation
Hawai'i Wildlife Fund, Mahu 'Aina, Life of the Land,
Hālaui Nā Mamo o Pu'uana'hulu, Malama Makua*

Concerns regarding the Proposed PMNM Sanctuary Designation for the Northwestern Hawaiian Islands

Nicole LeBoeuf, Assistant Administrator
for Ocean Services and Coastal Zone Management
National Ocean Service
National Oceanic and Atmospheric Administration
RE: Proposed Papahānaumokuākea National Marine Sanctuary
NOAA-NOS-2021-0114

Aloha,

We are writing to express strong concerns about plans to overlay a weak Department of Commerce "Sanctuary" over the strongly protected waters of the Northwestern Hawaiian Islands, including the NWHI Coral Reef Ecosystem Reserve, the NWHI State Refuge, USFWS Refuges, and the Papahānaumokuākea Monument.

This is a dangerous move which could deeply harm the NWHI, spreading commercial exploitation and opening new fisheries throughout this sacred and fragile pu'uhonua. This approach is not legal, given the mandatory requirement that any proposed sanctuary – IF one is designated – must build on (complement and supplement) the strong protections of the NWHI Reserve as defined by Executive Orders 13178 and 13196, which this proposed sanctuary fails to do.

We note that during the previous failed NWHI Sanctuary designation attempt, the State of Hawai'i demanded that a proposed Sanctuary must match the stringent State NWHI Refuge requirements and protections where all access and all activities are automatically prohibited by default except for a short list of regulated activities that must meet a "do no harm" standard; no recreational or commercial fishing, commercial use; public hearings mandatory on all permit applications, no multiple-year permits allowed, bans for permit violators. The proposed sanctuary fails to do so.

The NWHI Reserve and State NWHI Refuge - with the overlay of Monument Co-Trustee Management - represent the strongest protections which must be replicated in any proposed new NWHI designation.

1. The Northwestern Hawaiian Islands are NOT FOR SALE. They are not for commercial gain, commercial use, "development", or extraction proposed in the Sanctuary. Commercial use is prohibited in State Refuge waters. The strongest protections - as strong as those of the Reserve and State Refuge - must be provided for the entire NWHI pu'uhonua.
2. As is required in the NWHI Reserve and NWHI State Refuge, ALL activities must be

AUTOMATICALLY PROHIBITED throughout the NWHI, including in the Monument Expansion Area, and in any other proposed protected area such as a Sanctuary. The Commerce Sanctuary proposes to reverse this precautionary principle and to AUTOMATICALLY ALLOW all activities except for those on a specific list of prohibitions developed by the Department of Commerce – with the Department of Commerce exempted from these “prohibitions” - including exploring for oil, gas, minerals; using poisons, explosives; releasing introduced species, anchoring on coral, waste dumping, drilling, dredging, harvesting, injuring damaging resources, etc. This reversal of the automatic prohibitions required in the Reserve and State Refuge represents an enormous threat and is an extraordinary violation of the mandatory requirement to build on - complement and supplement - strong Reserve protections.

3. All rules and prohibitions in the NWHI must apply EQUALLY to ALL parties as is mandatory in the NWHI Reserve and State Refuge. The proposed Sanctuary language, however, includes an astonishing loophole exempts all Department of Commerce agencies – including the National Marine Fisheries Service - from any permit requirements and prohibitions, including the highly damaging activities listed above, if they label their activities as “research.” This is a vast weakening of existing protections. No agency, including the Department of Commerce, should be exempt from permitting requirements or prohibitions, other than Coast Guard in the case of emergency.
4. The proposed sanctuary opens the door to long-prohibited fisheries in the NWHI. NO commercial, “Non-commercial”, “sustenance” or recreational fishing should be allowed in the NWHI. No new fisheries of any kind should be opened in the NWHI. This is a pu’uhonua, a public trust and – in the case of any weakening of Reserve or Monument protections by Presidential action - the proposed introduction of fisheries throughout the NWHI represents a reversal of existing protections.
5. Regulations, penalties, and strong enforcement for the EXISTING protections of NWHI waters to 50 nm (NWHI Reserve) must be provided NOW. NOAA has refused to issue these regulations for the past TWENTY FOUR YEARS. Stop stalling, issue the regulations and enforce these pu’uhonua protections!
6. Regulations must be issued to strengthen the shockingly weak Monument Expansion Area (MEA) protections to - at a minimum - the level of existing strong State Refuge and NWHI Reserve protections. This can be done NOW. NOAA has failed to do this for the past EIGHT YEARS. Stop stalling and issue and enforce strong MEA regulations.
7. The MEA – given its fundamental weakness compared to Reserve and State Refuge protections – must be zoned separately from the Reserve and Monument so as never to spread its loopholes and weakness to the neighboring protected areas.
8. As is required in the State NWHI Refuge, public hearings MUST be held on all NWHI permit applications instead of the secretive NOAA permitting process proposed for the Sanctuary. In addition, there must be a PERMANENT PUBLIC RECORD of all permits granted.

9. AIS (Automatic Information Service) vessel monitoring – inexpensive, publicly available and necessary for enforcement – must be implemented for safety and enforcement NOW. Implement satellite vessel monitoring. NOAA’s refusal to take simple monitoring measures for the past 24 years has given the green light to poachers and violators.
10. Maintain the existing Co-Trustee management structure – joint management by the Office of Hawaiian Affairs, US Fish and Wildlife Service, the State of Hawai’i and the Department of Commerce/NOAA. This co-management structure provides checks and balances because it features agencies dedicated specifically to NWHI biodiversity preservation (USFWS) and cultural rights and practices (OHA), unlike the commercially-oriented Department of Commerce. Do not overlay the co-managed protected areas with a layer of “Commerce management” which - should a President weaken Reserve or Monument protections - could come into effect throughout the entire NWHI – eliminating the current system of checks and balances which has prevented the ecosystem harm that occurred under Department of Commerce auspices prior to designation of the Reserve and State Refuge.
11. Federal funding should be distributed equally amongst all Co-Trustees.
12. Independent cumulative impact assessments of permits are urgently needed and must be made part of the permanent public record. NOAA has failed to publish cumulative impact assessments – including of NOAA’s thousands of permittees, tens of thousands of “person- days” in the NWHI, shipwreck, oil spill, and other damage for the PAST 24 YEARS. A terrible track record.
13. The Sanctuary Draft Environmental Impact Assessment (DEIS) is legally flawed and fails to analyze, among other things, the above impacts and the impact - should a President weaken the Reserve or Monument - of overlaying strong Reserve, State Refuge, and Monument protections with a far weaker Sanctuary, riddled with loopholes. The DEIS also fails to analyze the potential impact of issuing and enforcing regulations under existing authorities and, instead of providing the required range of meaningful *management* alternatives, merely provides boundary alternatives under the same management paradigm with the Department of Commerce as the regulatory authority.

We strongly support the goal of providing the strongest possible protections for the Northwestern Hawaiian Islands (NWHI).

The current Sanctuary proposal fails to utilize the strongest existing protections (Reserve and State Refuge language) and represents a direct threat to the sacred and fragile NWHI pu’uhonua.

Presidential Action and NWHI Protections

We note that it is possible that protections created by Presidential Executive Orders or proclamations could be weakened by the action of a future President. A President cannot rescind a monument but can alter or reduce or expand its protections.

If a future President decided to weaken Reserve or Monument protections, leaving behind a weak NWHI Sanctuary riddled with loopholes, opening up industrial fishing and commercial activities while eliminating the checks and balances of Co-Trustee management that currently includes agencies dedicated to protecting Kanaka Maoli rights (Office of Hawaiian Affairs) and biodiversity preservation (the U.S. Fish and Wildlife Service), this shocking reversal of 24 years of protections would have devastating impacts on the NWHI ecosystem.

Any proposed new NWHI measures must utilize the strongest of the protective language found in the NWHI Coral Reef Ecosystem Reserve, State Refuge, and the Monument and apply the strongest protections throughout the region.

The proposed Commerce Sanctuary fails to follow the law (complement and supplement Reserve protections).

No proposed Sanctuary should overlay Reserve protections with a layer of weak rules, loopholes and commercial exploitation.

No proposed Sanctuary should overlay USFWS Refuges or the State Refuge. The [State rejected the violations and loopholes proposed in NOAA's previous \(failed\) Sanctuary designation attempt and demanded](#) that Commerce must match the stringent state Refuge protective requirements if a Sanctuary is to be established. The proposed Sanctuary, however, fails to do so and, instead, represents a grave threat to the sacred and fragile NWHI pu'uhonua.

We urge that the existing NWHI requirements - including as described above - be implemented now, without delay, under existing rules and management structures.

Mahalo nui loa.

On behalf of the NWHI hui: Kumu Hula Victoria Holt Takamine, Isaac "Paka" Harp,

Stephanie Fried, Dave Raney and Cha Smith

Lynette Cruz
Malama Makua

Hannah Bernard
Hawai'i Wildlife Fund

Narrissa P. Spies (Brown), PhD

Jessica Wooley
Former RAC Member

William G. Gilmartin Former:
Chair of Hawaiian Monk Seal
Recovery Team, Leader of NMFS
Monk Seal Recovery Program,
Member of NWHI Coral Reef
Ecosystem Reserve Advisory
Council

Jim Albertini and Stephen Paulmier
Malu 'Aina Center for Non-violent Education and
Action

William Sonny Ching
Hālau Nā Mamo o Pu'uanahulu
Nā Kumu Hula - William Sonny Ching & Lōpaka
Igarta DeVera
Pua'āinahau Foundation

The Keawekane-Stafford 'Ohana
Kainoa, Camille, Kealaula, Kainoakana'iaupuni,
Kili'apuokuakini

Henry Curtis
Life of the Land

Preston Kuilipule	James Long
David Schlesinger Project Developer	Miwa Tamanaha
Healani Sonoda-Pale	Ohana o Manuel, Nana & Michael Manuel
Tammy, Jacob and Cherish Harp	Ashley K. Obrey

Attachments

Annex I: NWHI hui, *Source Material and Documentation of Concerns Regarding the Proposed Papahānaumokuākea National Marine Sanctuary, 2024*

Annex II. Strongly worded letters from the State of Hawaii, Department of Land and Natural Resources to NOAA/NOS, sharply criticizing the loopholes and weak protections proposed NOAA's previous (failed) 2006 sanctuary designation effort.

These letters document NOAA's previous attempt to override State decision-making processes and introduce destructive commercial Sanctuary activities, illegal in State waters which threatened the protected waters of the State NWHI Marine Refuge, and are remarkably similar to the Sanctuary measures currently being proposed.

These detailed letters reflect the **State's strong commitment to exercising its jurisdictional rights to protect state Refuge waters** despite attempts by NOAA undermine the State's authority, to override protective measures for the NWHI and – in essence – to bully state officials into withdrawing their requirements.

The first letter was sent by the Chair of DLNR to the NOS representative, 'Aulani Wilhelm, on March 24, 2006. Despite receiving, in reply, a request that "*the State of Hawai'i not render further comment on the proposed Sanctuary regulations*", on April 17, 2006, the State sent a lengthy follow-up letter and continued to insist on jurisdictional rights and strong NWHI protections. We attach these letters which reflect NOAA Sanctuary efforts to weaken NWHI protections remarkably similar to those occurring during the current designation attempt in the hope that the State of Hawai'i and OHA will likewise continue to protect NWHI waters and stand strongly against destructive proposals or bullying by Department of Commerce agencies.



Northwestern Hawaiian Islands hui

Source Material and Documentation of Concerns Regarding the Proposed Papahānaumokuākea National Marine Sanctuary

For more information: NWHIhui.wordpress.com

May 6, 2024

Please submit edits, comments, and corrections to NWHIhui99@pm.me

We strongly support the goal of providing the strongest possible protections for the Northwestern Hawaiian Islands (NWHI).

The current Sanctuary proposal fails to provide these protections.

If a future President decided to weaken Reserve or Monument protections, leaving behind a weak NWHI Sanctuary riddled with loopholes, opening up industrial fishing and commercial activities while eliminating the checks and balances of Co-Trustee management that currently includes agencies dedicated to protecting Kanaka Maoli rights (Office of Hawaiian Affairs) and biodiversity preservation (the U.S. Fish and Wildlife Service), **this shocking reversal of 24 years of protections will have devastating impacts on the NWHI ecosystem.**

The current Sanctuary proposal fails to utilize the strongest existing protections (Reserve and State Refuge language) and represents a direct threat to the sacred and fragile NWHI pu'uhonua.

The NWHI Coral Reef Ecosystem Reserve ("NWHI Reserve"), the NWHI State Refuge, the Papahānaumokuākea Marine National Monument and the U.S. Fish and Wildlife Refuges currently provide strong protections for the natural and cultural resources of the Papahānaumokuākea, including a ban on commercial fishing and recreational fishing other than at Midway Atoll.

The proposed Commerce Sanctuary fails to follow the law (complement and supplement Reserve protections), and proposes overlay Reserve, State Refuge and Monument protections with a layer of weak rules, loopholes and commercial exploitation.

We urge that the existing NWHI requirements - including as described below - be implemented now in the Reserve, Monument and Monument Expansion Area, without delay, under existing rules and management structures.

This document provides a brief overview of existing protections and the history of their establishment (necessary to understand the baseline of protections that must be "complemented and supplemented" by any proposed Sanctuary or other new designation) and flaws in the proposed Sanctuary Draft Environmental Impact Assessment, Draft Sanctuary Management Plan and Sanctuary Federal Register Notice.

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Public support for strong NWHI protections

The Northwestern Hawaiian Islands (NWHI) are the most isolated archipelago on earth. Stretching over 1200 miles northwest of Kaua'i, these fragile atolls and shoals encompass tremendous biodiversity, including some of the world's oldest living coral colonies. Of great significance in Kānaka Maoli (Native Hawaiian) culture and history, ancient 'oli and mele (chants and songs) tell of the fire goddess Pele and her family traversing the NWHI and of their special distinction as ancestral homelands and sacred sites.

The NWHI are the primary breeding and foraging grounds for the Hawaiian monk seal, Hawaiian populations of the threatened green sea turtle, almost the entire world populations of Laysan albatross, the black-footed albatross, the Laysan duck, and numerous other threatened and endangered species. These islands and atolls form the largest tropical seabird rookery under U.S. jurisdiction.

The NWHI, however, have not been entirely protected by their isolation. When now-prohibited fisheries operated in the NWHI under Department of Commerce management - NOAA, NMFS and the Western Pacific Regional Fishery Management Council (Wespac) - spiny lobsters suffered severe reductions in populations, the mean weight of the 'ula'ula koa'e (onaga or red snapper) was reduced and the critically endangered Hawaiian monk seal was pushed to the brink of extinction. The current move to eliminate Co-Trustee management and reinstate Department of Commerce authority threatens to bring back the levels of damage that occurred previously in the NWHI under Commerce management.

The massive outpouring of public support in response to Commerce mismanagement of the NWHI was expressed in over 100 public meetings and over 110,000 letters, faxes and emails sent to federal and state officials. As a result, the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve was established by Executive Order in 2000, strengthened by Executive Order in 2001 which established a limited entry Reserve managed through a permit system with strict criteria and required that any proposed Sanctuary must "complement and supplement" – **build on, increase and enhance**– these existing protections. The Executive Orders are still in force.

As a result of continued public support, the establishment of the Reserve was followed by the establishment of the State of Hawai'i NWHI Refuge in 2005, and the Papahānaumokuākea Marine National Monument in 2006.

The NWHI Coral Reef Ecosystem Reserve ("NWHI Reserve"), the NWHI State Refuge, the Papahānaumokuākea Marine National Monument and the U.S. Fish and Wildlife Refuges currently provide strongest protections for the natural and cultural resources of the NWHI, including a ban on commercial fishing and recreational fishing other than at Midway Atoll and checks-and-balances management by four Co-Trustee agencies, including those dedicated to protecting Kānaka Maoli (Native Hawaiian) cultural practices and rights (the Office of Hawaiian Affairs - OHA) and biodiversity preservation (U.S. Fish and Wildlife Service - USFWS).

Any new NWHI designation must meet or exceed the strongest protections that currently exist in the NWHI. These protections – by law -- include the NWHI Executive Order Reserve protections – which provide the baseline or "floor" for any additional layer of protection.

However, instead of spreading, reinforcing, and complementing and supplementing the strongest protections - found in the Reserve – as required by law - and the State Refuge, the proposed Commerce "sanctuary" eliminates Co-Trustee management by the Office of Hawaiian Affairs and the U.S. Fish and Wildlife Service and attempts to spread loopholes, open up industrial fishing and commercial activities, and institute a secretive permitting process from which the Department of Commerce exempts itself.

Presidential Action

It is possible that action by a future President may weaken the strong protections established by Executive Order or presidential proclamation. If that were to occur, the proposed Sanctuary plan -- to overlay existing strong protections with a layer of loopholes, a weakened management structure without Co-Trustee status for

OHA and the U.S. Fish and Wildlife Service, and weak rules that reverse existing protections - is likely to have a devastating impact on the Northwestern Hawaiian Islands.

Given that the NWHI have some of the strongest protection rules and requirements on the planet, it is important to be familiar with these requirements.

Existing Strong Protections

A. The strongest existing protections are found in the NWHI Coral Reef Ecosystem Reserve, the Hawai'i State NWHI Marine Refuge, and the Papahānaumokuākea Marine National Monument

⇒ The NWHI Coral Reef Ecosystem Reserve ("NWHI Reserve"), established by Presidential Executive Orders 13178 (2000) & 13196 (2001).

- Was established for a sole purpose: comprehensive, strong, and lasting protection of the NWHI "in their natural character" and provided the first ever Federal recognition of Kanaka Maoli cultural practice and access rights;
- All activities are automatically prohibited, except a short list of allowed activities.
- All rules apply equally to federal agencies, including the Department of Commerce.
- Only allows "appropriate" research and assessment, education, public awareness/ public appreciation "to the extent consistent with the primary purpose of the Reserve" – i.e., protection of the NWHI in their natural character.
- No commercial fishing (fishing was capped at existing levels, then later ended by buyout)
- No recreational fishing outside of Midway
- Sets up the NWHI Reserve Advisory Council (RAC) with strict anti-corruption, anti-self-dealing requirements, and with federal agencies as non-voting members.
- Requires that the NWHI RAC - with its specific anti-corruption composition – must serve as the Advisory Council (SAC) for any NWHI Sanctuary - should one be established.
- Reserve Executive Orders are in effect and place legal requirements on any Sanctuary.

Most importantly, the Executive Orders which established the NWHI Reserve **are still in effect today** and mandate that any Sanctuary – should one be designated – must build on ("complement and supplement") mandatory Reserve requirements. A Sanctuary cannot introduce loopholes and weaker protections as is the case in the currently proposed Sanctuary, or propose a structure for a Sanctuary Advisory Council that differs in any way from the structure of the Reserve Advisory Council.

- It is important to note that NOAA has refused to issue Reserve regulations to facilitate enforcement of Reserve protections for the past 24 years.

⇒ The Hawai'i State Northwestern Hawaiian Islands Marine Refuge (§13-60.5-1 to §13-60.5-7)

- Requires permits for entry to the Refuge
- Rules apply equally to everyone, including government agencies.
- Activities must be non-commercial; NWHI resources are "public trust"

- Do No Harm requirement: “a person shall only enter the refuge to engage in activities that do no harm and do not degrade the coral reef ecosystem”
- Requires public hearings on all permits
- Bans multi-year permits
- Only allows “appropriate” scientific research under a “do no harm” requirement
- Calls for enforcement and surveillance to ensure that activities “do not degrade the resources or diminish the natural character of the marine refuge.”
- Bans vessel discharge in the Refuge
- Bans commercial use of anything harvested or extracted from the area
- Provides penalties and institutes bans for permit violators
- Allows cancellation of permits based on results of cumulative impact assessment

During the previous (failed) attempt by NOAA to establish a Sanctuary to overlay existing NWHI protections in 2006, the State objected to the weak terms and loopholes introduced by the proposed Sanctuary language – far weaker than existing protections. The State insisted that any Sanctuary must utilize the language of the strong State Refuge rules and stringent permitting guidelines as the basis for any proposed Sanctuary operations. The State informed NOAA that that, for all NWHI activities (outside of Midway):

• The **activity must be non-commercial** and will not involve the sale of any organism, by product, or material collected;

• Resources and samples are a **public trust**, not to be used for sale, patent, bioassay, or bio-prospecting, or for obtaining patents or intellectual property rights;

• The activity must have **demonstrable benefits** to the preservation and management of the NWHI ecosystem;

• The activity must **do no harm** to the ecological or biological systems, sites or resources of the NWHI, or by virtue of the mode of transport to be employed for access;

• The activity must have **demonstrable benefits** to the cultural and spiritual relationship of Native Hawaiians to the NWHI ecosystem and support the perpetuation of traditional knowledge and ancestral connections of the Native Hawaiians to the NWHI.”

The 2024 proposed Sanctuary fails to meet these benchmarks.

⇒ Papahānaumokuākea Marine National Monument (**Presidential proclamations 8031 and 8112**)

In 2006, as a result of public outcry over NOAA’s earlier proposed weak Sanctuary language and loopholes, the White House blocked NOAA’s first Sanctuary designation effort and, instead, established the Monument to overlay, reinforce, and protect the NWHI Reserve, the State NWHI Refuge, and USFWS NWHI Refuges. The Monument instituted a crucial system of checks and balances by requiring joint management by Monument Co-Trustee agencies including the Office of Hawaiian Affairs and the US Fish and Wildlife Service, removing sole authority from the Department of Commerce - which had previously “managed” the NWHI (outside of USFWS refuges), allowing the overfishing of spiny lobster, bottomfish declines and harm to the critically endangered monk seal population.

Monument requirements include:

- Continuation of all existing protections, including the Reserve Executive Orders which still remain in effect

- Joint management by four Co-Trustee agencies including those dedicated to cultural rights and biodiversity preservation: The Office of Hawaiian Affairs (OHA), the ecologically-oriented US Fish and Wildlife Service (Department of Interior), the State of Hawai'i (DLNR) and NOAA (Department of Commerce).¹
- An order for NOAA to immediately implement long-delayed Vessel Monitoring Systems for enforcement purposes.
- A ban on commercial fishing and bioprospecting
- Prohibitions apply equally to federal agencies including NOAA/Commerce

Weak protections, loopholes and the introduction of activities illegal elsewhere in the NWHI

2016 Monument Expansion Area (MEA).

In 2006, the Monument Expansion Area was established in waters from the 50 nm border of NWHI Reserve and Monument out to 200 nm. Unfortunately, MEA rules represented an extraordinary reversal of protections found elsewhere in the NWHI, proposed a range of activities that are illegal in the Reserve, State Refuge or Monument and instituted astonishing loopholes, waiving permit requirements and prohibitions on harmful activities by the Departments of Commerce and Interior, and proposed the commercialization of the NWHI. Fortunately, management must be shared between the Departments and Interior which allows Interior to serve as a brake on some of the commercial excesses of the Department of Commerce.²

Instead of meeting the legal requirement to utilize the strongest NWHI protections, NOAA now proposes to enlarge and spread these loopholes throughout its "Sanctuary" instead of complementing and supplementing the mandatory strong Reserve protections and maintaining consistency with existing protections.

This MEA region of extraordinary biodiversity includes **75 seamounts, biodiversity hotspots** in the open ocean which provide habitat for deep-sea sponges, other invertebrates, fish, **and colonies of corals thousands of years old**. It contains major **monk seal feeding grounds** - monk seals may forage 80 miles from breeding grounds and dive to depths of almost 2,000 feet while feeding. **Albatrosses and Great Frigatebirds** rely on the area during chick-brooding periods, when their foraging is focused within 200 miles of the nesting colonies and provides a foraging and migration path for **five species of protected / endangered sea turtles. Twenty-four species of whales and dolphins**, including some under Endangered Species Act use the Expansion Area.

- MEA: High impact fisheries and no meaningful enforcement.

In the MEA, if both the Secretaries of Commerce and Interior agree, a fishery can be set up in the Expansion Area which borders the highly protected Reserve and Monument waters! Given Interior's EQUAL and JOINT management role, a Commerce fishery has not yet been set up. **Such fishing is totally illegal in every other area of the NWHI!** (Reserve, State Refuge, Monument).

The proposed Commerce Sanctuary, however, eliminates Interior's joint fishery decision-making role, and proposes to allow fisheries – regulated solely by Commerce - in the NWHI.

¹ The December 8, 2006 Memorandum of Agreement (MOA) by the Secretaries of Commerce and Interior and the Governor of Hawai'i provided the Co-Trustee structure for coordinated administration of all the Federal and State lands and waters within the boundaries of the Monument. The MOA established the institutional arrangements for managing the Monument, including representation of Native Hawaiian interests by the Office of Hawaiian Affairs on the Monument Management Board. <https://www.papahānaumokuākea.gov/new-about/management/>

² "The Secretaries of Commerce and the Interior (Secretaries) shall share management responsibility for the Monument Expansion." Presidential Proclamation - Papahānaumokuākea Marine National Monument Expansion", pg. 5. <https://nwhihui.wordpress.com/wp-content/uploads/2021/06/obama-monument-expansion-proclamation.pdf>

Given NOAA's refusal to carry out meaningful monitoring or enforcement in the NWHI, allowing Commerce-linked fishing in the MEA or in any Sanctuary is an open door to facilitate poaching in neighboring Monument, Reserve and Refuges.

- **MEA: Shocking No-Permit No-Approval-Needed Loophole for Department of Commerce “exploration” and “research” – a reversal of Reserve, State Refuge and Monument protections which apply EQUALLY to ALL parties.**

In addition to research activities that are regulated (by permit), the MEA allows unlimited UNREGULATED no-holds-barred, no-permit-needed “exploration or research” by or for all Department of Commerce agencies (including NMFS) and the Department of Interior to be exempted from *all* prohibitions. Their actions may take place without comment or oversight by any other agency or co-manager and without any disclosure.

It is important to note that “**Research**” permits granted in NOAA Sanctuaries have included **bioprospecting** (illegal in the Reserve, State Refuge, Monument), **high-impact mass marine resource harvesting, and high impact commercial ecotourism**. In the highly commercialized loophole riddled Hawaiian Islands Humpback Whale Sanctuary, the lack of strong rules and enforcement results in vessel collisions which injure and kill dolphins, whales and calves including recent whale and dolphin deaths in 2024.³ In the past the harassment, injury or death of cetaceans has been associated with NOAA Sanctuary “research permits” granted for out-of-control commercial tourism activities re-branded as “whale research” and enormous loopholes in the “protection” language.

In the MEA this massive loophole can be found:

«The prohibitions required by this proclamation shall not restrict scientific exploration or research activities by or for the Secretaries, and nothing in this proclamation shall be construed to require a permit or other authorization from the other Secretary for their respective scientific activities.» MEA Presidential Proclamation

- Failure to issue MEA regulations: NOAA has refused – for the past eight years – to work with Co-Trustees to issue regulations for the MEA, including regulations which would bring MEA language up to the level of Reserve, State Refuge and Monument protections.

The sanctuary proposes to lower the bar, instead of using strong protective language, spreading MEA loopholes throughout the region, opening up the NWHI to commercial and extractive activities, while failing to require oversight or *guidance of NWHI Co-Trustees*.

Potential impact of Presidential Action to weaken existing protections

The NWHI Reserve and State NWHI Refuge - with the overlay of Monument Co-Trustee Management - represent the strongest NWHI protections which must be replicated in any proposed new designation.

³ <https://www.hawaiinewsnow.com/2024/02/24/humpback-whale-calf-injured-waters-off-maui-after-officials-say-it-was-hit-by-ship/>; <https://spectrumlocalnews.com/hi/hawaii/news/2024/03/13/dolphin-whale-killed-vessel-strikes->; <https://mauiNOW.com/2024/02/23/whale-calf-injury-off-ma%CA%BBataea-maui-is-likely-from-a-vessel-strike-boaters-urged-to-keep-distance/>;

It is possible that protections created by Presidential Executive Orders or proclamations can also be weakened by a Presidential action. A President cannot rescind a monument but can alter or reduce or expand its protections.

In theory, a well-framed National Marine Sanctuary - if it utilizes the strongest existing protections (Reserve and State Refuge language) and maintains formally structured Co-Trustee management authority (including OHA and USFWS) - in theory, this could provide a backup layer of protection in the event of Presidential weakening of the Reserve or Monument, leaving strong Sanctuary rules in place to maintain the existing highest level of protections.

The current Sanctuary proposal fails to match the existing strong protections, fails to follow the law (complement and supplement Reserve protections) and, instead, reflects a direct threat to the sacred and fragile NWHI pu`uhonua.

In the event of Presidential action – such a poorly-framed National Marine Sanctuary which fails to replicate the existing strong protections currently found in the Reserve, State Refuge and Monument and which promotes extractive and commercial activities currently prohibited throughout the Monument, Reserve, and State Refuge – such a Sanctuary would open up the fragile NWHI ecosystem to harmful commercial exploitation, and reverse 24 years of protections with devastating impacts on the ecosystem.

No sanctuary should overlay Reserve protections with a layer of weak rules, loopholes and commercial exploitation.

No sanctuary should overlay USFWS Refuges or the State Refuge.

The State rejected the violations and loopholes proposed in NOAA's previous (failed) Sanctuary designation attempt and demanded that Commerce must match the stringent state Refuge protective requirements if a Sanctuary is to be established. The proposed Sanctuary, however, fails do so and, instead, represents a grave threat to the sacred and fragile NWHI pu`uhonua.

Any proposed new NWHI measures must utilize the strongest protective language found in the NWHI Coral Reef Ecosystem Reserve, State Refuge and the Monument and apply the strongest protections throughout the region.

We support the provision of the strongest possible protections for the Northwestern Hawaiian Islands.

The draft Sanctuary proposal fails to provide protections as strong as those of the strongest Reserve, State Refuge, and Monument protections, fails to provide the checks and balances of the existing Co-Management structure of the Monument and fails to include an enforceable ban on commercial, non-commercial, sustenance and recreational fishing within Sanctuary boundaries and presents a legally flawed DEIS.

Concerns about the proposed Sanctuary

1. Introduction of fisheries prohibited in the Reserve, State Refuge and Monument

For example, under a Sanctuary, Section 304.5 of the National Marine Sanctuaries Act (NMSA) affords the Western Pacific Regional Fishery Council, *aka* Westpac, the opportunity to propose fishery regulations which could allow commercial fishing – or industrial scale “non-commercial” fishing - within the sanctuary boundaries. Thus, designation of the Papahānaumokuākea National Marine Sanctuary could have the direct result of creating new high-impact and currently prohibited fisheries within Sanctuary (and the co-terminus Monument and Reserve) boundaries.

2. Failure to meet the Supplement and Complement Requirement

Any Sanctuary must, by law, build on and strengthen (supplement and complement) the strong protections of the NWHI Reserve Executive Orders (13178 and 13196) and should reflect the strongest existing NWHI protections.

The Sanctuary Federal Register notice proposes merely to “*supplement* the existing provisions for the Management of the Monument” (Fed. Reg. Vol 98.#2.1.C.2) but not – as is mandatory - to *supplement and complement* existing *NWHI Reserve provisions*.

The Sanctuary proposal states that, under the NMSA, the proposed Sanctuary “supplements and complements State and local laws.” (Fed. Reg. V.89.#2. V.D. 2024)

However, during the failed 2006 Sanctuary designation effort, the State clarified that complementing and supplementing State Refuge rules means that any sanctuary must:

- ban commercial activities; prohibit the use of public trust resources “for sale, patent, bioassay, or bio-prospecting, or for obtaining patents or intellectual property rights”;
- require that any activity “must have demonstrable benefits to the preservation and management of the NWHI ecosystem” and “to the cultural and spiritual relationship of Native Hawaiians to the NWHI ecosystem and support the perpetuation of traditional knowledge and ancestral connections of the Native Hawaiians to the NWHI.”⁴
- require that an “activity must do no harm to the ecological or biological systems, sites or resources of the NWHI” including “by virtue of the mode of transport to be employed for access.”

The proposed Sanctuary fails to meet the “complement and supplement” requirement of the Reserve EOs and does not complement and supplement the State Refuge.

In the event of Presidential action to weaken the Reserve or Monument, the failure of a Sanctuary to supplement and complement existing protections by including the strongest existing protective measures will weaken NWHI protections and is likely to cause great environmental and cultural harm to this fragile region.

3. Summary of the strongest NWHI protections which must apply in new designation that claims to “protect” the NWHI

include the following:

1. A Precautionary Approach where:

⁴ State Refuge §13-60.5-1 to §13-60.5-7 and letter from Chair of DLNR to NOS, April 17, 2006.
<https://nwhihui.wordpress.com/wp-content/uploads/2021/06/dlnr-ltr-to-nos-re-draft-sanct-plan-violations.pdf>

- a. Access is automatically prohibited unless permission has been granted **by the Co-Trustees** (as per Monument Proclamation 8031, pg. 36444) with "an entry permit program for the area that will cause no harm" (State Refuge §13-60.5-1 to §13-60.5-7).
- b. All activities are automatically prohibited, except for a short list of activities allowed only to the extent they are consistent with the primary goal of conservation of the resources in their natural state as per NWHI Reserve (EO 13178), "**do no harm**," and involve no commercial extraction (State Refuge §13-60.5-1 to §13-60.5-7).
- c. Prohibited activities must be definitively and completely prohibited, with no exceptions for any agency (other than emergency access).
- The Monument definitively prohibits "exploring for, developing, producing oil, gas, minerals;" using "poisoning, electrical charges, explosives"; releasing introduced species; anchoring on living or dead coral, etc. There are no exceptions to these prohibitions which cannot be "regulated" or violated by the Department of Commerce or other federal agency. (Fed. Register. Vol 71. No.122, Sec.7.2006)
- d. All prohibitions must apply equally to all federal agencies, including the Department of Commerce, as per Reserve, Monument and Refuge rules where the sole exemptions to rules are for emergency Coast Guard access.
- e. Commercial exploitation must be prohibited in this public trust resource. The Northwestern Hawaiian Islands are NOT FOR SALE. They are not for the commercial gain, commercial use, "development", or extraction proposed in the Sanctuary. The State Refuge (§13-60.5-1 to §13-60.5-7) prohibits commercial use of anything harvested or extracted from the area and during the last Sanctuary designation attempt (2006), called for a ban on commercial use in the proposed Sanctuary.⁵ The strongest protections - as strong as those of the Reserve and State Refuge - must be provided for the entire NWHI pu'uhonua.

- f. Checks and balances on NWHI management must be provided by Co-Trustees, specifically including those focused on biodiversity preservation and cultural practices – USFWS and OHA.

The Papahānaumokuākea National Marine Monument is managed by Co-Trustees - the Secretary of Commerce through NOAA, the Secretary of the Interior through the U.S. Fish and Wildlife Service which focuses on biodiversity preservation, and the State of Hawai'i through the Department of Land and Natural Resources, and Office of Hawaiian Affairs. Any new designation must include those entities as Co-Managers.

⁵ Letter from Chair of DLNR to NOS, April 17, 2006. <https://nwhihui.wordpress.com/wp-content/uploads/2021/06/dlnr-ltr-to-nos-re-draft-sanct-plan-violations.pdf>

- g. Access permits must be subject to public hearings as in the State Refuge. (State Refuge §13-60.5-1 to §13-60.5-7). The State DLNR successfully filed an OIP request in support of a 45-day public comment and review period for NWHI Refuge permits.⁶
- h. Mandatory anti-corruption structure and composition of Advisory Council. The NWHI CRE Reserve Advisory Council (per EO 13178) has a mandatory *specific* structure requiring strict anti-corruption and conflict-of-interest rules. EO 13178 requires that the RAC as specifically structured to avoid self-dealing must serve as the advisory council for any Sanctuary (Sanctuary Advisory Council) or SAC, should one be established. The structure of the RAC/SAC cannot be altered.

Sanctuary loopholes, reversals of existing protections

1. Failure to mandate precautionary requirements

The proposed Sanctuary **reverses or vastly weakens the existing precautionary requirements** of Reserve, State Refuge, and Monument, including the above requirements, and proposes to:

- a. Automatically allows all activities except for a list of “regulated” activities under Department of Commerce decision-making authority – a reversal of Reserve, State Refuge and Monument protections. The Sanctuary institutes enormous barriers to prohibiting or regulating additional activities not already on the list: *“If an activity is not listed it may not be regulated, except on an emergency basis”* – the only way to add prohibitions is onerous: *“by the same procedures by which the original Sanctuary designation was made.”* Fed. Reg V89#42. Sec2.Art1. pg15275 and Art IV, Sec 1.

This language represents a reversal of existing protections and is direct threat to NWHI resources - especially in the case of any Presidential alteration of Monument or Reserve protections.

- b. Fails to COMPLETELY prohibit ANY activities in the Sanctuary – this is the reverse of Monument, Reserve and State Refuge protections, a staggering weakening of NWHI protections.

The Reserve and State Refuge completely prohibit activities by default except for those on a short list of regulated activities and apply the rules equally to Federal agencies, including those under the Department of Commerce. The Monument prohibits all access by default. The Monument Federal Register notice (V71.122pg 34446) provides a clear list of completely prohibited activities - *prohibited without exception* other than emergency or military use. Prohibitions include a range of highly damaging activities including exploring for oil, gas, minerals, using poisons, electrical charges, explosives, introducing species, anchoring on coral, etc. The Monument Proclamation provides a separate list of other “regulated” activities that may be allowed by permit with Co-Trustee permission.

⁶ Letter from Chair of DLNR to Hawai'i Office of Information Practices, January 26, 2007, OIP letter concurring with the State's request: <https://nwhihui.files.wordpress.com/2021/06/dlnr-ltr-to-oip-re-nwhi-transparency-1-07.pdf> and <https://nwhihui.files.wordpress.com/2021/06/oip-nwhi-dlnr-transparency-opinion.pdf>

By contrast, the Sanctuary Federal Register Notice (V89.#42, pg. 15276, Art. IV, Section 1.) provides lists of *all highly* damaging activities as “regulated” activities ... “which means that the Secretary of Commerce can regulate” – i.e. allow - activities, including those that are completely prohibited in the Monument, Reserve and State Refuge – including exploring for, developing or producing oil, gas or minerals, anchoring on coral, using poisons or explosives etc.

The DEIS (pg. 26-27) lists prohibited activities but states that “*the proposed [Sanctuary] prohibitions*” i.e. exploring for, developing, producing oil, gas, minerals, using poisons, explosives, introducing new species, anchoring on coral – these prohibitions *would not apply to ... “non-commercial fishing in the Outer Sanctuary Zone” and “scientific exploration or research activities by or for the Secretary of Commerce”* or the Secretary of Interior, thus creating a separate class of individuals and agencies not subject to any prohibitions while also creating enormous loopholes in protections, allowing highly damaging activities which can cause the destruction of NWHI environmental and cultural resources.

The Sanctuary proposes (**Section 922.244(f)**) to exempt the Secretary of Commerce or the Secretary of the Interior from the need to obtain a permit for scientific exploration or research activities within the Outer Sanctuary Zone (OSZ) and indicates that the prohibitions “shall not restrict scientific exploration or research activities by or for the Secretary of Commerce or the Secretary of the Interior when the activity occurs within the OSZ

- c. Introduces and allows “Development” (R&D) in the NWHI: The Sanctuary Federal Register notice proposes to allow “scientific research **and development** by Federal agencies.” Fed Reg V 89.#42, Art V, Section 1.22: “Development” is not a permitted activity in the Reserve, or State Refuge.
- d. Increasing vessel traffic, “tourism association” links and commercialization of the NWHI - “Special Use Permits”
Citing NMSA, the Sanctuary proposes to facilitate “**all public and private uses of the resources**” to the extent compatible with resource protection. (Fed Reg V.89#42 Sec1 pg15273). It authorizes NOAA (alone) to unilaterally issue “Special Use Permits” to “promote public use” of the NWHI. (Fed Reg V.89#2, pg. 15282)

Most sanctuaries - including the Hawaiian Humpback Whale Sanctuary - feature significant harm to protected species and habitats (including dolphin, whale, and calf injuries and deaths caused by commercial operators) as a result of extensive “public and private use” that NOAA has “judged compatible” with protection.

Facilitating “all public and private uses of the resources”, and NOAA’s proposed collection of fees for “Special Use Permits” “at the fair market value of the use of the resource”, including to “promote public use” and commercial use of the remote, largely uninhabited and inaccessible NWHI represents an enormous reversal of the “bring the place to the people, not the people to the place” precautionary approach of the Reserve and State Refuge protections. Even the Monument does not allow NOAA to sell Special Use Permits.

The Draft Sanctuary Management plan, or DSMP (pg. 161 of the DEIS), proposes developing and maintaining “economic partnerships” with “tourism associations” and businesses. While this perhaps reflects commercial goals of the Department of Commerce, this reverses the existing protective approach to the NWHI. In addition, it is most decidedly not a goal of the State Refuge and reverses the State call to ban commercial use. Increased commercial use and traffic poses a direct threat to the resource.

Special Use Permits do not exist in the NWHI Reserve or State Refuge which only allow sharply limited and clearly defined types of access. These are the strongest protections which must be reflected in any new designation.

The Monument introduced the category of commercial “Special Ocean Use” permits – but these can *only* be issued with the agreement of *both* the Secretaries of Interior and Commerce (checks and balances). The Monument requires a focus on “bringing the place to the people, not the people to the place.”

Alarming, however, Special Use Permits have made up the third largest group of permits issued, after Research and Management permits.

As is the case with all other Monument permits, the Monument places ten conditions on the issuance of any Special Ocean Use permits and requires that:

The Secretaries may not issue any permit unless the Secretaries find:

- a. The activity can be conducted with adequate safeguards for the resources and ecological integrity of the monument;
- b. The activity will be conducted in a manner compatible with the management direction of this proclamation, considering the extent to which the conduct of the activity may diminish or enhance monument resources, qualities, and ecological integrity, any indirect, secondary, or cumulative effects of the activity, and the duration of such effects;
- c. There is no practicable alternative to conducting the activity within the monument;
- d. The end value of the activity outweighs its adverse impacts on monument resources, qualities, and ecological integrity;
- e. The duration of the activity is no longer than necessary to achieve its stated purpose;
- f. The applicant is qualified to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;
- g. The applicant has adequate financial resources available to conduct and complete the activity and mitigate any potential impacts resulting from its conduct;
- h. The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity’s goals in relation to their impacts to monument resources, qualities, and ecological integrity;
- i. The applicant’s vessel has been outfitted with a mobile transceiver unit approved by OLE and complies with the requirements of this proclamation; and
- j. There are no other factors that would make the issuance of a permit or the activity inappropriate.

Weak Sanctuary "Special Use" rules

Unfortunately, the proposed Sanctuary is not only far weaker than the State Refuge and Reserve, it is also substantially weaker than the ten Monument requirements, and only proposes four requirements found in Section 310 of the NMSA for Special Use Permits (Fed. Reg V89.#42, pg15282):

- (1) activities must be compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;
- (2) SUPs shall not authorize the conduct of any activity for a period of more than five years unless otherwise renewed;
- (3) activities carried out under the SUP must be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; and
- (4) permittees are required to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the SUP

2. Public hearings for permits

- ⇒ As is required in the State NWHI Refuge, **public hearings MUST be held on all NWHI permit applications** instead of the secretive NOAA permitting process proposed for the Sanctuary. In addition, there must be a PERMANENT PUBLIC RECORD of all permits granted.
3. Checks and balances: Retain the same Co-Managers as in the Papahānaumokuākea Marine National Monument The proposed designation, as per Federal Register / Vol.89.No 42, lists only the Secretary of Commerce as the regulatory authority for issuing permits (Article IV, 1) and states that "collaborative management" with the State would occur under a "framework" established by NOAA (Art.V III D), **placing the state in a subordinate position**. U.S. Fish and Wildlife Service and the Office of Hawaiian Affairs are missing from any sanctuary co-management position.
 4. Failure to close MEA loopholes and strengthen weak language - further weakening the language and spreading it through the Sanctuary. The proposed sanctuary fails to overlay the weak and loophole-riddled Monument Expansion Area (Proclamation 9478) with the strong protections found in the Reserve, State Refuge and Monument, to complement and supplement these protections. There are many examples of MEA language that must be strengthened in order to match Reserve protections as required by Reserve Executive Orders. The proposed Sanctuary appears to use weak MEA language, further weaken it and enlarge loopholes and then apply this weakened language in the proposed Sanctuary – this is the OPPOSITE of supplementing and complementing the strongest NWHI protections and reflects a failure to comply with legal requirements to supplement and complement Reserve rules. For example, instead of closing the extraordinary loophole introduced by the MEA Proclamation exempting the Secretaries of Commerce and Interior from permit requirements, the sanctuary proposes, instead to perpetuate these regulations in the OSZ, The Sanctuary Federal Register notice, V89.#42 pg. 15282, states:

"Presidential Proclamation 9478 stipulates that the prohibitions required by the proclamation "shall not restrict scientific exploration or research activities by or for the Secretaries and nothing in this proclamation shall be construed to require a permit or other authorization from the other Secretary for their respective scientific activities." NOAA is proposing to exempt these activities within the OSZ to be consistent with Presidential Proclamation 9478."

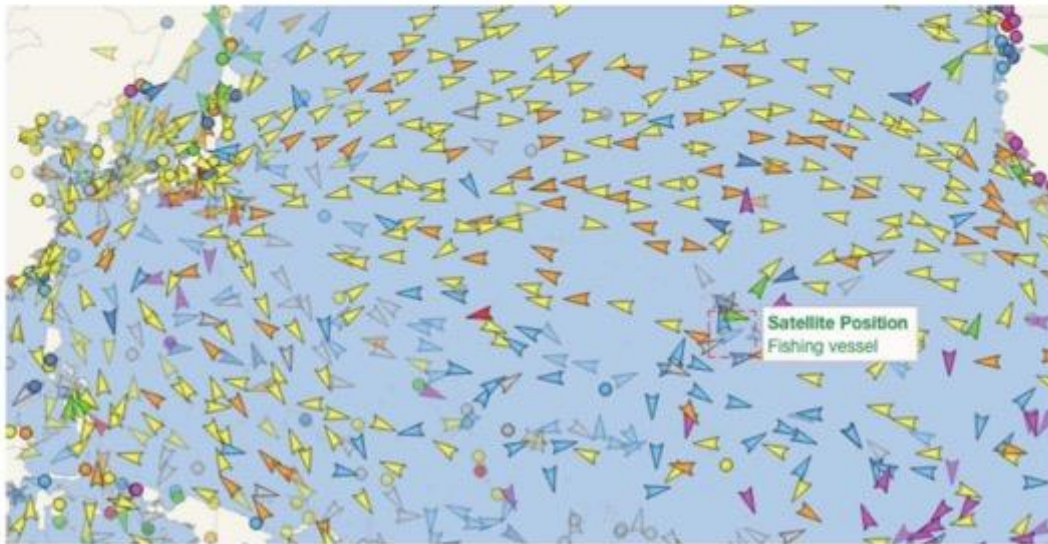
5. Weak vessel reporting requirements. The Sanctuary proposes to exempt vessels with permits or vessels “conducting non-commercial fishing” from sanctuary ship reporting requirements. (Fed Reg. Vol 89. #2, pg. 15278)
6. Other Issues
 - a. Enormous NWHI vessel traffic, lack of monitoring (AIS, etc.) and unenforced Areas to Be Avoided (ABTA)

The DEIS (pg. 85-86) indicates an enormous amount of large vessel traffic through the Monument – a yearly reported average of 200 vessels per year, 65% of which are “freighters and tankers...over 600 feet in length.” A one-year study by NOAA using easily available public Automatic Information System (AIS) data found that this reported traffic may actually be underreported “by as much as 50%” and that during the year of the study, 17 vessels transited through the Areas to Be Avoided without interruption, including 12 cargo vessels, 3 tankers, a research vessel and a tug. In 2021 “fishing vessels” were “used for conservation and management and research”. Thousands of shipping containers were lost in the vicinity of the NWHI in 2020 and 2021. Despite the ease of access and lack of expense of AIS tracking, it appears that NOAA has refused to implement this as part of routine monitoring and enforcement measures, having only done a “one year study” using AIS instead of having AIS screens prominently visible in NOAA Monument offices where anyone, at any time, can observe NWHI traffic.

The Sanctuary proposal indicates that, while fragile Areas To Be Avoided (ATBA) by vessels in near shallow reefs “can be mandatory”, most are voluntary. (Fed Reg. Vol 89. #2, pg. 15278)

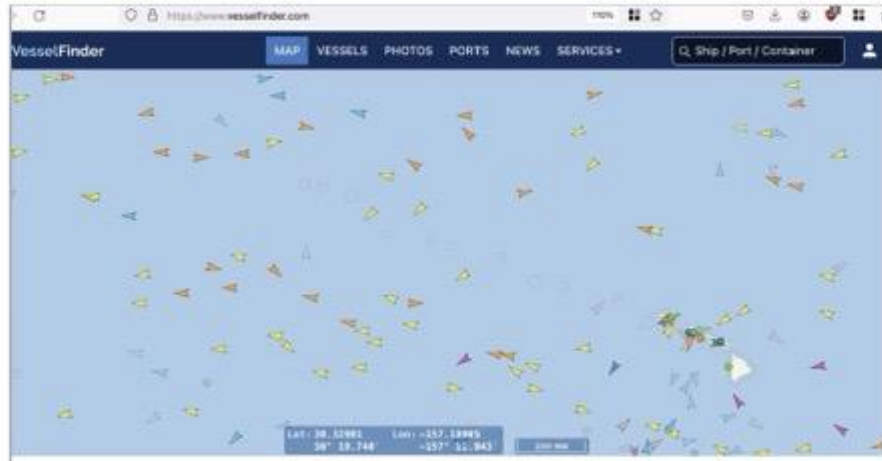
Easily accessible FREE AIS tracking for the NWHI shows the enormous amount of vessel traffic between California and Japan. The fishing vessel is in the area of Oahu. A paid annual subscription of less than \$1000 provides the name of the vessel and other characteristics. This is simple, publicly available information provided by a range of companies (vesselfinder.com, marinetraffic.com, marinevesseltraffic.com, myshiptracking.com, etc.). Vessels engaging in illegal activities will often turn off their AIS transmitters, with the signal disappearing upon entry to a closed area and reappearing after leaving a closed area. All vessels over 300 tons are required to use AIS and, in fact, as the price of AIS systems has come down, most long distance ocean vessels including larger fishing vessels and sailboats use AIS for safety reasons.

The image below shows a free online AIS feed of vessel traffic between the US West Coast and Asia. The fishing vessel marked on the map appears to be in or near Honolulu with the NWHI in the “blank spot” to the NW of the vessel.



The two images below are centered on the NWHI and show cargo vessels travelling through the NWHI Reserve and Monument. Cargo vessels are marked with yellow arrows, fishing vessels with blue arrows and tankers with orange arrows. The NWHI are represented by the faint circles on the map.





⇒ AIS (Automatic Information Service) vessel monitoring – inexpensive, publicly available and necessary for enforcement – must be implemented for safety and enforcement NOW. NOAA could also implement satellite eye-in-the-sky vessel monitoring. NOAA’s refusal to take simple monitoring measures for the past 24 years has given the green light to poachers and violators.

b. NOAA refusal to issue and enforce Reserve regulations for 24 years; MEA regulations for 8 years.

We note that, per Federal Register Notice Vol 69#1997, NOAA has had authority since 2000 to issue and enforce regulations in waters to 50 nm (NWHI Reserve) yet has refused to do so for the past 24 years.

⇒ We urge that regulations for the EXISTING protections of NWHI waters to 50 nm (NWHI Reserve) must be issued NOW. These regulations are based on stronger rules than an NMSA sanctuary. They should be issued immediately and can be used as the basis for additional regulations for any other new designation. Stop stalling, issue the regulations and enforce these pu’uhonua protections!

We note that, since 2016, NOAA has had the ability to work with co-managers to issue strongly protective regulations for 50 – 200 nm to strengthen MEA protections up to the level that would complement and supplement Reserve and State Refuge protections. Yet they have not done so.

⇒ Regulations must be issued to strengthen the shockingly weak Monument Expansion Area (MEA) protections to - at a minimum - the level of existing strong State Refuge and NWHI Reserve protections. This can be done NOW. NOAA has failed to do this for the past EIGHT YEARS. Stop stalling and issue and enforce strong MEA regulations.

⇒ We note that these strengthened regulations are based on stronger Co-Trustee authority than in an NMSA Sanctuary under the Department of Commerce.

⁷ <https://nwhihui.files.wordpress.com/2021/06/2-fed-reg-nos-self-implementing-no-regs-2004-10-15.pdf>

c. Failure to implement cumulative impact assessments

Independent cumulative impact assessments of permits are urgently needed and must be made part of the permanent public record. The NWHI hui has repeatedly called for cumulative impact assessments to be conducted and released prior to any sanctuary designation effort. NOAA research despite repeated requests over a 24 year period, NOAA has failed to publish cumulative impact assessments – including of NOAA’s thousands of permittees, tens of thousands of “person-days” in the NWHI, shipwreck, oil spill, and other damage -a terrible track record with no accountability.

- ⇒ Cumulative impact assessments must be made public, now.
- ⇒ If NOAA has failed to carry out such assessments, they must be carried out immediately.
- ⇒ A penalty schedule must be established for the failure to implement and publish cumulative impact assessments since, without such assessments, there is no way that ecosystem management can reliably be implemented.

Legally Flawed Sanctuary DEIS.

We note that the National Environmental Policy Act (NEPA) requires a DEIS to provide:

- An analysis of meaningful management alternatives
- An analysis of impacts of all actions predictable as a result of permitted activities
- A proper analysis of the “no action” alternative versus other management alternatives

1. DEIS fails to provide meaningful management alternatives

The “No Action” alternative of using existing protections has a management structure of four co-Trustees (OHA, Interior, State, Commerce). The DEIS only proposes ONE management alternative to this structure - a management alternative where the Department of Commerce is the permitting authority, eliminating OHA and Interior, and placing the State in a subordinate position. The three alternatives provided differ only in their boundaries – these are not *management* alternatives; they are simply *boundary* alternatives using the same management model.

The DEIS fails to provide a range of different management alternatives such as those:

- With USFWS, OHA, State as equal co-Managers
- Bringing MEA protections up to the level of Reserve and State Refuge
- Management where all activities are prohibited except for a short list of permitted activities to the extent compatible with the primary purpose of protection (complement and supplement)
- Management where all prohibitions apply equally to Department of Commerce instead of exempting Commerce “research” from all prohibitions and permit requirements

2. DEIS fails to analyze the impacts of actions predictable as a result of permitted activities

including the impacts of:

- “Non-commercial” fishing that is proposed for the Sanctuary.
- Failing to use the “everything prohibited” (except a short do-no-harm list) precautionary requirements of the Reserve, State Refuge and Monument with and “all activities are allowed” except a list of prohibited activities, from which Commerce “research” is exempt ;
- Exempting Commerce “research” from the prohibitions on exploring for oil, gas, minerals, using poisons, explosives, releasing introduced species, anchoring on coral, drilling, dredging, harvesting, injuring damaging resources, waste dumping, etc.

- Creating of a class of federal employees/agencies that are exempted from prohibitions, unlike in the Reserve, Refuge, and Monument
 - Proposing “research and development” by “any federal agency” as a regulated activity (per Federal Register Notice)– given that “development” is not a regulated or allowed use in Reserve, State Refuge or Monument.
 - The impact – in the case of Presidential weakening of Reserve or Monument – of overlaying and thereby replacing strong Reserve and Monument rules with far weaker and loophole-riddled Sanctuary rules
3. **DEIS fails to properly analyze the “no action” alternative, fails to compare the range of legal tools and legislation available under existing protections**
- including the impact of
- issuing and enforcing regulations in the Reserve
 - issuing and enforcing regulations to close the extraordinary loopholes in the MEA, bringing the MEA up to the protection standard of Reserve, State Refuge, Monument;
 - the enhancement of USFW enforcement authority
 - the use of easily available technology - such as AIS– for monitoring and enforcement
 - conducting cumulative impact assessments, including of NOAA activities which make up the primary impact on the resource



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. VOIGHT
COMMISSIONER
DEPARTMENT OF LAND AND NATURAL RESOURCES
CHIEF OFFICER OF WATER RESOURCES MANAGEMENT

ROBERT MASUDA
DEPUTY DIRECTOR

DEAN HAKAHO
ACTING DEPUTY DIRECTOR

AQUATIC RESOURCES
DIVISION AND OCEAN RECREATION
BUREAU OF OCEANIC RESOURCES
MANAGEMENT AND WATER RESOURCES
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES DEPARTMENT
HONOLULU

HAWAII AND HAWAIIAN
ISLANDS PRESERVATION
HAWAIIAN ISLANDS PRESERVATION
DIVISION
HONOLULU

March 24, 2006

Ms. Aulani Wilhelm
Acting Reserve Manager
Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve
6600 Kalanianaʻole Highway, Suite 301
Honolulu, Hawaii 96825

Dear Ms. Wilhelm:

SUBJECT: State of Hawaii Comments on the Draft of the Proposed Sanctuary Regulations for the Northwestern Hawaiian Islands (NWHI)

Thank you for the opportunity to provide comments on the proposed Sanctuary regulations. Our comments are included herein for your consideration.

General Comments:

Overall the proposed regulations are directly in line with our position. We are happy to see that the key issues that have been raised by the State are included for consideration.

In the background section, there is reference to a Memorandum of Understanding (MOU) that was developed by the Interagency Ecosystem Task Force in 1995. It applies a geographic framework under which ecological boundaries are defined and states that the Department of Commerce and the Department of Interior are committed to working with the State of Hawaii utilizing an ecosystem approach. While we agree with the need to manage the NWHI using an ecosystem-based approach, we have not seen the MOU that is described as the basis for this approach and would like to have a clear understanding of the previous efforts.

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There needs to be a new section added to the preamble that outlines and clearly states that these regulations in no way supersede or trump regulations already in place under the authorities of the jurisdictional partners, the State of Hawaii and the U.S. Fish and Wildlife Service (USFWS). The overall premise of these regulations should be that they are consistent with other applicable laws and authorities.

As you are aware, the State of Hawaii has recently created a State Marine Refuge in all State waters from 0 - 3 miles around all the islands and atolls of the NWHI, except Midway Atoll National Wildlife Refuge (Midway). Our regulations require that all entries into State waters require an access permit that is granted by the Board of Land and Natural Resources. We have established a permit review committee to review these permits and asked that all jurisdictional partners be a part of this review process. A key consideration for our review is that biological and cultural resource considerations are of equal importance.

The proposed general procedures for submitting and reviewing permits under the Sanctuary designation are different, both in terms of the criteria or findings used to access and review permits and who has the authority to grant the permits.

While most of the findings for the Sanctuary review of permits are very similar, some of our permit guidelines are more specific. We need to resolve this.

It appears that, at least for the short term, the best we will be able to hope for is a permit application that is the same for all agencies with a parallel review and approval process.

Specific Comments:

1. **PREAMBLE:**

Page 31, Paragraph 2 states that the only documented small businesses operating in the NWHI are eight federally permitted commercial bottomfish fishermen.

While these are the only federally permitted fishermen, there was a small fleet comprised of a few boats that fished for tuna, called the ikashibi fleet, that also operated in the NWHI in the past. We would like to see some mention of these fishermen in the summary of impacts.

2. **DEFINITIONS:**

a. **Under the Definitions section, there are no definitions for research, education, and several other classes of permits. It would help to have these definitions also included to ensure consistency.**

b. **"Attract or attracting means luring or attempting to lure a living resource by any means, except the mere presence of human beings (e.g. swimmers, divers, boaters)."** It is difficult to determine why this definition is included here or what activities it might pertain to, except perhaps for commercial purposes, such as extreme sports

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(swimming with sharks, swimming with dolphins, etc.). Any activity that involved attracting wildlife would be in potential conflict with State rules that seek to ensure "...conservation and natural character for present and future generations," as well as the non-commercial requirement of the permitting guidelines and the requirement to show benefit to the ecosystem. Although the Executive Order (EO) allows "chumming material or bait" for "authorized fishing operations" in Section (b) (4), these rules would potentially allow it for any use.

It should be explained why this definition is in the proposed rules and to which activities it applies.

- c. **Ecological Reserve** is a category of protected area not included in the original EO. At issue is whether the Ecological Reserves for the Sanctuary supplement or complement the Reserve Protection Areas granted permanent protection by the original EO.
The purpose of the Ecological Reserve category should be clarified, and maps should be provided.
- d. **The Native Hawaiian Practices definition** needs to be tightened. The last sentence should read: "This may include, but is not limited to, the non-commercial use of Sanctuary resources for direct personal consumption while in the Sanctuary and may be subject to limits on harvest."

Native Hawaiian practices as indicated on Page 40 means "... cultural activities for the purposes of perpetuating traditional knowledge, caring for and protecting the environment, and strengthening cultural and spiritual connections to the NWII that have demonstrable benefits to the Native Hawaiian community. This may include, but is not limited to, the non-commercial use of Sanctuary resources for direct personal consumption while in the Sanctuary."

State rules specify that, "it is unlawful for any person ... to take for the purpose of sale or sell marine life taken from the refuge," therefore, language pertaining to the ban on commercial extraction should be added to this definition. The State's permitting guidelines require that activities "must be non-commercial and will not involve the sale of any organism, byproduct, or material collected." In addition, the definition of Native Hawaiian Subsistence Uses provided by the National Oceanic & Atmospheric Administration (NOAA) in the September 2004 draft Sanctuary regulations (Page B-3 of "Advice and Recommendations on the Development of Draft Fishing Regulations Under the NMSA, Section 304(a)5," September, 2004) included the following statement, "It does not include the sale of any marine resources." This has been removed from the current document. The original EO in Section 4(c) allows only for "Culturally significant, noncommercial subsistence, cultural, and religious uses by Native Hawaiians" and states that these uses should be

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allowed within the Reserve, consistent with applicable law and the long-term conservation and protection of Reserve resources.”

To eliminate any potential conflicts with State rules and the original EO, it is suggested that the phrase, “This does not include commercial activities or the sale of any marine resources” be added to this definition.

- c. **Special Ocean Use** means an activity or use “...engaged in to generate revenue or profits for one or more persons associated with the activity, and does not destroy, cause the loss of, or injure Sanctuary resources.” Page 23 indicates that this could include commercial photography, commercial dive operations, and/or commercial wildlife viewing tours. Page 49 indicates that it could include “sport fishing.” In fact, it could include any for-profit activity and no non-profit activities. It is also noted on Page 24 that the Sanctuary may collect a fee representing “the fair market value of the use of the Sanctuary resource.”

Potentially, such permits could be issued throughout the archipelago for any sort of commercial activity. State rules only allow three use categories: a) Research/Education, b) Native Hawaiian, and c) Non-extractive purposes undertaken to further the knowledge of resources or which provides for enhanced resources protection or resource management. The Special Ocean Use permit category should indicate that this permit type is “initially restricted to Midway alone, and only if the activity has been identified as a compatible use through a USFWS compatibility determination” as indicated on Page 23, at the bottom of the second full paragraph.

- f. **Sport Fishing** is defined as “payment of a fee to engage in non-commercial fishing activity in the Sanctuary.” **Recreational Fishing**, by contrast, is defined as fishing “conducted for personal enjoyment, no fee for service.” It is difficult to understand why this distinction is necessary, except perhaps to regulate activities at Midway. It should be clarified as to why it is necessary to have separate definitions for “sport” versus “recreational” fishing in this document.

If there is a need to keep the definitions separate, the **Sport Fishing** definition should be rewritten. How can a payment of a fee to engage in fishing activities NOT be considered commercial?

Instead of the definition proposed, we suggest, “payment of a fee to engage in a vessel-based fishing activity using hook and line techniques, in the Sanctuary, where the catch is not for sale or barter.”

- g. Under the definition of **Sustenance Fishing** include “fishing for bottomfish or pelagic species outside of the SPAs, in which all the catch is consumed within the Sanctuary ...”

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- b. **Midway Special Management Area (SMA)** defines an area within the sanctuary, and overlaying Midway. Midway is not part of the Reserve established by the EO, so the Midway SMA would be a supplement to the Reserve.
It should be clarified as to whether or not this designation would allow or encourage activities presently considered by the USFWS to be incompatible with the purposes of Midway.
- i. **Ocean-based Ecotourism** is defined as "foo for service activities" to include visiting the Sanctuary for "study, enjoyment, or volunteer assistance for purposes of conservation and management." The inclusion of "enjoyment" as a sufficient criterion for an activity to qualify as ocean-based tourism would appear to allow any ocean-based visit, such as that provided by cruise ships, to qualify, as "ecotourism" as long as people enjoyed the trip.
It is suggested that the word "enjoyment" allows an overly broad interpretation of ocean-based ecotourism, and should be deleted from this definition.

3. REGULATIONS

a. Prohibited Activities:

- 1) There are a number of philosophical inconsistencies with State rules in Section 922.203, regarding prohibited or otherwise regulated activities. The State stipulates a prohibition on "any activity that is not authorized by this chapter" i.e., in State waters, everything is prohibited unless specifically permitted (in State's case science/education, Native Hawaiian, non-extractive conservation, etc.). By contrast, the proposed NWHI Sanctuary language allows any activity to occur unless explicitly prohibited.
To resolve this philosophical conflict, there is a need to modify the introductory language in this section to indicate that "any activity not authorized below is prohibited." The number and type of activities to be permitted should then be reduced to be consistent with allowable uses in State waters, as clarified by the State's recently issued permitting guidelines. Permitted activities should be limited to those permitted by the State in State waters, as described in the State rules and permitting guidelines.
- 2) Under Section (a) (1) (f), the wording should read "as provided in paragraphs (e) through (g) NOT (d).
- 3) **"Anchoring or having a vessel anchored on any living coral."** State rules prohibit "engaging in any activity, including the anchoring of a vessel that can or does result in damaging or destroying coral." This differs from the original EO, which prohibits anchoring on any living or dead coral "when

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visibility is such that the seabed can be seen." The proposed Sanctuary language is more permissive by only prohibiting anchoring on live coral, but is less permissive by not limiting the prohibition to only areas where the seabed is visible. How one would know whether or not the anchor is on live coral when the seabed is not visible (or when the seabed consists of live coral interspersed with dead coral) is not clear.

The rule regarding anchoring on coral should be reworded to be consistent with the stricter State rules.

h. Regulated Activities (allowable):

Section (c) (6) (i) and (ii) Regulated Activities lists certain discharges that would be allowed outside of SPAs, including "bilge water" and "... any other pollutant discharge from the operation of a marine propulsion system, shipboard maneuvering system, crew habitability system, or from a protective, preservative, or absorptive application to the hull of the vessel." This proposal significantly expands the categories of exemptions beyond those contained in the original EO, and the exemption of "any pollutant" associated with the various "systems" listed, including a "crew habitability system," which seems quite broad. As research traffic levels broaden, it will be important to ensure that dumping of pollutants inside protected areas does not increase.

It is suggested to include on the list of prohibited activities which may not be allowed by permit, "discharging or depositing" except for (From EO 13196, Sec 4) "fish parts (i.e., chumming material or bait) used in and during authorized fishing operations (if any); biodegradable effluent incident to vessel use and generated by a marine sanitation device in accordance with Section 312 of the Federal Water Pollution Control Act; water generated by routine vessel operations, excluding oily wastes from bilge pumping; cooling water from vessels or engine exhaust."

c. Permitted Activities:

- 1) **Commercial fishers** also appear exempted from the paragraph (c) restrictions on anchoring.

The State suggests that a "no harm to coral" language be applied to fishers.

- 2) **Section 922.204 Permitting procedures and criteria** gives the Director (the Director of the National Marine Sanctuary Program or designee) wide latitude in the issuance of permits, limited only by the purposes and policies of the National Marine Sanctuary Act (NMSA) and the Goals and Objectives of the Sanctuary, and the requirement to make certain findings as a condition of granting a permit. Presumably the more restrictive of this combination

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would apply. The State's permit process requires a "do no harm," precautionary approach, based on resource conservation, public comment on all permits, and consideration of the applicant's history of prior violations. The language in this document ("sole discretion" of Director) does not specify any method of ensuring preservation of ecological integrity, and allows the Director issue a permit if he or she considers that it furthers educational value or assists conservation or allows recreational activities, special ocean use, sport fishing, recreational fishing. There appears to be no requirement for public notice, other than for Special Ocean Use permits, for any category of activity not previously identified as subject to the special use permit section of the NMSA for public notice. There also appears to be no requirement for an advisory panel of ecosystem scientists, public comments, or other means for public participation in the granting of the permits. The Director may issue a permit at "his or her sole discretion." Provisions for the above do not appear to be required under the regulations.

These rules differ greatly from those used by the State of Hawaii to evaluate and grant permits, and represent a potential conflict in regard to integrating management regimes.

- 3) **Permit Types:** The State of Hawaii allows only three permit types. The draft Sanctuary rules propose adding "recreational activities, special ocean use, sport fishing, recreational fishing," for a total of seven permit types. Thus, there is a large disparity in the number and type of permit types between the State and the Sanctuary. This will hinder efforts at co-management. **It is suggested that the Sanctuary reduce the number of permit types, or stipulate that certain permit types are restricted to Midway alone, and only if the activity has been identified as a compatible use through a USFWS compatibility determination.**
- 4) **Findings:** This section places some constraints on the Director. However, instead of the state's "do no harm" standard, Section (c) (1) requires that the activity "can be conducted with adequate safeguards for the resources and ecological integrity of the Sanctuary" but does not require review panel of scientific experts. By contrast, the State rules stipulate a "do no harm" standard, a precautionary approach, conservation in natural character as the primary goal, and only allow three categories of access (see above). State permitting guidelines clarify the requirement that all activities are non-commercial and must have demonstrable benefits to preservation and management of ecosystem. The Sanctuary Goals and Objectives and the original EO also require long-term conservation in natural state and subjects all activities to consistency with that primary purpose. **The State suggests that this section utilize language in State permitting guidelines to replace "adequate safeguards" with:**

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- "The activity must be non-commercial and will not involve the sale of any organism, byproduct, or material collected;"
- "Resources and samples are a public trust, not to be used for sale, patent, bioassay, or bio-prospecting, or for obtaining patents or intellectual property rights;"
- "The activity must have demonstrable benefits to the preservation and management of the NWHI ecosystem;"
- "The activity must do no harm to the ecological or biological systems, sites or resources of the NWHI, or by virtue of the mode of transport to be employed for access;"
- "The activity must have demonstrable benefits to the cultural and spiritual relationship of Native Hawaiians to the NWHI ecosystem;"
- "The activity must support the perpetuation of traditional knowledge and ancestral connections of the Native Hawaiians to the NWHI."

Section (c) (4) allows a finding that "the end value of the activity outweighs its adverse impacts on Sanctuary resources, qualities, and ecological integrity." This subsection could be a significant loophole subject to abuse.

The State recommends this phrase be deleted to avoid future conflicts in co-management.

There needs to be a new section added to outline additional findings for research permits. At a minimum, the permits should detail the type of research to be undertaken, the numbers, species, sizes and amounts of organisms to be collected, stresses that the activity is non-commercial and that any products derived from the research are also not for sale, and require a report on the findings that can be used to perpetuate management activities. Many of these criteria and guidelines are outlined in the State's permit guidelines that are attached for you review and reference.

- 5) **Section (c) (4) allows a finding that "the end value of the activity outweighs its adverse impacts on Sanctuary resources, qualities, and ecological integrity." This subsection could be a significant loophole subject to abuse.**
The State recommends this phrase be deleted to avoid future conflicts in co-management.
- 6) **Section (e) (1) would seem to indicate that Native Hawaiians alone are subjected to a "no commercial activity" requirement.**
The State believes that the "no commercial use" requirement must be applied across the board to most permit types, except for the Midway permit (in accordance with USFW) and any temporary permitted commercial fishing prior to phase out.

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Additional findings for Native Hawaiians should also include an additional finding that requests the description of the types of organisms that may be collected for cultural and traditional uses and indicates that the collections or consumption of some species may be severely limited, or not allowed.

- 7) **Additional requirements for sport fishing permits:** Sport fishing would be limited to the Midway SMA, and would require a feasibility study as well as a finding that the Director of USFWS had determined the activity to be compatible with the purposes of Midway. The latter requirement also applies to sustenance fishing at Midway.

The State would note that these regulations do not require concurrence of the Director of the USFWS at Midway, and suggests this be corrected to allow for a properly co-managed Sanctuary.

- 8) **Additional requirements and criteria for Special Ocean Use permits need to be carefully and critically re-thought. If, as stated in the Preamble, the Special Ocean Use permit requires a feasibility study prior to allowing a pilot project to be considered, then this is not clearly outlined in this section. In the Preamble, it is further stated that NOAA will provide public notice for any “new categories of activities” being considered under this authority. Again, the mechanism to do this is not clearly outlined under this additional requirements section.**

In the Preamble, Special Ocean Use implies any commercial activity such as commercial photography, commercial dive operations and commercial wildlife viewing. While some of these activities are not currently occurring in the Sanctuary, most, if not all, were in operation in the past at Midway. Are these activities therefore considered “new categories of activities” or would the “new” designation apply to only activities that occur in areas where they did not previously occur? **We would oppose the application of the additional requirements and criteria being applied to commercial photography, as this is an ongoing part of operations within the NWHI.** If the new requirements were applied, Jean Michele Cousteau would not have been able to film “Voyage to Kure,” nor would we have the National Geographic book “Archipelago.” The list goes on. We also have concerns about the application of this requirement and criteria to other uses that have traditionally occurred in Midway. Lastly, we have had commercial operations on private vessels (ham radio operators who volunteered their time) that have been of assistance previously at Kure Atoll, as recently as last summer.

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While we understand the need to regulate and to limit the types and amounts of commercial ecotourism activity and other commercial ventures, this permit class, applied too broadly, will limit access to activities that help to bring "the place" to the people.

- 9) **Section 922.208 Certification of preexisting permitted activities** is made necessary by provisions of the NMSA exempting various activities with valid leases, permits, etc., issued prior to the effective date of the regulations. The Director is allowed to require a "certification of such preexisting leases, permits, etc., and to impose "conditions" on the certification as the Director deems reasonably necessary to achieve the "purposes" for which the Sanctuary was designated.

The State suggests that "goals and objectives" be substituted for the word "purposes" to avoid ambiguity.

There is an assumption made throughout the document that the only pre-existing permits are going to be for bottomfishing permit holders. Both the State and the USFWS are currently issuing permits. There is the potential that a permit holder could have a pre-existing permit issued by one of these agencies, and under these proposed regulations, also needs to apply for a certification under the Sanctuary.

There needs to be some provision to assess the total number and types of active permits at the time of designation and determine which are in need of certification. We would recommend that permit holders with less than four months on an active permit not be required to seek certification.

d. Fisheries

- 1) On **Page 14, Paragraph A**, the statement is made that NMSA requires a review and update, as necessary, of the Sanctuary management plans and regulations every five years. It should be noted that the NWHI Sanctuary would still be subject to the provisions of the original EO, in which the President established permanent protections. The five-year review should not be an opportunity for revisiting fisheries banned by the EO, such as the lobster and precious coral fisheries, or those to be phased out as part of the Sanctuary designation process, such as the bottomfish fishery.
This limitation on the 5-year review process should be acknowledged in writing within the document.
- 2) Language pertaining to sport fishing (Page 49) indicates that such permits for sport fishing may only be issued for Midway. However, apparently sport fishing may also occur under a "Special Ocean Use" permit which is not a

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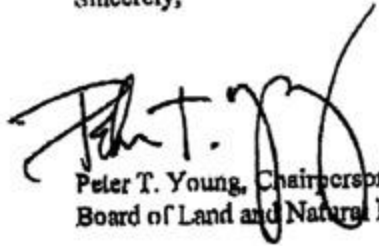
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- category currently limited to Midway. (See previous discussion in Section 2.)
- The document should be clarified to indicate that sport fishing under a Special Ocean Use permit may occur only at Midway.**
- 3) In the Definitions section, the term "Bottomfish Species" is over broadly defined. Earlier drafts of the Sanctuary regulations provided a short list of eight bottomfish species that are managed by the State as the basis for its restricted fishing areas; all of these species are true deep sea bottomfish. The new document returns to a long list, including certain coral reef dependent species that have previously been suggested for removal from the list of Bottomfish Management Unit Species; this appears to allow the Western Pacific Regional Fishery Management Council (WESPAC) to potentially manage additional taxa within the scope of the bottom fishery. **It is suggested that the list of Bottomfish Management Unit Species be revised to include only those eight that are recognized by the State of Hawaii as the basis for its bottomfish management plans.**
- 4) The proposed total allowable catch (TAC) for bottomfish and pelagic species exceeds the current levels of fishing effort in the NWHI and, therefore, potentially allows an increase in fishing above current levels. **The State declines to propose an alternative TAC, but does suggest that total permits not be allowed to exceed the eight permits currently active (four in the Mau Zone and four in the Hoomalu Zone), which is less than the number proposed herein. As the fishery under this alternative will be phased out in five years, there is also no need to consider issuance of permits to Native Hawaiian bottomfishermen. The State also does not endorse the fishing regulations proposed by WESPAC, which exceed the bottomfish TAC proposed in these draft Sanctuary regulations (381,000 lbs./yr. proposed by WESPAC, versus 350,000 lbs./yr. proposed by Sanctuaries) and the maximum total number of bottomfish permits proposed herein (14 proposed by WESPAC versus 13 proposed herein). The State's position is to oppose any increase in fishing for any species above current levels.**

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Again, we appreciate the opportunity to comment on the proposed draft regulations and look forward to a continued partnership as we move forward into Sanctuary designation. If you have any questions on this document, please call me at (808) 587-0401.

Sincerely,



Peter T. Young, Chairperson
Board of Land and Natural Resources

Attachment

COPY

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSIONER OF WATER RESOURCES MANAGEMENT

ROBERT K. MASUDA
DEPUTY COMMISSIONER

DEAN HAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND SALVAGE REGULATION
BUREAU OF CONVEYANCES
COMMISSION OF WATER RESOURCES MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESTORATION ENFORCEMENT
DIVISIONS
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
HAWAIIAN ISLAND RESERVE COMMISSION
LAND
STATE TREASURER

Hoku

April 17, 2006

Ms. Aulani Wilhelm
Acting NWHI Reserve Manager
6600 Kalanianaʻole Highway, Suite 300
Honolulu, Hawaii 96825

Dear Ms. Wilhelm:

Subject: Comments on Draft Regulations, Draft Environmental Impact Statement, and Management Plan for the Northwestern Hawaiian Islands National Marine Sanctuary

The following comments are provided by the State of Hawaii in regard to the draft Regulations, Environmental Impact Statement (DEIS), and Sanctuary Management Plan (SMP), all dated April 2006, for the Northwestern Islands (NWHI) National Marine Sanctuary. The comments are provided in three sections, related to each of the three documents listed above. Many of the comments listed initially under the Proposed Sanctuary Regulations also apply in whole or in part to both the DEIS and draft SMP.

PROPOSED SANCTUARY REGULATIONS

In the cover memo accompanying the current set of documents under review, it is requested that the State of Hawaii not render further comment on the proposed Sanctuary Regulations. The State acknowledges this request, however, we provide the following additional comments on the revised Sanctuary Regulations, with the note that many of the issues raised are also applicable to the DEIS and the SMP.

A. State Concerns Met

The State thanks the National Oceanic & Atmospheric Administration (NOAA) for responding to some of our concerns regarding the draft Regulations:

- Mentioning the historical presence of the ikashibi tuna fleet in one sentence in the Preamble.
- Inserting the phrase "or dead" into the prohibition on anchoring on "living coral," i.e., anchoring on live or dead coral.

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- Clarifying that personal “recreational activities” and commercial sport fishing are confined solely to Midway Atoll. The new Regulations, however, appear to eliminate personal “recreational fishing” from confinement to Midway Atoll, allowing it to occur throughout the NWHI in conflict with State rules. In addition, these draft Regulations still allow a wide range of commercial activities (Special Ocean Uses) throughout the archipelago (922.204 (b) Permit Types (6).
- Language has been added clarifying the U.S. Fish and Wildlife Service’s (USFWS) role and jurisdictional authority.
- Permit types have been reduced, but are significantly greater than the number issued by the State or the USFWS. Recreational activities have been combined with sport fishing and restricted to Midway Atoll.

B. Continuing State Concerns

In our letter of March 24, 2006, we pointed out inconsistencies between the proposed Sanctuary Regulations and State rules, and identified specific areas where we proposed changes. To facilitate the process of co-management, we are reiterating our concerns in specific areas, including:

Inconsistencies with State rules in Section 922.203, regarding prohibited or otherwise regulated activities.

The State rules stipulate that all activities are prohibited unless specifically permitted. By contrast, the proposed NWHI Sanctuary Regulations allow any activity to occur unless explicitly prohibited. We would note, however, that both the DEIS and the SMP utilize descriptive language indicating that, in the Sanctuary, “everything is prohibited, except that which is explicitly permitted,” such as:

1. “The fundamental shift in the management regime in Alternative 2 [and 3] to an ecosystem-based management approach wherein all access is prohibited unless permitted...” (Pg. 4-71 in the DEIS).
2. “All classes of activities, except enforcement activities, emergency response, activities and exercises of the armed forces, and passage without interruption, would be prohibited within Sanctuary boundaries without a permit.” (Pg. 4-71 in the DEIS).
3. “The Sanctuary, USFW and State of Hawaii Regulations prohibit all access (except for passage without interruption, activities carried out by the armed forces, law enforcement activities and emergency operations) in their respective NWHI jurisdictions unless the activity is specifically allowed by permit.” (Pg. 165 in the SMP).

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As in our earlier letter, the State urges that the Regulations be amended to be consistent with State rules, given that this would also be consistent with the DEIS and SMP descriptions of the proposed sanctuary permitting system as noted above.

In addition, the new draft Regulations exhibit more of a focus on the Native Hawaiians and the 'extensive' evidence of human activity on the islands.

The State would note that there is no doubt about the uses at Nihoa and Mokumanamana, but there is no physical evidence of pre-contact Hawaiian habitation or use on any other islands further to the northwest. Therefore, we recommend a deletion of the reference to "extensive" use on all islands, or note that this use was only extensive at Nihoa and Mokumanamana.

C. Permitting Process

1. The State continues to have concerns regarding the proposed NOAA permitting process, which differs greatly from that utilized by the State and which represents a potential conflict with State rules and permitting guidelines (see additional comments in this regard under the section on the SMP).
The State does not endorse a process by which permits should be issued at the "sole discretion" of Sanctuary Director without public comment, or input by an advisory panel of agency representatives, including experts in invasive species control, marine conservation biology, and Native Hawaiian cultural resources.
2. There is a lack of definition for research, education and other classes of permits.
The State recommends that improved definitions for these permit classes be provided, and made to match the State definitions as closely as possible.
3. The Special Ocean Use permits would appear to allow a wide range of commercial uses, including cruise ship stops and commercial diving, throughout the archipelago.
The State wishes commercial uses, including cruise ship stops and commercial diving operations, to be primarily confined to the Midway Atoll SMA.
4. There is no public notice requirement other than for a subset of Special Ocean Use permits. Nor is there any process specified for public notice of pending permit applications, or on the action taken by the National Marine Sanctuary Programs (NMSP) to grant, deny, or issue permits with conditions.
The State recommends that the permit guidelines be revised to provide for notification to the general public of pending permit applications and to make provision for a period of public comments for permits under review.
5. The Permitting Action Plan Appendix 2 describes a tiered permitting process with levels of permit classes (A, B, and C), and with general criteria for the permit coordinator to follow in deciding which level of review would be required for permits under consideration.

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The State would note that there appears to be no independent review of the permit coordinator's decision to assign a permit to Class A, and review of Class B permits appears to occur solely within the NMSP chain of command. Referral of a permit to outside expert review is thus discretionary and not required, for Class A and B permits. As noted above, the State supports public comment and external review for all permits.

DRAFT SANCTUARY MANAGEMENT PLAN

Overall, the draft Management Plan has evolved over the past year into a document that provides some clarity on the management direction of the proposed NWHI Sanctuary. If, at the appropriate time, the Governor of the State of Hawaii agrees to include State waters in the Sanctuary, there will be a need for certain changes in regard to interagency coordination and the proposed permitting process.

A. Co-management

The proposed Management Plan states that *"collaboration between jurisdictional agencies and stakeholders is essential for establishing cross-jurisdictional management goals and developing and evaluating ecosystem-level plans"* (Pg. 64, lines 4-5).

However, the Permitting Action Plan does not fully reflect the policies and guidelines that have been developed for the State of Hawaii's NWHI Marine Refuge and the State Wildlife Sanctuary at Kure Atoll. In addition, no reference is made to the permitting process that has been developed for the State NWHI Marine Refuge. Furthermore, in examining this document, the State of Hawaii cannot locate any reference to co-management of the Sanctuary with the State. As a result, the State recommends adding the following to the Management Framework section, Mechanisms for Collaboration and Partnership (Pg. 67), after NOAA Coordination on Page 69:

Co-management

The sanctuary will be jointly managed by the sanctuary manager, the State of Hawaii co-manager, and other field staff through a cooperative Federal-State partnership similar to the Hawaiian Islands Humpback Whale National Marine Sanctuary. The sanctuary manager will receive national program guidance from the National Marine Sanctuary Program. Additionally, the State co-manager will receive guidance from the Hawaii Department of Land and Natural Resources.

The sanctuary and NOAA's National Marine Sanctuary Program will work cooperatively with the people of Hawaii to protect these important coral reef ecosystems. Grassroots support is vital to the success of marine sanctuaries. NOAA's partnership with the State, and with the people of Hawaii, will help to ensure that the vast coral reefs, ecosystems and resources of the Northwestern Hawaiian Islands are protected for present

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and future generations.

Collaboration and Partnerships

In the list of jurisdictional authorities, Page 64, change line 34 to read:
State of Hawaii, Department of Land and Natural Resources

International Partnerships

On Page 70, line 29, replace the words "working on" with "preparing" *an application to the U.S. National Park Service etc.*

On line 34, replace the word "help" with "provide global protection for" *the natural and cultural values etc.*

Native Hawaiian Community Involvement Action Plan

Strategy NHCI-1.1 proposes the establishment of a Native Hawaiian Sanctuary Advisory Council working group *to provide an opportunity for the Sanctuary to obtain advice and guidance from Native Hawaiian cultural experts, including kupuna (elders) and practitioners (Pg. 230, lines 39–40).* Will the role of this working group include evaluation of permit applications as advocated above?

B. Permits

The SMP provides for six permit types, whereas the State of Hawaii provides for three. This could lead to confusion for applicants and may cause problems when permits are assessed if the proposed activity is to take place in both Sanctuary and State waters. More discussion on permit types is required to ensure consistency in a co-managed sanctuary.

The Permitting Action Plan states the *"Interagency coordination for permitting and enforcement, which manages human uses in the Sanctuary, is becoming increasingly integrated and coordinated among jurisdictional agencies" (Pg. 170, line 5-6).* Although one Interagency Committee meeting has been held to discuss permitting, there has been little progress on integration and coordination.

Although this section of the plan lists the USFWS website on Page 170 (line 37), it does not mention the State of Hawaii, Department of Land and Natural Resources' website.

Appendix 2a, *Guidelines for Submitting Permit Applications* (Pg. 298) makes no reference to any State or USFWS permits that may be required in this part of the plan. There is reference to these permits in the Permitting Action Plan (Pg. 170), but a list of permits should also appear in the Guidelines (Appendix 2a). The main problem is that an applicant may not know what other permits are required.

Section G(2) *Copies of other permits* asks the applicant to include copies of other Federal, State and/or local permits issued for the permit requested, which assumes other

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agencies have already issued their permit. This suggests that the applicant would secure a permit from one agency then try to secure a permit from another which could lead to problems if one agency issues a permit without consultation with another, possibly leading to conflicting views.

Appendix 2 (Pg. 298) of the SMP provides permit guidelines and application forms. These forms appear inadequate to enable the assessment of permit applications in a manner to ensure protection of the ecological integrity of the ecosystem.

If the Sanctuary is to be managed in a coordinated and integrated way, the most effective mechanism for issuing all permits (Federal, State, local) is for the relevant jurisdictional agencies to meet together to review and discuss permit applications to ensure a coordinated response to each application. This approach has been discussed and agreed to in earlier Interagency Committee meetings and is mentioned in the Collaboration and Partnership section of the plan (Interagency Committee, Pg. 68, lines 22-23). *...The Interagency Committee will meet quarterly on all aspects of coordinated Sanctuary management, including review and development of policies, protocols, permits and other operational aspects of the Sanctuary.* However, this collaborative management approach has been lost or overlooked in the proposed Sanctuary permitting process.

The State recommends that:

- **The Permitting Action Plan mention DLNR's permit guidelines and add the State of Hawaii, DLNR website on Pg. 170, line 27.**
- **Appendix 2a of the Management Plan be revised to change Section G(2) to read: *other Federal, State and/or local permits may be required by the following Federal, State and local agencies depending on the proposed activity:* (provide a list of these jurisdictional agencies with specific permits required)**
- **Appendix 2b *Permit Application Form (p306)* be revised to provide an application form that requests information similar to the current State and USFWS application forms. Each jurisdiction also requests different information, which reflects their applicable statutes and regulations. The Sanctuary's application form would also require specific information that reflects its needs. An application form that provides more consistency in format will go a long way to facilitate co-management of the Sanctuary amongst jurisdictional agencies.**

C. Evaluation of Permit Requests

The plan states that *"depending on the type and location of the proposed activity, additional review may be required by partner jurisdictional agencies, additional NMSP program personnel, or outside experts."* As many of the requested permit activities are likely to take place in State waters and/or USFWS jurisdictions, sharing all permit

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requests with jurisdictional partners would strengthen collaboration, rather than leaving it to the discretion of the sanctuary permit coordinator. The State has now established a review process for Refuge permits that requests comments from all jurisdictional partners, which should be reciprocated by also requesting the State to review all Sanctuary permit applications.

The Native Hawaiian community involvement action plan (Pg. 228) states that "*the Constitution of the State of Hawai'i requires the state to care for Hawai'i's trust resources and recognizes the state's obligation to work for the betterment of Native Hawaiians* (line 35–36). It also states that "*it is imperative that the Native Hawaiian community be involved in the planning, management and operations of the Sanctuary*" (lines 38–39). However, the proposed Sanctuary permitting process does not provide for Native Hawaiian involvement in the evaluation of permits.

As part of the State's permitting process, Native Hawaiian cultural and resource management experts are requested to review and provide comments on all permit applications for activities within the State Refuge. In order to effectively co-manage the proposed Sanctuary, consistency in permit review processes is desirable.

The State recommends that this section of the Management Plan (Pg. 302) be changed to:

- Provide for review of all permit requests by key jurisdictional partners, including the State of Hawaii.
- Provide for review of all permit requests by Native Hawaiian cultural and resource management experts.

D. Consultations and Statutory Requirements

This section contains a list of a number of Federal statutes but no list of relevant State of Hawaii statutes/regulations.

The State recommends that this section of the Management Plan be changed to add the relevant State of Hawaii statutes and regulations such as Hawaii Administrative Rule, Chapter 13-60.5 to the list, along with the Federal statutes.

E. Budget

The State would note that the five-year budget for the proposed Sanctuary may not provide adequate funding for certain priority areas. For instance, the Protected Species Action Plan comprises only 1% of budget, and the Alien Species Action Plan (to prevent alien species introductions and monitor and control existing alien species in the Sanctuary) comprises only 3%. The latter area is particularly important as a threat to the ecological integrity of the sanctuary, and would seem to merit greater funding. For example, the aftermath of the *Casitas* shipwreck now requires substantial USFWS

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commitment to monitoring for potential invasives where the ship's crew landed on shore *in extremis* without being able to undertake any alien species prevention protocols; other incidents of this type are all but inevitable in the future.

The State recommends that the proposed budget be rebalanced to allocate greater financial commitments to protected species, invasive alien species, vessel hazards, and enforcement.

DRAFT ENVIRONMENTAL IMPACT STATEMENT

A. General Comments

The DEIS reads well and there is a good and sound justification for most of the actions.

Many would/will argue that goal #7 objectives do not now accurately reflect most of the alternatives and should perhaps be revisited; especially given the statements on Page 1-12, lines 10-12.

Throughout the Executive Summary and in subsequent descriptions of the role on the NMFS, no mention is made of their pivotal role in managing marine mammals, especially the critically endangered Hawaiian monk seal.

The State recommends that this oversight be rectified.

It is also important to be inclusive throughout. The EO calls for not only consultation with the Federal agencies and the State of Hawaii, but also advice from the Western Pacific Regional Fishery Management Council (WPRFMC) and the Reserve Advisory Council (RAC). This is missed on Page ES-5, lines 30-35.

The State recommends that the section of the document noted above be amended to include consultation with the RAC and WPRFMC. We would note that the necessity to consult with the latter organization may be rendered moot if the decision is made to manage fisheries under the authority of the Sanctuaries program rather than under the Magnuson-Stevens Fishery Management Act (a course of action that we would note is implied in these documents).

The two key principles that are missing from the overall management approach are a precautionary approach to resource management and the need to maintain the biodiversity of all resources. Language similar to the precautionary approach is used to describe erring on the side of resource protection when uncertainty exists regarding potential impacts, but we are not sure this goes far enough in determining impacts.

The State has substantial concerns regarding the apparent absence of a precautionary approach for assessing permit impacts, particularly for Class B permits. It appears that a few phone calls or e-mails could suffice to obtain permit approval for activities with unknown impacts to the ecosystem, and which could

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include extractive uses. We recommend, for all permits, a full external review by a committee of agency representatives. In addition, if there are "legal problems" with a permit applicant, such as a record of previous illegal activities, we recommend that this be taken seriously, potentially preventing access to these public trust resources.

While we acknowledge that a few of our comments were incorporated into the draft Regulations and are reflected in the alternatives, we are still concerned about the Special Ocean Uses criteria. The process to gain approval for commercial photography and/or documentaries seems overly difficult. At the same time, the process to gain approval for other commercial uses does not take into account the unique and fragile nature of some of the ecosystems of the NWHI.

As noted previously, the State does not support broad scale commercial activities (including commercial diving and cruise ship visits) in the NWHI, and further policy discussions are needed to define where appropriate Special Ocean Uses (other than photography or filming) should or should not occur.

B. Recreation and Ocean-based Ecotourism Activities

The SMP Ocean-based Ecotourism and Recreation Action Plan proposes to investigate ecotourism locations. According to the SMP, "The first areas that would be investigated include Midway Atoll, Kure Atoll and locations outside SPAs" which, from the maps provided, could include RPAs at Nihoa, Mokumanamana, and other places (Pg. 201). The DEIS provides the following useful descriptions of tourism and recreation in the NWHI:

There appears to be inconsistencies between the draft Regulations and what is discussed in this section of the SMP. The State desires that recreation and tourism in the proposed sanctuary be confined primarily to the Midway SMA. A principal concern is with the potential proliferation of ocean-based ecotourism to unsustainable levels in the NWHI, with consequent damage to resources (as has happened in the Galapagos Islands).

C. Pollution

In our letter of March 24, 2006, we underscored substantial concerns about the potential for sanctuary designation to lead to increased pollution levels as a result of: 1) increased vessel traffic, and 2) lowered pollution standards as proposed in the draft Regulations. We find the DEIS analysis of pollution sources (Pgs. 3-84 to 3-87) to be quite useful, underscoring the "multitude of wastes" produced by seagoing vessels, including cargo, fishing, cruise ships, research vessels, U.S. Coast Guard ships, and recreational vessels and underscoring the potential discharges from vessels including sewage, gray water, bilge water, hazardous wastes, and solid wastes. The DEIS notes that gray water can include nitrogen, phosphates, copper, lead, mercury, nickel, silver, zinc, oil, grease, metals, pesticides and medical wastes. It also notes that cruise ships, such as those which

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have recently begun to visit Midway Atoll, "generate large volumes of waste and may have significant impacts on the marine environments they transit. Large cruise ships can generate as much as eleven million gallons (41,640,000 liters) of wastewater per day (NOAA 2003b). Solid wastes generated by cruise ships may be incinerated on the vessel and the ash discharged at sea, or the wastes may be disposed of or recycled at onshore facilities (USEPA 2000)." According to the DEIS, the USFWS bans the dumping of cruise ship waste in the Midway Refuge. The SMP also notes the presence of "NOAA vessels, Oscar Elton Sette, Hi'ialakai, Ka'imimoana and UH's R/V Kilo Moana and R/V Kaimikai-O-Kanaloa as well as chartered vessels for marine debris removal. These vessels are most active in the NWHI during the months of April through November. These vessels average 200 feet in length, weigh 2,300 tons, and carry 50 crew and researchers and other staff, and can generate several thousand gallons of sewage and gray water per day" (Pg. 147).

We agree with NOAA's assessment that "The most persistent and significant threat to water quality in the ROI (Region of Influence) is the vessels that transit the area. Vessel traffic presents the risk of a large oil spill or release of cargo that could greatly impair the marine water quality of the affected environment" (Pgs. 3-87).

The State wishes to underscore its deep concerns regarding the apparent relaxing in the draft Regulations of pollution standards currently in effect (as outlined in our letter of March 24, 2006). We also note with additional concern that, despite the importance of preventing hazards associated with vessel traffic, including the shipwreck of the *Castles* last summer, the Vessel Hazards Action Plan appears to make up only 1% of the Sanctuary's proposed five-year budget.

D. Specific Comments

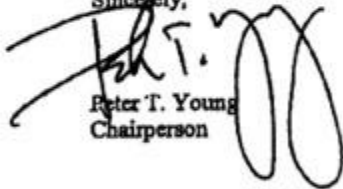
The State also offers the following specific comments on the DEIS:

1. On Page ES-4, lines 23-25, the sentence needs to be changed. The correct representation of the State's lead on World Heritage is found on Pages 1-5 and 1-6 lines 36 & 1-3.
2. On Page ES-6, line 5, the sentence should read "...In addition, a sanctuary can foster coordinated management AND RESEARCH, towards achieving a greater understanding of marine ecosystems of the NWHI."
3. On Page 1-4, lines 1-2, it should probably read Hawaiian genealogies through the Kumulipo (Hawaiian Creation Chant) identify the coral polyp as the first living creature to emerge from the sea.
4. In Table ES-3 under the Summary of potential resource impacts, the impact analysis recreational fishing is not accurate in Alternative 3.

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Once again, the State of Hawaii thanks NOAA for the opportunity to comment on these documents and believes that this is a useful step toward attainment of a co-managed NWHI National Marine Sanctuary.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter T. Young", is written over a printed name and title. The signature is stylized and somewhat illegible.

Peter T. Young
Chairperson

cc Dan Polhemus
Athline Clark

**Papahānaumokuākea
Native Hawaiian Cultural Working Group**

May 7, 2024

Mr. Eric Roberts, Superintendent
Papahānaumokuākea Marine National Monument
NOAA/ONMS
1845 Wasp Blvd., Bldg. 176
Honolulu, HI 96818

Re: PMNM-Sanctuary Designation, Docket NOAA-NOS-2021-0114

Dear Mr. Roberts,

This letter is written testimony submitted by the Papahānaumokuākea Native Hawaiian Cultural Working Group (CWG) regarding the proposed Papahānaumokuākea National Marine Sanctuary (PNMS). The CWG is a group of Native Hawaiians that have deep connections and historical ties to Papahānaumokuākea National Marine Monument (PMNM) through a living pilina (relationship) bound by genealogy, cultural protocols, and values building contemporary multi-disciplinary research and practice. Our group is made up of Native Hawaiian kūpuna (elders), researchers, scholars, cultural practitioners, educators, community members, former site managers, and marine advocates. Many of us have historical family ties and/or have first-hand knowledge of visiting these ancestral islands of our homeland. We have been actively engaged in caring for these islands and waters for the past 24 years as the Native Hawaiian community voice for the region giving advice to the Monument Management Board through the Monument Co-manager and Co-trustee, the Office of Hawaiian Affairs. Beginning in 2001, the CWG has represented the Native Hawaiian community voice for the Northwest Hawaiian Island (NWHI), giving advice, first to NOAA through the NWHI Coral Reef Ecosystem Reserve Advisory Council (RAC), and more recently through the Office of Hawaiian Affairs OHA as a Monument co-trustee.

We thank the Administration for continuing the designation process of the proposed Papahānaumokuākea National Marine Sanctuary and write to express our strong support for designating this sacred place that supports a diversity of life, including hundreds of native species and the largest extent of coral reefs in the archipelago as a national marine sanctuary. The proposed sanctuary would add additional protections to biodiversity hotspots, sacred sites, and productive marine habitats throughout the Hawaiian Archipelago. Sanctuary designation would also provide the opportunity to develop a comprehensive and cohesive set of regulations that maintains and enhances existing resource protection. **What follows in the subsequent pages are our recommendations, which should be read as the conditions of our support. The CWG hopes these issues can be addressed so we can fully support Sanctuary Designation without any reservations.** Mahalo nui for your careful consideration of our mana'o.

PAPAHĀNAUMOKUĀKEA NATIVE HAWAIIAN CULTURAL WORKING GROUP
EMAIL: HUIJANAMANA@GMAIL.COM

A. The CWG Supports Designation of the Papahānaumokuākea as a National Marine Sanctuary Through Alternative 1

1. *Alternative 1 Boundaries and Need for Action*

The CWG supports Alternative 1 for the designation of Papahānaumokuākea as a National Marine Sanctuary. Alternative 1 - the preferred alternative - would designate boundaries that are co-extensive with the marine portions of the PMNM. This alternative includes the deep-water resources of the monument expansion area including seamounts supporting rare oases of life in this primarily pelagic and deep-ocean environment, vulnerable shallow reef waters, maritime heritage resources, and a living cultural seascape (Re: World Heritage) that may be excluded from sanctuary protections under other alternatives. The region consists of small islands, islets, atolls, and a complex array of shallow coral reefs, deepwater slopes, banks, seamounts, and abyssal and pelagic oceanic environments. These systems support a diversity of life, including hundreds of distinct native species. Like the traditions noted within the Kumulipo, the corals form the foundation of an ecosystem that hosts a distinctive assemblage of marine mammals, fish, sea turtles, algae, and invertebrates.¹

The proposed sanctuary acknowledges the past advocacy and discussions among a wide group of people, from fishers to Native Hawaiians and conservationists during the Monument expansion effort and does not expand the area's specific boundaries any further than what is currently in place under the Papahānaumokuākea Marine National Monument. The sanctuary would establish an additional layer of supplementary regulations over the existing boundaries of the Monument that would complement, maintain, and enhance existing resource protections. This boundary ensures the full extent of existing protections are complemented and enhanced, maximizing protections for cultural and natural resources, while also respecting the thoughtful stakeholder engagement process that defined the boundaries for the Monument.

The proposed rule also seeks to unify management of the area by reducing discrepancies and gaps in prohibitions, regulated activities, and permit criteria, providing clarity and comprehensive protection for the proposed sanctuary. We appreciate that the proposed sanctuary terms of designation, rule, and management plan keep existing protections, such as from deep-sea mining, or other extraction, in place as a baseline. Sanctuary designation would also strengthen the durability of these existing protections provided through the Monument, through

¹ For a more detailed description of Papahānaumokuākea and discussion of the importance of this region to Native Hawaiians, see MAI KA PŌ MAI: A NATIVE HAWAIIAN GUIDANCE DOCUMENT FOR THE MANAGEMENT OF PAPAĀNAUMOKUĀKEA.

the additional protections, tools, and resources available under the National Marine Sanctuaries Act (NMSA). **Because there is some risk that the existing protections afforded the Papahānaumokuākea National Marine Monument could be curtailed by a future President, the protections afforded via a sanctuary designation, even where duplicative of those applicable to the Monument, are necessary.**

2. Permitting, Enforcement and Liability

We support the proposed rule which enhances enforcement and addresses governance discrepancies and gaps, particularly the enhanced regulations and guidance to assess civil penalties for permit and regulatory violations as well as the increased ability to impose liability for damage to sanctuary resources.

The NMSA provides the Office of National Marine Sanctuaries (ONMS) authority for enacting emergency regulations, much clearer regulations and guidance for enacting civil penalties for permit and regulatory violations than what is currently available with the Monument proclamation alone and, the imposition of liability for damage to sanctuary resources.² Under the Act ONMS can implement immediate temporary regulations where necessary to prevent or minimize the loss or injury to a sanctuary resource. ONMS can also assess civil penalties for violations of provisions of the NMSA and regulations and permits issued pursuant to the NMSA.³

Historically, agencies like the US Coast Guard and NOAA Office of Law Enforcement have had difficulty enforcing monument proclamations as law when challenged. The NMSA is clear, and there is precedent for enforcement. As described in the DEIS, because of the lack of codified regulations, enforcement of domestic illegal fishing in the Monument Expansion Area (MEA) does not carry the same penalties and may only result in a warning to violators. Under Alternative 1, law enforcement would be strengthened in the MEA, or Outer Sanctuary Zone (OSZ), including the option to impose civil penalties throughout the Alternative 1 boundary areas.⁴ Funds collected from penalties and response costs and damages are available to conduct restoration for damaged resources and comparable resources within the sanctuary.⁵ Further, implementing NMSA regulations would not eliminate state regulations or preclude state enforcement instead of or in addition to the federal infractions.

² The Draft environmental Impact Statement (DEIS) identifies this authority as possibly the most significant difference between no action and sanctuary designation. DEIS at 98.

³ 16 U.S.C. §§ 1443; 1434(d); 1437(d).

⁴ DEIS at 100.

⁵ DEIS at 98.

3. *Maintaining and Enhancing Protections from Development*

Sanctuary designation would add to and complement existing protections for Papahānaumokuākea.⁶ **One significant additional protection we appreciate and support the proposed addition of “any energy development activities” to the PMNM prohibition on exploring for, developing, or producing oil, gas, or minerals.**⁷ This addition will provide additional protections consistent with the underlying intent of the prohibition on oil, gas, and mineral development by accounting for technological advances in other forms of energy development. In addition, by establishing consistency throughout Papahānaumokuākea, this prohibition will help advance the proposed sanctuary’s draft goals and objectives by protecting sensitive marine ecosystems such as fragile coral reefs and deep-sea corals, benthic habitat, and seamounts. Prohibiting oil, gas, and mineral development reduces the risk of offshore spills that could significantly harm sanctuary resources. Deep seabed mining, oil and gas drilling, and other energy development activities, including renewable energy system installation, destroys fragile benthic habitat, releases sequestered carbon, and spreads sediment plumes that can suffocate both sensitive shallow and deep-sea coral reefs, which negatively impacts nursery and foraging habitat for fish, and reduces the ecosystem’s overall resilience.

In addition, the CWG supports regulations, including the prohibition on altering the seabed by modification or placement of materials, except for scientific instruments, providing new protections for the limited and sensitive habitats of the OSZ including deep seabed, banks and seamounts in waters that are primarily pelagic overlying deep abyssal plains.⁸ Access through permitting would allow managers to review methodologies and monitor permittees, protecting these resources. While minimal user contact with the seafloor occurs or is anticipated in the OSZ, these resources are rare and extremely vulnerable to disturbance. As such, these new regulations that provides direct, long-term, benefits to physical resources of the OSZ.

4. *Programmatic Benefits*

We also support designation of Papahānaumokuākea as a sanctuary because it will be eligible for additional public and non-profit sources of funding that could strengthen the public’s appreciation of Papahānaumokuākea and support a more consistent budget funding for research, citizen science, scientific and cultural education, community engagement, emergency response, and management. While co-trustee agencies provide staff

⁶ See, e.g., State of Hawai‘i, Notice of Intent Preparation Notice, p. 6 (Nov 2021), “It is important to note that the proposed action cannot, and will not, weaken the current protections or authorities in place within the Monument, whether marine or terrestrial, nor does it change or supersede any of the existing state and federal jurisdictions, regulations, or management structures of the Monument, as provided by the executive order and proclamations. Any regulations for a proposed sanctuary would be separate from, but supplementary and complementary to, existing prohibitions in the establishing executive order and proclamations.”

⁷ 89 Fed. Reg 42, 15290 (Mar 1, 2024) *see* § 922.244(a)(1).

⁸ 89 Fed. Reg 42, 15290, *see* § 922.244.

and program support for the Monument, sanctuary designation would ensure access to additional ONMS resources, including national programs for conservation science, maritime heritage, climate change and education. The NMSA also authorizes non-profit organizations like the National Marine Sanctuary Foundation and friends groups to provide private funding for the sanctuary, and allows ONMS to apply for, accept, and use grants from other federal agencies, states, local governments, regional agencies, interstate agencies, foundations, or other persons.⁹ Sanctuary education, outreach, and community engagement around the marine ecosystems, wildlife, and cultural heritage of Papahānaumokuākea can be a powerful force in building stewardship.

The Sanctuary Draft Management Plan identifies several funding priorities supported by the CWG including a Native Hawaiian cultural program to work closely with Native Hawaiian organizations and joint collaborative projects with Native Hawaiian organizations and others to enhance understanding and conservation of cultural values to advance sanctuary management. Another important priority identified is initiation of the design, build, and operation of a dedicated research vessel that would enable NOAA (and partners) would begin implementing site-specific research and monitoring activities with this vessel.¹⁰

The following comments include areas of concern and essential recommendations for changes or clarification to improve the final designation of the PNMS.

B. Sanctuary Management and Advice

1. *Integration of Native Hawaiian Culture, Knowledge, and Practices*

The CWG Appreciates and Supports Integrating Native Hawaiian Culture, Knowledge, and Practices into Papahānaumokuākea’s Management. The proposed PNMS sanctuary management plan is influenced by Mai Ka Pō Mai, which was birthed by the Native Hawaiian community and represents our vision for how we should mālama this place. Through the support of OHA and NOAA, the CWG consulted with ‘Ōiwi communities for more than a decade, which led to the creation of this historic management guidance document called Mai Ka Pō Mai. This document lays the foundational framework to guide the weaving of Kānaka ‘Ōiwi (Native Hawaiian) knowledge systems, values, and practices into all aspects of the management of Papahānaumokuākea.

The Mai Ka Pō Mai introduces traditional concepts and cultural traditions into the management plan as a foundation for how the PNMS should be managed through a Native Hawaiian perspective. This is an example of the highest degree of integration of Hawaiian culture in any

⁹ DEIS at 31.

¹⁰ DEIS Appendix A at 167.

federal process. To see the guidance document institutionalized for the proposed Papahānaumokuākea sanctuary sends a clear message of support for our progress as a Native Hawaiian community and our relations with the federal government.

The draft management plan emphasizes the importance of weaving Kānaka ‘Ōiwi knowledge systems, values, practices, and other knowledge systems and approaches in caring for this sacred biocultural seascape. It is vital to honor the unique contributions of ‘Ōiwi knowledge systems through meaningful inclusivity and engagement of ‘Ōiwi practitioners, researchers, and community members in multi-disciplinary research partnerships.

As indicated in the DEIS, the Monument’s co-managers have emphasized Indigenous Knowledge in management, with a mission to ensure ecological integrity and achieve strong, long-term protection and perpetuation of Papahānaumokuākea’s ecosystems, Native Hawaiian culture, and heritage resources for current and future generations. The basis for building a firm foundation to apply Indigenous Knowledge to management has been the development of strategies for the involvement of cultural practitioners in policy, management, education, and research. As stated in the DEIS, “the long-term planning needed to effectively apply Indigenous Knowledge to management hinges on empowering indigenous peoples within research, management, and policy who are well-positioned to work collaboratively from the agency to Native Hawaiian communities.”¹¹

The PMNM is currently managed under a 2008 Management Plan that is five volumes long,¹² however, it is yet to be updated to reflect the Expansion Proclamation of 2016 and the 2017 Memorandum of Agreement. The DEIS indicates that the core elements and framework for the Draft Sanctuary Management Plan were designed in coordination with the monument’s co-trustees to ensure concurrence of plans between the proposed sanctuary and the overarching Monument. The core elements of this draft plan—vision, mission, principles, and goals—are the same as those developed by the co-trustees for the future monument management plan update. This approach seeks to ensure that when Monument management planning resumes, there is a foundation to build on that would not alter the Monument’s co-management structure.¹³

The draft management plan also affirms that the PMNM co-trustees are collectively committed to realizing the mission of Papahānaumokuākea and highlights some of the advantages of cooperative management, as delineated in the 2017 Co-Trustee Memorandum of Agreement, including a joint management plan, joint permitting system, and resource sharing.¹⁴ The draft plan further states that sanctuary management would supplement and complement, rather than supplant, the existing co-management regime of Papahānaumokuākea. **The CWG believes that for all of the above reasons, these management goals and integrating Native Hawaiian**

¹¹ DEIS at 75-76.

¹² <https://www.papahanaumokuakea.gov/new-about/management/>. This link outlines the current management arrangements and includes the 2008 Plan.

¹³ DEIS at 30.

¹⁴ DEIS Appendix A at 147.

Culture, Knowledge, and Practices into Papahānaumokuākea's Management would be improved with the following additional actions.

2. The Office of Hawaiian Affairs Should be Designated a Co-Manager of the Sanctuary

In 2016, through many discussions among Native Hawaiian leadership uplifting the vision of kūpuna leaders to protect and care for this special place in perpetuity, OHA became a PMNM co-trustee agency to, in part, elevate the CWG's collective voice and guidance to the Monument Management Board (MMB).

The proposed rule provides that NOAA's Office of National Marine Sanctuaries will have primary responsibility for managing the sanctuary. However, as the sanctuary includes State waters, NOAA has determined that it will co-manage PNMS with the State of Hawai'i. The rule also provides that the Office of ONMS may enter into a Memorandum of Agreement with the State regarding this collaboration that may address, but not be limited to, sanctuary resource protection, educational programs, permitting, research activities, development, and threats to sanctuary resources.

We recommend that NOAA elevate Native Hawaiian voices beyond sanctuary advisory bodies and into its formal co-management structure by making the Office of Hawaiian Affairs a co-manager of the sanctuary, mirroring the level of decision-making authority granted through the co-trusteeship that the Office of Hawaiian Affairs shares with the Department of Commerce, the Department of the Interior, and the State of Hawai'i for administering PMNM.

A 2006 Memorandum of Agreement MOA signed by the two secretaries and the Governor of Hawai'i directed that day-to-day management of the monument be conducted through the collaborative efforts of seven co-managing agencies: NOAA's Office of National Marine Sanctuaries and National Marine Fisheries Service, U.S. Fish and Wildlife Services Refuges Program and Ecological Services, the State of Hawai'i's Department of Land and Natural Resources' Division of Aquatic Resources and Division of Forestry and Wildlife, and the Office of Hawaiian Affairs.

Although one press account suggested that OHA could not be made a co-manager under the NMSA, we are unable to identify such limiting authority. It appears that state agencies have been made co-managers for other sanctuaries. For example, for the National Marine Sanctuary of American Samoa, the American Samoa Department of Commerce has been designated as a co-manager to assist NOAA with the administration of the sanctuary.¹⁵ The CWG requests

¹⁵ National Marine Sanctuary of American Samoa, Management Structure ([Management structure | National Marine Sanctuary of American Samoa \(noaa.gov\)](#)). See also, 15 U.S.C. § 922.106 Management and enforcement. The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the [Sanctuary](#) pursuant to the Act. The American Samoa Department of Commerce (ASDOC) will assist NOAA in

similar representation in co-management be provided for Native Hawaiians through OHA. The CWG would support the Department of Interior's agencies and other state agencies being added as co-managers to provide complete consistency with the co-trusteeship of the PMNM.

3. *The Reserve Advisory Council Should Continue as the Sanctuary Advisory Council*

The sanctuary should retain the NWHI CRE Reserve Advisory Council (RAC), including the Native Hawaiian seats, as the Sanctuary Advisory Council (SAC) for the PMNS. It is not clear from the designation documents what role NOAA intends for the RAC if the PMNS is designated, so this role should be clarified in the FEIS and Sanctuary Management Plan.

On December 4, 2000, presidential Executive Order 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (CRE Reserve), pursuant to the National Marine Sanctuaries Amendments Act of 2000.¹⁶ Executive Order 13178 required the Secretary of Commerce to initiate the process to designate the CRE Reserve as a national marine sanctuary and that "in designating *and managing* the sanctuary, the Secretary shall consider the advice and recommendations of the Reserve Council established pursuant to paragraph (f) of this section." (emphasis added). Executive Order 13178, section 5.(f), directed the Secretary to establish the CRE Reserve Advisory Council (RAC) and dictated what constituencies and agencies are represented on the council. The RAC was duly established pursuant to section 315 of the NMSA, which authorizes the Secretary of Commerce to establish advisory councils to provide advice to the Secretary of Commerce regarding the designation and management of national marine sanctuaries. The RAC's charter is in accord with the NMSA and Executive Order 13178, stating the RAC "shall provide advice and recommendations to the Secretary regarding the management of the reserve portion of the monument, and the designation and *management of* a potential national marine sanctuary in the NWHI."¹⁷ (emphasis added).

These legal authorities indicate an intent that the RAC continues ("becomes") as the SAC for the PNMS. The DEIS and proposed management plan do not clearly state this and, in fact, say little about NOAA's intention for the PNMS advisory council. For example, when addressing resource issues for implementing the sanctuary management plan, the DEIS states that "[i]f the proposed sanctuary designation takes effect, NOAA will maintain the essential, existing resources and actions for management, such as maintaining an administrative office and a sanctuary superintendent and *supporting the creation and operation of a Sanctuary Advisory Council.*"¹⁸ The RAC is already operating successfully within existing funding and has a carefully established makeup representative of diverse stakeholders, including important Native Hawaiian representation.

the administration of the Sanctuary, and act as the lead territorial agency, in conformance with the terms of designation, these regulations, and the terms and provisions of any grant or cooperative agreement.

¹⁶ Pub. Law 106-513 (2000).

¹⁷ (emphasis added) [nwhi_crer_charter_renewal_signed_7_3_17.pdf](#) ([nmspahanauumokuakea_blob_core_windows.net](#)).

¹⁸ DEIS Appendix A at 167.

Elsewhere, under the draft management plan’s strategies for expanding partnerships and engagement, it states a sanctuary advisory council will be developed and maintained to “engage working groups, friends groups, and others to support sanctuary programs and initiatives; and continue other initiatives that allow sanctuary constituencies to be more involved in the sanctuary and enhance opportunities for long-term engagement.”¹⁹ This appears to be a significantly more limited role than currently fulfilled by the RAC or other SACs, and could compromise the voice of the Native Hawaiian community from its current opportunity to “provide advice and recommendations to the Secretary regarding the management . . . of the sanctuary.”

The CWG supports the RAC continuing as the body providing management advice and recommendations the PNMS, as set forth in Executive Order 13178, effectively transitioning to the more broadly titled “Sanctuary Advisory Council” to reflect the fact PMNS under Alternative I would include the waters that are part of the CRE Reserve as well as the additional waters of the OSZ. The SAC’s makeup as established in Executive Order 13178 has proven to provide effective representation of Hawaiian communities, its membership is well qualified to provide management advice for all of the marine waters that could be included in the PNMS, and the RAC has functioned effectively over its years. It would be efficient and reduce potential conflicts to have one advisory council for the sanctuary that includes the NWHI CRE Reserve, instead of two separate councils providing advice on Reserves resources.

C. Commercial and Non-Commercial Fishing

1. Process Concerns for the Development of Fishing Regulations

Over the years, the industrial fishing industry has been one of the significant threats to the health and well-being of this magnificent place and all its lifeforms. While the NMSA includes provisions allowing for commercial and recreational fishing in some sanctuaries, in this case the presidential proclamations establishing the PMNM greatly restrict all fishing, and any fisheries regulations implemented must be at least as protective as provided for in the proclamations. The proclamations specifically prohibit commercial and non-commercial fishing, except that Proclamation 9478 establishing the Papahānaumokuākea Marine National Expansion provides for limited non-commercial fishing subject to such terms and conditions as the Secretaries deem appropriate, “if such activity is consistent with the care and management of the objects within the Monument Expansion and is not prohibited.”²⁰ We reiterate that because there is some risk that the protections afforded Papahānaumokuākea through its designation as a marine national

¹⁹ DEIS Appendix A at 160.

²⁰ 81 Fed. Reg. 169, 60231 (Aug 31, 2016).

monument could be curtailed by a future President, the protections afforded via a sanctuary designation, even if duplicative of those applicable to the Monument, are necessary.²¹

NOAA indicates that applicable fishing regulations are being developed by the National Marine Fisheries Service and the Western Pacific Regional Fishery Management Council (WPRFMC or Wespac) in consultation with OMNS.²² Because the applicable fishing rules are being developed under the Magnuson-Stevens Act outside of the Sanctuary designation process, **we request that this fisheries management process include the preparation of an Environmental Impact Statement with ample opportunities for public comment.** These regulations are controversial and the potential environmental impacts from even low levels of fishing could impact Papahānaumokuākea significantly, and these impacts have not been adequately evaluated in the DEIS prepared for the sanctuary designation process. **We also request that NOAA ensure that any fishing regulations developed are consistent with, and at minimum, at least as protective as, the monument proclamations.**

2. Commercial Fishing

We support the proposed rule's prohibition on commercial fishing and possessing commercial fishing gear except when stowed and not available for immediate use. This is consistent with the monument proclamations and addresses one of the biggest threats to Papahānaumokuākea.

3. Non-Commercial Fishing

We support the proposed rule's prohibition on non-commercial fishing and possessing non-commercial fishing gear except when stowed and not available for immediate use. This prohibition is consistent with the monument proclamations' prohibitions on removing or harvesting any living or non-living resource. Proclamation 9478 provides that non-commercial fishing may be allowed in the MEA as a regulated activity "provided that the fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably."²³

Under the proposed rule, non-commercial fishing is defined as fishing that "includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing." Under the rule, the non-commercial fishing prohibition would not apply to non-commercial fishing activities in the OSZ that are authorized under the Magnuson-Stevens Act "provided that no sale of harvested fish occurs."²⁴ While the definition of non-commercial fishing is consistent with

²¹ See also Letter from Marine Mammal Commission, DEIS appendix F at 297.

²² DEIS at 11.

²³ 81 Fed. Reg. 169, 60232 (Aug 31, 2016).

²⁴ 89 Fed. Reg. 42, 15290 (Mar 1, 2024).

Proclamation 9478, which does not explicitly define the term, the exception to the non-commercial fishing prohibition is not consistent because it only prohibits the “sale” of harvested fish and not also the “barter, or trade” of harvested fish. **The CWG opposes the change, removing the words “barter” and “trade” because it is inconsistent with Proclamation 9478’s restrictions on non-commercial fishing. As described further below, allowing for barter or trade of harvested fish under this exception to the Monument’s prohibitions could allow for harvested fish to enter commerce in contradiction to the terms of the Proclamation, posing a threat to the sustainable management of Papahānaumokuākea’s resources, and would be inconsistent with the care and management of the objects within the MEA. The CWG recommends amending the proposed language to read “provided that no sale, barter, or trade of harvested fish occurs.” In addition, similar to the “Research Fishing” proposal discussed below, any non-commercial fishing should also require discussion by PMNM and sanctuary co-managers and advisory bodies to determine if the proposed non-commercial fishing is consistent with the purposes and policies of the NMSA and the monument and sanctuary’s protections, goals and objectives, and require a special use permit under 50 C.F.R. § 404.11.**

4. Development of Fishing Regulations

The development of proposed non-commercial fishing regulations for the OSZ – especially regarding how this fishing is defined, raises important issues and concerns for the CWG. In particular, we are concerned about how non-commercial fishing in the Monument might take the form of “Customary Exchange,” a non-traditional form of fishing for Hawai‘i, especially when considering the region of the Northwestern Hawaiian Islands. Additionally, we are concerned about use of the term “Research Fishing,” another activity Wespac has sought to define as non-commercial fishing. We thank NOAA for rejecting Wespac’s proposed regulations providing Native Hawaiian Subsistence Practices Fishing Permit applicants the ability to request limited cost recovery by selling their catch in the permit application process through a Statement of Need for cost recovery along with expected costs because it failed to fulfill the purposes and policies of the NMSA and the goals and objectives of the proposed sanctuary designation.²⁵

First, the CWG unequivocally opposes any rules that would allow for large-scale extraction similar to what was proposed previously by Wespac, alarmingly, under the guise of native rights. Wespac proposed large-scale extraction from the Papahānaumokuākea MEA (350,000 lbs of bottomfish and 180,000 lbs of pelagic fish annually), with the recommendation that permittees be allowed to take home catch for “consumption, including community sharing, bartering, and trade” and to recover costs from these trips through the “sale of catch.” We oppose Wespac’s attempt to, yet again, push their industrial fishing interests forward at the expense of the health of Papahānaumokuākea. **We also oppose any sale, barter, or trade of any such large-scale extraction and the cost recovery proposed previously by Wespac for such trips.**

²⁵ DEIS at 22.

Customary Exchange is the practice used to describe the non-commercial trade of fish for other goods and services between community members in the Pacific Islands (Severance 2010). It is defined as the “non-market exchange of marine resources between fishermen and community residents... for goods, and/or services for cultural, social, or religious reasons... [It] may include cost recovery through monetary reimbursements and other means for actual trip expenses... that may be necessary to participate in fisheries in the western Pacific.” (Leong 2021). Proponents of this idea often argue that it serves as a way for island peoples to maintain a sense of cultural continuity from their past into the present. Viewed as a form of traditional fishing, there are two areas from which this concept is codified in the Pacific: Rose Atoll Marine National Monument and the Marianas Trench Marine National Monument. In both of these situations, researchers have argued that traditional fishing practices historically occurred for personal, cultural, and community benefit. These practices led to the informal exchange of marine resources and various types of transactions that fit the customary exchange definition (Kotowicz & Richmond 2013).

Noting the use of Customary Exchange in those regions of the Pacific, we credit the Council’s effort to include the needs of those areas’ native communities. Concerning Papahānaumokuākea, the idea of Customary Exchange is an extractive process considered harmful and incompatible with the known traditions specific to this region—an area customarily deemed kapu or off-limits to fishing other than for the traditional practice of harpooning ulua or giant trevally from shore to be dried and shared with the aboriginal communities on Ni’ihau and Kaua’i.

Specifically, within the definition of Customary Exchange, the idea of cost recovery through monetary reimbursement is of particular concern. It was stated in Wespac’s proposed language that it “shall not exceed the actual fishing trip expenses related to ice, bait, fuel, or food.” While this definition is non-market, it still involves financial transactions that allow for potential, unscrupulous exploitation. According to 50 C.F.R. § 665.12, Commercial fishing means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter, or trade.

How the proposed language was written would also allow any Hawai’i resident to fish in this region. The Hawaiian historical record and oral histories suggest that this region was considered “āina akua,” or lands of our ancestral gods, which people only visited for essential traditions and spiritual purposes (Kikiloi 2010, 2012). Due to this remote region’s deep spiritual significance and marginal nature, people visiting exercised a higher degree of restraint so as not to leave a lasting impact on the land and sea. Moreover, travel to this region was not motivated by the need to fish and bring back resources that could then be shared among home communities. Fishing in this region was noted to be a sustenance practice incidental to the primary purpose of these trips, which the kūpuna termed- holo moana (the practice and lifestyle of seafaring) (Maly 2003).

Concerning Wespac’s proposed “Research Fishing,” we note that there is already a permit category for research activities governed by the rules, regulations, and policies set forth by the Monument Management Board and the Findings of 50 C.F.R. § 404.11. **We recommend that any research activity, including those related to fishing, be discussed with PMNM and**

sanctuary co-managers and advisory bodies to determine if the activity meets the research needs of management. Under this structure, if any fishing is conducted under a research permit, any fish consumption must be done in conjunction with research or a Native Hawaiian Practices permit and be consumed in Papahānaumokuākea only.

With this in mind, we support the current definition of sustenance fishing as a Native Hawaiian practice. It is a specific concept applied to the original PMNM boundary waters described as “... fishing for bottom or pelagic species in which all catch is consumed within the Monument, and that is incidental to an activity permitted under this part.”²⁶ This definition was developed through consultation and interviews with many of the kūpuna who had connections to the region, many of whom were early members of the CWG. In that spirit, it is the region’s most appropriate form of non-commercial fishing. Under the sanctuary proposal, the Secretary may authorize sustenance fishing outside of any Special Preservation Area as a term or condition of any sanctuary permit. Sustenance Fishing is allowed incidental to an activity permitted under Proclamation 8031 and in regulations at 50 CFR part 404. Sustenance fishing was not explicitly identified in Proclamation 9478 but is allowable. **We support the proposal to manage this activity as a term or condition of a general or special use permit for the proposed sanctuary.** This will help provide consistency in management and permitting.

In closing, it is the CWG’s position that the current definition of sustenance fishing is the closest to meeting Native Hawaiian traditions and values for this place. Recently, this position was reaffirmed in a Native Hawaiian community workshop organized with OHA in November 2021 (Papahānaumokuākea CWG 2021 NH Workshop 2021 Report). Of the 60 participants who represented different organizations and gave input at the workshop, all supported these ideas:

- Traditionally, this region was seen as ‘āina akua (lands of the ancestral gods). This defines a different relationship we need to maintain with this place.
- Any fishing that occurs there must be non-commercial and align with Native Hawaiian traditions for this specific region.
- The idea of Cultural Exchange is not appropriate for this specific region.
- The relationship with the ocean must be reciprocal with the place, and more focus should be on the symbolic “feeding” and making it abundant (hānai a ‘ai) rather than extraction.
- It is appropriate for any fish caught through traditional fishing to be eaten in the place but it should not be brought back home.

In addition, we emphasize that any extraction of fish, including those caught for research, be led by Native Hawaiians conducting activities in Papahānaumokuākea, whether it occurs under

²⁶ 50 C.F.R. §404.3.

the current permitting structure of a Native Hawaiian Practices permit or similar permitting system.

Kānaka ʻŌiwi voices have always shared how fragile these ecosystems are despite the appearance of abundant fish stocks. The rich legacy of protecting the Northwestern Hawaiian region has shaped conversations about Native Hawaiian fishing rights within the Sustainable Resources Group, the Reserve Advisory Council, as well as at numerous Native Hawaiian workshops over the years. On many of these occasions, it has been emphasized in spades that *“kuleana is a responsibility and a privilege, not a right.”* And those same sentiments were accentuated during the workshop in 2021. This kuleana (privilege) is anchored in maintaining accountable and sustainable practices that uphold a balanced and thriving community. We affirm this approach as it most appropriately aligns with the genealogy of these ancestral islands.

We thank you for the opportunity to provide our comments to designate marine portions of Papahānaumokuākea Marine National Monument as Papahānaumokuākea National Marine Sanctuary to protect nationally significant biological, cultural, and historical resources and to manage this special place as part of the National Marine Sanctuary System. Over the years, the Hawaiian community, conservation groups, and the general public have been vocal and unified in support of the protection of this expansive part of our archipelago. We stand today once again in the protection of our home.

Please e-mail huimanamana@gmail.com if there are any questions regarding these comments.²⁷

Sincerely,

Papahānaumokuākea Native Hawaiian Cultural Working Group (CWG)

Pelika Andrade,
Hui Manamana, Reserve Advisory Council

Dr. Kekuewa Kikiloi,
Hui Manamana

J. Hau'oli Lorenzo-Elarco,
Hui Manamana, Chair of Nomenclature Subcommittee

Kaipulaumakaniolono Baker,

²⁷ These comments were prepared with the assistance of Roger Fleming, Director and Attorney, Blue Planet Strategies.

Hui Manamana, Chair of Hui 'Ohi Manu Subcommittee

Aulani Wilhelm

William Aila

Edward Halealoha Ayau

Nai'a Lewis

Dr. Haunani Kane,
Reserve Advisory Council

Nakoa Goo,
Reserve Advisory Council

G. Umi Kai

Hinaikawaihiilei Keala

Dr. Kalei Nu'uhiwa,
Chair of Permit Review Subcommittee

Dr. Lilikalā Kame'eiehiwa

Bonnie Kahapea-Tanner,
Reserve Advisory Council

Kaleo Manuel

Makani Gregg

Brad Ka'aleleo Wong

Solomon Kaho'ohalahala,
Reserve Advisory Council

Kēhau Springer

Kepo'o Keli'ipa'akaua

Cody Kapueola'ākeanui Pata

Keoni Kuoha

PAPAHĀNAUMOKUĀKEA NATIVE HAWAIIAN CULTURAL WORKING GROUP
EMAIL: HUIAMANAMA@GMAIL.COM

Kanoelani Steward
H. Kalama'ehu Takahashi
Puakea Mo'okini-Oliveira
Pua Mae'elua
Na'alehu Anthony
Shad Kane
Alexander Alike Garcia
Kaimalino Andrade
Malanai Kane
C.M. Kaliko Baker
Maile Shannon
Momi Wheeler
Ho'oipo Bertelmann
Kapua Kawelo
Darrian Kahcalani Muraoka
Kalama Chock
Kainaniokalihiwai Kahaunaele
Dr. Mehana Blaich Vaughan
Mehanaokala Hind
Kehaulani Kupihea
Ivy Haliimaile Andrade
Marques Hanalei Marzan

PAPAHĀNAUMOKUĀKEA NATIVE HAWAIIAN CULTURAL WORKING GROUP
EMAIL: HUIAMANAMANA@GMAIL.COM

Presley Wann

Jamie Anne Kawallehua Makasobe

Dr. Noelani Puniwai

Malia K.H. Akutagawa

Kamakanioka'aina Paikai

Moani Heimuli

Keala Kanakaole

Noah J. Gomes

Kelley Uyeoka

Kainalu Steward

Pua'ala Pascua

Pā'anaakalā Tanaka

G. Ka'ehukai Goin

Ekolu Lindsey

Dr. G. Kalehua Krug

Dr. 'Alohi Nakachi

Mike Nakachi

Kaikea Nakachi

Kaliko Amona

Mahina Paishon

Dr. Kamana'opono M. Crabbe

Keala Kahuanui

PAPAHĀNAUMOKUĀKEA NATIVE HAWAIIAN CULTURAL WORKING GROUP
EMAIL: HUIAMANAMANA@GMAIL.COM

A4 Papahānaumokuākea Final Statements

Hi my name is Riley and I go to Waialae Public Charter School. I think Papahānaumokuākea should be a national marine sanctuary so that the animals can be protected. Because it is home to over 7,000 species. Hopefully if it becomes a sanctuary, NOAA can strongly protect the endangered species that live there.

Aloha, my name is Odin and I go to Wai'alae Public Charter School. We have been learning about Papahānaumokuākea and we have been thinking if we should make it a national sanctuary. I think we should because over 6000+ species will be way more protected and approximately 2000 of them can only be found here and that shows why we need to protect it!

My name is Joshua Keoni Manlagnit and I am in the fifth grade. I go to Waialae Public Charter School, and my teacher is Mr. James Muneno. I believe that Papahānaumokuākea should become a sanctuary. It should become a sanctuary because it is the home of more than 7,000 species of animals, and ¼ of them are endemic. And protecting endemic species is important because they maintain the balance of our ecosystems, preserving biodiversity, and ensuring the sustainability of human populations. Another reason why Papahānaumokuākea should become a sanctuary is because climate change affects turtles by the temperature rising so more females are born, then there are less male turtles to fertilize the eggs, which results in lower turtle populations in Hawaii.

Aloha my name is Talis and I attend Waialae Public Charter School, and I'm in full support of making Papahānaumokuākea a national marine sanctuary. One reason I would like this to happen is that there are over 1,500 endemic species that live there, so if we don't protect it we will lose countless numbers of species, such as turtles, seals and sharks. So please protect Papahānaumokuākea as much as possible.

Aloha my name is Hanuola. I go to waialae elementary and I'm in 5th grade. I think Papahānaumokuākea should be a sanctuary because it can help the animals there and not decrease the number of animals there are at Papahānaumokuākea. Like the turtles when the temperature rises the turtles tend to have more female babies. Did you know there are 7000+ species? That biodiversity is why we have to make it a sanctuary.

Aloha, my name is Gracie, and I am in Mr. James class at Wai'alae Public Charter School. I am making this public comment in full support of Papahānaumokuākea becoming a Marine Sanctuary, as I believe it is important to protect the many biodiverse species in the area. Such as the Green Sea Turtle or Hawaiian Monk Seal, both of which are currently endangered. As well as almost 7,000 other species that live in the area.

Aloha, my name is Cassidy. I'm a student at Wai'alae Public Charter School, and my kumu is Mr. James. I want to help advocate for the Papahānaumokuākea sanctuary. My classmates and I just learned about how lots of organisms and species need to be kept safe. There are over 7000 species and approximately 2000 of them can be found nowhere else in the world. There are at least 14 million seabirds that nest here! And they can live up to 65 years because there is no property there and that's why we need to keep it as safe as possible. Scientists find new creatures in Papahānaumokuākea I think every year! My last reason is because some of the oldest organisms live here and that is why we need to keep it safe and have a better sanctuary than ever!

Hi my name is Jin and i go to Wai'alae Elementary Public Charter School and im in 5th grade,, And my teacher is mr. James muneno, We recently learned about Papahānaumokuākea, and about

keeping it saf. I think we should make Papahānaumokuākea a sanctuary because we can keep the 7,000 species that live there feel safe and stay safe. Also i think we should make Papahanaumokuakea a sanctuary so then more animals can be bred and that would be good because then if there's more animals it can keep the ecosystem more healthy. If more people try to make Papahanaumokuakea a protected sanctuary, lots of fish in general will have a great place to live, but if we allow too much fishing there, the water might get polluted by gasses and bad liquids.

Aloha, my inoa is Karlee. I attend Wai'alaie Elementary Public Charter School. I fully support the decision to turn Papahānaumokuākea into a Sanctuary. I strongly believe if Papahānaumokuākea National Monument is turned into a sanctuary, the ecosystem will thrive for the best and the animals will be secured from harm. Protecting the kupuna islands by turning it into a sanctuary is a good idea because not only will it improve the health of our oceans, but it will also help to preserve our Hawaiian cultural connections to the place.

Hi my name is Welenson and I go to Wai'alaie Elementary Public Charter school and I'm a 5th grader and I think that Papahānaumokuākea should be a sanctuary. Because there are so many recently discovered species like the ghost octopus and more that are found nowhere else in the world. If we protect Papahānaumokuākea we will be able to discover more species. It's important to me because it helps us discover new species like the ghost octopus and if the island goes under the water because of sea level rising then some of the species won't have a home to live in like the turtle that lives there and the history of the place will be gone so that is why I think that papahanaumokuakea should be a sanctuary.

Aloha my name is Mari, I go to Wai'alaie Elementary Public Charter School and I'm in 5th grade. I support Papahānaumokuākea in being a Sanctuary. There are a lot of rare species of animals and more we have never discovered before, and there are animals that are found nowhere else. The turtles like to lay their eggs on Lalo island and if we don't protect the turtles, sea-level rise and erosion, caused by climate change, could make all the turtles have to go higher to lay their eggs. This is why Papahānaumokuākea should be more protected and make it a sanctuary.

Aloha, my name is Malayna. I am in the 5th grade at Wai'alaie Public Charter School. I have been learning about Papahānaumokuākea and I believe that it should become a sanctuary. Papahānaumokuākea is an important part of our ocean ecosystem because 95% of sea turtles lay their eggs there. It is also home to more than 7,000 different species and at least 1750 of those species cannot be found anywhere else in the world. Make Papahānaumokuākea a sanctuary so that these organisms can be protected. Thank you!

Hi my name is Kai. I'm in 5th grade and I go to Wai'alaie Elementary School and I think we should protect Papahānaumokuākea and make it a sanctuary. Papahānaumokuākea is full of lots of native animals that are only living there. Making it a sanctuary can help all of these native and endangered animals stay alive.

Aloha my name is Veda and I'm a 5th grader at Wai'alaie Elementary Public Charter School and I believe Papahānaumokuākea National Monument should become a Sanctuary too. Now I have many reasons on why Papahānaumokuākea should be a Sanctuary. One reason is that it has many different animals only found at that place including the new species found called the Ghost octopus and more. It also has the oldest bird, an albatross that is 73 years old. Also sea turtles come there and lay their eggs. The animals and islands in Papahānaumokuākea should be protected more so that they can help to restore the health of our oceans.

Aloha from wai'ala'e public charter school! My name is Hugo and I think Papahānaumokuākea should be a marine sanctuary because this special place is being impacted by human activities. Some problems include pollution, climate change, and possibly overfishing. If we make Papahānaumokuākea a sanctuary, then all commercial fishing should be illegal, and the kapuna islands can be fully protected.

Aloha, my name is Jihoo and I am a student at Wai'ala'e Public Charter School. Our class has been learning about Papahānaumokuākea and how to protect it in order to make it a sanctuary. People who have connections to Papahānaumokuākea see it as a place that connects them to nature and their own culture. A quarter of species in Papahānaumokuākea are found nowhere else on earth. That's how important it is to protect it since it is a habitat of a lot of organisms. If you do not protect Papahānaumokuākea enough, then the animals might die because of its loose protection. Making Papahānaumokuākea as a sanctuary shows respect for the marine life in there and also the people who has connections to the place.

Aloha, my name is Irisa and I am a student at Wai'ala'e public charter school in fifth grade. I believe that Papahānaumokuākea should become a sanctuary because it is home to many endemic species including the oldest ever living one which is a type of coral. Papahānaumokuākea also has a big problem, it seems that the protection at the moment isn't enough because people are deciding to go ahead and allow commercial fishing there. That is why I agree that Papahānaumokuākea should be classified as a sanctuary.

Aloha, my name is Abyie and I am a student of Wai'ala'e Public Charter School. I am very supportive of making Papahānaumokuākea a national marine sanctuary. I believe that Papahānaumokuākea needs to be a sanctuary so that the islands will be protected even more by NOAA. All of the creatures that live there on land and in the sea are important to the ecosystem. My evidence is from "National Oceanic and Atmospheric Administration" they say that "Sanctuary designation would provide clarity and comprehensive protections for Papahānaumokuākea's ecosystem wildlife and cultural and maritime heritage reasons." This shows that NOAA will take extra care of Papahānaumokuākea if it is a sanctuary. If NOAA spends more time on Papahānaumokuākea they will make sure that the younger generations will be able to take care of Papahānaumokuākea and all of the animals that live there.

A5 Public Comments

Hi, I am a 5th grader in Wai'alaie elementary public charter school. My name is Cruz and I support that Papahānaumokuākea should be a National Marine Sanctuary.

My first reason is that there are some still undiscovered species there.

My second reason is that I don't want people catching too much fish IF Papahānaumokuākea becomes a Sanctuary. Only take what you need for your family and friends. Possibly even barter.

My third reason is that permitting fisher people to SELL fish is commercial fishing, which is risky and we don't want risky things like overfishing. Also that can make people abuse the situation.

There are things we can learn by making it a National Marine Sanctuary. However, we also need rules and regulations that will fully protect the marine life.

Aloha, my name is Kai. I'm a student in 5th grade at Waialae Elementary Public Charter School. I write to you with full support of making Papahānaumokuākea not just a Marine National Monument but a National Marine Sanctuary too.

Papahānaumokuākea is home to many endemic and endangered species that include seabirds, fish, seals, turtles, and many more species that we try so hard to protect. In fact, there are around 7,000 species that live their life there.

Many species there are also rarely studied, that could help stop a crisis we face, or a crisis the animals face. Animals from this diverse ecosystem include a 65 year old albatross and one of the oldest organisms on earth. Scientists even discovered a new species of bamboo coral there.

I also think that commercial fishing should not be allowed because large fishing nets can harm animals and coral. If catching 350,000 lbs of bottom fish and 180,000 lbs of pelagic fish is allowed each year, problems could be caused, such as overfishing and catching other species that might be endangered.

Papahānaumokuākea is also constantly threatened by things like invasive species and rising ocean temperatures which results in coral bleaching. In fact, 70% of coral in the US is in Papahānaumokuākea, which makes protecting coral reefs in Papahānaumokuākea a top priority for keeping coral reefs alive. And if the number of coral decreases, the fact that it's a Marine National Monument and Sanctuary that has more protection can comfort us, and animals.

In conclusion, I think that Papahānaumokuākea should be a National Marine Sanctuary that protects our futures and the futures of animals all over the Pacific Ocean and the world.

Hello. My name is Reign and I'm from Waialae Elementary. I am here to support the extra protection going to the Papahānaumokuakea region. This is important to me because I think all the species there are very special.

My first reason is that... A lot of the native and endemic fish there might be accidentally caught. And we won't be able to find some of those fish species in the main Hawaiian chain. Please do not allow commercial

fishing.

My second reason is that... 70% of the coral in the U.S.A are in the north-western islands of Hawaii, or Papahānaumokuākea. And ¼ of all the species in Papahānaumokuākea are endemic to the Hawaiian island chain. And we want our next generation to see all those species thriving in the future, right?

My third reason is that... Those islands show us the very, very old Hawaiians and their culture. And since the Hawaiians lost a big fragment of their culture, this information can be vital.

That is why I support Papahānaumokuākea being a national marine sanctuary. So please, fight for Papahānaumokuākea to save the fish and all marine life!

Aloha my name is Luke, I'm a student from Waiālae Public Charter School. I am here to say I greatly support Papahānaumokuākea gaining more protection because Papahānaumokuākea is home to many species and a lot of them are endangered so if we could have more protection for these beautiful 7000+ species we could research so much more and preserve these animals.

In the 582,250 square miles of area that we are protecting, there is so much we haven't discovered and we can discover so much more that can be important to science.

My second reason is that fishers are understandable if they get a few fish but overfishing could be a huge problem, and we must enforce laws that keep this place safe and clean and make it so they need a permit or something like that, that would keep people from taking so much.

My third and final reason is that since there is little known about all of Papahānaumokuākea. We could kill many species without knowing about it and setting back research and knowledge that we know about Papahānaumokuākea. If we don't protect Papahānaumokuākea, species could become extinct before we even discover them.

In conclusion I think that we should indeed protect this place and make it a sanctuary. It is important to our understanding about Papahānaumokuākea and what is living in the area so we should invest in more protection for this amazing place.

Aloha! My name is Emmie, and I go to Waiālae elementary school with my teacher being Ms. Dileo, a fifth grade teacher. I support Papahānaumokuākea Marine Sanctuary. From knowing the issues causing Papahānaumokuākea from being threatened by many troubles, (marine debris, climate change, invasive species) it is well known that it should be taken care of.

One reason why, is when the marine debris progresses to the ocean, like waste, trash, and leftovers, it creates one pile of pollution crossing the ocean, just like the Great Garbage Patch. Sometimes, when we don't take care of something soon enough, it creates a bigger problem later to clean up.

To state another reason, climate change is making a big impact too. It creates a problem that is hard to fix. Glaciers melting, weather changing, temperatures fluctuating abnormally, and sea levels rising, is when ecosystems are in danger. When the tide rises, the honu (sea turtle) has to swim more upground to lay their eggs. Not only that but, when the honu give birth, the climate change causes the hatchlings to be female.

Last but not least, invasive species. It is becoming a bigger issue as we speak. Many invasive species are causing wildlife to be close to their brink of extinction, especially to Papahānaumokuākea.

Ta'ape fish, are one of the most invasive species in Papahānaumokuākea. Just one tiny animal can make such a big difference in an ecosystem and could cause the ecosystem to be unbalanced. Many other species are causing our kupuna islands to suffer, such as rats and invasive vegetation.

To conclude, Papahānaumokuākea should be treated as how anyone human should be treated, with kindness and with respect. Marine debris, climate change, and invasive species, are terribly impacting our elder islands and we should do as much as we can to protect them from extinction. Papahānaumokuākea Marine Sanctuary is a way humans can be brought together to help society and Hawaiian history and marine life from being extinct.

My name is Alex, I'm in 5th grade of Waiālae Public Charter School, and my teacher is Ms. Dileo. I support the topic of protecting Papahānaumokuākea. I agree with this topic because many of the marine animals in Papahānaumokuākea are already severely affected by some people being careless about the environment.

One reason I want to support Papahānaumokuākea becoming a sanctuary is because of the threats to it already. Some of them are marine debris that damages coral reefs, climate change that also endangers coral reefs and affects turtles, and invasive species that come from somewhere else and threaten native species.

Another reason why I approve this topic is because of the already endangered marine life that get hurt every time something damages their ecosystem. For example, when big companies go commercial fishing, they unintentionally scoop up some endangered marine life and damage coral reefs on the bottom of the ocean.

Lastly, I think Papahānaumokuākea should become a sanctuary because it has lots of very fascinating species found nowhere else, and if we continue to keep on endangering and hurting them we might not have a chance to see them again.

In conclusion, I think that we should make Papahānaumokuākea a sanctuary because we must help them, after all of the damage we already gave them.

Aloha! My name is Bailey and I attend Waiālae Elementary Public Charter School. I am currently in fifth grade and I am passionate about protecting our environment, including Papahānaumokuākea. There are many reasons why we should support the transition of Papahānaumokuākea National Marine Monument into a sanctuary.

Firstly, we need to protect all the native species that call Papahānaumokuākea their home. Did you know that around 1,800 species on earth are found only at Papahānaumokuākea? This incredible place is home to many rare and unique species that require our help to survive.

Secondly, Papahānaumokuākea is not just home to a wide variety of marine life, but also to 4,000-year-old corals, which are the oldest living organisms found there. These corals are crucial to the ocean ecosystem and must be protected.

Lastly, Papahānaumokuākea is home to many native endemic animals from Hawaii, such as green sea turtles, Laysan ducks, and the Hawaiian monk seal. These animals are a vital part of Hawaii's ecosystem, and we need to take action to ensure their survival by making Papahānaumokuākea a National Marine Sanctuary.

In conclusion, we all have a responsibility to protect the environment, the animals, and the land for future generations. I truly support Papahānaumokuākea National Marine Sanctuary, and I hope you support it too.

Hi, my name is Seth. I am in the 5th grade at Wai'alaie Elementary Charter School. My teacher's name is Ms. Dileo. I completely approve of you making Papahānaumokuākea a sanctuary.

I agree with this because with less protection, the already almost extinct fish would go extinct with people fishing.

Also, it contains the oldest organism in the coral. And it would be hard to study it with people fishing.

There are also thousands of other fish and animals in Papahānaumokuākea that we will never see because people have been killing them and eating them.

And that's why I think Papahānaumokuākea should be a sanctuary.

Aloha my name is Sara and I am a 5th grader at Wai'alaie Public Charter School. I fully support papahānaumokuākea becoming a national marine sanctuary.

My first reason is that there are about 700 species living there, most of them are endemic to Hawai'i and found nowhere else in the world. If strangers come and start overfishing, lots of fish and sea animals will be wiped off the earth.

My second reason is that some things you find in papahānaumokuākea are very ancient, one coral found there is 4000 years old. If we don't protect our land then lots of history will be lost.

My final reason is that there is much more to discover there in papahānaumokuākea, new species are still being discovered. If we destroy the land then we will never get to see all the rare species there.

These are all of my reason why I support and believe that papahānaumokuākea should become a national marine sanctuary.

Hello, my name is Ty, a Wai'alaie student in 5th grade and my teachers name is Ms.Dileo. I would like to talk about Papahānaumokuākea the National Marine Sanctuary. There is a recommendation that would allow too much fishers catching the fish there and about 350,000 pounds of bottom fish and 180,000 pounds of pelagic fish every year. That is way too much fish caught every year. Please do not allow this to happen. If it does, this can cause an imbalance in the ecosystem. And fishers can accidentally catch sea turtles and make them stuck in the nets and will harm them. So in conclusion i support the sanctuary, but NOAA should not allow overfishing in the sanctuary.

Hello my name is Jasmine and I go to wai'alaie elementary public charter school. I am in fifth grade and my teacher is Ms.DiLeo. I support Papahānaumokuākea National Marine Sanctuary.

One of my reasons of why PMNM be a sanctuary are that it is home to many species of animals like the Honu laying their eggs for the new species of the Honu. On some of these special islands there are around 14 million seabirds that has nested there.

My second reason is that PMNM has so many interesting facts about it like RARELY studied species and more species to discover. It is also home to the oldest organism to it would be a shame to get rid of all the interesting things about Papahānaumokuākea.

My conclusion is PMNM is such a wonderful place with all the animals and creatures that make PMNM a truly magical place to be it helps animals with their daily lives and help them create more species like the

Honu for example, which is why I support PMNM be a sanctuary.

Hello, My name is Grace and I'm in grade 5 at Wai'alaie elementary charter school. My teacher is Ms Dileo, and I think Papahānaumokuākea should be a Native Marine Sanctuary.

Papahānaumokuākea is such a wonderful place as it has many different creatures. Infact, there are 5,000 different species that are undiscovered by scientists. Even one specimen that is one of the ancestors of the first hawaiians. There's Honu, seabirds, and coral that make the whole ecosystem in place. Without it, the whole ecosystem would collapse and Papahānaumokuākea will be deserted just like the places for fish.

The fish are what makes Papahānaumokuākea unique, it's what makes it an amazing ecosystem. However before Papahānaumokuākea became a monument which was 2006, people could freely take fish from the place, causing terrible balance to the environment and ecosystem. It was because of commercial fishing which is promoting a business with specific fish. Many times when people fished with a large net, it'll damage the coral. Well, now there's a rule where you need a permit before entering into Papahānaumokuākea and fishing, making it equal for everyone.

Papahānaumokuākea is a very historical place and even has some history with the hawaiians. The hawaiians believed that Papahānaumokuākea, the northwestern island is the area where life began. There's a story behind the name of Papahānaumokuākea from a website called "Papahānaumokuākea Marine National Monument (.gov)" that says "The name Papahānaumokuākea commemorates the union of two Hawaiian ancestors – Papahānaumoku and Wākea – who gave rise to the Hawaiian Archipelago, the taro plant, and the Hawaiian people." Maybe this is why the hawaiians believed they were born on Papahānaumokuākea. In fact Papahānaumokuākea and the other islands like Lalo and Nihoa, were born before the islands of Hawai'i.

In conclusion, Papahānaumokuākea is a beautiful and historical place that many people can't see the uniqueness of. There's so many things that Papahānaumokuākea has that's never seen before that it's bad for specific people who want to take advantage of Papahānaumokuākea. That's why we need to put more safety to Papahānaumokuākea.

A6 Papahānaumokuākea Public Comments

I think there should still be fishing allowed for people who are just fishing for their family or a few people, like the people they are voyaging with

1	<p>Aloha, my name is Tucker and I am a 5th grade student of Wai'alaie elementary and I am in full support that Papahānaumokuākea (PMNM) should become a sanctuary. My first reason for this is that there are many different kinds of species in PMNM. PMNM is home to more than 7,000 species of animals! If PMNM were not to be a marine sanctuary, all those species would be open to dangers such as fishing and ships. Another reason is that animals would be very safe in PMNM. The animals would be safe from outside dangers and people doing commercial fishing. The last reason is that PMNM would provide good scientific research for people. With that, if people learned about the animals and plants in PMNM, they might know how to protect the species and keep them safe from extinction. Also, these species may have a better life without harm from people. Lastly, please don't allow any kind of fishing in the sanctuary that would allow people to catch more fish than they need and then sell it. Selling their catch is commercial fishing. With that, people could catch hundreds of fish in one day. If that happens, many of the fish species could decline and could possibly go extinct forever. Please, let PMNM become a sanctuary for all the animal and plant species.</p>
2	<p>Aloha my name is Kaio, I'm in 5th grade, and I go to Wai'alaie Elementary Public Charter School. I believe that people should work together to protect Papahānaumokuākea (which should be a sanctuary), which is a home to many endangered and native animals to hawaii, such as Hawaiian monk seals and sea turtles. One reason this national monument should also be a sanctuary is because only a little bit of the species that live in Papahānaumokuākea are discovered and if we let pollution or invasive animals in Papahānaumokuākea then the undiscovered animals wouldn't be discovered at all so the extra protection could help the research</p>

	<p>going. Also there are a lot of endemic species so if we don't protect it, the endemic species could go extinct because they only live in Papahānaumokuākea. Papahānaumokuākea is also what the Hawaiians said, that this is the ancestor of all the Hawaiian islands and like I mentioned earlier this is the home to many endemic and endangered animals that used to have a bigger amount in the main Hawaiian islands but now most of them live in Papahānaumokuākea. Greenhouse gasses could also affect Papahānaumokuākea. Mahalo for listening to this public comment from Wai'alaie Elementary Public Charter School.</p>
3	<p>Aloha, my name is Zia/Xotchi. I am a 5th grader at Wai'alaie elementary charter school. My class has been recently learning about Papahānaumokuākea (PMNM) and since it's already a marine national monument it should also be a sanctuary too. Here's a few reasons why Papahānaumokuākea Marine National Monument Should become a sanctuary.</p> <p>It will be safer to native species because there are some invasive species in the waters of PMNM. These invasive species can kill the native species because the invasive species are eating all the native species' food and taking all of their necessary resources. It would be a better environment without the invasive species.</p> <p>There is something called Marine Debris and plastic (you probably know of plastic already) which is a big threat to sea life and can affect the sea animals that are in the waters of PMNM. The Native animals are kind of like humans and they need a space to call home just like humans (a clean space of course). The state of the environment that the animals live in may look clean but it can be cleaner! This is because 70% of coral in the US is growing inside the ocean waters at PMNM and is very welcoming and protective of the sea animals which is amazing. It is also amazing because the coral reef is kind of</p>

	like the rainforests in Hawaii, because it is an ecosystem for all kinds of species.
4	Translated from Mandarin Chinese: Hello, my name is Wesley and I'm a 5th grade student at Waialae School. I support the sanctuary designation because the underwater coral reefs surrounding the ten islands and the deep seas of Papahānaumokuākea need protection.
5	Aloha, my name is Kai and I am a 5th grader from Wai'ālae Elementary Charter School. I have been learning about Papahānaumokuākea for almost a month in ITU from my teacher. I honestly think that Papahānaumokuākea should become a National Marine Sanctuary due to the purpose of it almost being harmed. We should make a change! First of all, as marine debris (waste) hits Papahānaumokuākea, it can lead to animals like sea turtles to die due to how it can be mistaken as food or Jellyfishes to them. Greenhouse gasses can negatively cause global warming as pollution increases. As Climate change hits, it can lead the sea level to rise 3-4 ft and make bad hurricanes or storms that wash away beaches, making it hard for Sea turtles to nest their eggs on shore. If there is no land for them to nest, then it can cause them to not be able to lay 65-180 of their eggs on shore. Higher temperatures from climate change can heat up the nests and cause more female turtles to hatch, leading to the population of sea turtles to decrease because it is not balanced. As Greenhouse gasses increase, the atmosphere is heated and the temperature in the ocean rises. This causes the temperature to increase in marine ecosystems, leading animals, including coral, to have a hard time to survive either if they live in the Shallow, Middle, or Deep part of the Marine ecosystem. ITU=Integrated Thematic Unit
6	Hello my name is Riku. I am a 5th grade Waialae student and I support Papahānaumokuākea national monument (PMNM) becoming a sanctuary because I don't want it to lose protection. If it did, then all the different species of fish could become endangered from

	<p>overfishing and commercial fishing. I think there should still be fishing allowed for people who are just fishing for their family, not for selling the fish. I also think PMNM should become a sanctuary because of the coral reefs. This is important because a lot of animals live in those coral reefs so if there's no more protection, marine debris, invasive species, and climate change could kill the coral and then many animals will lose their homes.</p>
7	<p>Aloha, my name is Christine, a fifth grader at Wai'alaie elementary charter school. I fully respect Papahānaumokuākea "PMNM" as a national marine monument. And I believe turning it into a national marine sanctuary would add protection and would not only help the environment but also help keep species alive and allow them to thrive.</p> <p>More than 7,000 species can be found here, and a fourth of those species can't be found anywhere else on earth! Those species are native species. Invasive species impact native ones by competing for resources needed to live and by killing them. Eventually biodiversity may lower due to them taking resources from native species, which just gives native organisms a harder time with living a normal life.</p> <p>Another reason is that trash contributes to animals dying. Trash comes in different sizes and characteristics, and animals may mistake them as food and digest it, but the truth is they can't. Due to the trash getting stuck inside the animal's body, the animal suffers starvation and goes through pain until they progressively get worse and die. If Papahānaumokuākea was a sanctuary, there would be restrictions to fend off trash, and the environment and biodiversity would improve in the matter of hand because there would be less animals consuming trash and a healthier environment for creatures to live in.</p> <p>Lastly, PMNM shares history, compared to the main Hawaiian islands they are referred as the kupuna islands because they are the</p>

	<p>oldest islands, they can be found around north western islands. Animals and plants meant a lot to the native hawaiians. If we made an effort to protect PMNM there would be information for future generations to uncover.</p> <p>Lastly, I don't support allowing people to fish 350,000 pounds of bottom fish and 180,000 pounds of pelagic per year because it seems like an exaggerated amount because it's so many pounds of fish per year! This could lead to overfishing.</p> <p>In conclusion PMNM is a gem, a special one that needs to become a marine sanctuary because it would support biodiversity and the environment would become healthier. With PMNM our future generations would be able to learn about the past.</p>
8	<p>Hi my name is Aloe and I am a 5th grade student at Wai'alaie Elementry charter school. You have my full support of Papahānaumokuākea Marine National Monument (PMNM). I think PMNM should be a sanctuary because we should be protecting the native species because some native species at PMNM can help the ecosystem. For example, unicorn fish can produce healthy sand that gives species that live in the sand a home.</p> <p>Another reason why PMNM should be a sanctuary is because there are different species of fish and plants and the many different species at PMNM are very old, as old as ancestors. We should keep them protected so our future generation can learn more about them. Another reason why we should make PMNM a sauctuary is because it should be protected from commercial fishing that can affect the environment. It takes away native species and corrupts the marine ecosystem, like when they do bycatch it can make the tiger sharks in the area to go extinct and certain fish populations will sky rocket and the fish will eat all of the algae and that will give no algae for the sea turtles making it harder for them to find food.</p> <p>The last reason why PMNM should be a Marine National sanctuary is because the coral ancestors are the oldest ancestors in PMNM. The coral ancestors are a very important part of the food</p>

	<p>chain because they provide sea turtles a food supply so if the coral dies off, we will not have sea turtles. thank you and mahalo make hawaii a better place.</p>
9	<p>Hello, my name is Ryze. I'm a fifth grader at Wai'alaie elementary school. My ITU teacher Ms Nishimora has been teaching the importance of Papahānaumokuākea Marine National Monument (PMNM) and why it should become a sanctuary or not. I believe Papahānaumokuākea should become a sanctuary because 70% or more of U.S. coral reefs are found in Papahānaumokuākea growing more and more. In addition, Westpac believes that NOAA should allow 350,000 pounds of bottom sea fish and 180,000 of pelagic fish caught yearly, but this could cause overfishing. Furthermore the coral reefs are the rainforests of the sea and the home of the oldest living organism on the planet and also many other different oceanic animals. So if we support Papahānaumokuākea we support the Pacific Ocean. Mahalo.</p>
10	<p>Aloha, my name is Milo and I am in 5th grade at Wai'alaie Public Charter Elementary School. My teachers have been teaching us about the importance of Papahānaumokuākea Marine National Monument (PMNM) and I think PMNM should be a sanctuary. This will be good for PMNM because it will add extra protection for the 7000 species that live there. We need to keep the species of Papahānaumokuākea safe because they help the waters, they help the balance in the ocean, and produce good scientific research because of the rare animals that are there, like the ghost octopus. Without PMNM being a sanctuary most of the animals that live there may not be there in the future because of the lack of protection. This is why I think that PMNM should be a marine national sanctuary!!! Thank you for reading.</p>
11	<p>Aloha! My name is Alivia and I'm a 5th grade student at Wai'alaie Elementary Public Charter School. I think Papahānaumokuākea, the kapuna islands, should not be forgotten</p>

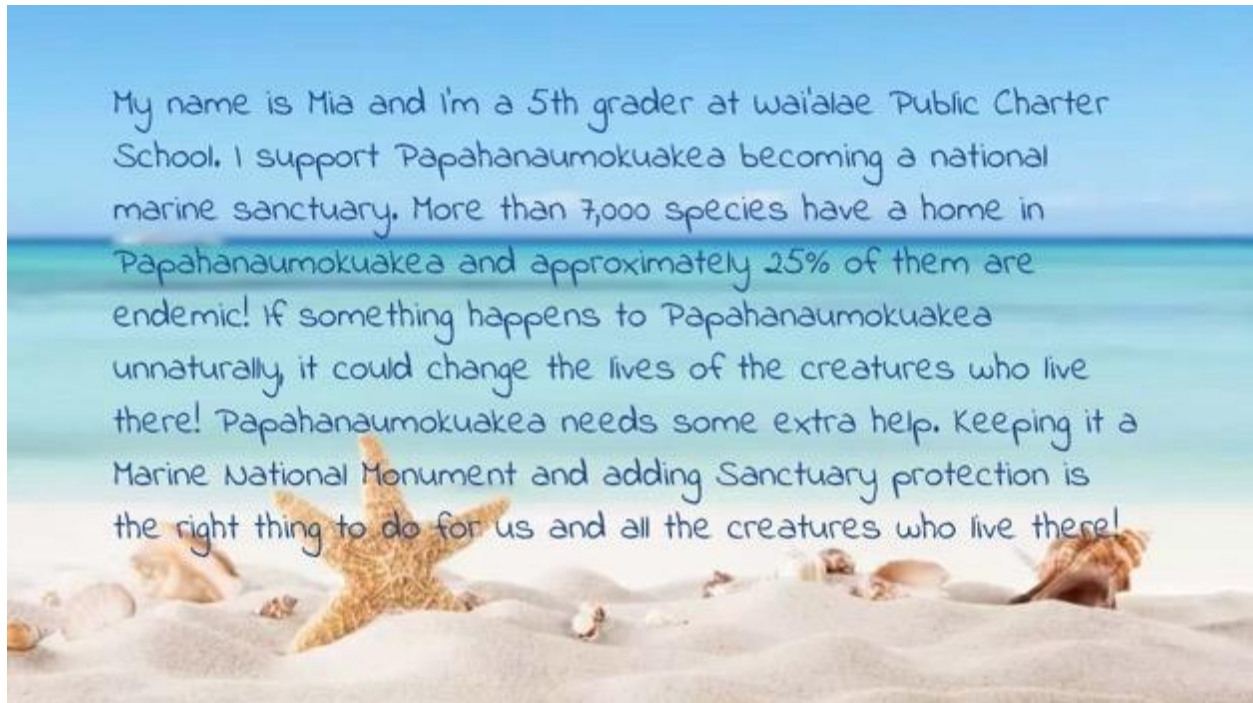
	<p>and become a national marine sanctuary to make Papahānaumokuākea more protected.</p> <p>Foremost, Papahānaumokuākea is home to the many native species such as plants and animals that don't live elsewhere in this world! Papahānaumokuākea also is being polluted by trash and plastic. Many plastic waste are floating in the ocean and getting tangled on the things, especially the marine animals.</p> <p>Furthermore, Papahānaumokuākea is home to many of the rare and endangered species. The list includes green sea turtles, Hawaiian monk seals, and the leatherback and hawksbill turtle.</p> <p>Plus, Papahānaumokuākea's biggest problem is climate change, climate change is caused by burning fossil fuels and using an abundance of gas. Climate change can affect Papahānaumokuākea because of the rising waters, the sand islands where the turtles nest will get submerged.</p> <p>Lastly, I support Papahānaumokuākea as a national marine monument, because I think Papahānaumokuākea should have more protection on being turned into a national marine sanctuary. Papahānaumokuākea should be more protected because we need to protect the marine species that thrive in this environment.</p>
12	<p>Aloha my name is shiloh and i'm in 5th grade. i go to wai'alae public charter school. I think Papahānaumokuākea should be a "sanctuary."</p> <p>My first reason is that Papahānaumokuākea should be protected well. Why? Because if it was a sanctuary the climate would be fine. The coral reef would be nice and healthy. The sea level wouldn't be high.</p>

	<p>My second reason is "the native species might die" if the area is not protected enough. "Some parts of the ocean are filled with trash" because it is not protected that well.</p> <p>My third reason is that "they are our kupuna and if we get to protect them". Maybe in the "future people might start to live there and care for the island."</p> <p>My last reason is when the invasive species are there "they are going to kill the native species and eat the native species and the invasive species eat the native food and it's gonna be hard to find food."</p>
13	<p>I am Siva, a 5th grader at Wai'alaie elementary. I believe that we should be protecting Papahānaumokuākea and here are some reasons why:</p> <ul style="list-style-type: none"> ● It has many rare and native animals and endangered animals too ● Scientist could research all about these very rare animals ● It has a perfect ecosystem and if us humans over fished in that area then the ecosystem would be ruined <p>With these reasons and how many rare animals there are just proves that this should become not just a marine national monument but a national marine sanctuary too, so it will be more protected.</p>
14	<p>Hello, my name is Owen. I'm in the fifth grade and a student at Waialae Elementary School.</p> <p>We have been learning about PMNM and wanted to be a part of the stance to make PMNM a Sanctuary so PMNM would be protected from commercial fishers. Please don't allow commercial fishers to fish in PMNM because there are unique and different species in PMNM that are found in not many places.</p> <p>PMNM should become a sanctuary because it is home to one of the oldest living organisms. It's called the deep sea black coral and it can live up to 4500 years and 1000 ft deep in the ocean.</p>

	<p>About six presidents have been protecting Papahānaumokuākea so we should keep protecting and even make PMNM a Sanctuary because six of our presidents had seen importance in this matter. PMNM islands are known as the kupuna islands which means the elder islands.</p>
15	<p>Aloha, my name is Atsuto, a fifth grader from wai'alaie elementary charter school. I am writing for Papahānaumokuākea to be a national marine sanctuary. Papahānaumokuākea is a very important marine monument where it should be protected extra with the place taking care of many animals in the ocean. The area of Papahānaumokuākea contains over 70% of the coral in the United States. Papahānaumokuākea will be needing extra protection for the coral, old ancestors living for thousands of years. With the help of becoming a sanctuary, our ancestors will have extra protection from algae and non-ocean safe sunscreen. Another reason is that Papahānaumokuākea is the home to thousands of sea animals. If any animals are affected, food webs and food chains will collapse with unbalanced populations, and many animals will die. Finally, Papahānaumokuākea will need to be protected from tons of trash polluted into the ocean. There are many people littering across the ocean. With tons of trash, Papahānaumokuākea is affected a lot with the place being a home to many marine animals such as Honu or Hawaiian green sea turtles. With tons of trash like plastic, Honu or animals mistakenly think of the trash as prey and with trash in their body, animals are not able to digest it. In conclusion, Papahānaumokuākea is a wonderful place that is home to many marine species that should be protected with how important it is. Papahānaumokuākea deserves to be a national marine sanctuary that needs a lot of extra care and protection from people to save the area.</p>
16	<p>Aloha my name is Tia lehua and i am a 5th grade student at wai'alaie public charter school. I think Papahānaumokuākea (pmnm) should be</p>

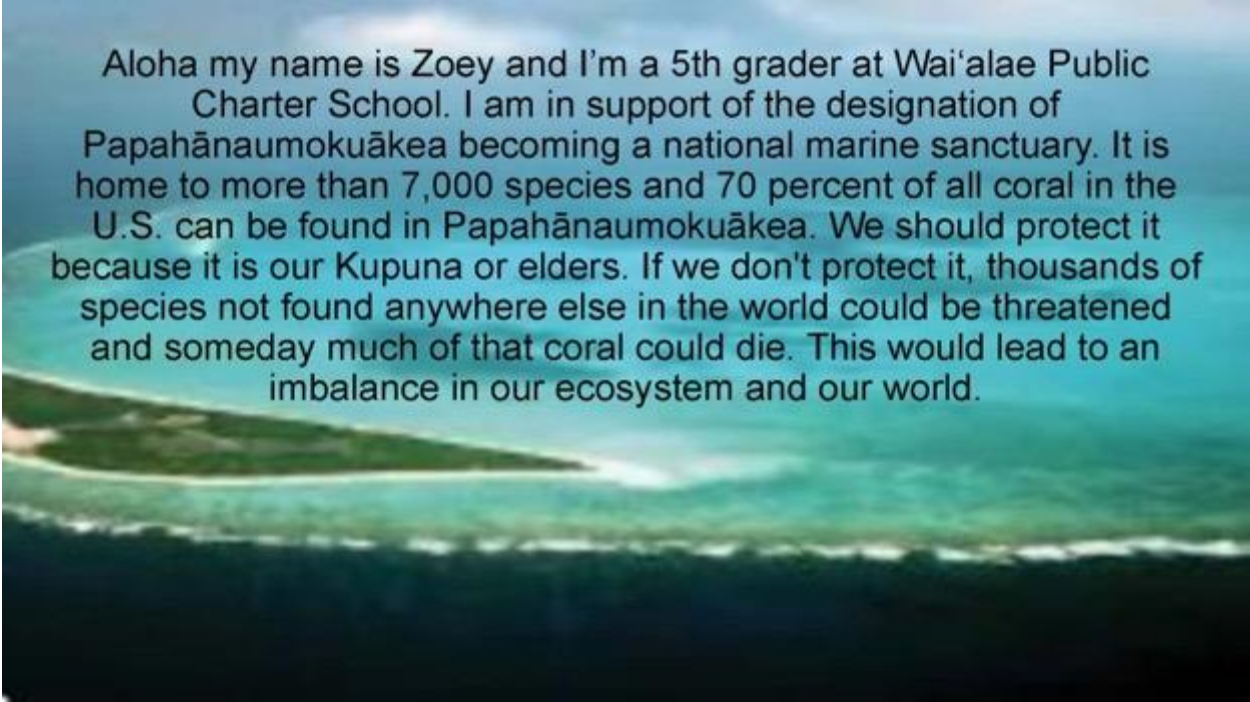
	<p>a sanctuary for many different reasons. Why? Well here are a few reasons why.</p> <p>My first reason is because over 70% of the coral reefs in the U.S. are growing in pmnm, and corals support marine life. This proves that if we decide not to put in more protection then, sadly much of our marine species in could be endangered. And all marine life and coral could shatter.</p> <p>My next reason why I think Papahānaumokuākea should be a sanctuary is because our coral reefs aren't doing too well so if we don't do anything then coral reefs could go extinct. Here are some of the things our coral reefs are experiencing: "coral bleaching, climate change, and rising sea levels". So if we don't make an act then those things can cause our coral reefs to go extinct. And you know what will happen if coral reefs disappear. (our marine species will also go extinct)</p> <p>My final reason why is because we would be killing more than 7,000 species of animals. In particular we would be killing 7,000 species of seabirds. And in "2016 they found a new species of ghost octopus." They also found other new species of animals. This shows that we must protect generations of new species that we haven't even discovered yet. And if we had more protection then we could stop overfishing. If people wouldn't be able to overfish, animal species would be far from extinction.</p>
17	<p>My name is Olivia, I am a 5th grade student at Wai'alaie Public Charter School, and I support Papahānaumokuākea Marine National Monument (PMNM) as a National Monument, but I also think it should become a sanctuary. My first reason is Papahānaumokuākea is the home to many animals that are endemic (Only found in a certain place) to Hawai'i. So if you make it a sanctuary it can continue to protect and be the home to these amazing animals. My second</p>

	<p>reason is Papahānaumokuākea is very important to the Hawaiians. This is because it signifies the union between Papahānaumoku and Wākea, and the Hawaiians believe they are their oldest Kupuna (Ancestors). My last reason is I want Papahānaumokuākea to still be there when I'm 30, so I can go there and take care of the animals as a veterinarian. Also I <i>love</i> animals, I think they are such interesting and intriguing creatures that humans should learn all about! That is why I wanted the money we made for Maui to go to the Maui Humane Society.</p>
18	

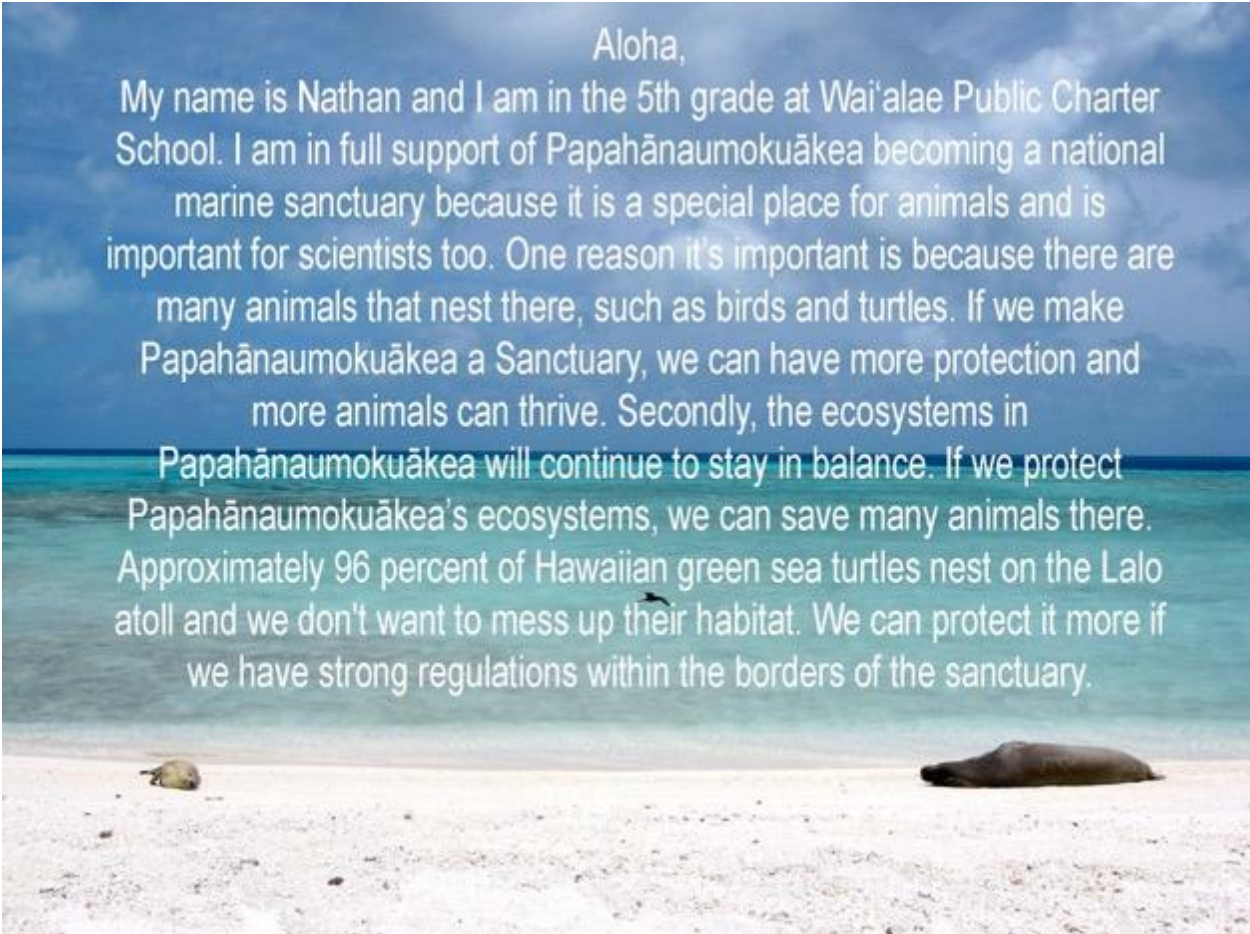


Hello my name is Nico and I am a 5th grader at Wai'ala'e Elementary School. I am in full support of the designation of Papahānaumokuākea becoming a national marine sanctuary. PMNM has many vast coral reefs, which provide shelter for most of the species that live there. PMNM is home to more than 7,000 different species, and one-fourth of these are found nowhere else in the world. PMNM and its animals are in danger because of threats such as climate change and ocean debris. I urge you to designate Papahānaumokuākea as a national marine sanctuary.

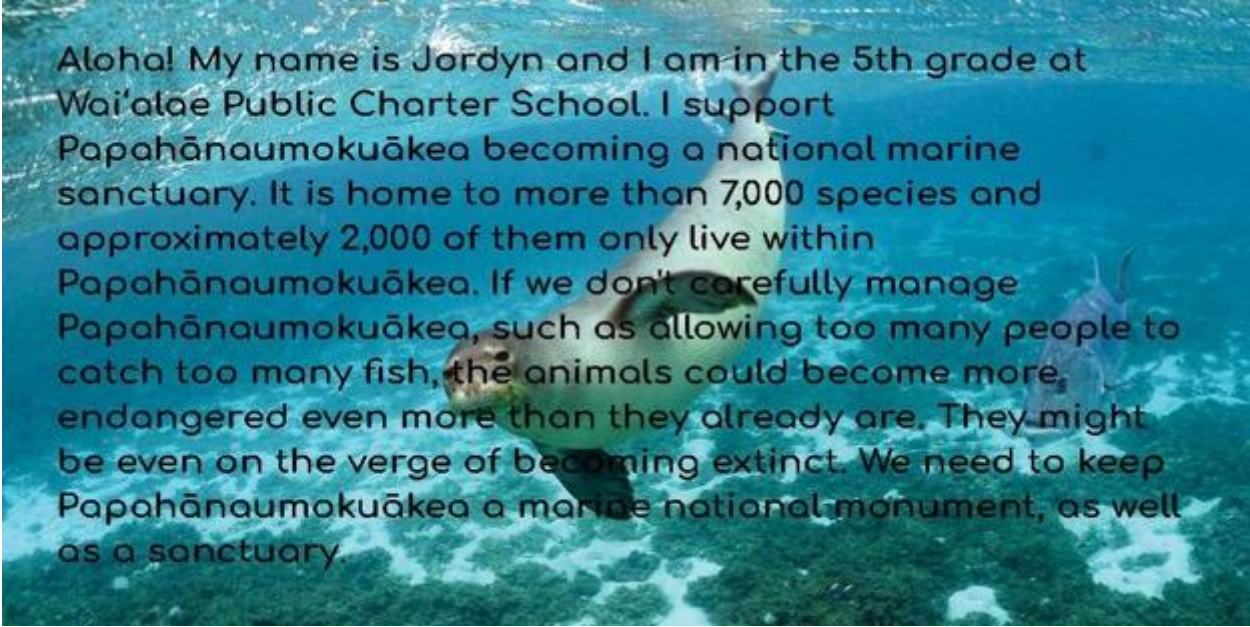




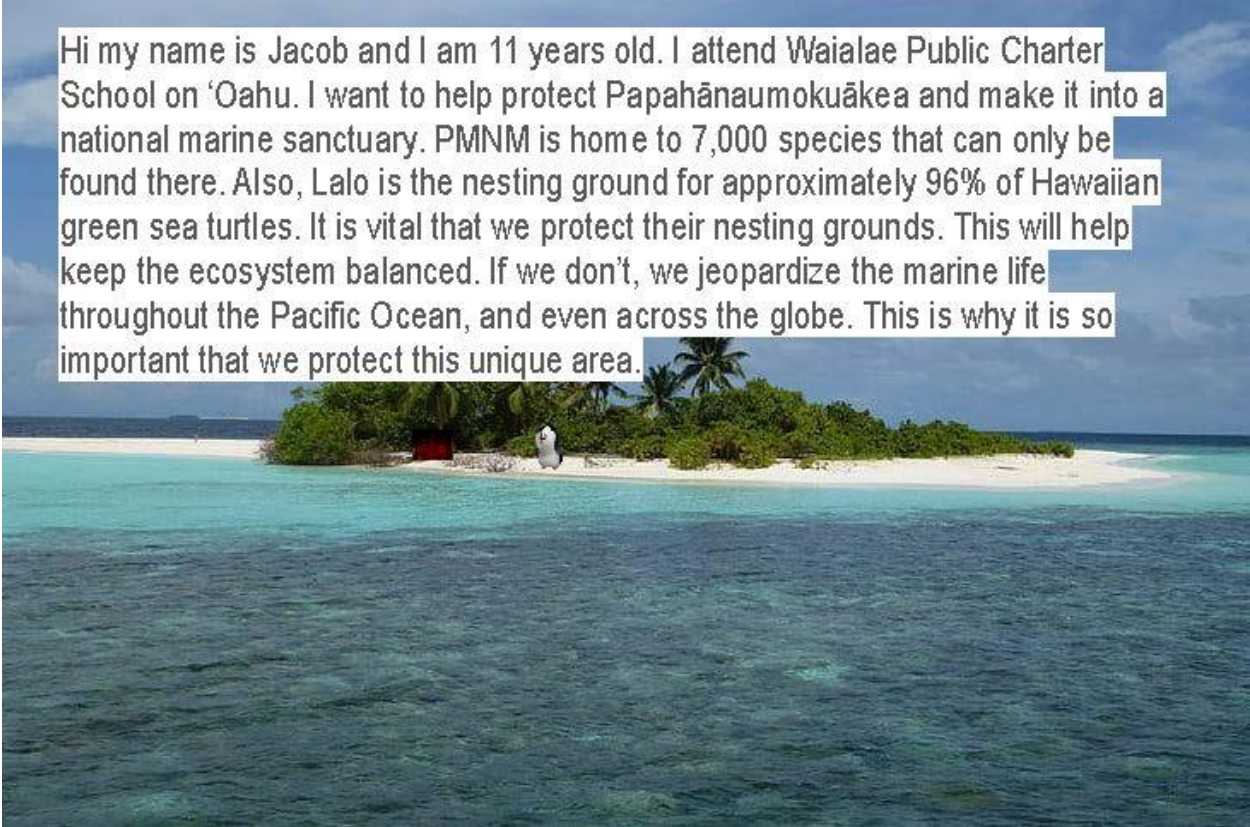
Aloha my name is Zoey and I'm a 5th grader at Wai'alaie Public Charter School. I am in support of the designation of Papahānaumokuākea becoming a national marine sanctuary. It is home to more than 7,000 species and 70 percent of all coral in the U.S. can be found in Papahānaumokuākea. We should protect it because it is our Kupuna or elders. If we don't protect it, thousands of species not found anywhere else in the world could be threatened and someday much of that coral could die. This would lead to an imbalance in our ecosystem and our world.



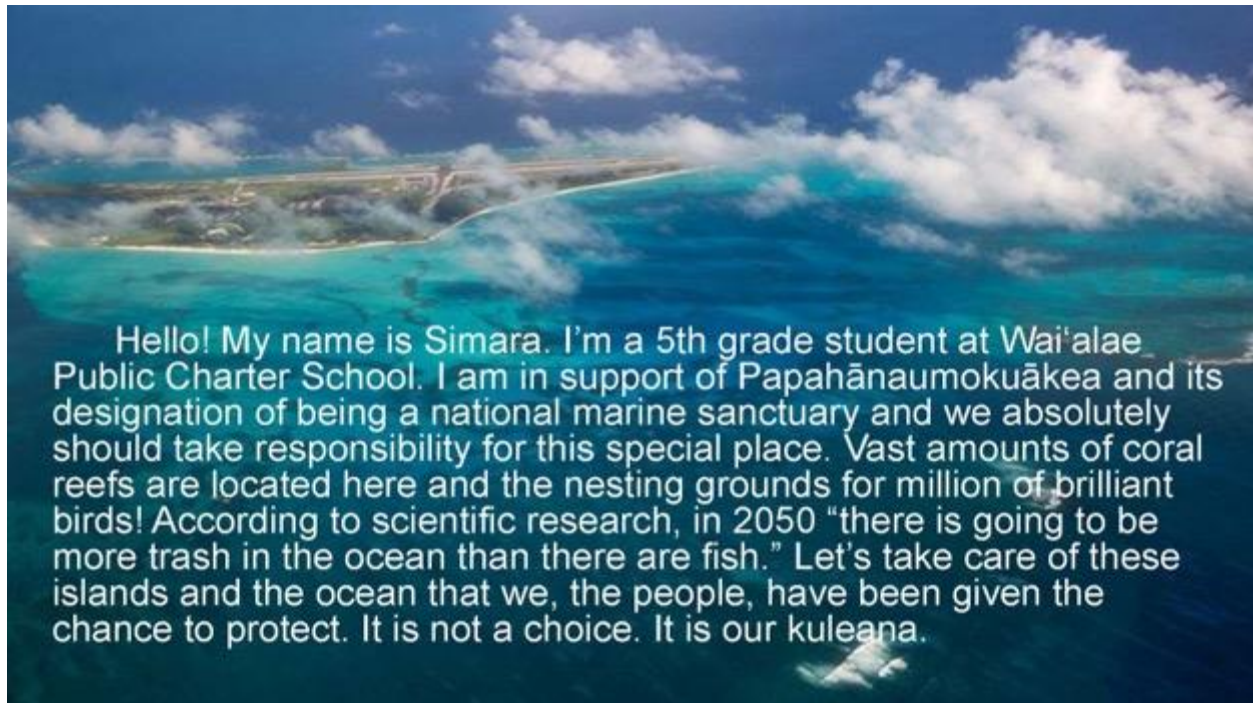
Aloha,
My name is Nathan and I am in the 5th grade at Wai'alaie Public Charter School. I am in full support of Papahānaumokuākea becoming a national marine sanctuary because it is a special place for animals and is important for scientists too. One reason it's important is because there are many animals that nest there, such as birds and turtles. If we make Papahānaumokuākea a Sanctuary, we can have more protection and more animals can thrive. Secondly, the ecosystems in Papahānaumokuākea will continue to stay in balance. If we protect Papahānaumokuākea's ecosystems, we can save many animals there. Approximately 96 percent of Hawaiian green sea turtles nest on the Lalo atoll and we don't want to mess up their habitat. We can protect it more if we have strong regulations within the borders of the sanctuary.

An underwater photograph showing a large shark swimming towards the camera. A diver is visible in the background, and the water is clear and blue.

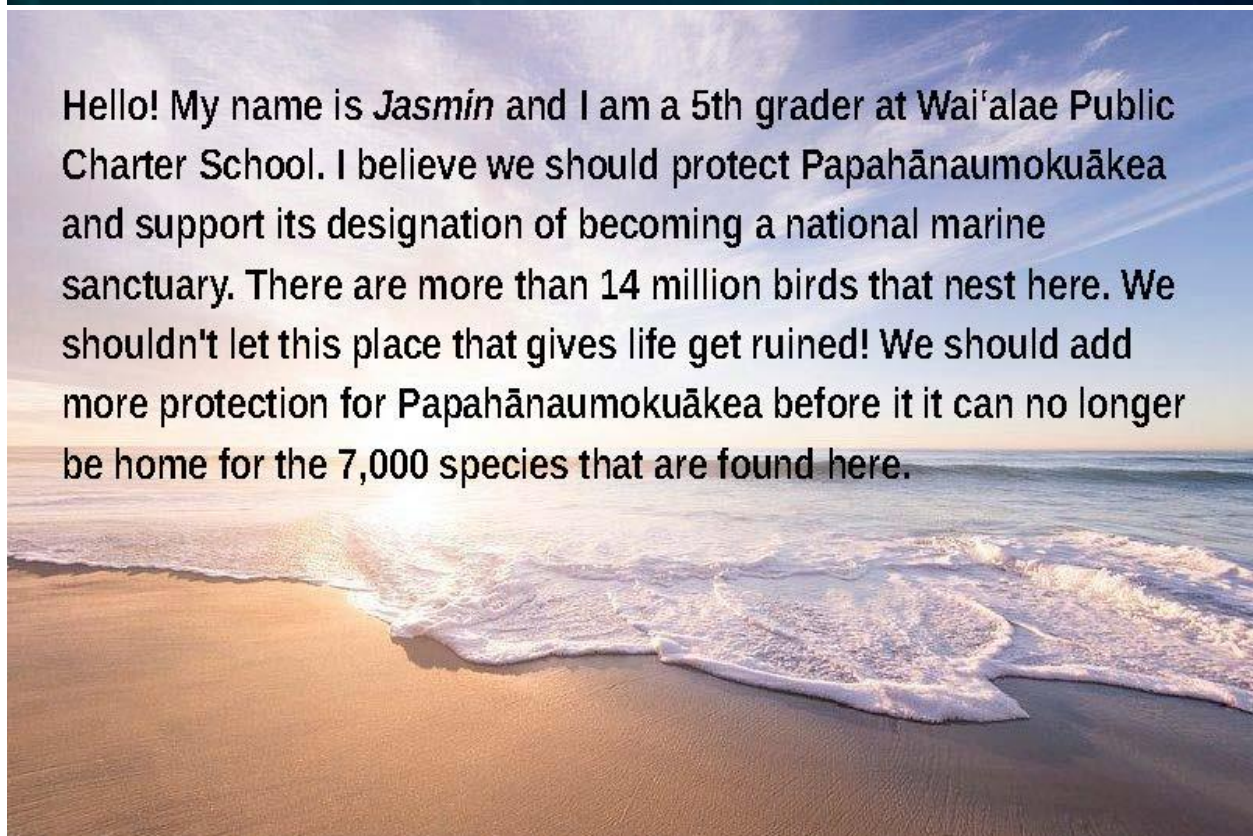
Aloha! My name is Jordyn and I am in the 5th grade at Wai'atae Public Charter School. I support Papahānaumokuākea becoming a national marine sanctuary. It is home to more than 7,000 species and approximately 2,000 of them only live within Papahānaumokuākea. If we don't carefully manage Papahānaumokuākea, such as allowing too many people to catch too many fish, the animals could become more endangered even more than they already are. They might be even on the verge of becoming extinct. We need to keep Papahānaumokuākea a marine national monument, as well as a sanctuary.

A photograph of a tropical island with a white sandy beach, lush green vegetation, and palm trees. A person is standing on the beach. The water is clear and blue.

Hi my name is Jacob and I am 11 years old. I attend Wai'atae Public Charter School on 'Oahu. I want to help protect Papahānaumokuākea and make it into a national marine sanctuary. PMNM is home to 7,000 species that can only be found there. Also, Lalo is the nesting ground for approximately 96% of Hawaiian green sea turtles. It is vital that we protect their nesting grounds. This will help keep the ecosystem balanced. If we don't, we jeopardize the marine life throughout the Pacific Ocean, and even across the globe. This is why it is so important that we protect this unique area.



Hello! My name is Simara. I'm a 5th grade student at Wai'alaie Public Charter School. I am in support of Papahānaumokuākea and its designation of being a national marine sanctuary and we absolutely should take responsibility for this special place. Vast amounts of coral reefs are located here and the nesting grounds for million of brilliant birds! According to scientific research, in 2050 "there is going to be more trash in the ocean than there are fish." Let's take care of these islands and the ocean that we, the people, have been given the chance to protect. It is not a choice. It is our kuleana.



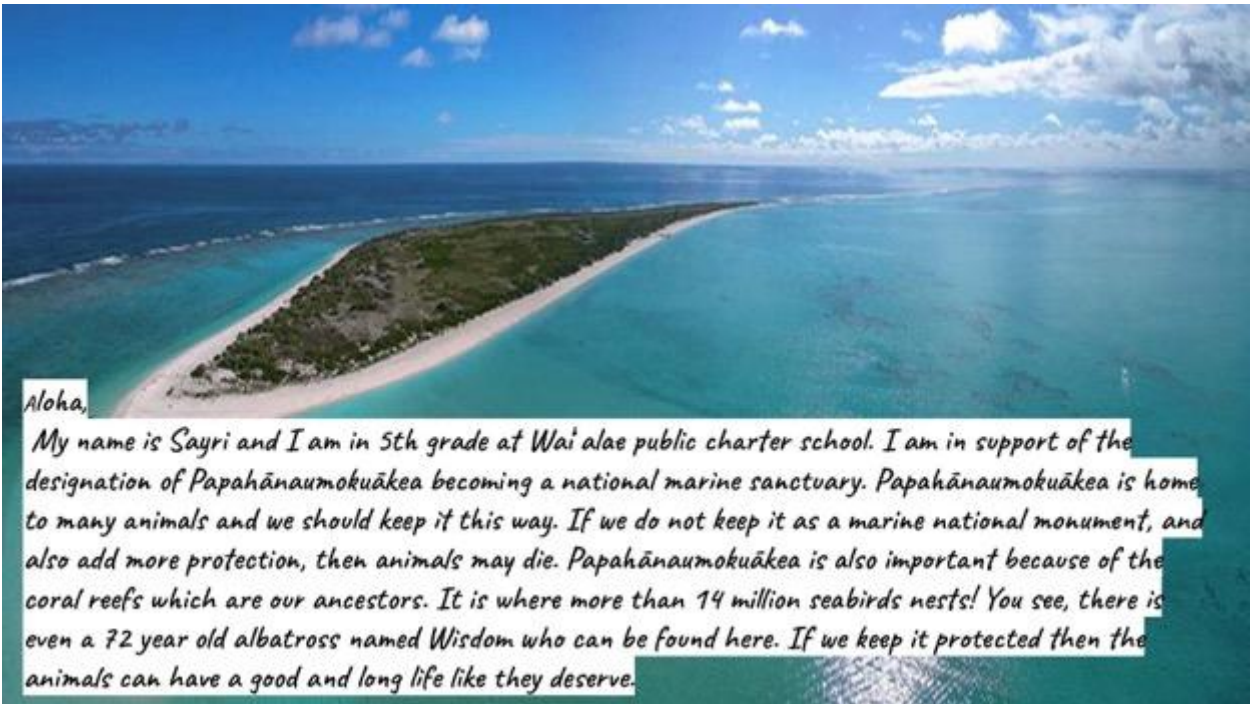
Hello! My name is *Jasmin* and I am a 5th grader at Wai'alaie Public Charter School. I believe we should protect Papahānaumokuākea and support its designation of becoming a national marine sanctuary. There are more than 14 million birds that nest here. We shouldn't let this place that gives life get ruined! We should add more protection for Papahānaumokuākea before it it can no longer be home for the 7,000 species that are found here.

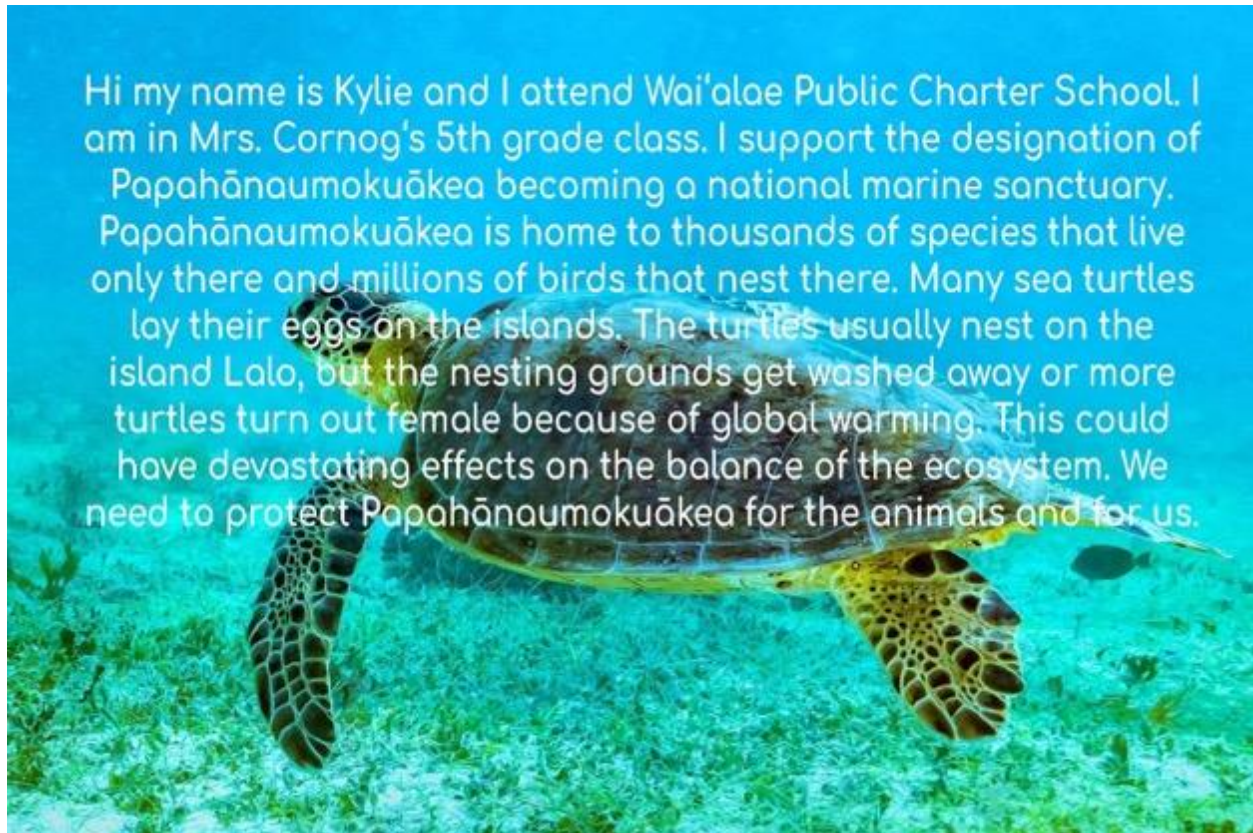
Aloha, my name is Vera. I am in 5th grade at Wai'ala'e Public Charter School. I support keeping Papahānaumokuākea protected and becoming a national marine sanctuary because it is special. Keeping the 7,000 different species safe is our kuleana because that is their home. According to Kumu Malia, it has been their home for over millions of years. Another reason to keep Papahānaumokuākea safe is that 70% of the coral found in the US comes from Papahānaumokuākea and if the coral reef ecosystems are not protected, then this can lead to extinction because of a lack of food, home/hiding places, and reproduction.



Aloha,

My name is Sayri and I am in 5th grade at Wai'ala'e public charter school. I am in support of the designation of Papahānaumokuākea becoming a national marine sanctuary. Papahānaumokuākea is home to many animals and we should keep it this way. If we do not keep it as a marine national monument, and also add more protection, then animals may die. Papahānaumokuākea is also important because of the coral reefs which are our ancestors. It is where more than 14 million seabirds nests! You see, there is even a 72 year old albatross named Wisdom who can be found here. If we keep it protected then the animals can have a good and long life like they deserve.





Aloha,

My name is Aria. I am 10 years old and I go to Wai'ālae Public Charter School. I am in support of the designation of Papahānaumokuākea national marine sanctuary. We should protect Papahānaumokuākea because it is home to 7,000 species of animals and more than 14 million seabirds that nest there. Not to mention 70% of the coral found in the U.S. is found in Papahānaumokuākea. As much as I want to go there, I know the right thing to do is to protect it and only go there to research, to clean up debris, or to do Hawaiian cultural practice like voyaging.

Aloha,

My name is 'Alaea and I am a fifth grade student at Wai'alaie public charter school. I am in support of the Papahānaumokuākea national marine monument becoming a sanctuary, but I have some suggestions about the rules and regulations at this amazing place. I think if you make somewhere restricted to the public for reasons in the interest of that place, which is what you seem to have do with PMNM. Then you should keep it restricted to all. I see and cherish the cultural significance of these islands and I don't think a PHD should get someone a pass into native land. These are the kupuna islands, our elders, and we must care for them. We must give them the tender love and space they need to rest and be. I suggest that you stop allowing people on these islands all together, or just let everyone come. Five people still do damage and cause disruption to the land even when they're not intending to. I hope you take this suggestion to heart.

Thank you,

Alaea

(Honolulu, hawaii)

Hi! My name is Freyja and I attend Wai'alaie Elementary school on 'Oahu. I support the designation of Papahānaumokuākea national marine sanctuary because it gives us life. The earth is giving us everything we need to live. But we are not letting nature grow as it should. Papahānaumokuākea has endangered animals and if their population declines, it will affect our world's ecosystems. We have to stop throwing trash, which could end up in the ocean, like we don't care! We have to act like we care about the earth. We can't just do it because we are told to. Papahānaumokuākea is our elder and we actually have to take care of our elders! The Kupuna islands are our ancestors. If we don't protect this special place, Papahānaumokuākea, our culture as well as nature, will become endangered too!





cameron

Hi my name is Cameron and am in fifth grade and i think we should protect Papahānaumokuākea because more than 14 million sea birds nest there. Another reason that we need to protect Papahānaumokuākea is because turtle nesting areas are washing in the ocean.



Noah

Aloha, my name is Noah and I am a student of Waiālae Elementary School. I am not for expanding protection for Papahānaumokuākea (PMNM). My reasons are because 1, we have given PMNM enough protection already and 2. how could a small scientist group make a giant impact? There is barely any scientists that have explored PMNM. If you still do make it a marine sanctuary, make sure scientists will be aloud to go and explore. There are MILLIONS of unfound species. For all we know there could be ancient animals that we have no idea they are there. We need to broaden our horizons so we understand the world better. So NOAA, or whoever is reading this, it's not worth going through all this trouble to make PMNM a sanctuary, it is not worth it.

TESTIMONY
POSTAL MAIL
PMNM SANCTUARY DESIGNATION
NOAA/ONMS
1845 WASP BLVD. 176, HONOLULU, HI 96818
May 7, 2024

How is the word "shoreline" legally defined (in the excerpt below) in relation to the iron seawall ruins/other human-made rubbish of Tern Island? Will the seawall and other iron ruins and debris from past USN and USCG occupation become a part of the Sanctuary, if legally created?

Excerpt:

"The boundary includes the marine environment surrounding the Northwestern Hawaiian Islands from the shoreline of the islands and atolls seaward to 200 nautical miles,..."

SINCERELY,

George H. Balazs
992 AWAAWAANOA PLACE
APT. A
HONOLULU, HI 96825

GEORGE H. BALAZS
GOLDEN HONU SERVICES OCEANIA
CHINA/HAWAII ALOHA ALLIANCE
TTS@HONUWORLDINHAWAII@
HOTMAIL.COM CELL +18086838402

www.GeorgeHBalazs.com

Date: May 6, 2024
To: John Armor, Director
Office of National Marine Sanctuaries
PMNM – Sanctuary Designation
NOAA/NOS/ONMS
1845 Wasp Blvd. Bldg 176
Honolulu, HI 96818
From: Linda M. B. Paul, International Director, Endangered Species Program, Earthtrust
815 Pahumele Pl., Kailua, HI 96734, 808-347-8825
RE: Public comment on the DEIS for the proposed National Marine Sanctuary in the
Northwestern Hawaiian Islands

Comment on the Draft Environmental Impact Statement (EIS) for the proposed National Marine Sanctuary in the Northwestern Hawaiian Islands

The Draft Environmental Impact Statement (EIS) for the proposed Papahānaumokuākea National Marine Sanctuary in the Northwestern Hawaiian Islands states that the purpose of the proposed action is to provide comprehensive and coordinated management of the marine areas of the Papahānaumokuākea Marine National Monument (PMNM) to protect nationally significant biological, cultural, and historical resources through a sanctuary designation. As stated in the Draft EIS, the term Papahānaumokuākea, when used alone, refers to the place, also historically known as the Northwestern Hawaiian Islands, including the land and all waters to 200 nm from shore. The Draft EIS affirms that this area is not necessarily the same as the area of the Monument. The purpose and need statement of the National Marine Sanctuaries Act (NMSA) or any other federal or state statute do not preclude the inclusion and a full analysis of the impacts of a sanctuary boundary alternative that encompasses all of Middle Bank, which is a large underwater volcano between Kauai and Nihoa islands that provides habitat for a multitude of marine species including the endangered monk seal and several species of whales.

The National Environmental Policy Act (NEPA) and its regulations require that a Final Environmental Impact Statement (EIS) consider a reasonable range of alternatives to the proposed action, including all "reasonable alternatives", which are defined as alternatives that are technically and economically practical or feasible and meet the purpose and need of the proposed action. If such an alternative is not included in the FEIS, NEPA, its Rules and its caselaw require that a detailed explanation be provided as to why such an alternative was not included. (See 43 CFR § 46.420). The FEIS for the proposed Sanctuary is required by law to either fully analyze the biological/ecological, economic, social, and cultural impacts of a sanctuary boundary alternative that encompasses all of Middle Bank or provide a detailed explanation of why this alternative is inconsistent with the stated purpose and need of sanctuary designation and the NMSA. In a letter dated January 28, 2022, the Northwestern Hawaiian Islands Coral Reef Reserve Advisory Council (RAC) recommended that the Office of National Marine Sanctuaries (ONMS) include in the FEIS a sanctuary boundary alternative that

includes "some larger portion of Middle Bank, that is, incorporate an area that is presently outside of the eastern PMNM boundary."

However ONMS has eliminated from the DEIS an alternative sanctuary boundary that extends southeastward of the Monument that includes Middle Bank because it supposedly would not fulfill the purposes and policies of the NMSA and therefore would not meet the purpose and need for the proposed sanctuary designation. Specifically, the Draft EIS states that because of the State of Hawaii's opposition to expanding towards the Main Hawaiian Islands, a boundary alternative that encompasses all of Middle Bank would be inconsistent with the particular purpose and policy of the NMSA, which mandates that ONMS "develop and implement coordinated plans for the protection and management of these areas with appropriate federal agencies, state and local governments, etc."

The elimination of a Middle Bank alternative from detailed study because of the State's opposition is inconsistent with the guidance in response to Question 2A in the *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations* (46 Fed. Reg. 18026):

Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

While the referenced purpose and policy of the NMSA is important, in basing its decision to eliminate the Middle Bank alternative solely on that one purpose and policy ONMS fails to take into account other important purposes and policies set forth in the NMSA, including the third purpose and policy, which is "to maintain the natural biological communities in the national marine sanctuaries, and to protect, and, where appropriate, restore and enhance natural habitats, populations, and ecological processes." Furthermore, as stated in the sixth purpose and policy, any public and private uses of sanctuary resources must be "compatible with the *primary objective of resource protection*" (emphasis added). The decision to eliminate the Middle Bank alternative also did not consider what the Draft EIS reports to be the guiding questions that directed ONMS's analysis, including the question: How does the spatial extent of the proposed sanctuary affect the resources, natural environment, cultural heritage, and human uses in and around the proposed sanctuary?

The NEPA guidelines make it clear that while the State's preferences may be considered in shaping the alternatives analysis, the alternatives considered may not be entirely driven by those preferences. In doing so, ONMS may have eliminated a sanctuary boundary alternative that is environmentally preferable and better meets the full range of purposes and policies of the NMSA as well as the sanctuary's vision, mission, and guiding principles.

In order to provide ONMS with a better understanding of how the omission of a Middle Bank alternative from detailed study could potentially place biological/ecological resources important to the proposed sanctuary at risk, the RAC Research Subcommittee compiled an extensive literature review that synthesizes information on the conservation value of Middle Bank and the implications for a sanctuary boundary decision, including a discussion of the sanctuary uses, resources, and qualities that could potentially be at risk by not considering a Middle Bank alternative. This review, which includes information that was not available during the Monument Expansion in 2016, is intended to help ensure that the Final EIS is guided by science, as required by the final rule updating NEPA implementing regulations published in 87 *Federal Register* 23453. As noted in the Federal Register notice, “The EIS process also serves to enrich the understanding of the ecological systems and natural resources important to the Nation and helps guide sound decision making, including development, in line with the best available science and data.” A summary of the literature review should be incorporated in the main text of the Final EIS, and that the entire document be included as an appendix. For the purposes of the administrative record, PDFs of all the literature cited in the document have been made available to ONMS staff.

In a letter to ONMS dated July 12, 2016, the RAC recommended that ONMS periodically evaluate the effect on sanctuary resources of fishing activities in the portion of Middle Bank currently open to fishing, but no action was taken. That periodic evaluation of fishing impacts on at Middle Bank needs be conducted, similarly to how ONMS has proposed conducting evaluations of fishing effects in the Outer Sanctuary Zone (see Sec. I. Part J In the “Supplementary Information” part of 89 Fed. Reg. 15272). As ONMS states, “Such evaluations would take into consideration the best scientific information available and evaluate whether additional actions are necessary for the proper care and management of Sanctuary resources, including fishery resources, consistent with goals and objectives of the Sanctuary.”

As stated in the Draft EIS, there were comments suggesting “that sanctuary boundaries should extend beyond the footprint of the Monument to adjacent areas, including nearby seamounts and the entirety of Middle Bank.” The Final EIS should acknowledge that this public support for the inclusion of all of Middle Bank within the proposed sanctuary was also “significant.” Furthermore, the Final EIS should note that only three of the 25 individuals consulted for the Cultural Impact Assessment in *E Ho'i i ke Au a Kanaloa* expressed opposition to the inclusion of all of Middle Bank within the sanctuary (Nohopapa 2023). Two other consultees expressed preference for the sanctuary designation to encompass the largest area possible, although the incorporation of all of Middle Bank was not specifically mentioned (Nohopapa 2023). Moreover, there was widespread agreement among consultees that the health of Papahānaumokuākea and its ecosystems are connected to and affect the Main Hawaiian Islands. As detailed in the attached *Middle Bank: Conservation Concerns and Sanctuary Boundary Implications*, information in the scientific literature suggests that Middle Bank may play a key role in the maintenance of those connections.

It is also recommended that the Final EIS delete the statement that the State manages fishing activity at Middle Bank. Although the State has historically taken the lead in managing the Main

Hawaiian Islands bottomfish fishery, Middle Bank is located entirely within federal waters, and management of fishing activity at the seamount is ultimately the responsibility of the federal government. Fishing regulations for this area do not require support from the State. This point was made by the Western Pacific Regional Fishery Management Council (WCPFC) in Amendment 14 to the Bottomfish and Seamount Groundfish Fisheries Management Plan (dated December 19, 2007), which proposed to close the waters of Middle Bank to fishing for bottomfish in order to end the overfishing that was occurring within the Hawaiian Archipelago at that time. The Council recommended the closure of Middle Bank and other areas in the Main Hawaiian Islands within federal waters as “their closure would not require complementary State regulations” (see p. viii of document at <https://www.fisheries.ONMS.gov/resource/document/final-amendment-14-fishery-management-plan-bottomfish-and-seamount-groundfish>).

The Final EIS should provide data to support the statement that Middle Bank is important to Kaua'i fishers and should include a summary of the economic, social, and cultural benefits of maintaining access to the fishery resources in the portion of Middle Bank currently open to fishing. This analysis should be based on interviews with fishery participants, observations of fishing practices, comments collected during the public scoping and public review processes, published literature (e.g., see references in *Middle Bank: Conservation Concerns and Sanctuary Boundary Implications*), and other qualitative, quantitative social science data.

Decisions that could potentially affect the health of biological resources important to the sanctuary should also be based on quantitative data systematically collected by the state and federal agencies responsible for fisheries management. Data on the level of fishing effort at Middle Bank over the past several years are important for predicting the likelihood and extent to which fishing could have an adverse impact on these biological resources. The only fishing occurring on the portion of Middle Bank outside the Monument that is not subject to federal or state permitting and reporting requirements is non-commercial (i.e., recreational and subsistence) fishing for pelagic species. The State's Division of Aquatic Resources administers a mandatory permitting/reporting program for the commercial bottomfish fishery and commercial small boat pelagic (i.e., non-longline) fishery in both the state and federal waters around the MHI. In addition, there is a federal permitting/reporting program for the non-commercial deepwater bottomfish fishery in the federal waters around the MHI, including the waters over Middle Bank. It is possible that some non-commercial bottomfish fishermen have opted to obtain a state commercial marine license rather than the federal non-commercial permit. However, non-commercial catch and effort logbooks are still required for catches of bottomfish made in federal waters around Hawaii. Updated annual data on the number of fishing trips made to Middle Bank and the number of unique vessels that fished Middle Bank can be made publicly available. These data are not confidential (See tables on p. 3-39 and 3-40 in the document at <https://www.fisheries.ONMS.gov/resource/document/final-amendment-14-fishery-management-plan-bottomfish-and-seamount-groundfish>).

The Final EIS should delete the reference to assurances from ONMS to Kaua'i fishers during public meetings regarding the 2016 Monument Expansion. The statement implies that the

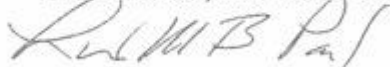
sanctuary boundary vis-à-vis Middle Bank was determined by the agency before the sanctuary designation process began. Such a pre-determination would be inconsistent with the Notice of Intent published on November 19, 2021, and the subsequent public scoping process, during which ONMS specifically requested comments on the spatial extent of the proposed sanctuary and boundary alternatives. No restrictions were placed on the boundary alternatives ONMS would consider. In particular, the public was not informed of the reported assurances and their determining effects on the sanctuary boundary when it was recommended to ONMS that the EIS include a sanctuary boundary alternative that encompasses “some larger portion of Middle Bank, that is, incorporate an area that is presently outside of the eastern PMNM boundary” (See RAC letter dated January 28, 2022).

With respect to the socio-cultural aspects of including all of Middle Bank within the proposed sanctuary, it has been suggested that the Final EIS consider the possibility that a boundary alternative that encompasses Middle Bank include fishing regulations that leave at least some segments of the fishing community better off. In particular, the EIS analysis during the sanctuary designation process offers ONMS an unique opportunity to identify and assess alternative ways to enhance subsistence and indigenous access to the area of Middle Bank currently open to fishing, thereby helping protect Native Hawaiian traditional and customary fishing practices. For example, it has been recommended by the WCPFC that commercial fishing in the Monument expansion area be prohibited, but the removal of fish for Native Hawaiian cultural practices be allowed in the Monument expansion area by permit. If the sanctuary boundary encompasses all of Middle Bank, similar fishing regulations could be applied to the portion of the seamount currently outside the Monument. This alternative would be consistent with the Cultural Impact Assessment in *E Ho'i i ke Au a Kanaloa* in which consultees advocated for protecting Papahānaumokuākea from commercial fishing, while ensuring that resources are available for Native Hawaiian subsistence fishing (Nohopapa 2023). Furthermore, this fishing regime would have the added biological and sociocultural advantages of bringing the entirety of Middle Bank under the management guidance of *Mai Ka Pō Mai*. Additional information on how the sanctuary could preserve Native Hawaiian fishing practices is provided in *Middle Bank: Conservation Concerns and Sanctuary Boundary Implications*.

Additional research and information about the social, cultural, and economic impacts of the proposed sanctuary for Native Hawaiian communities and residents of Hawai'i is needed. There is a lack of data to help inform management decisions, particularly regarding the potential effects of the inclusion of Middle Bank in the proposed sanctuary on the traditional practices and livelihoods of local fishers. Although the United States has not yet ratified the United Nations Convention on the Law of the Sea of 10 December 1982, it recognizes and follows it as customary international law. Of particular concern are those activities that take place in the Northwestern Hawaiian Islands under claims of innocent passage. (See *inter alia* UNCLOS Articles 17 to 32.) All activities in the proposed sanctuary should fully comply with UNCLOS and all other applicable international treaties.

Thank you for providing the public with the opportunity to provide comment on the DEIS for the proposed NMS in the NWHI before it became final.

Linda M. B. Paul, International Director, Endangered Species Program, Earthtrust



5

Oral Comments

Virtual Public Hearing

Location: GoTo Webinar

Date: April 6, 2024

Time: 9 AM

Dave Raney

I'm Dave Raney, and I served as the conservation representative and secretary of the Northwestern Hawaiian Islands Coral Reef Ecosystems advisory council in its initial years. The National Marine Sanctuaries website states that the addition of a national marine sanctuary would provide regulatory and management tools to augment and strengthen existing protections for Papahānaumokuākea ecosystems, wildlife and cultural and maritime resources, and also provide backup protection in the event of future president rescinding the National Marine... The monument. I'm concerned however, because as I understand the basic National Marine Sanctuary Act, it does grant Westpac the opportunity to submit a fishery management plan for the area. And unless the secretary of the commerce rejects the FMP, the sanctuary designation, potentially, could have unwanted, the unintended result of allowing commercial fishing within sanctuary boundaries. I know this is a concern that's widely-shared by people that kind of in my network that says we can't support the sanctuary because it provides a back door for commercial fishing to come into it. Whereas, your presentation says commercial fishing is completely banned. And I don't know whether that's language within the Sanctuary Act, or as a result of it being in the monument because the monument could go away. So, those are my concerns. Just, make sure that somehow the sanctuary does not provide a vehicle for as commercial fishing to seek in through the back door, because we know Westpac will push as hard as they can to get that. Mahalo [Thank you].

Pete Stauffer

Good morning. My name is Pete Stauffer. I'm the national ocean protection manager for the Surfrider Foundation, and I'm pleased to provide comments on behalf of our US network, including our four Hawai'i-based chapters. Surfrider is a grassroots organization of local volunteers who work to protect our coast and ocean through education, advocacy and stewardship. First, I want to thank NOAA staff for their efforts to advance the Papahānaumokuākea National Marine Sanctuary. Surfrider strongly supports alternative 1 to designate the sanctuary, which will provide lasting stewardship for ecosystems, wildlife, and cultural resources. Papahānaumokuākea is a very special place, but it's under threat from climate change, pollution, habitat loss, fishing pressure, and other stressors. Surfrider supports the establishment of science-based regulations to ensure sufficient protections for these unique and sensitive resources. We also support the development of a robust sanctuary management plan to strengthen collaboration and stewardship efforts. Further, the sanctuary advisory council process will provide a necessary venue for collaboration with Native Hawaiians and a range of different stakeholders. Finally, Surfrider strongly supports NOAA's plans to hire a Native Hawaiian program specialist and engage with the Native Hawaiian community across the islands. We see the national marine sanctuary as an opportunity to center Native Hawaiian

leadership for the area's conservation and management initiatives. Mahalo for the opportunity to provide public comment on behalf of our chapters and supporters. In the coming weeks, Surfrider will also submit written comments as part of the official public record. Mahalo [Thank you].

Roberto Torres

Hi, good morning. With regards to ho‘olaha [introductions or announcements], I'd like to comment about my desire to include and facilitate the participation of biology students, marine biology students at Kamehameha Schools, UH Mānoa, HPU, as well as, as those majoring in the Native Hawaiian studies. I work on Midway Atoll, I'm a firefighter here and I've observed research groups from Alaska, the mainland, the Caribbean, but never from the Hawaiian Islands. So, just something I would like to personally see, to get them more involved and take ownership of Papahānaumokuākea. That's all.

Karyn Bigelow

Hi. Thank you for having me to everyone on the team at NOAA, and thank you to all those who have even done the work to get us to this point. I am Karyn Bigelow, co-executive director at Creation Justice Ministries, where our mission is to protect, restore, and rightly share God's creation. We represent 38 communions and denominations across the United States and are the eco justice partner with the National Council of Churches. As a Christian organization, we support the proposed sanctuary for Papahānaumokuākea, understanding it to be a sacred place for many Native Hawaiians. It preserves sacred places, stories, artifacts, and strong Polynesian cultural ties to the land and seas dating back more than a thousand years. These partnerships with Native Hawaiian practitioners, scientific organizations, educational institutions and others will ensure that future generations continue to discover the cultural, historical, and scientific significance of the area and its connections to the greater Pacific. We firmly believe that we are called to be stewards of creation as humans and the additional protections and management tools afforded by sanctuary designation are necessary to protect this area's ecosystem and biodiversity. We want to see threats that this proposed sanctuary would be able to undo by additional protections and would come from sanctuary designation and management plans developed by NOAA in partnership with local communities, to increase resource protection and conservation, research and monitoring, governance and operations, partnerships and constituent engagement, education, interpretation and mentoring. Thank you so much for your time, and again, just to iterate that we support this effort as Creation Justice Ministries.

Isaac “Paka” Harp

Hey, thank you for un-muting me. This is Isaac “Paka” Harp, also known as Paka. Aloha kakahiaka kākou [Hello and good morning everyone]. Mahalo [Thank you] for the opportunity to come in today. I'll be basing my comments on the federal register notice published March 1st of this year. In 2016, presidential proclamation 9478 expanded the monument and directed, not suggested, that the Secretary of Commerce consider initiating a sanctuary designation process to supplement and complement existing authorities. A primary directive here is to supplement and complement existing authorities. In the background section, we can see the monument is administered jointly by four co-trustees, Commerce, Interior, State of Hawai‘i and Office of Hawaiian Affairs. In the co-management of the sanctuary section, we can see that NOAA and the

State of Hawai'i would collaboratively manage the sanctuary, and that NOAA would establish a framework for co-management. Proposing to remove two of the four existing management co-trustees and having NOAA dictate the framework for co-management is entirely contrary to supplement and complement directive. Providing kanaka maoli [Hawaiian natives] a meaningful role in management could complement and supplement existing management. The cultural working group comprised of kanaka maoli [Hawaiian natives] currently advising the four co-trustees could fill that role. The prolonging United States military occupation of Hawai'i fully justified a kanaka maoli [Hawaiian native] provided a seat at the table as the fifth management co-trustee. Under the section development of proposed terms of designation and proposed regulations, a list of [inaudible] and federal proclamations that NOAA have reviewed to guide monument management is listed, not listed on a printed administration executive order 13196 in the state refuge regulations. All existing regulations must be considered in order to adhere to the supplement and complement provision or directive. Kala mai [Excuse me]. There's a list of 24 activities subject to regulation, including introducing alien species, deserted vessel, commercial fishing, like commercial fishing possessing fishing gear, anchoring and living or de coral drilling, et cetera, and disturbing or damaging any living or non-living essential resource. And in this section, NOAA proposes to have the authority to issue permits to allow these activities to these prohibited activities to occur, which is another section contrary to supplement and complement directive. In conclusion, NOAA proposes to implement a VMS or vessel monitoring system, which restricts access to monitoring VMS-equipped vessel activity. On the other hand, the AIS or Automatic Identification transmit ships' position so that other ships are aware of this position, thereby, enhancing vessel collision avoidance, and the AIS system can provide open access for public vessel monitoring, thereby, adhering to the supplement and complement directive. I'll provide additional written comments on the March 1st Federal Register notice, as well as, the draft environmental impact statement for proposed actions. Mahalo [Thank you] for your time and consideration. Aloha [Goodbye].

Cha Smith

Hi, my name is Cha Smith. I'm part of the Northwestern Hawaiian Island hui that helped establish this existing monument. I just want to say offhand, right off, I mean, there's a really good reason that the Department of Commerce has not been successful in trying to control the Northwestern Hawaiian islands, and that is because it's a total conflict of interest, that as commerce, it's in conflict with a resource protection, your mission, complete odds. So, lots of pretty pictures, lots of noise, lots of nice music, you know, that doesn't really cover up. You can't put lipstick on that pig. I haven't really had much chance to read the 400-page document that was just dropped on us, so I have not really delved into the total weeds of this thing. But the broad view with lots of photos is that, it seems like it's all more protection, very lovely, harmonizing all the issues that we are dealing with, the different designations, and... Just not going to happen. I feel like I need additional time to deeply explore all the concerns, including the elimination of the Department of Interior, the Fish and Wildlife seems to be written out of this plan. There are lots of issues that recreational fishing, full market value, all these kinds of things that they just sound like you could pretty much drive a cruise ship through these possible openings in your proposal. So, I need more time to really look at the details of it all. I'm not convinced this is needed in any kind of way. I'm not sure why this is happening other than, well,

it gives you guys something to do, that's the main thing. But, really, the Northwestern Hawaiian Islands is doing great without you. So, thank you.

Narissa Brown

Aloha [Hello]. My name is Narissa Brown, and I'd like to provide some thoughts today from a personal capacity, not from my federal position. In the EIS that I read, you correctly pointed out that, Mai Ka Pō Mai, for example, was written by the Native Hawaiian community, took over a decade, and has a really strong foundation for how the monument should be managed. And in that document, it views Papahānaumokuākea as an area of regeneration, and it's not appropriate for the extraction of fish. Now, the non-commercial exemption to the prohibitions in the EIS could allow for that extraction. And I think that's what people are really concerned about. Sort of buried in the appendix are the proposed draft rules that Wespac put forth. And that's I think what most people have a problem with, is that they're proposing to take up to 350,000 pounds of bottom fish and 180,000 pounds of pelagic fish. And that is not in line with Native Hawaiian principles. And to make matters worse, Wespac is proposing to allow this extraction as a Native Hawaiian practice. And that's not in line with Mai Ka Pō Mai or the cultural impact assessment interviewees, what they put forth in the interview. I think that this issue needs to be expanded and needs more involvement from the Native Hawaiian community, as well as, direct involvement with the Office of Hawaiian Affairs as a co-trustee of the monument. The fishing issue, I believe, will overshadow the positive benefits of sanctuary designation, and I recommend removing the exemption on non-commercial fishing to allow for more dialogue with the Native Hawaiian community. And if it is found to be appropriate, the exemption can be included in the next monument management plan with input on how the Native Hawaiian practice should occur by the community and not from Wespac that represents commercial interests. I'd also ask NOAA to consider adding an additional virtual meeting as the Merrie Monarch Festival, the largest Native Hawaiian event in the state is currently underway, and many of the Native Hawaiians who could comment on this are unable to attend this meeting today. So, thank you very much for considering my comments.

Stephanie Fried

Okay. Okay. I'll start again. Let me... sorry, the... Okay. So, as I said, I was involved in establishing the protections for this pu'uhonua [sanctuary] a quarter of a century ago. And it's quite important to note that the sanctuary introduces tremendous threats compared to the existing protections. I've been able to skim through the 400-page DEIS and the Federal Register Notice. I call your attention to the fact that even NOAA's former general counsel has raised tremendous concern about this potential sanctuary's impact on our pu'uhonua [sanctuary]. And they counter in detail the claims heard today about the so-called added protections. The Marine Mammal Commission raises the same concerns. The legal arguments are quite persuasive. I urge everyone to look at them on page 330 of the DEIS. I'll talk only about a few of these issues. Number one, you all are claiming that the reason for a sanctuary is to provide added protections. In fact, sanctuaries introduce the possibility for fisheries establishment throughout a sanctuary. And you're talking about there won't be commercial fisheries, but there's a push for what is euphemistically called non-commercial fisheries. A fishery is a fishery is a fishery. And now, before sanctuary establishment, there are no fisheries in these islands. So, establishing a sanctuary brings in the process under the law where fisheries must be considered. So that is an

enormous risk, the so-called non-commercial fisheries. Another extraordinary risk is the fact that, you, folks, the Department of Commerce is creating an enormous permit free area for Department of Commerce activities. You've read a lovely list of all the things that are prohibited, okay? But what you did not present was the fact that the exemption prohibitions apply to actions by or for the Secretary of Commerce under the guise of research. We all remember what NOAA did as soon as the state refuge was declared many, many years ago, there was an attempt to try to get a permit for a Wespac permanent bottom fisher to "conduct research by tagging 3,000 ulua". Okay. So, under the guise of research, many horrible commercial activities have happened. Our pu'uhonua [sanctuary] is not designed for commercial activities. And in fact, if you're claiming to do protections, you first have to understand what exactly the existing protections are. So, the executive orders in 2,000, which established the reserve, set up a no take, primarily, no take limited access area. The monument expansion area introduced shocking loopholes, and you folks are just copying the loopholes and the worst of the expansion proclamation and exempting Department of Commerce from a lot of these prohibitions. In addition, you've kicked out OHA and the US Fish and Wildlife Service from equal co-management roles. Those are co-management roles OHA protects Native Hawaiian interests and the Fish and Wildlife Service protects the biodiversity, and those two entities are not at the table.

Isaac "Paka" Harp

This is Isaac "Paka" Harp again. Mahalo for unmuting me. Sorry, I just wanted to share that I'm a kanaka maoli [Hawaiian native]. I come from many generations of fishers, and I felt the need to give back to the ocean, and I ended up becoming involved with state management efforts, marine management efforts as a member of the bottom fish task force, as well as, the gill net task force. I served on the Kaho'olawe Ocean Management Advisory Group. I'm the only individual to have ever served on six Wespac advisory councils consecutively. I was also the chair of the first Native and indigenous rights advisory panel to Wespac. And during that time, I learned of some unscrupulous activities by Wespac, including massive overfishing of the lobster stocks in the northwestern Hawaiian islands, leading to the starvation of the endangered Hawaiian monk seals. And I decided to write a draft management plan or conservation plan for the Northwestern Hawaiian Islands, which initiated a huge public initiative for the Northwestern Hawaiian Islands leading to the designation of the Coral Reef Ecosystem Reserve in 2000. And I served as the vice chair on the first reserve advisory council to the Coral Reef Ecosystem Reserve. Unfortunately, I was not given a second term in that. There was only two individuals that were not reassigned as the council members, and that is myself, as well as, Mr. Dave Rainey. I believe the purpose were not placed back in our position, was because we were constantly reminding NOAA that they need to follow the law. There were claims that the enforcement was self-implementing. I served on the working enforcement working group, which included NOAA enforcement, state enforcement, coast guard, et cetera, and no one understood what, or how enforcement could be self-implementing. So, I think one of the main things we need is a good system for monitoring the area. Remote monitoring was recommended as far back as the year 2000, and continued to be recommended for several years thereafter. And we just don't have what we need to actually monitor the activities up there. And like I said, the AIS system for vessel monitoring would be preferable to VMS if the public can access the data and

monitor the vessels out there as well. Just in case the managers might miss something, we can alert the managers to potential violations of the regulations. That's all.

Mike Nakachi

Yeah, sorry about that. First time to this kind of format. Appreciate that Alapaki, Eric and Ryan, for the opportunity and the time and space to comment. I appreciate the comments from Uncle Paka and Dr. Fried and Dr. Narissa Brown. You know, I didn't have time to look through all that palapala [document]. It is overwhelming for many of us, and I think, first and foremost, is that I think everyone's intentions are trying to act in the best interest for this pu'uhonua [sanctuary] of Papahānaumokuākea. But I am a little distressed that we have a monument, and I see two seats that represent the monument board with the state and NOAA being here. I would always appreciate that the collaborative efforts of all the trustees would be on the table to do these kind of public scoping, so that there is full transparency across the board to try and do a sanctuary designation with Fish and Wildlife Service, and along with OHA or Office of Hawaiian Affairs. I have been blessed to be in the realm of Pō [Darkness], and it's kind of upsetting to hear some of the comments prior. I think the biggest thing that you're going to feel is the word fishing. I think if kanaka maoli [Hawaiian natives] are sitting in the area and had the right to sustenance and catch what they're going to eat for that day, that is fine. However, once you start changing things and you say no commercial fishing on this proposal or this draft EIS and you open up the back door, I think that has been also commented several times here on this. I think you need to really look at that very closely and close those loopholes down, so that they don't exist. For many of us kanaka maoli [Hawaiian natives] that are active practitioners in various forms and in various things and in various ways, once you start changing the dynamic of going for monetary value to cover costs or recover costs, that is not a cultural practice, and that is not a Native Hawaiian practice to do those type of things. So, we don't want the exploitation of buzzwords being used against us for the collaborative covering of expenses and lacing pocketbooks for the almighty dollar in a realm that should be reserved for all forms of kanaloa [the ocean, ocean species], and us as human stewards need to do our best to protect that. And we will do that as Kia'i Kanaloa [ocean protectors, ocean species protectors]. And again, the cultural working group will try our best to do that. And I appreciate the time, and all the best on this, and look forward to meeting you also in person. Aloha [Goodbye].

Tammy Harp

Aloha [Hello], everyone. My name is Tammy Harp. My concern is having the DOC designated as the governing entity. First paragraph, NMSA authorizes the secretary. Last sentence, the primary objective of the NMSA is to protect the resources of the NMS system. Line four to six, which, I won't read to save time, but under aesthetic qualities, for me, is that I'm able to protect it from a distance. Line three, the list under the special national significance, no inkling of commerce, and yet, commerce wants full custody. I support the current management scheme of joint administering between the DOC, DOI, SOH and OHA. If we are to bring continuum in supplement to complement, the management of the NWHI, then, sharing the load is needed. The current management entities involved are to mean not broken, maybe need oiling every now and then, but why do we want to dismantle the trust gained? Lastly, I will say, you see, I do not want to experience a potential repeat of how commerce over overthrew its blanket upon our

queendom. Mahalo [Thank you] for your time, and I'd like to give my remaining balance to Paka, so he can finish up what he intended to do. Thank you, guys.

Isaac “Paka” Harp

Mahalo [Thank you]. It's Paka again. The initiative that led to the Coral Reef Ecosystem Reserve was a massive public initiative with huge public involvement. And leading a lot of that effort was the Northwestern Hawaiian Island Hui [Group], a small group of individuals passionate about protecting Northwestern Islands. And the late Uncle Buzzy, Louis "Buzzy" Agard was a member of the hui [group], and his preferred name for this protected area was Pu‘uhonua, which means a place of safety, refuge, et cetera. So, if the sanctuary is designated, I would request that the name Pu‘uhonua be considered as the name of the sanctuary. Mahalo.

Stephanie Fried

I apologize for the technical difficulties. I just want to focus a little bit on the monument expansion area, because it's quite important that this... It's important to understand that this area is shockingly-weaker than all of the rest of the protected areas. And the MEA, actually, allows a fishery management area, but only if both the Department of Commerce and the Department of Interior agree. The Department of Interior will not agree to put a sanctuary on. Only the Department of Commerce have the authority here. And so... Not only that, OHA is, again, not an equal co-trustee. So, in the monument, OHA is an equal co-trustee, Fish and Wildlife is an equal co-trustee as is the state of Hawai‘i and the Department of Commerce. The Department of Commerce in that group is the odd man out in the sense that they're the only ones that are committed to commercial exploitation and commerce. The other parties are not. The sanctuary, the Federal Register Notice states that it will be the Secretary of Commerce, which will regulate all of these activities, injuring the resource, touching coral, scientific research and development by federal agencies. And so, to us, it looks like... Frankly, it's a power grab by the Department of Commerce. We find it... The US Fish and Wildlife System has been up there for a hundred years. They do not need an overlay by the Department of Commerce. The state has the most protected waters, the most highly-protected waters, and the Coral Reef Ecosystem Reserve, frankly, that was the first... When we all fought that battle, that was the first time the US government, the federal government, recognized the cultural access rights of Native Hawaiians. That was the first kanaka maoli [Hawaiian natives] recognition by the federal government of the United States, and the protections in that reserve are far stronger. The sanctuary, what the sanctuary proposes is to match the incredibly weak protections and the loopholes of the monument expansion area. And so, you're basically cherry-picking the weakest most damaging protections. If you're going to claim that a sanctuary is needed to help protect our resources, then, match the protections to what the state says, which is no commercial activities in state waters. That's what the permitting regs say. Match it to the executive orders. It's a primarily no take region. There is none of this noncommercial fishing under Wespac. And the rules apply equally to everyone. In your proposed sanctuary, the rules don't apply equally. The Secretary of Commerce gets a free pass to do whatever they declare research to be. So, treat everybody equally the way the most protective things do and match the protections in state waters and in the Coral Reef Ecosystem Reserve. Mahalo nui loa [Thank you very much].

Isaac “Paka” Harp

Mahalo for this additional opportunity. There's a volume, amount of documentation to review and comment on that is related to this sanctuary designation proposal, including the draft environmental impact statement, which is approximately 400 pages. Several executive orders, as well as, presidential proclamations, federal register notice, and other designation-related documentation. So, I would like to request that the public comment period be extended for, at least, 30 days to provide a sufficient time to review all this documentation. Most of the general public, as you probably understand, works during the weekdays and tries to enjoy the family time on the weekends. So, there's not much time we can dedicate towards reviewing and preparing comments on this huge amount of documentation that needs to be reviewed. So, again, please extend the public comment period for, at least, 30 days. Mahalo [Thank you].

Honolulu Public Hearing

Location: Aloha Tower, 155 Ala Moana Blvd, Honolulu, HI 96813

Date: April 8, 2024

Time: 5 PM

Brian Kulik

Name, Brian and Gigi Kulik organization is Veterans of the VFW. And the email address is promisemyangel@gmail.com. As concerned citizens who love the oceans, and in keeping our waters as pure as possible through marine sanctuaries and organizations such as NOAA, that will ensure that all marine life will continue to prosper, and thus humankind will prosper too. For the ocean gets us life, and the greatest gift of all, is subsistence. So anyways, thank you guys for being here and we'll see you again.

Don Palawski

My name is Don Palawski. I'm just a private citizen, former retired Fish & Wildlife Service Refuge manager. I used to actually support alternative 3. I think it's important that the Fish & Wildlife service, under the National Wildlife Refuge Administration Act, have jurisdiction to manage the refuges. Just as the National Marine Sanctuaries should have the authority to manage the sanctuary. So I'd just like to put that forward. I don't think it would affect the management at all, but I think it adds a complement and supplement phase for the sanctuary program to supplement the National Wildlife Refuge System Administration Act. Thank you.

Dean Sensui

Good evening, Dean Sensui. I'm Hawai'i Goes Fishing, also the Pacific Islands Fisheries Group. It's been said that Papahānaumokokea, that entire Northwest island chain is pristine. It's been pristine for a long, long time, right? I mean, it looks by the very definition of pristine. It means that you can't really detect any human activity, short of what's already happened there. We had eight permitted vessels to go fishing, until the monument was expanded. But you really couldn't find very much traces of that activity. It's so huge. You're looking at an area that's the size of the West Coast. To say that those guys could overfish the Northwestern Hawaiian islands, means that you could overfish the big island by yourself. That's not going to happen, right? So it's a wonderful thing if the state could get involved in helping manage that resource. Realistically speaking, the state does not have those resources available at hand. They couldn't afford to do it.

I would rather see those resources put the use here in the main Hawaiian islands, to help manage our resources and improve things. We can always use better habitat for better fisheries, seeing how everyone here depends on these local fisheries. The bento that was provided for us, half of them have chicken and fish. So you can see how important fish is to us. I really think that the state has to focus on managing the resources here. That area up there, Papahānaumokuākea is so huge, even the Coast Guard has difficulty patrolling the area. They told me that they can't do it. They don't have that kind of resource. Not even with the sort of long-term, remotely piloted aircraft that's available to the military. They just don't have the resources to do it. So let's keep it here. Thank you.

Kāneʻohe Public Hearing

Location: Heʻeia State Park, 46-465 Kamehameha Hwy, Kāneʻohe, HI 96744

Date: April 9, 2024

Time: 5 PM

Luwella Leonardi

I just want to give a heads-up as to what's going on and what it is. I've attended many meetings over the years. And I have my own personal opinions that stretch over... What is it, since 1974, I believe. That's when a lot of us decided to come out and engage in the community meetings because of what was happening offshore. And then we got to stretch our relationship to those local fishermen that don't exist. They're not here anymore. And they were fishing throughout the Pacific. So yeah, I still have those memories. So I'm just trying to make those connections on the X-axis over time. And that's basically where I'm coming from. And there has been a lot of meetings. And there's a gap in between us and you, Papahānaumokuākea, which I'm trying to close.

Nalani Minton

Aloha [Hello]. I attended virtually the Zoom meeting on Saturday, and there were a lot of long-time activists who spoke about things that are very confusing to us as Native Hawaiian communities. Because we had not been involved in the design of the whole program or understanding how each community is going to interact with this process and who is going to make the decisions on which of the alternatives are used and who is going to make sure that some of the seemingly apparent conflicts of interest are controlled. So I made my way around the room tonight to try to ask for clarification. Since there's no answers or responses that are part of this process of going around to all the islands and asking communities to give their response and their questions, but there will be no answer or response. And so that's very, very foreign to us as kanaka maoli [Hawaiian natives]. Because we kūkākūkā [discuss], and we need to walaʻau [converse]. We need to understand from each other what we feel the impacts will be not only what is written, but the things that don't seem to make sense to us. A lot of the things that are written are very beautiful, and they sound very protective. And hopefully they will be. But what is our role in all of that? To only be permitted sometimes and to be not permitted other times? And how does sustenance play a role in our lives? How do we relate island by island, community by community? So there's lots of questions. A lot of us didn't know that NOAA funds Wespac. A lot of us didn't know that the Department of Commerce is involved with NOAA.

Because we have so much exploitation in our history, it's hard for us to understand how these things are not a conflict of interest, even though there may be very well-intentioned and good people who are trying to protect the rights of conservation and of regenerative life. We as kanaka maoli [Hawaiian natives] and all indigenous peoples have a kuleana [responsibility] to protect, not resources only, but life sources. And so we're very concerned that we do understand where some of these seeming conflicts come from and how will they be dealt with. And then there are other questions. I was talking to Randy. I talked to about six NOAA representatives tonight. And I feel that on the website there needs to be clarification of some of these things, because then it will help each community to understand what the response is collectively. But I also have some questions about migration routes for not only the whales, but for all life forms of the ocean that we are related to as family. And how are they going to be protected by corridors that allow them to move freely and be protected whether they're inside the boundaries or outside of boundaries and things like that. So it's just one example of how we love our 'āina [land] and how there is a huge Aloha 'Āina [Love for the land/Protect the land] movement right now coming back. And people really need to be able to express their love for our 'āina [land] and how they feel it needs to be protected community by community. Mahalo [Thank you].

Brian Bowen

I'm Brian Bowen. I work for the university, but I speak tonight as a private citizen. Some time ago, some of the scientists that work on conservation came to a consensus that 30% of the oceans needs to be protected in order to maintain healthy oceans. And the citizens of Hawai'i should be very proud. They're among the few places that have actually achieved this with the monument and now with greater protection in the sanctuary. And that's all I have to say.

Jim Kastner

Hello, my name is Jim Kastner. I'm one of the 100,000 people who fought for the establishment of the strongest possible protections for the Northwestern Hawaiian Islands, the Coastal Coral Reef Reserve in 2000, the state refuge in 2005 and the monument in 2006. For decades, you have refused to provide the regulations, penalties, schedules, excuse me, and strong enforcement including AIS and satellite monitoring. The reserve and state refuge protections are some of the strongest on earth. Issue and enforce the regulations and spread them to the weak monument expansion area. MEA. Your DEIS fails to do this. In 2006, the state demanded any sanctuary must apply the strict standards of the state refuge similar to the reserve, where access is very limited, all activities are automatically prohibited except a short list. Prohibitions apply equally to everyone. Commercial and recreational fisheries are banned, protecting fish nurseries supplying our main islands. Public hearings are mandatory for state permit applications. Unlike the secretive NOAA permit process, the monument bans bio prospecting and preserves these protections. Unlike your proposed commerce sanctuary, the monument is managed by four equal co-trustees: the better system with fish and wildlife, which protects biodiversity, OHA, which protects Native Hawaiian rights, and Department of Commerce in the state of Hawai'i. The 2016 monument expansion area, unlike other protected areas, introduced shocking loopholes and makes possible activities completely banned in a reserved refuge and monument. But at least both the departments of Commerce and Interior have equal status. Interior can act as a brake on the worst of commerce excesses. You claim your commerce sanctuary provides new protections, but you refuse to apply the strong protective language of the reserve or state

refuge to the MEA or proposed sanctuary. Instead, you copy the worst loopholes from the weak MEA and spread them throughout your sanctuary. You propose a new so-called non-commercial Wespac fishery in this fragile ecosystem, which can violate the ban on drilling, dredging, waste, dumping, or damaging the ecosystem. You exempt the entire Department of Commerce including NOAA fisheries from prohibitions on fishing, anchoring on coral and harvesting our precious resources, waste dumping, drilling, and apparently even exploring for oil, gas, and minerals as long as you label it so-called commerce research. NOAA wants to sell special-use permits based on what you call market value of our pu'uhonua. This is what your DEIS says. Words matter. Papahānaumokuākea is not for sale, not for commercial gain, not for fishing. Even NOAA's former general counsel raised huge concerns about threats posed by your plan. Yet when all goes ahead. Your DEIS fails to address these concerns, potentially leading to litigation. Instead of wasting taxpayer money on expensive hearings and fancy videos promoting your sanctuary, please do your job. Issue regulations and a penalty schedule for the reserve and monument based on the strongest existing protections. And enforce them instead of trying to spread the biggest loopholes. Mahalo [Thank you].

Wai'anae Public Hearing

Location: Wai'anae District Park Gym, 85-601 Farrington Hwy, Waianae, HI 96792

Date: April 10, 2024

Time: 5 PM

William Aila

It's one of my pride and joys. I'm alumni of Wai'anae High School, Sea Rider, very familiar with this gym, played in it. Don't start my three minutes yet. Okay. So aloha mai kākou [Hello and welcome everyone]. I want to say, Mahalo [Thank you], to all of the folks who are in this room and worked very, very hard to put this together. Again, my name is William Aila. I had been part of this process since before the RAC process. And coincidentally, the group that approached President Clinton actually wanted a marine sanctuary at the very beginning and then settled for a monument. Number two, I want to call some very important people into the room. Uncle Walter Paulo, Uncle Eddie Ka'anana, Uncle Kawika Kapālehua, Auntie Isabella Abbott, and others who were at this juncture at the very, very beginning and actually inspired many of the restrictions that are in the rule making and made their way into the executive orders today. These were fishermen who firsthand experience in Papahānaumokuākea, what became Papahānaumokuākea and said, "Hey, wait, too important this place. Let's have no take except for subsistence while you're in there." I support alternative number 1, because it's the most comprehensive alternative. And I support it, because from an ecosystem perspective, it encompasses the health of the birds that are part of the refuge, the reef fish that are part of the near shore reef fisheries and the pelagics that are further out. I say that real quickly, because without the reef fish larvae feeding the pelagics, the juveniles, and then without the pelagics' eggs feeding the reef fish juveniles while they're out there... And without the birds feeding on all of that and coming back to the shore and helping out with the nitrogen cycle, it's the utmost appropriate way to manage this area. I do want to point out that in rule making now or in the future, there's no such thing as customary exchange from a Hawaiian perspective. Okay? Hawaiians never bartered. What they did was the folks from up mauka [upland] brought stuff

down, because they knew their favorite auntie was down there. And they know that what she wants to eat from up mauka [upland]. And at the same time, the fishing family or the family down by the shore knew what Auntie wanted. So they went and go get it. There was never this discussion at the gathering with a discussion about, "Well, how much is one akule worth to you guys?" It was never like that. So cultural bartering, cultural out... That was not and is never a cultural practice. Bartering is something that was brought in by the Westerners. And I'll finish some more with written comments. But mahalo [thank you]. It's about time only, like 30 years in the making. Thank you.

Luwella Leonardi

This is where I live, right up here, up in the valley. I live in a Hawaiian homestead. I also grew up on Hawaiian homestead. And prior to that I had parents and grandparents. Okay. Edward Nī'aupi'o is my tutu man. He was my grandfather's brother. And let me begin by saying, I am my father's daughter. His name is Kanakao'o Nī'aupi'o. My name is Luella Leonardi. I work within the classrooms. And like I said last night, until the gap, I'm not from Papahānaumokuākea. A lot of people in the community know this. And the funny part about it is all my grandchildren grew up in the Papahānaumokuākea Group organization, because they needed to self-educate themselves. And again, I work within the classroom. There is a huge gap. And I mentioned that gap last night between my dad's era. Sorry, I'm getting confused here. What I want to say here is I grew up in Waimanalo near Makapu'u, or right across the Kaiona Beach Park. And Sea Life Park was down the road. I was in the fifth grade, and Sea Life Park showed up with [inaudible]. So these are the reasons why I say we need to close the gap. There's just too much gaps. I'm also the keeper of Kū [Hawaiian god of war] and Hina [Hawaiian goddess, the mother of Moloka'i]. I have two Kū'ula [Hawaiian god of fisherman, possibly a statue or image of the god]. I've been the keeper for almost 50 years, and this was entrusted to me. So right now the Kū'ula [Hawaiian god of fisherman, possibly a statue or image of the god] are hanging out in Waimanalo Valley. And I'm still doing a whole lot of homework on the Kū'ula [Hawaiian god of fisherman, possibly a statue or image of the god]. And mind you, all of you, I'm also a Christian. So people look at me like, "How can you do these two things and balance off the Kū'ula [Hawaiian god of fisherman, possibly a statue or image of the god] and at the same time, Christian?" Hey, you just got to do your kuleana [responsibility]. Okay. So what I want to end here is classroom. The 400 pages needs to be within the education. Until we understand, until we bring it out into the community, I'm not going to support this. Sanctuary. Just go look up at that word in USA. That word is so depressing. So I just wanted to say that I would definitely do my due diligence. I'm just not a sit-around person, as you can tell. Yeah. And I've been to all the fisherman's meetings from way back in the '70s, the '50s, and since I was a little girl with my dad who was doing the mending with the old generation at any fishing areas where they mend the nets. So been there, done that. Again, until we get into the classroom with this information, 'a'ole [no].

Melva Aila

Aloha [Hello]. My name is Melva Aila. I lived in Wai'anae all my life. And I've participated in this process many years ago when it was called Northwestern Hawaiian Islands. And I strongly support this proposed sanctuary for Papahānaumokuākea. This place is a very special place, and

it needs the highest protection of all. So mahalo [thank you] for your time for coming out and listening to us. Aloha [Goodbye].

William Aila

The sanctuary would provide the most protection, because the rules that are promulgated via the National Marine Sanctuary Act actually have way more teeth in it and are enforceable. Number two, the monument status is something that, as strong as it is, there are rustlings in the US Supreme Court that Chief Justice Roberts is interested in somebody bringing a case to the Supreme Court about the size of some of these monuments. So our national marine monuments fit right into what he's asking. And the third big danger out there is we could have a president next year that is not supportive of any type of resource management. And so these are all positive things to support the national monument status for Papahānaumokuākea. And I didn't quite understand... There's a naming process for the expansion area? Or there's a look at a different naming process?

Luwella Leonardi

Okay. Last night I noticed that you have a docket. I too have a docket, and I've spent, Oh Gosh, years with a docket with the military. I did go to court, I did face the judge, and my opposition was the Pentagon [inaudible] Davis. So I did question the whole thing about what is a docket in lieu of Papahānaumokuākea. So that would be one of the details that I would like to have clarity on. Where is this docket? I mean, do we have access to this docket? "Where is it going to be?" is my question. Secondly, I just wanted to make sure that you know that I'm also with BOM, Bureau of Ocean Management. And I like the idea of the pixels with the numbers in it. My degree is in geography, it's cartography, remote sense, and GIS and infrared. So therefore, I like the idea of a pixel, but then I'm leery about that about how the pixels go. So I do engage with BOM when they come to Hawaii. And BOM was pretty cool as far as mapping. Yeah. Yeah. So I guess that's how I relate it with them to the mapping. And if I were to relate to Papahānaumokuākea, it would be just the islands with the names on it. We're into ethnomathematics. We're expecting our children in the classroom to do ethnomathematics. And so this is why I am bringing up the whole bone thing. Yes, I did attend all of their meetings when they did come to Hawai'i, by the way. And they were very good about giving me information, and I take their information into the classrooms. Thank you.

Waimea Public Hearing

Location: Waimea High School, 9707 Tsuchiya Rd, Waimea, HI 96796

Date: April 11, 2024

Time: 5 PM

Hoku Cody

Hello, folks. It's nice to see some familiar faces here. NOAA guys in the back. Hoku Cody. I live in Hanapēpē, originally from Big Island [inaudible]. Actually a former field camper and biologist of Papahānaumokuākea Five Field Seasons, as well as the former Kaua'i organizer for the expansion of Papa [Papahānaumokuākea] on Kaua'i. So I worked really hard in making sure that the expansion honored the fishing grounds of the West Side fishermen, especially over here, as well as the North Shore guys as they're also lineal descendants of the islands. So I'm just here to

provide comments on a few things in support of the sanctuary that the Southwest Boundary line continues to get honored and doesn't move for sake of the fishermen unless they want to move into something of some sort of community management, if that's what they would like to do. But I would say leave that for them. I'm in support of Mai Ka Pō Mai being an actual management plan rather than a guidance document implemented to the full extent possible so that we could get more locals and better job force within Hawai'i, up to Papa [Papahānaumokuākea], better represented up there. I feel like that's the best protection and resiliency we can get is if we get Hawai'i people involved in this. The other thing in support, supporting the sanctuary, because there's so much cultural resources up there, and with climate patterns changing, Hawai'i stands to be one of the first islands ready to take on what is the biggest seabird repository from Papa [Papahānaumokuākea] down here. But if that place is vastly depleting, we're over here trying to do our best to get ready, but we just need it protected up there. We need the traditional practices honored, the cultural knowledge as well as the lineal descendants that continue to call that place home. All of those things need to be honored within the sanctuary designation process. Yeah, and just thank you guys so much for all that you guys do. I know it's a lot of work, so mahalo [thank you] for everyone.

Abraham Albilado

Good evening everybody. Before I start connect, can you guys please put up the slide with the monument and the expansion just to show it if I may please. Hello, everybody. My name is Abraham Albilado. This was my cafeteria back when breakfast was 35 cents and lunch 75 cents and was way better than the food that kids eat today. Anyways, guys, as I listened to all these proposals that is coming on over here, now this is just my opinion, but everything was lost as soon as we got cut off from going to Northwest Hawaiian Islands. My background is I'm a commercial fisherman. I'm a second-generation commercial fisherman. I have fished. Northwest Hawaiian Islands was closed there before I got there, so I could go as far as that southern tip right there. The reason why I brought this up right here is because back in 2016 when it was proposing this whole expansion, you see where the little nipple is right around Nīhoa, the people was fighting so hard to get that full 200, yeah. 100-100, right? But they never getting them. So my stance on this is if this is actually for the Hawaiian people, then how come the Hawaiian people wasn't listening? A lot of passionate things, man, a lot of heart has been coming out. Everybody put their heart and soul in that, and just totally neglect them. That was one thing. The second thing is what is more better than fishing? What can teach practices more better than fishing? Like I said earlier, everything got cut off when they shut us down. And then they said, I just type in Northwest Hawaiian Islands proposal 2006, and it says that these reefs burst with life, great predators with white-tipped reef sharks, spinner dolphins, trevally jacks. It says, virtual entire population is critically endangered. The breeding grounds of approximately 90% of threatened Hawaiian green sea turtle population. Okay. So this is back in 2006. Anybody over here that go transit on this island, Nā Pali Coast, any tourists on the south side, how much turtles we get now? Okay. So my point is, is there ever a goal? Are we going to meet any... Is anything else going to come out of this besides more closure? 2006, 50 by 1200 miles. 2016, 200 by almost 1200 miles. You see where I'm going? You see how small the main Hawaiian islands and how much is already taken away? My thing, my fear is that look how much they already take. In the thing that I read about the Bush thing is a hundred times the size of Yosemite National Park or whatever, and it was just blah, blah, because of that. We're all going to be affected when the

fishermen die off. When I was a young kid, my dream was to fish up in the Northwest Hawaiian Islands. Well, you guys providing only... I mean, yeah, you guys will permit people for fishing 50 miles. You guys never been 50 miles offshore. Can't even see nothing out there. Not mentioning, if you guys Google this right now, from where I'm standing to the east corner of Nīhoa right now, 40 fathom, 141 miles, that was almost 24 hours traveling, nobody going to be able to go out there. I guess what I'm trying to say guys, is if we are really trying to protect Hawai'i, its culture, its fishing, it starts with the fisherman. Thank you, guys.

Klayton Kubo

Okay, Klayton Kubo, Waimea, Kaua'i. I get some real concerns about this. I understand that this is going to be a dual coverage. The monument can be just expelled by a rogue. I don't even say the word, but nobody going to feel buttered. Well, if one president comes in, he can basically expunge this monument, but the sanctuary is going to be harder to get expunged. So, did you guys prove the socioeconomics and the human impacts that why whoever is providing this sanctuary, did they even prove it? I hope too I'll get one answer on that one. So, now I'm going to just fly this. How can we be a self-sustainable state if the federal government and the state continue to take away areas that we can gather? That's my biggest question that I would really appreciate somebody answered that one there because it seems like throughout the years now it seems like there is one pitch on fishermen. More regulations, more restrictions. So please answer that question for me, and I will email you guys. This is verbal, right? It don't be in an email form. So I hope somebody going basically answer all my questions on this email. Mahalo nui [Thank you so much]. And if I get something else to say, hopefully you guys will let us or whoever else that'd like testify maybe one other round. I'm going to go sit down. Mahalo nui [Thank you so much].

Evan Manini

Aloha. Thank you for being here. My name's Evan Manini. I'm here to speak on behalf of my mom's 'ohana [family]. So, my mom's 'ohana [family] was originally... Her Hawaiian side was from Nīhoa. A lot of these things were planned and discussed. My 'ohana [family] never heard nothing about this, and her family was Kealohanui. They were from Nihoa. Later they moved to Maui. My mom was born in O'ahu, where she came to Kaua'i. But I was always told that was where we were from. Yet all of these plannings, and you had 25, I believe, people that you interviewed with the impact, none of my siblings was questioned. And yet we have direct ties through lineage of the moku [island, Nīhoa]. And this all involves this whole section that we're talking about. Now everybody knows my dad. My dad was from Hawai'i, and he has deep ties, but I'm only half of my dad. My 'ohana [family] on my mom's side was from there. And sometimes I feel we're not being heard or we don't even exist anymore for the decisions, whether United States governments does it or someone else will do it. And then on the policing of this whole area, who will do it? The policing can't even be done on this island. Let alone it's going to be done hundreds of miles away? What if it's international people breaking the rules? How would they be prosecuted? Or would they be slipping through envelopes and say, "Okay, just a slap on the wrist, we'll let you go." A lot of these things are great. More isn't always better. I mean, look at these islands. This is still part of the Polynesian Triangle, and all of the Polynesians have the rights to be there or at least visit. So I come before you today and speak on behalf of my mo'opuna [grandchildren] who cannot speak or some of my family members who are not here. And we all have the blood quantum to have some kind of opinion, right, or at least

to be heard or at least be invited sometime in the future to maybe visit an area that we are forbidden to go or forbidden to fish or even visit because we'll be trespassing in our home, which is very sad. But this is how the United States government has treated the kanaka maoli [Hawaiian natives]. My dad made it clear. My mom was very quiet, but now I'm here to speak on behalf of the generations to come and anybody else that ties their lineage into my 'ohana [family]. Thank you very much.

Abraham Albilado

Okay. So, Abraham Albilado again. Waimea, Kaua'i. So, I guess some things that I would like to just... I guess it's not even part of this proposal, but some things that'll be transparency for the people to understand and to see that this is almost 20 years over here. Yeah, '26 will be 20 years. 18 years right now. Do we have any data, anything that shows the perks and the gains that they say that the Hawaiian people getting by closing this place down? One of the things I read by Senator Schatz, I got him in my folder back there, which is a good place to be, but he said that by shutting this Northwest Hawaiian Islands down, that sanctuary will feed the rest of the Hawaiian Islands with bottom fish, tuna and stuff like that. I'm not a scientist. I'm a fisherman, but I know that for bottom fishing specifically, what we need is what's falling from the sky right now. Fresh water is vital for bottom fishing to grow. Every river mountain that we have, every waterfall that we have falling down into the ocean provides sanctuary for the uku, 'ōpakapaka, onaga, all the deep seven fish, all the fish that is considered delicacies here in the islands. So, yeah, we cannot do nothing now since the president had already ruled. But I guess what I'm saying is if we can provide any kind of knowledge, scientist data, because everything about science nowadays. Because for what I know, not everybody fishermen over here, so how I explain this, I use gardening because gardening is a visual aid. So imagine this square right here. I pull up all the weeds, I till the ground and make them cherry. They like, "Yeah, protect them." We'll pull on freaking barbed wire fence, 10 bulldogs around. Nobody will watch them, nobody coming out. What can happen after time? Grass start to grow. Weeds start to grow. Trees start to grow. You start to see changes. What you think? Sometimes the bit of positive is actually a negative. That's when a fisherman come in. Just like the farmers got to tend to their cattle, the gardeners got to tend to their gardens, fishermen tend to the fish. Like I said earlier, fisherman is very vital in this equation. Without us, not gonna have none of this scientists no more job because they cannot tell us, "Oh, you guys will go fishing, you guys doing your stuff." They'll have to find grants elsewhere because not going to have fishermen for telling they're doing the wrong thing. Mahalo [Thank you].

Klayton Kubo

Klayton [inaudible] I sit on the no action alternative. Yes. I never say that. Yeah. So no action alternative. I just had this all in my head, but man, that stuff was kind of stressful. So, no action alternative. And in a way I just reiterate some stuff. As a state, how are we going to be self-sustainable? You cannot keep eating imported fish. That is just unacceptable. I go to the state capital, all I can hear about self-sustaining 2030, 2050. And another 10. I talk about the line that come down the nipple. I heard that some talks about moving that line. Remember, the promise was back in 2016, that promise better stand because I know for a true fact I had participated heavily in that. So that line better stand. Mahalo nui [Thank you very much].

Hanalei Public Hearing (Virtual)

Location: GoTo Webinar

Date: April 12, 2024

Time: 5 PM

Maka'ala Ka'aumoana

I am Maka'ala Ka'aumoana. And today I testify on behalf of an organization that has existed on Kaua'i since the early '80s. Its mission is to protect traditional rights, practices and lifestyles. I support designating Papahānaumokuākea a National Marine Sanctuary. I support the continuation of the rules currently in place under the Marine National Monument Status. Papahānaumokuākea protects unique and valued resources and provides us a safe place for these resources to teach, feed and propagate vital life to the Pacific realm. The sanctuary status does not change the protections and purpose of Papahānaumokuākea. I do not support any changes in any extractive regulations except the addition of the ones that you mentioned for energy. I do not support that. I mean, I support that rule. I do not want those extractions either. I consider Kaua'i to be the people connection of Papahānaumokuākea, and many of our families have genealogical history and kuleana [responsibilities] within the boundaries of the monument or sanctuary. I support alternative 1. Mahalo [Thank you].

Lynn Bowen

Okay. I wasn't very well prepared for this. It's kind of a last-minute meeting. But I am all for this. I think it's a needed addition to the monument and that this could do nothing but good for that whole area, for the species, the ocean, the land at large. And I totally support this change. I hope it moves forward. Mahalo [Thank you].

Abraham Albilado

Hello, gentlemen. Abraham Albilado from Waimea, Kaua'i. I am a second generation commercial fisherman. I am in opposition of this bill. As I mentioned last night, Papahānaumokuākea has been going on for 18 years already. If this is a great thing that is moving forward, I would like to see any kind of scientific knowledge as to how this is helping the people. As I said last night, if this was for the Hawaiian people, then the expansion in 2016 should have went all the way 200 miles wide by 1,200 miles long, but it went 200 miles wide and almost 1,200 miles long due to some kind of lobbying going on in the system. So there's a lot of dispute between Hawaiian people and what is right and what is wrong, which is wrong together because on our dollar bill it says, "United we stand, divided we fall." We're in a very divided community right now. I support the people of the community. I support all my Hawaiian people. But I also support fishing. And fishing is a culture that is huge here in Hawai'i. I think that these things should be seriously looked over again, because fishing, fishermen in particular, is a very part of this community, this ecosystem. We are in charge. We are the guys who are the gate men. We are the people who take care of this ocean. A lot of light has been shared as far as negativity goes, but a lot of it is due to foreign countries. We as the Hawaiian people already are low in numbers, fishermen even more lower. So as I said in scientists, everyone looks at numbers. Look at how much fishermen. Look at how much activity. Look at how much participation has been taking since 2002 to now, only short 24 years, and as the years go by, we

get less and less. So I beg everyone who is listening, I beg everyone who is a part of this to really think about what you're trying to say because if you look at the whole spectrum, we're losing... We lost 80 to 90% of the whole Hawaiian Archipelago already. What makes you think that they're not going to take the rest? Okay. I'm not in opposition for everybody. I love everybody, but we really need to think about this. If we really care about the Hawaiian people, if we really care about our community, if we really, really care about what is going on here in this world, we should really take a second look at this and see. Like I said, if there's no scientific evidence showing that this monument is producing more fish in order for our fishermen to populate the islands down here or if it's producing more turtles or whatever it said in the original proposal back in 2006. There's got to be a sunset date. I believe, this is just my opinion, but I believe we have reached where the turtles are very, very extremely healthy. If you don't believe me, go to any beach right now in Kaua'i and count how many turtles you see. Same with the monk seals. I love everybody. Please think about this. I am in strong opposition of this bill, and I would like this thing abolished if possible when if no scientific evidence can come from what has happened in the last 18 years. Thank you guys. Aloha [Goodbye].

Līhu'e Public Hearing

Location: Elsie H. Wilcox Elementary School, 4319 Hardy Street, Līhu'e, HI 96766

Date: April 13, 2024

Time: 9 AM

Molly Lutcavage

I want to thank you all for coming and giving us a chance to speak, and thank you for coming to Hawai'i. My comments will be brief, but obviously I am an oceanographer, and a lab director and founder of the Large Pelagics Lab, and I'm also a scientist and have been on the Wespac SSC for 11 years. I'm very familiar with process and the things you were talking about. And I've also been working with fisheries groups since twenty... I don't know, 12,13. And we work conducting crop research of fishermen. And I think very few of us have the opportunity, as scientists, to learn and understand the true culture and the authority and knowledge of our fishers and fishermen here, and their important role that they play in providing food security, cultural. And from my experience working both on the mainland on American [inaudible] and working here in Hawai'i, which is pretty cool. It's really stunning to me and to many that Hawai'i has yet to really listen and pay attention to the needs of our fishermen and fleets, and to promote their economic, cultural and basically their needs to feed us, to support our culture. In this state, they're not recognized on the same level as agriculture as they are in many, many other states, and we have the highest per capital consumption of seafood in the United States. If I have a minute in my role, not as an expert on tuna, I've primarily spent with fishermen, on ahi and large pelagics, and as a former sea turtle ecologist for many years, protective of resources, I hope that the state working together with NOAA, can bring our fishermen and their knowledge up to where they belong. And secondly, the values that I've learned since 1967... '77. I'm not that old, working with fishermen, they bring the best questions as sentinels of the ocean, to us scientists and the regulators, and without those questions and knowledge of what our resources, ahi, sea turtles, too could have remained hidden. I deeply respect our fishermen because they are as savvy as any of us well-trained scientists could be. Their knowledge is absolutely and important

and needs to be raised to attention in the state of Hawai‘i. And as far as sanctuaries and all the other management issues that we've all dealt with it's an energy in the scientists and access to, fishermen are extremely important and should be raised in their, being sensitive, they're full honesty is extremely important. And I will just have to put in that, I would say we all know the levels of the administration, no action would be my recommendation based on my involvement with the sea science knowledge of the science of what's being done now, and how much work you all have to do to handle what you got now, and how much more support we need from research to understand the resources in the islands. Not just to protect the species, but the fish that it feeds on. So thank you for listening and thank you for your time. Thank you for coming and I will submit all your comments in writing. Thanks again.

Presley Wann

Aloha [Hello]. My name is Presley Wann. I'm here as an individual [inaudible]. I'm retired. I'm currently very involved in communities especially on the north shore, Hā‘ena, Hanalei. I am here in support everyone. For several reasons. My family, I have genealogical leading of descendant of Hā‘ena, the Nā Pali Coast, and Nīhoa. My great-grandfather had a sailing canoe on the beach in front of our Kuleana Land in Hā‘ena. Was in 1947, when the retirement took his state income. He couldn't fish. He couldn't nothing. So that's my connection. I just want to make a comment on we have to get to these points of how we call an extreme action, because we've lost our konohiki system. The only time we have kapu [taboo or prohibition], is when things are extremely bad, mismanaged. So we're in this place right now, where we have to do something very drastic. I have an opportunity in 2014 to go and visit and got to see how things can be if we just take care of it. I just think that the importance of everything, the whole ecosystem, especially our birds, and protecting them because they were so important. As the the whole, and to the Hawaiians. Papahānaumokuākea is very... It's like our church. And so we got so many things to protect. And of course the birds are really important to be taken care of. They were our fish finders. They showed us our way home, when we were close to home, and when we were far away from home. So these kinds of things are really important. You don't think it's inter-related until you've there and you can see, the relationship of everything on the land and the ocean. So I guess, I think it's important to... A friend told me one time, he said, "The answers to the past..." I mean, "The answers to the future are in the past." So I think we got to go back and really, priority should be culture and traditional practices. And protecting that place that's worth taking care of, so, mahalo [thank you].

Kupono Haituka

Aloha [Hello]. My name is Kupono Haituka. I just also have a question for you guys based on that one slide where we talked about military exemption. For the practices or whatever like that. Law enforcement. And I just kind of want to know, what does that mean exactly. If they were like "You know, we go to bombing practice." Does that make an exemption for them to go out there and conduct those exercises? Okay. That was just my main question. Just like what uncle was saying before this, if you go to these places, to Hā‘ena, Nīhoa, [inaudible] you can see kind of what proper conservation does, and it's for everybody. And how everybody else can benefit from this. You know, Kaua‘i moku [island] definitely benefits from the hana [work] of Ha‘ena, who work to visibly better and manage that area themselves. And even like Ka‘awa and Nā Pali, it's a house up there, and that is just, we all benefit from that. And same thing with Nīhoa. When

you talk about ‘āina momona [fruitful land], that's what you think of when you go there and you see it first-hand. Each trip. It's more than you can ever imagine. More than maybe you've ever seen in your life. And so being that closed system, [inaudible]. And even with modern science, and with kānaka science, I think this monument is really a place where we can actually see those two worlds coming together. And there's a lot of talk currently about those three coming together, we don't see the action as much, but I think Papahānaumokuākea can be a pretty prime example of that. [inaudible] science in Hawai'i. That's all. Mahalo [Thank you].

Hilo Public Hearing

Location: Mokupāpapa Discovery Center, 76 Kamehameha Ave, Hilo, Hawai'i 96720

Date: April 15, 2024

Time: 5 PM

Craig Severance

Okay. First, I'd like to recognize the ‘āina [land] and thank you all for this opportunity. Second, I'd like to say that my testimony is going to be in favor of moving toward a sanctuary, but in favor of option two and in favor of keeping fishing available commercially in the monument extension area, and then I'll explain why. This proposal really has the advantage of requiring, under three major pieces of congressional legislation, comprehensive social and economic and cultural impact assessment, something that the monument designation circumvents and avoids. That's the primary reason I support moving toward a sanctuary because a sanctuary has a much broader public process, much broader public impact, and gives fishermen a voice. For the record, I should say that I'm a retired fisheries anthropologist from UH Hilo. I do serve the Western Pacific Fishery Management Council on three committees, but I'm speaking for myself as a licensed commercial fisherman. Too old to fish anymore, but still someone who cares about fishermen, their families, and the fishing community, and the cumulative impacts of further prohibitions on commercial fishing. To me, this is part of a large-scale movement that is popular, but isn't as well-supported by the scientific literature as some people might argue. Let me speak first to the economic impacts that have been looked at already of the closure to commercial fishing in the monument expansion area. There are two papers that have gotten a lot of press. One by Linum and others, which suggests that there hasn't been a major impact on long-line fishing for that closed area in terms of the total percentage of the catch that would be excluded. That particular paper was funded by Pew Foundation. The second by Chan et al came out of the Pacific Islands Fisheries Science Center. That one, while the percentage of loss-in-catch is relatively low, the cumulative impacts through the fisheries system, and by this I mean a fishery system that includes the processing, marketing, and ultimately the consumer, which is all of us, does have a potential cumulative impact. Again, there is some recent scientific literature in refereed journals that calls into question the assumed benefits of large-scale blue water marine-protected areas because pelagic fish move. It may also be that heavier fishing right on the edge has more of an impact on the stocks, and even large-scale MPAs have not really demonstrated a significant benefit to the stocks if you follow that literature instead of other literature. I would suggest that everybody make judgments about this literature to see which of the literature is more advocacy-driven and which is more empirically based. That said, I would also support Hawaiian permits for sustenance and subsistence fishing. I would humbly suggest

that you all reconsider the possibility of customary exchange as a way of some cost recovery, but no profit in the commercial sense, for fishing in the monument expansion area should something other than option 2 that would allow continuing of the current fishing in that area be allowed. Thank you.

Roxane Keli‘ikipikāneokolohaka

Aloha kākou [Hello everyone]. I provide this written comment as an individual in support of National Marine Sanctuary designation. My comments are based on knowledge and practice through my lived experiences as a Kia‘i Loko [fishpond caretaker] for over 20 years, a Kia‘i Kanaloa [ocean caretaker, ocean species caretaker] of over 15 years, and as a marine biologist. The EIS describes globally significant cultural, biological, and ecological function of Papahānaumokuākea. Also identifies ongoing and on-the-horizon threats and impacts that have the real potential to irreversibly change the function of this sacred place. Hence, the need for this kind of intervention on its behalf, and on the behalf of the broader realm of Kanaloanuiākea [the vast ocean], through sanctuary designation. It's crucial to frame all considerations and our decision-making in a way that is reflective of the function and intention of Papahānaumokuākea. Our thinking should be more on loko i‘a [fishponds] than ko‘a [coral, coral reef]. If we think of Papahānaumokuākea as a larger-scale loko i‘a [fishpond] that if nurtured to reach its highest potential will eventually contribute greatly to the restocking and rebalancing of the larger Kanaloanuiākea [the vast ocean], then that is what we acknowledge as an akua [divine] function. Some may be looking to Papahānaumokuākea as a ko‘a [coral, coral reef] where we're extracting, where they can go beyond the waters that have been depleted to the momona [fertility] of another space but have no collective intentions to feed that ko‘a [coral, coral reef] in alignment with that cultural practice. In either practice, the akua [divine] must be given the extensive time and space to do what they do without the short-sighted and extractive intentions of man. In that framing, I support the prohibited and otherwise regulated activities, particularly fishing. I am concerned about exemptions and exceptions related to non-commercial fishing as I do not see effective monitoring and oversight practices. Unless there is an extraordinary amount of funding for 24-hour surveillance, monitoring, etc., you cannot catch everything that is happening up there. I do not support the reference to the cultural practice of customary exchange as it is written in some of the testimony from Wespac. That's an inaccurate use of that practice. My major concerns regarding sanctuary designation lies within NOAA and ONMS's capacity to adequately serve as kia‘i in this space in its current state. There is a huge lack of equity within ONMS when it comes to the knowledge and rights of indigenous people. There is no authority over permitting. Inside of the Hawaiian cultural working group must be the authoritative voice in approving any kinds of permanence. There need permits. There needs to be permanent FTEs, specifically higher Hawaiians who have the appropriate and credible knowledge, skills, and experience to ensure the actualization of the Hawaiian cultural objectives and strategies listed here. SACs lack the necessary authority to oversee decision-making and implementation processes. Lastly, Kanaloa [ocean, ocean species] consciousness is what needs to be activated in this decision-making and implementation processes. Thinking that is long and deep, not short and shallow, which is easy. Contemplation that requires the examination of the interconnectedness of multiple factors. A lens that is reflected with the original and most effective stewards of the space, a Hawaiian lens. Intentions that place the Kanaloa [ocean, ocean

species], the element in the center of all thought and action, not man. Ola i ke au a Kanaloa [May we live on by the currents of the sea]!

Rikki Torres-Pestana

I want to accuse you guys of being contractors, conscripting genocide against the whole people in our country, our nation. We are a nation of people. We have a country. You follow us over here, conscripting genocide right now. Everybody who signed paper with you fellows is collaborating with genocide. We have a country here. How many people are here? Your kūpuna [ancestors] when sign the Kū‘ē Petition. They're with us right now. All our ‘uhane [spirits of the past]. I never come to talk to these guys. They know they're the crooks. NOAA, it's all military. I was navy special forces in 1967 in Vietnam. I know well how the Navy, they come, they no good, they pīlau [rotten], they hewa [wrong], everything they touch. Their track record is proven. Look Pearl Harbor, our biggest lolo heiau [religious place of worship] in our kingdom. Look at it. It's most polluted. What they leave, they talk about picking up pollution, and what is the ship that everybody go look over there? It's been in there how long, leaking oil? The Americans use it as their propaganda, so they can go look at their dead soldiers. All the time, their thing is polluting our most sacred, one of the most sacred, what's the haole [foreign] word, estuaries. Every, Hilo was the most biggest estuary. There's a river in front here called Wailoa. Now the DLNR they want to call Waiākea, Waialoa, a‘ole [no], it's Waiākeakai. Over there is Wailoa. You fellas are committing genocide. You fellas don't belong here. It's embarrassing what you are. It's a crime what you're doing. Our children's future is in great great danger. Braddah Iz put it down well in his song, the Hawaiian people, we are in great danger because you fellas come over here thinking you're Americans. We're not Americans, brother. Wake up. You know the Lahaina fire was sad. I lived in Lahaina about 18 years. I came home eight months before that. That was not a wildfire. Come on, brother. I'm 78 years old. I was born in Honoka‘a. I was raised in Hilo. I used to paddle iron roof canoe all along Waiākea and almost to [inaudible] street. Okay? My Filipino uncles would make me iron roof canoes. I paddled all around here. Abundance of fish. Abundance of fish. Now the papio in Hilo get one look like one space animal with all the feet and the teeth. They find it in the mouth of the pāpio in Hilo Bay, and you're going to tell me you're going to propose something that you're going to take care of. Come on, stop lying to the world. International law is coming. International law is here. You'd be surprised how many international lawyers are biting at the bit to come help us. It's coming. It's coming. We are getting back our nation. We are getting back our kingdom. Kō Hawai‘i Pae ‘Āina, Hawaiian Island Kingdom. You guys are kanakas [Hawaiian people], go study Kamehameha III. He's the man. He's more sacred than Gandhi, what he wrote in kanaka ‘ōlelo [the language of the Hawaiian people] and to translate it in English, we lose the sacredness of what he wrote. I carry around an English version of the copy with me like a Bible. We had to go to India and make copies. No one in America wanted to touch, us making a copy of that. We are getting some more copies and we are getting paperback copies and we're spreading it to all the people, especially our young mo‘opunas, because they're not Americans. Look at you guys. Look at your guys' behavior. You no shame? You guys can go home and sleep at night? Auē nō ho‘i ē [Goodness]. Enough already. You are [inaudible]. International law is coming. This is a heads-up. I live on a sailboat right there at Waiākea River. I came home three years ago from Maui about eight months before that fire. I thought I was going to California or O‘ahu to find a boat to do exactly what I'm doing. There it was right there for me. Akua [God] went bless us and more and more of

us on every island are going to take care of our oceans our way. I've got [inaudible]. I've been appointed as the harbor master here in Big Island. Three months ago, DLNR came up to me, notified me I had 72 hours to move the boat or they're going to come in. Their record here, they destroy everything. They destroy boats and I'm still here three months later because I called up Michael, our prime minister, and he called the head of DLNR and he got it on the phone verbally. They will not never touch any vessel that's registered in the Hawaiian Kingdom. We are coming. Every island is going have. We're having a fleet, a fishing fleet first. Fishermen had more power than the ali'i. Fishermen. Nobody could even surf it. You don't surf it. Cost of you folks have no clue, but you fellas doing. We going pray for you fellas. You need it because you're collaborating with genocide. America, look at what's happening to America. The empire is falling. War is coming. Prepare us Vietnam vets. Wow, you'd be surprised. I'm a warrior of peace, but don't ever question my ability to understand war. Don't ever. As Vietnam vets, we're ready. I don't want to be under Chinese. They're more worse than Americans. Under laws of war, the American military will be here to assist us. I want the druggies out of here. I want all the people who's abusing our children and kidnapping our children. You Americans, military are going to assist me in my, our... What we are doing? We're going to clean up what mess America has been doing to our country for too long. Ola nā kanaka i ko 'olua aloha [May the Hawaiian people live on by your love]!

John Broward

Thank you for the opportunity to speak to you today. First of all, I want to start off by saying that I'm going to support the Marine Sanctuary... Sorry, got a call [inaudible]... About a year ago I retired from National Park Service. I spent about 40 years in National Park Service. A couple of things I learned to appreciate during that time was the need to protect these areas for future generations and even places I'll never see. It gives me peace of mind knowing that they're protected. I might not ever get up to Northwest Hawaiian Islands, but knowing that they're protected will give me my family peace of mind. I'm a father of an 18-year-old and I want to make sure there's something left for her and other generations in the future. I also learned that these areas aren't always completely protected because there's always confusions of all kinds of activities that do destruction. I appreciate the fact that they're protected, but it's also important to have continued monitoring and law enforcement and those kinds of things to protect these areas completely. The other thing I learned during that time is that when we had visionaries look at these areas to protect them for future generations, people a hundred years ago started thinking about this as far as land resources and how important it was. These visionaries were able to establish these areas, so I appreciate what NOAA is doing. I appreciate what you guys are doing and what anybody involved moving forward with this. In summary, I just want to say that I go on record that I support it, and I support Alternative 1. Thank you.

Jamie Barlow

Hello, folks. First off, appreciate each of you for listening and for the audience and the comments I've heard today and throughout the week. I have like five comments in three minutes, so I probably won't get there, but I'll try. I'll start with one way, way down in the weeds for consideration, which is anchoring from a vessel safety perspective. I realize this is a sanctuary's designation. We're talking about anchoring in shallow waters, which is a monument thing. I didn't have a chance to capture that, but I at least want to offer that there are times

where anchoring is absolutely necessary from a vessel safety standpoint. I've certainly been in situations where I've been in big water, engine overheated, and I've needed a place to anchor. Because these are the Leeward Islands coming home may not be a viable option. A place where a vessel can anchor that's pre-designated. For example, north or south of La Perouse, in 60-80 feet of water. It's pre-designated. There's no dead coral. It's rubble, and it's identified. Let me back up and mention that I'm going to say that these are comments for myself as just an engaged citizen. I just want to make sure that I'm just speaking for myself here. And then I just want to offer that that could allow a potential vessel that's in an offshore environment, have safety, and then be able to be there. With that idea, I also want to propose a solution, which could be that they have to contact the Coast Guard. They're going to be willing to pay a \$2,000 fee of some kind, so they're not going to violate it. It's just like, "I'm really up a creek. I really need to anchor. I will not let my crew go offshore and find glass balls or do anything else. I'll be there for eight days. A body will tow me home." I just want to offer that for consideration. Now with the limited time I have left, I support and promote your guys' judgment and a sanctuary's designation. I realize that one thing I want to offer is for more collaboration with maybe NESDIS and State Department for satellites as a continuing collaboration for just general satellite usage for management. I'm not going to dive into too deep about whether we can commercially fish in those regions, but I do support commercial fishing. The long line fishery here in Hawai'i is head and shoulders better than I would offer than the other areas in the other countries. I would rather see American jobs being promoted and decently managed, of course we can improve, because I think that's important from a sustainability perspective, labor practices and everything else. I support the possibility of fishing if it could be allowed in those offshore environments. Thank you. Aloha [Goodbye].

Mahina Kapulani

Aloha kākou [Hello everyone]. My name is Mahina Kapulani, born and raised in the south [inaudible] for many moons, many years. All I ask that whatever you guys do is that you include the kanaka [Hawaiian people whenever you make decisions. You got to include the local people, the people of this 'āina [land]. I see far too many marine sanctuaries created to keep out the Hawaiians, and it is a law that you must provide sustainability for the kanaka [Hawaiian people]. It's not only in certain areas. It's everywhere in the 'āina [land] and the ocean. Just remember that, okay? Everything is equal. Now, we're going to make sanctuaries to keep the rich people in this area, keep the Hawaiians out. I see it every day. I'm staying in Kingsland at the hotel, and I go fishing with my family, and they're trying to kick us off the beach. I said, "I'm staying at the hotel. Not only that, I have fishing and hunting rights on this island." So whatever you guys do, you got to talk to the Hawaiian people. You got to talk to the locals. Don't keep us out. All you going to do is, like brother said, you're going to create war. One day, the kanaka [Hawaiian people] are going stand up and they're going to use force. It ain't going to be a good thing because they're going to come strong. They're going to come to the last blood, to the last Hawaiians alive. So I'm telling you right now, as a veteran myself, the veterans are ready. The veterans in Keaukaha and Pana'ewa are ready. They're only going to take so much, and they're going to come with force. Might be blood on blood, we might be taking our own people out, but they're just tired of it. We should have seen from TMT that the Hawaiian people are just tired of it. Give us back what we need to survive. If you're going to start taking away land, take away ocean, take away coastline, sooner or later the bubble will burst, and we're going to have

bloodshed unfortunately. A lot of us veterans are ready and we're not scared. You know what I mean? Might be family against family, but that's just the way it's got to be. Right is right. Don't forget the kanaka [Hawaiian people] whenever you make decisions. That's all I ask for. Mahalo [Thank you]. Thank you.

Kahalu‘u Kona Public Hearing

Location: Kamehameha Schools - Kahalu‘u Makai Site, 78-6780 Ali‘i Drive, Kailua-Kona, Hawai‘i 96740

Date: April 16, 2024

Time: 5 PM

Isaac “Paka” Harp

My name is Isaac Harp. I was author of the draft plan that led to the coral reef ecosystem reserve designation in 2000, and I was real disappointed in the mid-2000s when NOAA started grant protections, and the proposed sanctuary at that time. I hope that's not the case now. The Northwest Hawaiian Islands are not for sale, commercial gain, or fishing. Regulations of penalty schedule and strong enforcement for the existing reserve and monument must be provided for now. This has been in place for 20 years. Where are the regulations and the enforcement? That's ridiculous. Now we're going into monument and it's not even designated and you're already drafting a monument management plan. I need to let the Congress order NOAA to designate or to initiate the process. Just two very different things. The expansion area protection should be strengthened to at a minimum be consistent with the state refuge regulation, the strongest regulations out there. Stronger than the Monument. All activities should be automatically prohibited rather than automatically allowed unless specifically prohibited or ruled then prohibition must apply to everyone including NOAA. No exemptions should be allowed. Will commercial, subsistence, real subsistence or fake Wespac subsistence, or recreational fishing should be allowed. The hearing must be held on all permit applications. No more secretive permit applications and approvals behind closed doors. The people should be able to know. Transparency is something that we need and there must be a permanent record of all permits issued. An independent cumulative impact assessment or permits must be a part of the permanent record. And I request to implement AIS vessel monitoring and satellite vessel monitoring for enforcement now. AIS preferable over BMS. AIS is publicly accessible and it's also a safety measure. It was designed for vessel collision avoidance. And I hope that somehow the existing co-management structure can be maintained. I think OHA should be an integral part of this. And last but not least, federal funding. The majority, all of it is going to NOAA. I think it should be equally distributed amongst the four trustees, at least at the monument level. Thank you for your time.

Claire Iloprizi

If I'm over, don't turn the thing on in. If I'm over three minutes, it's just going to be another second. I've tried to do it. For the record, I'm speaking from the American Declaration on the rights of Indigenous peoples, article six, indigenous spirituality. Number three, indigenous people have the right to preserve, protect and access their sacred sites. [Inaudible]. I am an indigenous practitioner helping babies be born, over 1500 of them. I'm an expert on sonar for

over the last 50 years. Our ancestors come from the ke kai [the ocean]. Papahānaumokuākea is the largest conservation. Why isn't the Hawaiian flag flying instead of the American flag? The queen never went to war and never signed a treaty. Show some respect. On page one, it states that the most significant threats to the monument rise from habitants and human activities beyond its borders. The EIS violations are stated on pages 120 to 124 on section 4.6.2, US Navy still conducts a few of their tests and training exercises within the southeast portion of the monument, with the potential impacts and mitigation number measures associated in the EIS. Why does the US military do that? Why are they still doing sonar? Marine biologists and environmental lawyers proved over and over again that the navy sonar activities harm more than 60 separate populations of nā 'ohana o Kanaloa [the families/species of the ocean], whales, dolphins, seals, and sea lions amongst all life in ke kai [the ocean], many are tagged and vaccinated. If a whale or dolphin can't hear, it can't survive, said David Henkin in the Earthjustice Trials. Now I was part of those too in 2005. Sonar severely damages the mammals' brains and ears and causing them to destroy themselves. Auditory structure damage was found in the four beached whales, especially bloody effusions and hemorrhage near and around the ears. This is shown worldwide since 2005. Whales and dolphins need their sonar ability to dive down and to find mating partners birth finding their way, sonar is comprising the way that they breed. I will talk to you about birth [inaudible] later. I'm deeply aware most of them that go down to birth are dying. I am deeply aware of how their brains burst before they go down to birth. Sadly, most of them do before they can birth. A temporary injunction was obtained with the navy from using sonar in 2005. However, the Pentagon mounted a campaign to gain military exemption. You guys got exemption all over this. Pisses me off. From all the environmental controls that overturned cases that were won to stop harming our iwi kūpuna [bones of our ancestors]. The Navy stated it can meet its training and testing needs at the same time provide significant protection for whales and dolphins by limiting the use of sonar and explosives. There's no limiting of it. President Eisenhower in '61 warned the public of the nation's increasing powerful military industrial complex and the threat to pose to American democracy. Today the US routinely outspends every other country for the DOD. The US authorized just this year 842.4 billion dollars for the DOD. Where is the accountability of the military industrial complex? Sonar is not safe. Wars are not safe. RIMPAC games are not safe. Wars now are started from a computer. It's a pushing. It's just sonar and it's drones. So why are we even doing all these RIMPACs? US military NOAA is not welcome in our islands with such a violent past and capable of protecting and guarding our lands and waters surrounding Papahānaumokuākea. We as indigenous people have the right to Papahānaumokuākea for our physical, mental and spiritual health. Our kai [ocean], our iwi kūpuna [bones of our ancestors] worldwide are kapu [sacred]. Mahalo [Thank you] for your time.

Nalani Merrill

Hello. Mahalo for all that you have done and all your work and for coming here and for sharing with us. I'm trying to figure out what it is you want from us or... I'm not real good at reading everything online and I really appreciate the way you presented the information. Of the three versions, it seems to me the first, which is very inclusive, more so inclusive of everything. For me personally, that seems like the better choice, to be more inclusive. Ideally it will bring kālā, money, we need for that protection. Saying that it's protected and actually being protected are kind of two different things. Ideally NOAA has, I would assume, the capability of going for grant

monies and things because congress will only provide so much, and there's a phenomenal amount of grant money out there for these kinds of things, if you have people that are grant writers. I love the way that what the scientists find out is shared with the group ideally in some kind of an accessible form so that our youth, who are coming up in droves. It's really exciting that they can pursue careers in this field and something that they care about. We've all cared about it but the steps are very slow in moving. Protecting our islands has been a struggle for a long time and trying to get back reclaiming in a sense. But this is a wonderful project that ideally will enhance things in the future. It already has and I'd like to thank you and I could quit looking at that clock. But thank you everyone for all.

Jason Helyer

Thank you. Hello, my name's Jason Helyer. I am representing my personal views today. I would like to offer support for the option two. And the reason why I favor option two is because a lot of marine management and spatial marine management has kind of turned it towards these really broad decision making and I think we could learn or we could reevaluate things and be specific about what we would like to protect and converse with stakeholders and have a better... I don't want to say better, but maybe a different outcome. And option two would allow that for the area, is 50 miles to the EEZ. Thank you.

Lynn Ryan

I wanted to show up and learn and thank you for being here. Too bad the address was not clear and I started out at the Keauhou Shopping Center and ended up here, which is nice to be on this property. It's some place I'm actually allowed to be, mostly. Alternative 1 has a larger area but I haven't looked at a lot of the details of any of this. But I appreciate any protection overlay that you all can offer to the plants and animals on the islands. And I have a great concern about the sonar activity in the ocean in the area and near the area, recognizing that it does great damage to our aquatic friends. And I will come up with some written comments that I wanted to enter in as one of the counted who's here to witness this. Thank you.

Rick Gaffney

Aloha [Hello]. I'm here to speak in favor of alternative 1. I come at this in recognition of the more than a hundred years of effort that has gone into protecting the Northwest Hawaiian Islands. I have the unique, maybe in this room, in my life opportunity to have been and visited and seen many of these islands personally. And I have been actively involved in the protection of these islands as a member of the Reserve Advisory Committee Council for over 20 years. But to me this is the culmination of that hundred years of effort to protect this place. President Roosevelt started... Teddy Roosevelt started nearly a hundred years ago protecting the seabirds in the Northwest Hawaiian Islands because milliners were taking their feathers in such heavy numbers and their eggs in such heavy numbers that populations of seabirds that are so important to the ecosystem of the Pacific Ocean were being decimated. And that was a start. So what I see in the DEIS and the proposal to overlay a national marine sanctuary is the next step in this long history of very necessary protections. This place is unique on the planet. It is one of the most isolated, if not the most isolated series of islands in any ocean on the world. And the amount of endemism that happens, that exists in the Northwest Hawaiian Islands is really overwhelming when you realize the divers in the deep of Kure Island recognize that a hundred

percent of the animals that they're looking at are unique to this place. When you understand that, you understand why this place needs to be protected. The world's oceans are under greater stress than they've ever been in history. Climate change is real. Deep sea mining is coming and the oceans need protected areas. Scientists around the world say 30% of the oceans, that's probably not enough in my mind. But this protection, these added protections, these cementing of protections that in many cases have existed for a century is absolutely essential to assure the future of this place. And it's a place that's worthy of protection. And I will provide written comments later on. Thank you very much.

Zahz HewLen

Aloha kākou [Hello everyone]. My name is Zas Hulen and I actually wasn't planning on testifying today mostly because I came not really knowing too much about Papahānaumokuākea. And I don't know if that's just because I went to Kealahou High School or what, but there's just such mystery about it and that's worrisome to me. And I guess out of the options that were presented, I'd be for alternative 1. I testify in support of that, but I am worried about the amount of permitted uses and exemptions that exist in what we've seen today, especially related to the military. So I would like to see transparency in all the permits that are issued. I don't know if that's already public record and people can see that, but that definitely needs to be something that needs to be out there in the open. And then I'd like to see as one of your values is education, really being in schools and educating just the public and having easy access to that about everything that goes on in the archipelago. And again, my name is Zas Hulen. I come from the ahupua'a [land division] Wai'aha and I'm running for county council, district seven. And a huge part of me coming here today is because we have serious ocean protections that need to be in place from our shores right here off of Kona all the way through the archipelago, protected from deep sea mining, commercial fishing, and the military. Thank you. Mahalo [Thank you].

Isaac "Paka" Harp

Mahalo [Thank you] for a second opportunity. Mine is just a brief one. Middle Bank is where the little hot dog thing looks like sitting on the side. And the Kona fisherman, they fish that area and sometimes the fish move to different areas of the bank and the fisherman needs to move around to find the fish. So I would request that the entire Middle Bank be cut out of the reserve area or the monument. The fishermen don't unintentionally cross the border and get busted and fined and everything. It's hard enough to survive as a fisherman as it is. I have experienced with that myself. So I hope we can find some way to at least accommodate that small area. So I believe the protected area covers about a third of Middle Bank and I would like to request that that section be open for the Hawai'i fishermen or any fishermen. I guess we cannot designate what fishermen can in go the area, so just open that section for the fishermen. Mahalo [Thank you].

Claire Iloprizi

So I have some major questions. I do want to start with how a whale comes up to the top of the surface. First of all, they've been here for 15 million years. The manō [sharks] have been here for 450 million years. Their heartbeat, the manō's [sharks], is every three seconds. The koholā's [whales] is every six. Ours as a baby is 120 to 160. I've been helping plenty babies for... Like I said, that's my life. So when I look at the kanaloa [ocean, ocean species], they come to the top of

the water and they have to gather the hā [breath]. They have to just gather and gather. They got to go all the way down. I went to section 106 meeting with the military. They wanted us to tell them, well, where are the heiaus [sacred places of worship] down there? And we're like, what? So you can bomb them? I guess that's what sonar is all about. And I think that too, that in all of the things that you guys are talking about, it's like what about the privacy? I understand that teachers want to teach and they want their kids, but how many people do you have in the room when you're making love? Those kinds of concepts, when you go to the bathroom, this is really private. These ancestors have been here for a lot longer than us. So as they dive down, that's when that sonar hits them and it just splits [inaudible] plenty of people and scientists and I teach them work worldwide. So I want to know. I have a love for these animals, as I think all of us do. And all kanaloa [ocean, ocean species]. They're all deeply affected. Why do we trust the military to be part and NOAA? NOAA is a branch. What is it? Who started NOAA? CIA? I keep hearing things, but it's definitely connected. I Googled it enough to know, same pace, saying this. And I've been in NOAA trials. What did they want? They wanted the iwi [bones] of that koholā [whale], that white whale. For what? The DNA? So I look at them, why do you think that we can trust them? We win lawsuits. They say they're not going to do the RIMPAC. They're bombing and bombing up on our mountain. They're bombing in our seas. I go to every committee. Everything I testify in, why do you think that we can do it? And why don't we go into ho'oponopono [time of correction, making things right]? Why don't we go and talk to the people, to the indigenous people here to talk about... And then the practitioners about these things. Why do we think that we can actually trust them? We need some answers because sonar is sonar, low frequency, high frequency. It's parasympathetic, sympathetic. It's war or it's love. So you guys all talk about peace and love and we love our islands. Then why are you allowing these guys in here again? So these are some of the questions that I think that should be on here and that should be answered. And who's going to hold them accountable? Because in those lawsuits with your justice, we won. We won and we won and we won and then we won all around the world. Did they ever stop bombing? No. Have they ever stopped bombing our iwi [bones]? The whole graveyard of all this. We cannot rest until our iwi [bones] have been respected. So we need some answers, we need some truth. Mahalo [Thank you] for you guys too.

Kahului Public Hearing

Location: Maui College Pā'ina Dining Room, 310 W. Ka'ahumanu Avenue, Kahului, Hawai'i 96732

Date: April 17, 2024

Time: 5 PM

Kekuewa Kikiloi

Aloha mai kākou [Hello and welcome everyone]. My name is Kekuewa Kikiloi. Today I speak on behalf of the Hui Manamana, our leadership team for the Papahānaumokuākea Native Hawaiian Cultural Working Group, or what is called the CWG. Our group is comprised of native Hawaiian activists, scholars, cultural practitioners, educators, and marine advocates who have more than a twenty-year history of helping to protect this culturally significant region. Many of us have historical family ties or have first-hand knowledge of visiting these ancestral islands of our homeland. I'm sharing today that the CWG supports the designation of Papahānaumokuākea as

a National Marine Sanctuary. Specifically we support alternative 1, the preferred alternative, which would designate boundaries that are aligned with the existing monument. The alternative includes the deep water resources of the monument expansion area, including seamounts supporting rare oases of life in this primarily pelagic and deep ocean environment. We're doing oral testimony today, but we'll also be submitting written comments as well. And that will give more detail. We appreciate that the proposed plan is influenced by Mai Ka Pō Mai that was built by the native Hawaiian community and represents our vision of how we should take care of this space. It shows a clear message of support of our progress as a native Hawaiian community and our relations to the federal government. The proposed sanctuary acknowledges past advocacy and discusses amongst a wide group of people from fishers to Hawaiians and conservationists during the monument expansion effort and does not expand the area's specific boundaries any further than what is already currently in place. We further appreciate that the proposed rule and draft EIS for the proposed sanctuary keeps the existing protections as a baseline. Let's skip down here. The proposed plan provides much clearer regulations and guidance enacting civil penalties for permit and regulatory violations than what is currently available within the monument proclamation alone and imposes liability for damage to sanctuary resources. It also keeps in place the advisory council, which includes native Hawaiian seats. It would not create a permit-free area for research or promote commercial activities to generate profit for NOAA as some have inaccurately claimed. Finally, I just wanted to mention that we are concerned about the industrial fishing interests in this area. Even though commercial fishing is prohibited, we are alarmed at the current proposal from Wespac at the large-scale extraction of fish from this area. And we oppose any sale, barter, trade of large-scale extraction and cost-recovery proposed by Wespac. Since this process is running under a separate process that is not aligned with sanctuary designation, we fully expect NOAA to ensure it has protective regulations that are consistent with the monument proclamations. This includes having a comprehensive EIS on the topic and having an adequate public comment process. Mahalo [Thank you].

Kanoelani Steward

Aloha nui kākou [Great greetings to all]. ‘O wau nō kēia ‘o Kanoelani Steward [I am Kanoelani Steward]. No Lahaina mai au [I am from Lahaina]. He kumu wau ma ke Kula Kaiapuni o Lahaina [I am a teacher at the Hawaiian Immersion school of Lahaina]. I just wanted to give a little kāko‘o piha [full support] to this National Marine Sanctuary designation. I believe it'll just provide an extra layer of protection. I have had the opportunity of going up to Papahānaumokuākea as part of the rock cruise. And because of my experience going up there, and within my capacity as a kumu [teacher] now in the school, I'm able to share what I experienced up there because of the protections that are already in place. And so I kāko‘o [support] alternative 1. Definitely kāko‘o [support] everything that Kekuewa just shared as well and hope to see this come through. Mahalo [Thank you].

Kalama‘ehu Takahashi

Aloha [Hello]. My name is Kalama‘ehu Takahashi. I have come here as a community member who has the opportunity to access Papahānaumokuākea until 2018 to Nīhoa with some of our hoa [friends] to do intertidal surveys, but also had the very unique opportunity also be on Nīhoa and kind of māka‘ika‘i mokupuni ma laila [visit the sites around the island there]. ‘Ike i nā ‘ano wahi like ‘ole a pau ma laila [See all of the many different sites there]. Nui ka mahalo [So

grateful]. And then again in 2021 with OET as their inaugural sort of what you call that. Yeah went in 2021 with OET cruise and stuff like that so we've had the opportunity to go up there. And I just wanted to mahalo [thank]. Mahalo [Thank] you guys for being here, mahalo [thanks] to NOAA and to all of our 'ohana [family, people] that have been putting these protections together. I'm here testifying in support of alternative 1 and more accountability for a lot of the hana [work] that's been permitted and permitted particularly with regards to the commercial activities and stuff like that. Because in the research of certain mo'olelo [stories] from the time of Pele mā [Pele folks, Hawaiian goddess of lava and volcanoes] and stuff like that. We don't talk about we going to go away, we're going to grab all this stuff and bring it all back here. The context of these mo'olelo [stories] is to talk about migrations and our connections to the larger, broader 'ohana [family] of the Pacific. Again, in another instance of the mo'olelo [story] Keanini'ulaokalani, this is a place where we talk about residents and having other older iterations and hanauna [generations] of our kūpuna [ancestors] living in those spaces and having interactions with Hawai'i as a main avenue, or like an alahula [frequented pathway], for us to have the culture evolve as we move down the island chain. But again, no necessarily presence of these extractive practices that are trying to bring some of these resources back into stuff other than to just ho'oulu i'a [grow fish], other than to just grow the population of i'a [fish] within the main Hawaiian Islands through navigation from Hawai'i Island all the way to Papahānaumokuākea and to return. So there's two of the older ones. Not only that one to look at. There was a series of interviews, "Hana Ka Lima, 'Ai Ka Waha" [A collection of historical accounts and oral history interviews with kama'āina residents and fisher-people of lands in the Halele'a-Nāpali region on the island of Kaua'i]. They talked about kūpuna [ancestors like 'anakala [uncle] Eddie who shared that mo'olelo [story] of using Papahānaumokuākea as this opportunity for us to train for voyaging but also to reconnect to our mo'olelo [stories] and to our kūpuna [ancestors] in those areas. And also with other regards to I think it was [inaudible]. Sorry, super informal. But the kine, Kupihea, Kawano Kupihea. They go from Mauiola. They go up there to bring the i'a [fish] back over here, not to harvest and to bring back, but to ho'oulu [grow] through those pilina [connections], through the ho'omana [worship], through that landscape and our connection to those areas to re-solidify these things. Anyways, talking plenty, super Portuguese. Just burning the three minutes. It's nice talking to you guys. I support of alternative 1 and in support of any more measures that hold commercial operators and other sort of people that are looking to do anything other than mālama [protect] our resources and our mo'olelo [stories] up there accountable. Mahalo [Thank you].

Katy Weeks

Mahalo [Thank you] for taking my comments. I'm a volunteer for the Hawaiian Islands Humpback Whale National Marine Sanctuary, but I'm speaking for myself. I'm so excited to support alternative 1. We live part-time in Massachusetts and part-time in Hawai'i, so we understand the Stellwagen Bank is very important as well. And I know that I don't understand everything, and I apologize if I make a mistake in my comments. I did not hear any discussion about protections for our koholā [whales]. And I'm requesting that we consider protections similar to the ones that protect our koholā [whales] in our sanctuary here, such as, for example, during whale season, limiting sonar, limiting speeds, keeping 100 yards from our koholā [whales]. Thank you very much.

Ben Walin

Mahalo [Thank you]. Just a little quick question and actually any questions are going to go through the thing, but my name is Ben Walin. I'm speaking actually on behalf of myself today. I'm a little concerned, actually very concerned about the sustenance and subsistence fishing and the regulations of the permits that are going to be proposed and how that's going to work. Being able to catch fish and bring fish home to your families is critical to our culture. A real quick story... My uncle was a commercial bottom fishing in the French Frigate Shoals. He was a UH Hilo. And he would bring back the bycatch, the fish that they could not sell. And this fish fed three of us for semesters. So this was our main source of protein. Now I know the commercial fishing isn't going to happen, but the ability to be able to bring fish back and to be able to share with our families I think needs to be worked into this somehow. Mahalo [Thank you]. Thank you.

Kekuewa Kikiloi

Yeah, thanks for the opportunity to continue. I'm sorry I had to cut the last one short. I didn't realize three minutes was so short. Anyway, some of the other things that we really like about the sanctuary designation is that it helps to strengthen the durability of the existing protections provided by the monument, which has been threatened by today's uncertain political climate, ensuring added safeguards to last regardless of who becomes president next. The sanctuary would also be eligible for additional public and nonprofit sources of funding that could strengthen the public's appreciation of Papahānaumokuākea and support a more consistent budget for areas such as operations, research, citizen science, education, and emergency response. And then deviating from my written record, I just wanted to add in terms of the commercial fishing... sorry the non-commercial fishing issue. We were the Cultural Working Group... It's not in this testimony, but we were concerned that it being put under the guise of native Hawaiian subsistence fishing, mostly because it allows for the general public to fish and not just native Hawaiians. It's not really a use that is being a privilege given to us or anything like that. We were also very much concerned about the amount of catch, because it's proposing 350,000 pounds of bottom fish and 180,000 pounds of pelagics, which we feel is beyond the scope of subsistence. The other thing that we are also concerned about was the process in which the permits were going to be evaluated. We didn't feel that, I'm not sure if this is part of the Magnuson-Stevens Act or the laws that are associated with all this is supposed to be structured. But NOAA fisheries definitely should be involved, but I really think that the management agencies should have the ability to have final say on this. Because it's a point of value to be able to, if you're the one managing the resource, you have to be able to enforce it, the penalties and stuff like that. And it's not like we can allow someone else to make those decisions for you. We thought that was kind of weird. And then finally, we really want to emphasize that because the processes were separate in terms of the development of the fishing rows and the sanctuary designation, we felt that they should have probably been aligned, if you're trying to increase the trust of the public. But because it's being run differently and it's not aligned now, we do think that it needs to have a separate EIS. That's really important, because fishing is the primary threat of the sanctuary. And it's not being evaluated in the sanctuary designation documents. So, mahalo [thank you].

Alisha Chauhan

Aloha [Hello]. I'm Alisha Chauhan. I'm a consultant mainly for ocean conservation projects here on the islands and water conservation as well. I'm highly in support of the marine protected area, the Papahānaumokuākea. I apologize, I don't know as much yet about the fishing or that component of it, but I would strongly advocate that we recognize the mono is very important as a keystone species in ocean waters. And here on the islands actually we're finding that... And we're starting to work with the fishing community in disposal of fishing line and fishing gear, because that leads to entanglement of marine species and marine animals. So I would want to ask that that be recognized and looked at and ensure that that's all part of this marine protected area as well. That there's stricter regulations and really ensuring and enforcement and really ensuring that this really is a national and global marine protected area to be looked at and that it will be going into consideration with all eyes on this in the future if it is a really great example in a model. So it would go into the whole 30 by 30 protecting 30% of the world's oceans by 2030, which is a UN global and sustainable development goal. So thank you. Sorry if my comments were a little scattered. And I look forward to learning more. And thank you for your support on making this an amazing marine protected area. Mahalo [Thank you].

Skippy Hau

I was actually not going to say anything, but I just... Well, it's been three years now, but I retired from the Division of Aquatic Resources three years ago. My name is Skippy Hau. And I guess what I'd like to bring up, because I don't think people are going to bring things up, I was able to work on the bottom fish surveys in the Northwestern Hawaiian Islands. So I worked in the Honolulu office. And we had commercial fishing boats go up to the Northwestern Hawaiian Islands to fish. One of the things that I was able to do was also to go to Tern Island, and we helped supply the folks that were doing research on Tern Island. One of my concerns is... I'm looking at it now, I guess now I'm retired, so this is from the early '80s. And Tern Island is falling apart. There are all these facilities that were built during the war and the military, and all these things are rusting. The buildings are falling apart, yet I don't really see the military in terms of cleaning up after they've established all these from airways to places where ships can land and things. And so also I guess the turtles are threatened, because they get, caught up in the facilities that haven't been removed. So those are some of the things I think I would like to see more attention being paid to or cleaning up. But also Midway. I think there was contamination of jet fuel on the island. I had wished I could take my brothers and go up and go fishing at Midway, but that never occurred. Because Aloha Airlines basically closed. But I support the sanctuary. And I'm looking now at 50 years later, but I would like to see things cleaned up. Like folks have said, "There's a lot of fishing gear, there's a lot of plastics." And all those things all end up on the islands. And nothing's going unless people go in and clean it up. It's still going to be there. But if you could, but I appreciate it. And thank you.

Thorne Abbott

Hello. My name is Thorne Abbott and speaking on my own behalf. I am on the RAC. I just want to thank NOAA, all the staff for coming over. I know it's a super late night, but we appreciate you coming to Maui and updating us here and respond and talk story a bit. I fully support alternative 1. And my main thing would be to say hurry up and get it done. For that little guy in the back has a place to sail to when he gets older and discover. Thank you. Mahalo [Thank you].

Kalama‘ehu Takahashi

I just wanted to bring up two points that I missed in the last testimony. I think one of them, I was able to review some of the testimonies from that same document “Hana Ka Lima, ‘Ai Ka Waha” [A collection of historical accounts and oral history interviews with kama‘āina residents and fisher-people of lands in the Halele‘a-Nāpali region on the island of Kaua‘i], and in some of those testimonies, one of the kūpuna [ancestors] that I wanted to bring into the space is ‘anakala [uncle] Buzzy Agard. He was one of the kūpuna [ancestors] that got into the conversations early from what I understand. But he was a Native Hawaiian commercial fisherman who saw the impacts and collapse of certain populations within Papahānaumokuākea. And due to his huaka‘i [trip] up there and his experience up there dedicated his hana [work] from there forth to the preservation of these places. I just wanted to offer that little bit of mana‘o [thoughts] about how people, despite what we got to do to survive, we still can base our aloha [love] and our hana [work] off the preservation of the resources. Secondly, I wanted to just talk about that conversation in terms of subsistence. I just want to make it clear. I don't have no problem with nobody trying to feed their family. We all got to do it and stuff like that. But when we talk about subsistence and stuff like that, I mean kind of nice yeah when you just go your place and you go your stuff and you come home and eat. It's nice if you can go holoholo [gather] and you can be home by dinner for eat, right? So we're talking about subsistence and stuff like that. We're talking about locality as well. And I think that an important matrices for us to consider whether these things are things like mo‘okū‘auhau [genealogy] and then kuleana [responsibility] based upon mo‘okū‘auhau [genealogy]. So we're talking about access to these spaces in these areas. Honestly, if they no more kuleana [responsibility], and they no more mo‘okū‘auhau [genealogy]. What is a word that we can use for that? If I was to come to you guys, if I come here in your neighborhood, and I come to your shoreline, you don't know me, and I come eat from your fridge, you won't be too happy. Yeah? I don't know what to call that... But sometimes they call that maha‘oi [impertinent]. Sometimes they call it [inaudible]. But I think that one of the most important things for us to consider in these conversations from here forth is how we are going to mālama [protect] our resources in our localities, in our ahupua‘a [land divisions], in our moku [land districts], however we want to call it, in the geographical area we tied to. And I think that our pilina [connection] and our kuleana [responsibility] should be there first before we decide to go into the realm of the akua [divine] and the realm of these places that historically, culturally demonstrate connectivity to these places. But like I said, to more so inform how we operate within the main Hawaiian islands and stuff. Because if we see how fragile these things are and we see how fragile these ecosystems and resources get in the end, the impacts from cultural environment, not cultural stuff, especially positive impact for the cultural, but extractive industries and stuff like that are damaging and pushing these places and these resources pass a certain threshold. We shouldn't be going more far for try and bring home dinner. I think we should try and mālama [protect] where we can and where we stay. So I just wanted to bring ‘anakala [uncle] back into the space. And mahalo [thank you] again for hearing me for the other three and a half minutes. Mahalo [Thank you].

Kaunakakai Public Hearing

Location: Kūlana ʻŌiwi, 612 Maunaloa Highway, Kaunakakai, Hawaiʻi 96748

Date: April 18, 2024

Time: 5 PM

Gil Kualiʻi

Aloha [Hello]. My name is Gil Kualiʻi. I hail from Moku o Keawe [Island of Keawe, Hawaiʻi Island]. I am a commercial fisherman out of Hilo, have been since my retirement from the US Navy in 2003. Although I may not speak Hawaiian, my language is undisputed. I am providing public testimony this evening in opposition to the sanctuary designation for Papahānaumokuākea. Fishing and gathering from our Hāmākua coastline have always played a tremendous role in my ʻohana's [families] life, being able to partake in our ocean's seasonal bounties responsibly over the years have generational memories ingrained in my poʻo [head]. I can't say that I've ever fished the Northwest Hawaiian Islands, but given opportunity today without hesitation, full speed ahead. I'm skeptical about NOAA's foresight in designating Papahānaumokuākea as a national marine sanctuary, and in their belief that by doing so would be the only option to preserve the area's pristine ecosystem and natural beauty. A beauty that will only be experienced by a select group of scientists, Native Hawaiian cultural practitioners, or those wealthy enough to incur the expenses to traverse the hundreds of miles of open ocean if established. What about the rest of us? The Hawaiians that don't have the financial backing to support such an endeavor? The Hawaiians that can only afford to read about it, read about the cultural significance of the area in a book, in the newspaper, or on TV? Where is the equity and environmental justice in NOAA's pursuit? The sheer distance and trip expense alone would curtail even the most adventurous of captains from even considering such an undertaking. Instead, we have a beautiful museum in Hilo, Mokupāpapa, so that we can see all the work being done by mainland scientists in Papahānaumokuākea. What's wrong with that picture? Hawaiians no can go, but those scientists can. I cannot say that my comments are representative of all fishermen and for all Hawaiians, but here are my thoughts. My first choice is to support no action. When I read your EIS, most of your arguments against no action is that Papahānaumokuākea requires protections that are not enforced in MEA, like protecting the seafloor and the fragile habitat. So, why aren't we pushing to do this under the monument management plan? We no need no sanctuary to do this. We already got a presidential proclamation that made the MEA that protects the seafloor. So, what is the real reason for the sanctuary? Plans for exclusive deep-sea mining, military operations, or fear that Trump will take it all away when you get in office, right Godfrey, like he did in the Atlantic. At least come up and say that to the people. Managing out of fear or use the smoke and mirrors instead of out of necessity is shameful. I will continue.

Walter Ritte

I'm learning a lot about what's going on. What I know is that on the island of Molokaʻi we have two economies. One is the cash economy and the other one is the subsistence. So, the subsistence economy is important for us for survival. So, I like the idea of having some kind of a subsistence use by Hawaiians in the sanctuary. You try to figure out how to bring back the things that we need. We also need to get seeds. So, not only for subsistence uses over there, but maybe

we might need limu, some kind of limu that we're using here in Hawai'i or 'opihi or any of the animals or corals that we're going to need here in Hawai'i. Need to have the opportunity for us to collect those kinds of things in order for us to survive over here. So, I'm listening and trying to figure out the complexities of all of this different people claiming use of this place, and at this point, that's the only reaction that I have right now is to make sure that the subsistence use is for subsistence use. Thank you.

Lori Buchanan

Aloha [Hello]. That three minutes is so intimidating. So, I will come back just to talk about this, the three minutes, but aloha [hello]. My name is Lori Buchanan. I am born and raised resident of Molokai. Today, of this one, I speak on behalf of the expand Papahānaumokuākea Coalition, which I have been a part of since it was founded nearly 10 years ago. Our group is comprised of a diverse network of native Hawaiian culture practitioners, fishers, conservation group scientists, businesses, and more across our Hawaiian pae 'āina [archipelago] and beyond. In 2016, we had more than one million people join us in supporting the expansion of Papahānaumokuākea. I'm sharing today that the Expand Papahānaumokuākea Coalition fully supports the designation of Papahānaumokuākea as a national marine sanctuary. Specifically, we support alternative 1, the preferred alternative which would designate boundaries that are co-extensive with the Papahānaumokuākea National Marine Monument. The preferred alternative acknowledges the past advocacy and discussions among a white group of people during the monument expansion effort. We appreciate that it does not expand the area's specific boundaries any further than what is currently in place. We appreciate that the proposed management plan weaves in Mai Ka Pō Mai, which was informed and created by the native Hawaiian community and our vision for how we care for our precious Papahānaumokuākea. The proposed rule in draft EIS not only keeps existing protections in place as a baseline, but establishes an additional layer of regulations over the existing boundaries of the current marine monument that would maintain and enhance existing protections regarding industrial fishing. We want to be clear that we oppose Wespac's ideas to have large scale fish extraction in Papahānaumokuākea. We also oppose any sale, barter or trade of this large scale extraction and the cost recovery proposed by Wespac for these trips. Because the development of the fishing rules is being run under a separate process, not aligned with sanctuary designation, we expect NOAA to ensure it has protective regulations that are consistent with the monument protections. This includes a supplemental EIS on this topic and having a public comment period for that. On behalf of all of us at Expand Papahānaumokuākea Coalition, we believe that alternative 1 opposes our vision to protect and preserve Papahānaumokuākea to the highest degree possible. Thank you. Laurie Buchanan, and I'll come back for bash you guys about the process we are today. Thank you.

Clayton Ching

I really have very little to add or comment. I thought... because I came here knowing nothing, okay. And then a little time digesting what was done. I feel like this was very well done. For somebody that comes in like me, know nothing, at least I leave knowing something and I think that everything looks good as long as you can keep outside forces from entering in. Because this is for Hawai'i, it's not for China for coming and go fish and utilize, other countries. Keep it Hawaiian, keep it Hawaiian and keep it real, and that's really what I have to say. I think. I mua [Forward]!

Petrisha Alvarez

Aloha [Hello]. I'm Petrisha Alvarez. I am raised on Moloka'i and I am representing the Hawaiian Island Humpback Whale National Marine Sanctuary Advisory Council, as I sit on the Moloka'i seat as an alternate member. Together, as the staff, of the Sanctuary Advisory Council, we represent a number of different and varied community group members including fishing and diving, transportation, cultural and research specialists, including state and federal agencies. We feel that we are in support of the expansion into a sanctuary and value that the National Marine Sanctuary has been proven to enhance protections of the marine environment for the research and provide educational opportunities to communities adjacent to sanctuary boundaries as well as including us. The protection will enhance the... This sanctuary expansion will enhance the protection of the world's most unique and endangered marine ecosystems, and biota. This protection will be very important as there's very critical and ecological importance of Papahānaumokuākea. The health of that archipelago directly affects us here in the main Hawaiian Islands, including the protection of humpback whales and their marine habitat. As a sanctuary advisory council here for the Humpback Whale Sanctuary, we view our sister sanctuaries such as Papahānaumokuākea, as cornerstones of protection in the marine waters around the United States and we're in support. Mahalo [Thank you].

Godfrey Akaka, Jr.

Aloha [Hello]. Godfrey Akaka Jr. representing the Native Hawaiian Gathering Rights Association. I just want to mahalo [thank] everybody for their testimony before me. I see the problem that I get is telling anti-fishing rhetoric that we stay dealing with, not just with the feds but on a state level, and a lot of it is money, money, money. It just comes back to money. And I'm not a commercial fisherman, but I support commercial fishing because I love to eat fish. And that's the question for everybody. If you eat fish, you love to eat fish, where you get your fish from? So, even if I go make tuna sandwich, I go, that's commercial. And the question I would like to have answered maybe later is, has there been an economic impact statement made? In other words, every time you say anti-fishing or shut down commercial fishing, shut down commercial fishing. Who pays for that? Price is us the consumers in the end, yeah? We're going to pay one higher price because how much of it is being imported from outside? So, those things is, I would like that question to be answered. I read a document from NOAA relating to the seals. The baby seals was dying because the apex predators, the sharks and the uluas was overpopulated, never have fish. So, was it overfishing? That's the utopia that would happen that everybody is trying to shut fishing down is this imbalance. The baby seals never have enough. They couldn't compete with the sharks and the uluas, and they was dying off. I support management. I'm not saying that there shouldn't be no rules, I support management, but there's a difference between management and anti-fishing, and what I see is a lot of anti-fishing, and the difference is when you stay making rules and closures when the scientific data doesn't even back that up, or just because that going make me feel good for close um. That doesn't make sense. That's not management. You most likely is doing more harm than good to that ecosystem. So, I have to say that I don't trust government and nobody should trust government. Nobody should trust government. So, I cannot support this. I cannot support this. Mahalo [Thank you].

Gil Kualii

Mahalo [Thank you] board for giving this opportunity again. Again, my name is Gil Kualii, commercial fisherman out of Hilo and continue on the public testimony. Knowing that the sanctuaries are done deal, I would like to suggest that NOAA consider reining in the sanctuary to the existing Papahānaumokuākea Marine National Monument. If maintaining the eastern boundaries of the sanctuary consistent with the monument fulfills the purpose and policies of the NMSA as the EIS says, then why wouldn't maintaining the boundaries to the west follow the same logic? The monument expansion there is deep water. Anything that might be worth protecting is way too deep to be reached by fishermen, maybe miners, but not fishermen. In fact, sanctuaries and fishing can co-exist. All the other national marine monuments in the country allow for fishing in their management plan. So again, the question is why not here? The sanctuary is going to almost double the total area of national marine sanctuaries in the entire United States. What the hell? And the burden of protecting it is going to fall on us, the Hawaiian people. It's a burden because we, as Hawaiians, lose any future opportunities to fish in the Northwest Hawaiian Islands. The only traditional connection we'll have in the waters outside 50 miles is fishing and the spirituality and cultural connection to fishing will be lost because the Hawaiian people were not united in their fight to exercise it. I'm going to repeat this. The Hawaiian people not united. And I'll finish with another dilemma. How do we exercise our rights to fish if we cannot afford to do so? There needs to be a mechanism for Hawaiians to afford to go fishing in the Northwest Hawaiian Islands. And right now the only thing that I see on the table is being able to sell fish to pay for it, not to make money just to pay for a trip. Mahalo [Thank you] for opportunity to provide comment on this issue. I know that this meetings haven't been well attended, probably due to NOAA's covert advertisement efforts and because fishermen feel that it's a done deal already. But it's important because most of those comments you're getting are from people on the mainland and not from the people that this sanctuary will most affect, the Hawaiian people. Mahalo [Thank you].

Lori Buchanan

Aloha [Hello], my name is Lori Buchanan, community advocate. And I'm not representing the first testimony I did right now, but I'm really sad that Moloka'i is the last one you guys list. In the future you should make um the first on the list. And the reason is because we're going to give you feedback that the way you guys have come this evening to present in this hearing is really inappropriate for Moloka'i. This is not how we want to engage. I know it's a public hearing, but it also should be a time for education and outreach, and the way you set up like this is typical of the federal government, and it's not helpful for us. The way we relate to Moloka'i is to sit in a public meeting and we listen to what everybody has to say and we ask questions and then that's how we learn. So, I just letting you guys know that I found this to be really not helpful for me. Also, when you were talking because of the complexity of the situation, I wish you had talked slower and louder, actually went point by point because as you've heard the second speaker say that he was here to learn. Also Captain Clay was here to learn. We all get to learn because none of us get paid. Like staff get paid to read hundreds of pages of this complex multi-management and actually how we going to be impacted on the ground. I do. I do my research. I do my homework and that's why I can come tonight and read off a paper, but I never get paid for that. I just care. And I know protecting our marine resources are important and I just made one decision sitting there tonight because you know what? Brother Godfrey is correct. He said every

time you go buy one tuna or eat one tuna sandwich, you supporting commercial fishing. So, after tonight I'm not going to be eating tuna or anything commercial because I no need, because I can be one subsistence. Like Walter said, we have a second economy on Moloka'i. That's why it's important for us. I don't have to go to Papahānaumokuākea to go fish because we are lucky that we take care of our resources. So, in the future, because I've been telling NOAA this all my life and I'm pretty old right now. When you come to Moloka'i, do some outreach, talk to people in the community. Don't come like this tonight, set up stuff and divide the community and put them into holes in silos and then tell them you cannot talk during one meeting and you only get three minutes in a big thing that is stressing you out looking at them. And I'm sorry only six people signed up for testify tonight, but don't do this to this community. Okay, thank you.

Kaleo Cravalho

Hello, my name is Kaleo Cravalho. Okay, just to let you guys know. Yeah, one thing with pono [moral/righteous] practice yah, information for the community would've been so helpful for a lot of the lawai'as [fisherman], commercial or non-commercial, to get input. So, upon you guys soliciting that this meeting, especially for our district over here, our Moloka'i district, it was poorly represented. That people like myself who holoholo [gather] a lot, love the ocean, I understand conservation, but I was raised up the way, what we do. You guys talk about sustainability, a lot of times get guys talk but they no go ocean. I don't really come up and speak. I like good things in the ocean because I love the ocean. But you guys think about it. I say, can tuna, you guys talking about can tuna, us guys, we grab my kui [spearfishing stringer] go right there. Holoholo [Gather]. Right there. We get kau kau [food], fresh. Okay, subsistence. Bring them to mea'ai [food, eat], let the family eat. So, how much of you guys love poke bowls? I mean it's a big fad right now. Big money. 63% of ours can come from where? I mean NOAA, you guys get all the information. 60% of our catch, our fish, come from where? Not Hawai'i? Not Hawai'i, not from the Hawaiians. So, we get them coming in from outside, international competition. So economically viable. If one commercial fisherman, one Hawaiian, one kanaka [Hawaiian person], like go over there and bring fresh fish, not frozen, fresh back to Hawai'i nei [here] for the people to mea'ai [food, eat] because not everybody lawai'as [fishes]. Not everybody fish. Some people depend on going to the store. So, what that one happened to our economic value or our culture, we don't like eat canned tuna; we like them fresh. You guys like eat canned tuna every time? I don't know. I like them right there, right there. So, if you guys thinking about this, I don't support this, not the way you guys are going about it. You think about it, our kanakas who do go out there and catch fresh, they bring them home, they didn't have to flash freeze them right there, like what you see and what we getting, and why are we depending on outside? Every time we're importing things from outside fish to come into Hawai'i. Why when those Northwest fish is right there where closer to Hawai'i, and you guys get China, the fleets out there, and you guys get Japan over there fishing all in our Hawaiian waters, but what about our people. So, you guys got to consider that, please. Mahalo [Thank you].

Godfrey Akaka, Jr.

Yeah, this only for me. One more quick comment. So, nobody wants subsistence fishing over there, Papahānaumokuākea, nobody because it's unsustainable. So, even if you make it closed for commercial and open for subsistence fishing, the subsistence fishers cannot afford to go

around there. They have to have a way to be sustainable to make money for the gas that's going to go all over there. So, I just wanted to make that one last comment. Mahalo [Thank you].

Anonymous

Mahalo [Thank you]. I think one of the only comments that I had so far, not being too up on what's going on, but I think commercial fishing should be allowed with regulations, especially regarding invasive species. There's a lot, to'au and ta'ape. I also think that you should pay Hawaiian fishermen to go up there and pay them for the catch, especially for those types of fish. Especially if you like talk about conservation. We should get those species out of our waters. Thank you.

Patrisha Alvarez

I just wanted to add to my testimony that we are in support because if we don't do this sanctuary boundary, then other large companies in large ships such as China, Japan, all these other big boats who have the funding to do these big boat factories, they'll be coming in and stealing all the fish. So, if we maintain it and keep it as a sanctuary, then we will be prohibiting other large companies from coming in. So that's why I support it.

Nani Kawa'a

Aloha [Hello]. My name is Nani Kawa'a and I'm an educator at Moloka'i High School and I didn't know about this meeting, so I agree with Lori. The turnout is really poor because I think a lot of people didn't know about it. This is so valuable. I'm trying to teach our young people respect for the ocean, but if I don't know what's going on, I didn't see any advertisement, I didn't see it on Facebook anywhere. If it wasn't for the cook who is my educational assistant, I wouldn't have known about this meeting. So, that's just my suggestion because I would like our young people to be able to make informed decisions and I cannot have a say tonight because I don't have enough knowledge of the subject. So, that's all I have to say and that's just my comments. Thank you.



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