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Options for Fishing Regulations in the NWHI Monument Expansion Area

*To Amend the Hawaii Archipelago and Pacific Pelagic Fishery
Ecosystem Plans of the Western Pacific Region*

Revised June 7, 2017

Prepared by Council Staff for the 170th Council Meeting

Summary of Proposed Action

Presidential Proclamation 9478 (see Appendix 1) set aside an area adjacent to the Papahānaumokuākea Marine National Monument that constituted a Monument Expansion Area (MEA). Through the proclamation, the Secretary of Commerce (NOAA), in consultation with the Secretary of Interior (USFWS), were provided responsibility for management of activities and species within the monument expansion area under their respective authorities (e.g. Magnuson-Stevens Fishery Conservation and Management Act (MSA), National Wildlife Refuge System Administration Act, Endangered Species Act (ESA), etc.). The Proclamation prohibited commercial fishing activities and anchoring on any living or dead coral. However, it also allows for regulated fishing activities, including Native Hawaiian practices (including exercise of traditional, customary, cultural, subsistence, spiritual, and religious practices) within the MEA, and non-commercial fishing (provided that the fish harvested either in whole or in part, does not enter commerce through sale, barter, or trade, and that the resource is managed sustainably).

The Council, at its 168th Meeting in October 2016, recommended staff conduct public scoping sessions with the purpose of determining what information is available for the Council to begin the process of analyzing alternatives and recommending management regulations for the MEA. Scoping sessions were held around the state in December 2016. At these scoping sessions, the public provided potential ideas but did not propose any options for management. These ideas are addressed as options considered but not analyzed.

A report of the public scoping sessions was provided to the Council at its 169th Meeting, March 21-23, 2017. At that meeting, the Council directed staff to develop and present options to the Council at its 170th Meeting.

On September 23, 2016, the NMFS sent the Council a letter requesting the Council's recommendations for amending the Hawaii Archipelago and Pacific Pelagic FEPs to establish appropriate fishing requirements under the MSA including the prohibition on commercial fishing and the regulation of non-commercial fishing within the monument MEA. The purpose of this paper is to provide options of management measures for sustainable fisheries in the MEA that would optimize yields and provide social, economic, and cultural benefits for the fishing community, where possible. There is a need to meet the direction of Presidential Proclamation 9478 with management measures to be developed and included in a future management plan for the area.

The Council will consider the following issues related to this action: commercial fishing, non-commercial fishing, and Native Hawaiian subsistence fishing. Options for each of these issues are described below.

Issue A: Commercial Fishing Options

Commercial fishing is listed as a prohibited activity under Proclamation 9478, which says the persons shall be prohibited from conducting or causing to be conducted “commercial fishing and possessing commercial fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument Expansion.” Under the current

guidance and statutes regarding the Proclamation, commercial fishing in the MEA is already prohibited. The following options are included to bring the Council's FEP regulations in-line with the mandate of the Proclamation.

- Option A1: No Action

Option A1 is No Action, or the status quo option. Under this option, the Council's existing regulations under the Hawaii Archipelago and Pacific Pelagic FEP would still exist on the books but not enforced in the MEA. This includes permitting and reporting for longline, precious corals, coral reef ecosystem (potentially harvested Management Unit Species), bottomfish, and crustacean fisheries. Developing and issuing regulations for prohibiting commercial fishing in the MEA would need to be done by the Secretary of Commerce (through NMFS) to meet the mandate of the Proclamation.

- Option A2: Prohibit Commercial Fishing in the MEA

Under this option, no commercial fishing would be allowed in the MEA. The Magnuson Stevens Fishery Conservation and Management 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." This would amend the regulations in the Hawaii Archipelago and Pacific Pelagic FEPs.

Issue B: Non-Commercial Fishing Options

Proclamation 9478 also provides for Non-Commercial Fishing to be managed under the Magnuson Stevens Fishery Conservation and Management Act, "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." Currently, non-commercial fishing is allowed in the NWHI (under the Hawaii Archipelago and Pacific Pelagic FEPs, non-commercial fishing (including recreational, charter and subsistence) is not prohibited and crustacean and precious coral fisheries are permitted for the NWHI) but management measures are not in place specifically for non-commercial fishing within the MEA. The current Papahānaumokuākea Marine National Monument also allows sustenance fishing within its boundaries (0-50 nm). This is mainly due to the lack of information on non-commercial fishing in the MEA and management measures developed without data on catch, effort, etc., may not be suitable. The following options provide a range of options that would amend the Hawaii and Pacific Pelagic FEPs to meet the mandate of the Proclamation.

- Option B1: No Action

Option B1 is No Action, or the status quo option. Under this option, the Council would continue to manage fisheries consistent with existing regulations and under applicable laws under the Hawaii Archipelago and Pacific Pelagic FEP. Currently, this includes permitting and reporting for non-commercial fishing of precious corals and crustacean fisheries. Pelagic, bottomfish and coral reef ecosystem management unit species would not have permits and to fish for these species, the Secretary of Commerce would need to institute non-commercial fishing permits through a secretarial amendment to the FEPs.

- Option B2: Permit Non-Commercial Fishing in the MEA

Under Option B2, Federal permits and reporting would be required for non-commercial fishing in the MEA. While non-commercial fishing can be allowed in the MEA, under the proclamation, the catch cannot be sold, bartered, or traded. “Non-commercial” fishing is not defined under MSA, so the Council would need to define non-commercial fishing for the regulations in the MEA.

- Option B3: Define Non-Commercial Fishing

The Council currently uses a definition for non-commercial fishing in the other Pacific marine national monuments as follows: Non-commercial fishing is “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.” Further, “recreational fishing” in the other monuments is defined as “fishing conducted for sport or pleasure, including for-hire charter fishing.” Traditional indigenous fishing, in this case, would include Native Hawaiian fishing practices.

- Option B4: Define Non-Commercial Fishing to include Customary Exchange

The Council has developed a definition of customary exchange with other island areas for their marine national monuments and may choose to include it as part of the definition of non-commercial fishing. This option would use the definition of non-commercial fishing as in option B3 but also include customary exchange to read as follows: Non-commercial fishing is “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, recreational fishing, and customary exchange.” Further, “recreational fishing” in the other monuments is defined as “fishing conducted for sport or pleasure, including for-hire charter fishing.” Traditional indigenous fishing, in this case, would include Native Hawaiian fishing practices. Customary exchange is defined as “the non-market exchange of marine resources between fishers and community residents for goods, services and/or social support for cultural, social, or religious reasons.” Customary exchange may also include cost recovery through monetary reimbursements and other means for actual trip expenses (e.g. ice, bait, food, fuel) that may be necessary to participate in fisheries in the NWHI MEA.

- Option B5: Prohibit Non-Commercial Fishing in the MEA

Under this option, no non-commercial fishing would be allowed in the MEA under the Hawaii Archipelago and Pacific Pelagic FEPs. Non-commercial fishing may also need to be defined under this option.

At the 170th Council Meeting, the Council may recommend a management approach for the NWHI MEA and select a preferred option which they deem most appropriate to optimize yields and socio-economic benefits for the fisheries in the Western Pacific Region. The approaches described in this document are not intended to be exhaustive and Council members may recommend other approaches for consideration and analysis.

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1.0 Introduction

Presidential Proclamation 9478 (see Appendix 1) set aside an area adjacent to the Papahānaumokuākea Marine National Monument that constituted a Monument Expansion Area (MEA). Through the proclamation, the Secretary of Commerce (NOAA), in consultation with the Secretary of Interior (USFWS), was provided responsibility for management of activities and species within the monument expansion area under their respective authorities (e.g. Magnuson-Stevens Fishery Conservation and Management Act (MSA), National Wildlife Refuge System Administration Act, Endangered Species Act (ESA), etc.). The Proclamation prohibited fishing commercial fishing activities and anchoring on any living or dead coral. However, it also allows for regulated fishing activities including Native Hawaiian practices (including exercise of traditional, customary, cultural, subsistence, spiritual, and religious practices) within the MEA, and non-commercial fishing (provided that the fish harvested either in whole or in part, does not enter commerce through sale, barter, or trade, and that the resource is managed sustainably).

1.1 Responsible Agencies

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1.2 Initial Actions and Public Review Process

The Council, at its 168th Meeting in October 2016, recommended staff conduct public scoping sessions with the purpose of determining what information is available for the Council to begin the process of analyzing alternatives and recommending management regulations for the MEA. The following scoping sessions were held in December 2016:

- December 6, 2016, University of Hawaii at Hilo, Edith Kanakaole Hall, Hilo, Hawaii;
- December 7, 2016, West Hawaii Civic Center, Kailua-Kona, Hawaii
- December 8, 2016, Courtyard Kahului Airport, Kahului, Maui, Hawaii
- December 13, 2016, Chiefess Kamakahahelei Middle School Cafeteria, Lihue, Kauai, Hawaii
- December 15, 2016, Ala Moana Hotel Garden Lanai, Honolulu, Oahu, Hawaii
- December 17, 2016, Kaunakakai Elementary School Cafeteria, Kaunakakai, Molokai, Hawaii

A report of the public scoping sessions can be found in Appendix 2 and was reported to the Council at its 169th Meeting, March 21-23, 2017. At that meeting, the Council directed staff to develop and present options to the Council at its 170th Meeting.

1.3 List of Preparers

Joshua DeMello, Fishery Analyst
Western Pacific Regional Fishery Management Council

1.4 Overview of the Fishery Ecosystem Plans

Fisheries operating in U.S. EEZ waters of the western Pacific region are governed by one of five fishery ecosystem plans (FEP) developed by the Council and NMFS. The FEPs are archipelagic-based and include the American Samoa Archipelago FEP, the Hawaiian Archipelago FEP, the Mariana Archipelago FEP (which covers EEZ waters around Guam and CNMI), and the PRIA FEP. Additionally, highly migratory pelagic fishery resources such as tunas and billfish play an important role in the biological and socioeconomic environment of the western Pacific region and are managed separately through the Pacific Pelagic FEP. The FEPs, implemented in 2010 (75 FR 2198, January 14, 2010), provide a comprehensive ecosystem approach to fisheries management by managing all fishery resources of a geographic area under a single management framework, and by providing formal mechanisms for coordination and management among federal, state, and local agencies, the fishing industry, local communities, and the general public. The overall goal of the FEPs is to establish a framework under which the Council will improve its abilities to realize the purposes and policies of the MSA through the incorporation of ecosystem science and principles. To achieve this goal, the Council adopted the following ten objectives that apply to each of the FEPs:

- *OBJECTIVE 1: Support Fishing Communities*
- *OBJECTIVE 2: Prevent Overfishing while Achieving on a Continual Basis the Optimum Yield from Each Fishery*
- *OBJECTIVE 3: Rebuild Overfished Stocks [Hawaii only]*
- *OBJECTIVE 4: Improve Fishery Monitoring and Data Collection*
- *OBJECTIVE 5: Promote Compliance*
- *OBJECTIVE 6: Reduce Bycatch and Minimize Interactions and Impacts to Protected Species to the Extent Practicable*
- *OBJECTIVE 7: Refine Essential Fish Habitat (EFH) Designations and Minimize Impacts to EFH*
- *OBJECTIVE 8: Increase Traditional and Local Knowledge in Decision-making*
- *OBJECTIVE 9: Consider the Implications of Spatial Management Arrangements in Council Decision-making*
- *OBJECTIVE 10: Consider the Implications of Climate Change in Council Decision-making*

1.4.1 Hawaii Archipelago FEP

Geographic area covered. The Hawaii Archipelago FEP was developed to regulate the harvest of non-pelagic marine resources in the EEZ around the Hawaiian Islands (3-200 nmi offshore).

Fisheries managed. The Hawaii Archipelago FEP contains conservation and management measures for fisheries harvesting bottomfish and seamount groundfish, crustaceans, precious corals and coral reef ecosystems species. Pelagic species are managed under a separate Pacific Pelagic FEP described in section 1.4.5 below.

Bottomfish fisheries in the main Hawaiian Islands (MHI) are managed through a total allowable catch limit (TAC), which is annually determined by the Council and specified by NMFS. In 2009, the Northwest Hawaiian Islands (NWHI) bottomfish fishery effectively ended through a voluntary effort reduction and compensation program following the designation of the area as the Papahānaumokuākea Marine National Monument in 2006 (71 FR 36443, June 26, 2006). Additional management measures for Hawaii Archipelago bottomfish include gear restrictions, provisions for at-sea observer coverage, bycatch management, and a framework process for regulatory adjustments.

The crustacean fisheries management program employs limited access (in NWHI), permit and reporting requirements, season, area, gear and size restrictions, and provisions for at-sea observer coverage, bycatch management, and a framework process for regulatory adjustments.

Hawaii's deep water precious coral fisheries are managed through bank-specific quotas and allow only selective harvesting techniques to be employed. Management measures for precious coral fisheries include: permit and reporting requirements, seasons and quotas, area, size and gear restrictions, bycatch measures, and a framework process for regulatory adjustments. A temporary moratorium on harvest of gold coral is currently in place.

The management program for coral reef ecosystem fisheries includes permit and reporting requirements, gear restrictions, bycatch measures, and a framework process for regulatory adjustments.

The Papahānaumokuākea Marine National Monument designation confers additional protection and management to resources of the NWHI. The Council works with NMFS, USFWS, and the State of Hawaii to ensure that fisheries management comports with monument requirements.

1.4.2 Pacific Pelagic FEP

Geographic area covered. The Pacific Pelagic FEP encompasses all areas of pelagic fishing operations in the U.S. EEZ as well as on the high seas. Although the management area of the Pelagic FEP spatially overlaps with the boundaries of the Council's archipelagic FEPs for demersal fisheries, the Pacific Pelagic FEP specifically manages those resources and habitats associated with the pelagic ecosystem.

Fisheries managed. The Pacific Pelagic FEP contains conservation and management measures for fisheries harvesting highly migratory fish species which include tunas, billfishes, nine pelagic sharks, and other non-demersal fishery resources. At present, pelagic fisheries are sizeable in

American Samoa and Hawaii (comprising shallow-set (swordfish) and deep-set (tuna) longline fisheries and troll and handline fisheries), and smaller in scale in CNMI, Guam, and the PRIA. The Council has taken a series of management actions to conserve pelagic species caught by fisheries in the Western Pacific Region. When the Pelagics FMP was originally implemented in 1986, the use of drift gill nets was banned in U.S. EEZ waters of the Western Pacific Region. Subsequent management measures have included: permit and reporting requirements, mandatory vessel monitoring for domestic longline vessels, area and season limitations, limited entry permit programs, vessel size limits, measures to reduce bycatch quantity and mortality, and recommendations for multilateral internationally coordinated management.

The Council also participates in meetings of regional fishery management organizations (RFMOs) that cover target species relevant to pelagic fisheries, including the Inter-American Tropical Tuna Commission (IATTC) and the Western and Central Pacific Fisheries Commission (WCPFC), which currently set harvest limits for bigeye tuna.

Comprehensive information on the target and non-target stocks, bycatch, protected species, and conservation and management measures for fisheries managed under each FEP can be found in the American Samoa Archipelago FEP (WPFMC 2009a), the Hawaiian Archipelago FEP (WPFMC 2009b), the Mariana Archipelago FEP (WPFMC 2009c), the Pacific Remote Island Areas FEP (WPFMC 2009d), and the Pacific Pelagic FEP (WPFMC 2009e).

2.0 Purpose and Need

On September 23, 2016, the NMFS sent the Council a letter requesting the Council's recommendations for amending the Hawaii Archipelago and Pacific Pelagic FEPs to establish appropriate fishing requirements under the MSA including the prohibition on commercial fishing and the regulation of non-commercial fishing within the monument MEA.

The purpose of this paper is to provide the Council with options for regulating fishing activities regulated by Presidential Proclamation 9478, consistent with the care and management of the objects within the Monument Expansion Area. The Council's Fishery Ecosystem Plans need to be amended to reflect the regulated fishing activities in the MEA allowed by the Proclamation while optimizing yields for fishing that is allowed and provide social, economic, and cultural benefits for the fishing community.

3.0 Description of Proposed Options

Section 3.0 describes options for each of the following issues being considered by the Council: commercial fishing, non-commercial fishing, and Native Hawaiian subsistence fishing. Impacts of each of these options can be found in Section 5.0.

3.1 Issue A: Commercial Fishing Options

Commercial fishing is listed as a prohibited activity under Proclamation 9478, which says the persons shall be prohibited from conducting or causing to be conducted “commercial fishing and possessing commercial fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument Expansion.” Under the current guidance and statutes regarding the Proclamation, commercial fishing in the MEA is already prohibited. The following options are included to bring the Council’s FEP regulations in-line with the mandate of the Proclamation.

3.1.1 Option A1: No Action

Option A1 is No Action, or the status quo option. Under this option, the Council’s existing regulations under the Hawaii Archipelago and Pacific Pelagic FEP would still exist on the books but not enforced in the MEA. This includes permitting and reporting for longline, precious corals, coral reef ecosystem (potentially harvested Management Unit Species), bottomfish, and crustacean fisheries. Developing and issuing regulations for prohibiting commercial fishing in the MEA would need to be done by the Secretary of Commerce (through NMFS) to meet the mandate of the Proclamation.

3.1.2 Option A2: Prohibit Commercial Fishing in the MEA

Under this option, no commercial fishing would be allowed in the MEA. The Magnuson Stevens Fishery Conservation and Management 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.” This would amend the regulations in the Hawaii Archipelago and Pacific Pelagic FEPs.

3.2 Issue B: Non-Commercial Fishing Options

Proclamation 9478 also provides for Non-Commercial Fishing to be managed under the Magnuson Stevens Fishery Conservation and Management Act, “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.” Currently, non-commercial fishing is allowed in the NWHI (under the Hawaii Archipelago and Pacific Pelagic FEPs, non-commercial fishing (including recreational, charter and subsistence) is not prohibited and crustacean and precious coral fisheries are permitted for the NWHI) but management measures are not in place specifically for non-commercial fishing within the MEA. The current Papahānaumokuākea Marine National Monument also allows sustenance fishing within its boundaries (0-50 nm). This is mainly due to the lack of information on non-commercial fishing in the MEA and management measures developed without data on catch, effort, etc., may not be suitable. The following options provide a range of options that would amend the Hawaii and Pacific Pelagic FEPs to meet the mandate of the Proclamation.

3.2.1 Option B1: No Action

Option B1 is No Action, or the status quo option. Under this option, the Council would continue to manage fisheries consistent with existing regulations and under applicable laws under the Hawaii Archipelago and Pacific Pelagic FEP. Currently, this includes permitting and reporting for non-commercial fishing of precious corals and crustacean fisheries. Pelagic, bottomfish and coral reef ecosystem management unit species would not have permits and to fish for these species, the Secretary of Commerce would need to institute non-commercial fishing permits through a secretarial amendment to the FEPs.

3.2.2 Option B2: Permit Non-Commercial Fishing in the MEA

Under Option B2, Federal permits and reporting would be required for non-commercial fishing in the MEA. While non-commercial fishing can be allowed in the MEA, under the proclamation, the catch cannot be sold, bartered, or traded. “Non-commercial” fishing is not defined under MSA, so the Council would need to define non-commercial fishing for the regulations in the MEA.

3.2.3 Option B3: Define Non-Commercial Fishing in the MEA

The Council currently uses a definition for non-commercial fishing in the other Pacific marine national monuments as follows: Non-commercial fishing is “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.” Further, “recreational fishing” in the other monuments is defined as “fishing conducted for sport or pleasure, including for-hire charter fishing.” Traditional indigenous fishing, in this case, would include Native Hawaiian fishing practices.

3.2.4 Option B4: Define Non-Commercial Fishing in the MEA WITH Customary Exchange

The Council has developed a definition of customary exchange with other island areas for their marine national monuments and may choose to include it as part of the definition of non-commercial fishing. This option would use the definition of non-commercial fishing as in option B3 but also include customary exchange to read as follows: Non-commercial fishing is “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, recreational fishing, and customary exchange.” Further, “recreational fishing” in the other monuments is defined as “fishing conducted for sport or pleasure, including for-hire charter fishing.” Traditional indigenous fishing, in this case, would include Native Hawaiian fishing practices. Customary exchange is defined as “the non-market exchange of marine resources between fishers and community residents for goods, services and/or social support for cultural, social, or religious reasons.” Customary exchange may also include cost recovery through monetary reimbursements and other means for actual trip expenses (e.g. ice, bait, food, fuel) that may be necessary to participate in fisheries in the NWHI MEA.

3.2.5 Option B5: Prohibit Non-Commercial Fishing in the MEA

Under this option, no non-commercial fishing would be allowed in the MEA under the Hawaii Archipelago and Pacific Pelagic FEPs. Non-commercial fishing may also need to be defined under this option.

3.3 Other Ideas Considered as Options but Not Analyzed in Further Detail

NEPA requires consideration of a reasonable range of technically and economically feasible alternatives that will permit a reasoned choice. Only alternatives that are reasonably related to the purpose of the action need be examined.

During its deliberative process to develop options for fishing regulations for the MEA, a number of ideas presented itself relating to allowing fishing activities including spatial management measures (e.g. area closures), quotas, bag limits, gear restrictions, and participation.

These ideas were initially considered but are not part of the proposed options at this time. Generally, the ideas went into greater detail than the options examined in this document and

analyses are on the impacts is unknown due to the lack of information. The lack of any current information on non-commercial and Native Hawaiian fishing practices in the MEA would not allow for analyses that were distinguishable from the options in the document.

The options analyzed in this document provides the first step in collecting information about the non-commercial fishing and Native Hawaiian fishing practices in the MEA. Data collected may point to the need for further management of fishing in the MEA and these other options may be considered at that time.

4.0 Analysis of Potential Impacts of the Options

4.1 Issue A: Commercial Fishing

4.1.1 Option A1: No Action

Impacts on Target Stocks

The no-action option would continue the current pelagic landings and fishing effort by the existing longline fleet in the MEA. Troll and/or bottomfish vessels are currently allowed to fish in the area, yet landings in the area from the small-boat fishery have not been landings since 2010. The amount of catch of pelagic species by the longline fleet may vary annually, but as it is managed by a quota for Bigeye Tuna on a Pacific-wide scale, it is not expected to result in significant impacts to target species such as Bigeye Tuna.

Impacts on Non-target Stocks

Under the no-action option, fishing impacts on non-target stocks by the existing longline fleet would most likely continue to be dominated by the same species.

Impacts on Protected Species

Under the no-action option, the impacts to protected species from longline and troll vessels would continue as expected and as authorized pursuant to the Incidental Take Statement contained in the current NMFS' Biological Opinion on the deep-set longline fishery. Longline vessels would continue to be required to adhere to all seabird, sea turtle, and other protected species mitigation and avoidance measures currently in effect for deep-set longline fishing activities.

Impacts on Habitat

Because troll and longline gears do not come into contact with the seabed, no impacts on marine habitat are anticipated under this option. If bottomfish fishing were to occur, there could be impacts from any bottom-tending gear, however, because of the depth in most of the MEA, bottomfish fishing is unlikely to occur.

Impacts on Fishery Participants and Fishing Communities

Under the no-action option fishery participants would continue to be impacted by factors such as weather, catchability, fuel prices, among others. However, if increased number of vessels were to fish in the MEA the Hawaii-based longline fishing community may be impacted by competition for a common resource. The Hawaii-based longline fishing fleet itself is managed by a limited-entry system that caps participation, but all of the permitted vessels could, in theory, fish in the

MEA and present competition for longline-caught species such as Bigeye Tuna and Swordfish. There are currently no other fishery participants that are known that would be impacted from an increase in fishing participation and/or vessel.

Impacts on Biodiversity and Ecosystem Function

There are no expected impacts to biodiversity or the pelagic ecosystem expected from this option. Pelagic fishing would continue to be dominated by longline vessels which would continue under this option, and troll and bottomfish vessels could likely fish in the area. However this is a relatively small amount of fishing effort (if any) in the water column away from the sea bottom which does not have much associated bycatch that would affect biodiversity. Any potential impacts to the pelagic ecosystem in the MEA by longline fishing has already been considered and analyzed under the Pacific Pelagic FEP. Other fishing gears and methods are less likely to occur because of the depth of the water and distance from the MHI.

Impacts on Enforcement and Administration

There are no additional impacts expected on administration or enforcement from Option A1, the no-action option. Enforcement and administration would continue to as it does currently.

Impacts on Proclamation 9478

Under this option, the regulations under the FEP would not be in compliance with Proclamation 9478. Therefore, issuing fishing regulations to prohibit commercial fishing as mandated by the Proclamation, would fall to the Secretary of Commerce to develop and implement for the MEA.

4.1.2 Option A2: Prohibit Commercial Fishing in the MEA

Impacts on Target Stocks

Under Option A2, commercial fishing in the MEA would be prohibited. This could potentially have a positive impact on target stocks as fishing effort and landings would be decreased to zero in the MEA. However, much of the stocks targeted in the MEA are highly migratory, meaning those fish that are afforded protection within the MEA may still be caught outside of the MEA. It is unknown whether the current fishing catch and effort will be lost completely or if it will be transferred to areas outside the MEA. If catch and effort remain the same, there will be no positive impact to the target stocks. Any protection may also be negated by non-commercial fishing activities in the MEA should the target stocks, catch, and effort be similar.

Impacts on Non-target Stocks

The impact to non-target stocks will be similar to the target stocks under this option, but those non-target stocks that are not migratory and stay within the boundaries of the MEA may be protected from fishing. Any protection may also be negated by non-commercial fishing activities in the MEA should the non-target stocks (or stocks that are non-target for commercial fisheries are targeted), catch, and effort be similar.

Impacts on Protected Species

Under this option, the impacts to protected species is unknown if commercial fisheries were prohibited. Existing fisheries would continue as expected and as authorized pursuant to the Incidental Take Statement contained in the current NMFS' Biological Opinion on the deep-set longline fishery in areas outside of the MEA. These fisheries would continue to be required to adhere to all seabird, sea turtle, and other protected species mitigation and avoidance measures

currently in effect for deep-set longline fishing activities. Protected species (marine turtles, seabirds, marine mammals, etc.) are not confined to the MEA and impacts from fisheries will continue to occur outside of the MEA. The extent to which that increases or decreases due to the prohibition of fishing inside the MEA can only be measured post-closure. The Council's Scientific and Statistical Committee is recommending scenarios for modeling to be done by the NMFS Pacific Islands Fisheries Science Center.

Impacts on Habitat

Impacts to habitat due to a prohibition of commercial fishing are negligible because the existing fishery gears do not come into contact with the seabed, so no impacts on marine habitat are anticipated under this option. If non-commercial bottomfish fishing were to occur, there could be impacts from any bottom-tending gear, however, because of the depth in most of the MEA, bottomfish fishing is unlikely to occur.

Impacts on Fishery Participants and Fishing Communities

Under this option fishery participants would continue to be impacted by factors such as weather and catchability in non-MEA areas, but may experience increased impacts by other factors such as fuel prices. This is due to having to travel a greater distance, which may in turn affect fish prices.

The Hawaii-based longline fishing fleet would be impacted as it is currently the only commercial fishing activity occurring in the MEA. While the average catch and effort seems relatively low (at about <10% of the entire fleet catch/effort), the portion provides for millions of dollars in sales, affects hundreds of jobs, and thousands of pounds of fresh seafood. Catch and effort may be made up outside of the MEA, but it is unknown if that will happen at this time and the impacts from expected increased costs for fuel due to increased distances is also unknown.

Impacts on Biodiversity and Ecosystem Function

There are no expected impacts to biodiversity or the pelagic ecosystem expected from this option. Pelagic fishing would continue to be dominated by longline vessels which would continue under this option outside of the MEA, and non-commercial troll and bottomfish vessels could likely fish in the area. However, this is a relatively small amount of fishing effort (if any) in the water column away from the sea bottom which does not have much associated bycatch that would affect biodiversity. Any potential impacts to the pelagic ecosystem by longline fishing has already been considered and analyzed under the Pacific Pelagic FEP. Other fishing gears and methods are less likely to occur because of the depth of the water and distance from the MHI.

Impacts on Enforcement and Administration

There are no expected impacts on administration or enforcement from Option A2, prohibiting commercial fishing in the MEA. However, enforcement would need to ensure that vessels in the area are not fishing within the MEA. Permits would not be allowed, thus not creating any additional administration needs for the area, but there may be a little administrative burden to initially inform the fisheries of the closure of the area to fishing.

Impacts on Proclamation 9478

Under this option, fishing regulations in the FEPs would be in line with Proclamation 9478 and its prohibited activities.

4.2 Issue B: Non-Commercial Fishing

4.2.1 Option B1: No Action

Impacts on Target Stocks

The no-action option would continue the current pelagic landings and fishing effort by any existing fishing activity in the MEA. Troll and/or bottomfish vessels are currently allowed to fish in the area although no landings are available for any non-commercial fishing activity within the MEA. This option does not provide the opportunity to collect information on target stocks that would be useful in management of the stocks in Hawaii and the Pacific.

Impacts on Non-target Stocks

Under the no-action option, fishing impacts on non-target stocks by any existing non-commercial fishing would continue. Data for which stocks are non-target and which are targeted in the non-commercial fishery sector of the MEA are unavailable, but any impacts seen would continue with no action. This option does not provide the opportunity to collect information on non-target stocks that would be useful in management of the stocks in Hawaii and the Pacific.

Impacts on Protected Species

Under the no-action option, the impacts to protected species from any existing non-commercial fisheries would continue as expected and need to adhere to all seabird, sea turtle, and other protected species mitigation and avoidance measures currently in effect and all regulations that apply under the ESA, MMBA, MBTA and other applicable law. This option does not provide the opportunity to collect information on protected species interactions that would be useful in management of the stocks in Hawaii and the Pacific.

Impacts on Habitat

This no-action option would allow for existing non-commercial fisheries to continue without additional management, but current fishery gears do not come in contact with the seabed so minimal impact is expected. Potential bottomfish fishing may include some minimal contact with the seabed but the extent to which that is happening is unknown. This option would not provide for additional information on habitat.

Impacts on Fishery Participants and Fishing Communities

Under the no-action option fishery participants would continue to be impacted by factors such as weather, catchability, fuel prices, among others. However, if increased number of vessels were to fish in the MEA existing fishing participants may be impacted by competition for common resources. It is unknown who currently fishes, or may fish, in the MEA and this option does not provide for collecting this type of information.

Impacts on Biodiversity and Ecosystem Function

There are no expected impacts to biodiversity or the pelagic ecosystem expected from this option beyond any current impacts. Pelagic non-commercial fishing would continue under this option, and troll and bottomfish vessels could likely fish in the area. However this is a relatively small

amount of fishing effort (if any) in the water column away from the sea bottom which does not have much associated bycatch that would affect biodiversity. Any potential impacts to the pelagic ecosystem in the MEA by longline fishing has already been considered and analyzed under the Pacific Pelagic FEP. Other fishing gears and methods are less likely to occur because of the depth of the water and distance from the MHI.

Impacts on Enforcement and Administration

There are no additional impacts expected on administration or enforcement from Option B1, the no-action option. Enforcement and administration would continue as it does currently.

Impacts on Proclamation 9478

Under this option, the mandate of Proclamation 9478 is somewhat met with non-commercial fishing in the area already permitted for crustaceans and precious corals. However, fishing for pelagic, bottomfish, and coral reef ecosystem management unit species would not be managed. Therefore, action by the Secretary of Commerce would be needed to manage the non-commercial fishing for those species to be in line with the Proclamation.

4.2.2 Option B2: Permit Non-Commercial Fishing in the MEA

Impacts on Target Stocks

Under this option current fishing landings and effort information would be collected providing for an opportunity to better understand the fishery and to possibly look at target stock status. Potentially, management measures could be developed to address any issues that may result of knowing the stock status. For pelagic species, the amount of non-commercial fishing that occurs may be negligible in terms of a Pacific-wide stock such as some of the tunas.

Impacts on Non-target Stocks

Option B2 would provide information on the non-commercial fishing in the MEA through permitting and reporting. Non-target stocks may be afforded the same opportunity as target stocks of better management with some type of data collection. The unknown nature of the existing fishery and potential entrants makes impacts on the stock unknown as well.

Impacts on Protected Species

This option would require existing and future non-commercial fishing to acquire a permit and provide reports on their fishing catch and effort. It would provide an opportunity to collect information on protected species identification and interactions. Because the non-commercial fishing in the MEA is potentially low, impacts to protected species should also be low and adding on a permitting requirement should not increase that. Impacts to protected species would be dependent upon an increase in participation in MEA fisheries.

Impacts on Habitat

Expected and current non-commercial pelagic fishery gears do not come in contact with the seabed so minimal impact is expected. Potential bottomfish fishing may include some minimal contact with the seabed but the extent to which that is happening is unknown. This option would provide for additional information on fisheries allowing for analysis of potential impacts to the habitat.

Impacts on Fishery Participants and Fishing Communities

Under this option, fishery participants would face increased burden in applying for permits, paying the fee, and providing reports/logbooks on their fishing catch and effort. Fishing rules and regulations may also provide a baseline of information that causes further increased burden through future management measures.

Implementing permits with reporting would have little direct impact on fishing communities, but may provide additional information for future social, economic, and cultural analyses.

Impacts on Biodiversity and Ecosystem Function

There are no expected impacts to biodiversity or the pelagic ecosystem expected from this option beyond any current impacts. Pelagic non-commercial fishing would continue under this option, and troll and bottomfish vessels could likely fish in the area. However this is a relatively small amount of fishing effort (if any) in the water column away from the sea bottom which does not have much associated bycatch that would affect biodiversity. Any potential impacts to the pelagic ecosystem in the MEA by longline fishing has already been considered and analyzed under the Pacific Pelagic FEP. Other fishing gears and methods are less likely to occur because of the depth of the water and distance from the MHI. Permitting and reporting would provide more information on the fishery allowing for additional analysis on potential impacts to both biodiversity and ecosystem function.

Impacts on Enforcement and Administration

Option B2 would not require any extensive additional resources for enforcement but would require additional administration. There would be very limited administrative costs to the government for changing the regulations and to the Council to change the FEPs and to both for outreach and education. There would be administrative and supply costs to the government for the development of paper and digital application and permit forms, review of applications, including confirmation of permit qualifications; and for the acceptance and processing of logbooks. It is expected that the level of interest in the permits to be very low due to the distance and costs associated with such trips. A definition for non-commercial fishing would also be needed to assist enforcement and administration of a non-commercial fishing permit and regulation.

Impacts on Proclamation 9478

This option would meet the mandates of Proclamation 9478, however since MSA does not define “non-commercial fishing,” the Council would need to define it for the regulations.

4.2.3 Option B3: Define Non-Commercial Fishing

Impacts on Stocks, the Ecosystem and the Communities

There would be no expected impacts on stocks (target and non-target), the ecosystem (protected species, habitat) or communities (fishing and indigenous) from this option. It would provide a definition for non-commercial fishing only. Impacts would occur from the actual fishing activity. Native Hawaiian fishing practices, allowed under the Proclamation, would be included in this definition as “traditional indigenous fishing” but allow the Native Hawaiian community (e.g. Office of Hawaiian Affairs or the Monument Management Board) to provide the definition of Native Hawaiian fishing practices.

Impacts on Enforcement and Administration

There are no expected administration or enforcement impacts from this option. Enforcement and administration would benefit from a clearer definition for non-commercial fishing.

Impacts on Proclamation 9478

This option would provide a definition for non-commercial fishing under Proclamation 9478 since no definition is provided. It would also include Native Hawaiian fishing practices, allowed under the Proclamation, as part of the definition of non-commercial fishing while not defining Native Hawaiian fishing practices.

4.2.4 Option B4: Define Non-Commercial Fishing WITH Customary Exchange

Impacts on Stocks, the Ecosystem and the Communities

There would be no expected impacts on stocks (target and non-target), the ecosystem (protected species, habitat) or communities (fishing and indigenous) from this option. It would provide a definition for non-commercial fishing only. Impacts would occur from the actual fishing activity. However, there is some concern that customary exchange may not be suitable for the place and for Native Hawaiians. If this option was chosen, there would need to be additional discussion with the Native Hawaiian community (i.e. Office of Hawaiian Affairs) on the appropriateness and use of customary exchange.

Impacts on Enforcement and Administration

Administration and enforcement would be impacted as it would have to deal with the permitting and reporting for customary exchange. The records of any expense fishing would need to be detailed and maintained to ensure that permittees are following the customary exchange definition.

Impacts on Proclamation 9478

There is concern that under this option, customary exchange would circumvent the provisions of Proclamation 9478 where the catch for non-commercial fishing where “fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade.”

4.2.5 Option B5: Prohibit Non-Commercial Fishing in the MEA

Impacts on Target Stocks

Under this option no information on fishing landings and effort information would be collected which may affect knowing the target stock status. A prohibition on non-commercial fishing would have less of an impact than commercial fishing, but would be similar in that effort may shift outside of the MEA and have minimal benefits.

Impacts on Non-target Stocks

Similar to target species, Option B3 would also not provide any additional information on non-target species and fishing effort may only be displaced to areas outside the MEA. Those non-target stocks may also be migratory and see no additional protection. Those non-target stocks that do remain in the MEA may be afforded protection from fishing pressure, but since no information is available, this additional protection will be nearly impossible to quantify.

Impacts on Protected Species

Under this option, non-commercial fishing would be prohibited, thus protected species interactions within the MEA would be zero. Should displaced or future effort shift to outside the MEA, this benefit could be negligible. Without knowing the current protected species interactions with non-commercial fisheries, it is difficult to assess any impacts. Current non-commercial fishing effort is likely near zero, thus this option would likely not impact protected species positively or negatively.

Impacts on Habitat

A closure of the MEA to non-commercial fishing is likely to provide little impact to habitat as non-commercial fishing effort and catch is very low, if there is any at all. The non-commercial fishing that may be occurring there is likely to have low impact to habitat as fishing does not occur at or near the bottom.

Impacts on Fishery Participants and Fishing Communities

This option is likely to have little impact on fishery participants as there are currently very few (if any) non-commercial fishery participants in the MEA. However, it does impact the Hawaii fishing community because it removes a source of fresh seafood and an area available for future non-commercial fishing, including for recreation, culture, tradition, and food.

Impacts on Biodiversity and Ecosystem Function

Biodiversity and ecosystem function impacts are difficult to ascertain as current non-commercial fishing catch and effort is likely very low to non-existent. The option to prohibit non-commercial fishing in the area may remove one predator out of the ecosystem that may provide a role in keeping balance in the ecosystem, but to what extent that provides is unknown at this time.

Impacts on Enforcement and Administration

There are no expected impacts on administration or enforcement from Option B3, prohibiting non-commercial fishing in the MEA. However, enforcement would need to ensure that vessels in the area are not fishing within the MEA. Permits would not be allowed, thus not creating any additional administration needs for the area, but there may be a little administrative burden to initially inform the fisheries of the closure of the area to fishing.

Impacts on Proclamation 9478

While Proclamation 9478 does allow for non-commercial fishing, it says so as a “managed activity.” Therefore prohibition of non-commercial fishing could be viewed as management of the activity and thus meet the mandate of the proclamation.

5.0 Council Action

At the 170th Council Meeting, the Council may recommend a management approach for the NWHI MEA and select a preferred option which they deem most appropriate to optimize yields and socio-economic benefits for the fisheries in the Western Pacific Region. The approaches described in this document are not intended to be exhaustive and Council members may recommend other approaches for consideration and analysis.

6.0 References

- NMFS. 2012. Catch and Effort Estimates for 2003-2010 from the Hawaii Marine Recreational Fishing Survey. Internal Report IR-12-010. May 8, 2012. 8 pages.
- WPFMC. 2009a. Fishery Ecosystem Plan for the American Samoa Archipelago. Western Pacific Fishery Management Council, Honolulu, Hawaii.
- WPFMC. 2009b. Fishery Ecosystem Plan for the Hawaii Archipelago. Western Pacific Fishery Management Council, Honolulu, Hawaii.
- WPFMC. 2009c. Fishery Ecosystem Plan for the Marianas Archipelago. Western Pacific Fishery Management Council, Honolulu, Hawai`i.
- WPFMC. 2009d. Fishery Ecosystem Plan for the Pacific Remote Island Areas. Western Pacific Fishery Management Council, Honolulu, Hawaii.
- WPFMC. 2009e. Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region. Western Pacific Fishery Management Council, Honolulu, Hawaii.

Appendix 1-Proclamation 9478

Presidential Proclamation Papahānaumokuākea --
Marine National Monument Expansion

PAPAHĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT EXPANSION

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA A PROCLAMATION

Through Proclamation 8031 of June 15, 2006, as amended by Proclamation 8112 of February 28, 2007, the President established the Papahānaumokuākea Marine National Monument (Monument), to protect and preserve the marine area of the Northwestern Hawaiian Islands and the historic and scientific objects therein. As stated in Proclamation 8031, the area, including the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, the Midway Atoll National Wildlife Refuge, the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, supports a dynamic reef ecosystem with more than 7,000 marine species, of which approximately one quarter are unique to the Hawaiian Islands. This diverse ecosystem is home to many species of coral, fish, birds, marine mammals, and other flora and fauna, including the endangered Hawaiian monk seal, the threatened green sea turtle, and the endangered leatherback and hawksbill sea turtles. In addition, this area has great cultural significance to the Native Hawaiian community and a connection to early Polynesian culture worthy of protection and understanding.

An area adjacent to the Monument, and that will constitute the Monument Expansion as set forth in this proclamation, includes the waters and submerged lands to the extent of the seaward limit of the United States Exclusive Economic Zone (U.S. EEZ) west of 163° West Longitude, and extending from the boundaries depicted on the map accompanying Proclamation 8031 as amended by Proclamation 8112 (adjacent area).

As required by the Antiquities Act, the adjacent area contains objects of historic and scientific interest that are situated upon lands owned or controlled by the Federal Government; they are 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 Native Hawaiian community.

This unique ecosystem has many significant features. Important geological features of the adjacent area include more than 75 seamounts, as well as a non-volcanic ridge that extends southwest towards the Johnston Atoll. Together, these features form biodiverse hotspots in the open ocean that provide habitat for deep-sea species, including sponges, other invertebrates, fish, and colonies of corals many thousands of years old. Recent science demonstrates that seamounts harbor a multitude of species with unique ecological traits, some newly discovered. Seamounts, ridges, and other undersea topographic features are important stepping stones that enable marine organisms to spread throughout the Hawaiian Archipelago, and between Hawaii and other archipelagoes. Undisturbed seamount communities in the adjacent area are of significant scientific interest because they provide opportunities to examine the impacts of physical,

biological, and geological processes on ecosystem diversity, including understanding the impacts of climate change on these deep-sea communities. These seamounts and ridges also provide the opportunity for identification and discovery of many species not yet known to humans, with possible implications for research, medicine, and other important uses.

Recent scientific research, utilizing new technology, has shown that many species identified as objects in Proclamation 8031 inhabit previously unknown geographical ranges that span beyond the existing Monument, and in some cases the adjacent area also provides important foraging habitat for these species. For example, the endangered Hawaiian monk seal forages well beyond the existing Monument. Scientific research on Hawaiian monk seal foraging behavior has shown that monk seals may travel 80 miles and dive to depths of almost 2,000 feet while feeding.

Important bird species abound in the Monument and the adjacent area. Birds from the world's largest colonies of Laysan albatross, Black-footed albatross, and Bonin petrels, as well as significant populations of shearwaters, petrels, tropicbirds, the endangered Short-tailed albatross, and other seabird species forage in the adjacent area. We now know that albatrosses and Great Frigate-birds rely on the adjacent area during chick-brooding periods, when their foraging is focused within 200 miles of the nesting colonies on the Monument's islands and atolls. At other times, these wide-ranging species use a much broader range (over 1,600 miles) for foraging.

The adjacent area is a foraging and migration path for five species of protected sea turtles. While green and hawksbill turtles use the nearshore waters of the Monument for nesting, these species along with the endangered leatherback turtle and threatened loggerhead and olive ridley turtles migrate through the adjacent area to reach high-productivity foraging areas.

Twenty-four species of whales and dolphins have been sighted in the adjacent area. Three of these species are listed under the Endangered Species Act as threatened or endangered: sperm whales, fin whales, and sei whales. Cetacean use of the Monument Expansion varies; resident species such as spinner dolphins, false killer whales, and rough-toothed dolphins utilize the area year-round, whereas other species, such as humpback whales, use it as a wintering area. A wide variety of tropical and temperate water dolphin species inhabit the Monument Expansion, including pantropical spotted dolphins, spinner dolphins, striped dolphins, rough-toothed dolphins, and bottlenose dolphins. Several rarely sighted species of dolphin inhabit the area, including Risso's and Fraser's dolphins. Both of these species are primarily oceanic and found in waters deeper than 1,000 meters. Acoustic evidence also shows that endangered blue whales the largest animals on Earth 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 ecosystems of the Monument and adjacent area. These large and highly mobile predators have expansive home ranges and regularly move across the boundaries of the current Monument into the adjacent waters. Additionally, blue sharks, three species of thresher sharks, and two species of mako sharks inhabit the open ocean environment of the adjacent area.

The Monument and adjacent area are part of the most remote island archipelago on Earth. This biological and geographic isolation, coupled with unique oceanographic and geological

conditions, has resulted in an ecosystem critical for new species formation and endemism. These forces result in some of the most unique and diverse ecological communities on the planet.

Importance to Native Hawaiian Culture

The ocean will always be seen as an integral part of cultural identity for the Native Hawaiian community. The deep sea, the ocean surface, the sky, and all the living things in the area adjacent to the Monument are important to this culture and are deeply rooted in creation and settlement stories. Native Hawaiian culture considers the Monument and the adjacent area a sacred place. This place contains the boundary between Ao, the world of light and the living, and Pō, the world of the gods and spirits from which all life is born and to which ancestors return after death. Long-distance voyaging and wayfinding is one of the most unique and valuable traditional practices that the Native Hawaiian community has developed and continues to advance. Once on the verge of cultural extinction, new double-hulled sailing canoes, beginning with the Hōkūleʻa in the 1970s, are bringing voyaging and wayfinding to new generations. This traditional practice relies on celestial, biological, and natural signs, such as winds, waves, currents and the presence of birds and marine life. The open ocean ecosystem and its natural resources in the adjacent area play an important role within the cultural voyaging seascape within the Hawaiian Archipelago.

Shipwrecks

World War II shipwrecks and aircraft in the adjacent area, though not identified as objects under the Antiquities Act in this proclamation, are of great historic interest. The naval portion of the Battle of Midway, one of the most important naval battles of World War II, occurred approximately 200 miles to the northeast of Midway Atoll, in the adjacent area. Deepsea technologies have enabled the USS Yorktown, an aircraft carrier torpedoed during the battle, to be found at more than 16,000 feet below the ocean's surface. Eyewitness accounts and historical records tell the stories of the destroyer USS Hammann, five Japanese vessels (the four aircraft carriers Hiryu, Soryu, Kaga, and Akagi, and the cruiser Mikuma), and several hundred aircraft that were also lost during the battle in this area. The locations of these vessels have yet to be identified. All told, the adjacent area serves as a final resting place for the more than 3,000 people lost during the battle.

WHEREAS, the waters and submerged lands adjacent to the Monument (west of 163° West Longitude and seaward from the boundaries delineated in Proclamation 8031 as amended by Proclamation 8112 out to the limit of the U.S. EEZ) contain objects of historic and scientific interest that are situated upon lands owned or controlled by the Federal Government;

WHEREAS, section 320301 of title 54, United States Code (the "Antiquities Act"), authorizes the President, 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 lands owned or controlled by the Federal Government to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS, it is in the public interest to preserve the marine environment, including the waters and submerged lands in the U.S. EEZ west of 163° West Longitude adjacent to Papahānaumokuākea Marine National Monument for the care and management of the historic and scientific objects therein;

WHEREAS, the wellbeing of the United States, the prosperity of its citizens and the protection of the ocean environment are complementary and reinforcing priorities; and the United States continues to act with due regard for the rights, freedoms, and lawful uses of the sea enjoyed by other nations under the law of the sea in managing the Papahānaumokuākea Marine National Monument and adjacent areas, and does not compromise the readiness, training, and global mobility of the U.S. Armed Forces when establishing marine protected areas;

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be part of the Papahānaumokuākea Marine National Monument Expansion (Monument Expansion) and, for the purpose of protecting those objects, reserve as a part thereof all lands and interests in lands owned or controlled by the Federal Government within the boundaries described on the accompanying map entitled "Papahānaumokuākea Marine National Monument Expansion" attached hereto, which forms a part of this proclamation. The Monument Expansion comprises the waters and submerged lands in the U.S. EEZ west of 163° West Longitude adjacent to the Monument. The Federal lands and interests in lands reserved consist of approximately 442,781 square miles, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of the Monument Expansion are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, leasing, or other disposition under the public land laws to the extent that those laws apply, including but not limited to, withdrawal from location, entry, and patent under mining laws, and from disposition under all laws relating to development of oil and gas, minerals, geothermal, or renewable energy. Lands and interest in lands within the Monument Expansion not owned or controlled by the United States shall be reserved as part of the Monument Expansion upon acquisition of title or control by the United States.

Management of the Marine National Monument

Nothing in this proclamation shall change the management of the Papahānaumokuākea Marine National Monument or any of the provisions specified in Proclamations 8031 and 8112. Terms used in this proclamation shall have the same meaning as those defined in Proclamation 8031. The Secretaries of Commerce and the Interior (Secretaries) shall share management responsibility for the Monument Expansion. The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (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, the Endangered Species Act (for species regulated by NOAA), the Marine Mammal Protection Act, and any other applicable Department of Commerce legal authorities. The Secretary of the

Interior, through the United States Fish and Wildlife Service (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 98532 and Executive Order 6166 of June 10, 1933.

Additionally, 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 Secretaries shall prepare a joint management plan, within their respective authorities and after consultation with the State of Hawaii, for the Monument Expansion within 3 years of the date of this proclamation, and shall promulgate as appropriate implementing regulations, within their respective authorities, that address any further specific actions necessary for the proper care and management of the objects and areas identified in this proclamation. The Secretaries shall revise and update the management plan as necessary. In developing and implementing any management plans and any management rules and regulations, the Secretaries shall consult, designate, and involve as cooperating agencies the agencies with jurisdiction or special expertise, including the Department of Defense and Department of State, in accordance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.), and its implementing regulations. If the Secretaries deem it beneficial, they may prepare a joint management plan for the entire Monument and Monument Expansion area, consistent with the provisions of the respective proclamations.

The Secretaries shall coordinate and work cooperatively with the Department of Defense, through the United States Navy, to protect, under the Sunken Military Craft Act, Public Law 108375, 118 Stat. 1811, and any other applicable legal authorities, United States sunken military vessels and aircraft that are found within the geographic boundaries of the Monument Expansion. Any sunken craft of a foreign state found within the geographic boundaries of the Monument Expansion may be protected to the extent authorized under U.S. law, consistent with the President's Statement on United States Policy for the Protection of Sunken Warships (January 19, 2001).

This proclamation shall be applied in accordance with international law. The management plans and their implementing regulations shall impose no unlawful restrictions on innocent passage or otherwise unlawfully restrict navigation and overflight and other internationally recognized lawful uses of the sea in the Monument and Monument Expansion and shall incorporate the provisions of this proclamation regarding U.S. Armed Forces actions and compliance 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. Also, in accordance with international law, no restrictions shall apply to foreign warships, naval auxiliaries, and other vessels owned or operated by a state and used, for the time being, only on Government noncommercial service, in order to fully

respect the sovereign immunity of such vessels under international law. The Secretary of State, in consultation with the Secretaries of Commerce and the Interior, shall take steps to protect the Monument Expansion as it does with respect to the Monument as specified in Proclamation 8031.

Restrictions

Prohibited Activities

The Secretaries shall prohibit persons from conducting or causing to be conducted the following activities:

1. Exploring for, developing, or producing oil, gas, or minerals, or any energy development activities within the Monument Expansion;
2. Using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of a Monument Expansion resource;
3. Introducing or otherwise releasing an introduced species from within or into the Monument Expansion;
4. 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 Expansion resource, except as provided under regulated activities below;
5. Drilling into, dredging, or otherwise altering the submerged lands, or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands, except for scientific instruments;
6. Anchoring on or having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor rope;
7. Deserting a vessel at anchor or adrift within the Monument Expansion; and
8. Commercial fishing and possessing commercial fishing gear except when stowed and not available for immediate use during passage without interruption through the Monument Expansion.

Regulated Activities

Subject to such terms and conditions as the Secretaries deem appropriate, the Secretaries may permit any of the following activities regulated by this proclamation if such activity is consistent with the care and management of the objects within the Monument Expansion and is not prohibited as defined above:

1. Native Hawaiian practices, including exercise of traditional, customary, cultural, subsistence, spiritual, and religious practices within the Monument Expansion;
2. Research and scientific exploration designed to further understanding of Monument Expansion resources and qualities;
3. Scientific research and development by Federal agencies that cannot be conducted in any other location;
4. Activities that will further the educational value of the Monument Expansion or will assist in the conservation and management of the Monument Expansion;
5. Anchoring scientific instruments; and
6. Noncommercial 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.

Regulation of Scientific Exploration and Research

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.

Emergencies and Law Enforcement Activities

The prohibitions required by this proclamation shall not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for law enforcement purposes.

U.S. Armed Forces Actions

1. The prohibitions required by this proclamation shall not apply to activities and exercises of the U.S. Armed Forces, including those carried out by the United States Coast Guard.
2. The U.S. Armed Forces shall ensure, by the adoption of appropriate measures not impairing operations or operation capabilities, that its vessels and aircraft act in a manner consistent, so far as is practicable, with this proclamation.
3. In the event of threatened or actual destruction of, loss of, or injury to a Monument Expansion resource or quality resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the United States Coast Guard, the cognizant component shall promptly coordinate with the Secretaries for the purpose of taking appropriate action to respond to and mitigate any harm and, if possible, restore or replace the Monument resource or quality.

4. Nothing in this proclamation or any regulation implementing it shall limit or otherwise affect the U.S. Armed Forces discretion to use, maintain, improve, manage, or control any property under the administrative control of a Military Department or otherwise limit the availability of such property for military mission purposes, including, but not limited to, defensive areas and airspace reservations.

Other Provisions

Nothing in this proclamation shall be deemed to diminish or enlarge the jurisdiction of the State of Hawaii.

The Monument Expansion shall be the dominant reservation.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation.

Warning is hereby given to all unauthorized persons not to appropriate, excavate, injure, destroy, or remove any feature of this Monument Expansion and not to locate or settle upon any lands thereof.

This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

BARACK OBAMA

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Appendix 2-Public Scoping Report

Report of the NWHI Monument Expansion Area Fishing Regulations Public Scoping Sessions

February 21, 2017

Background/Introduction

Presidential Proclamation 9478 set aside an area adjacent to the Papahānaumokuākea Marine National Monument that constituted a Monument Expansion Area (MEA). Through the proclamation, the Secretary of Commerce (NOAA), in consultation with the Secretary of Interior (USFWS), was provided responsibility for management of activities and species within the monument expansion area under the MSA and ESA. The Proclamation prohibited fishing commercial fishing activities and anchoring on any living or dead coral. However, it also allows for regulated fishing activities including Native Hawaiian practices (including exercise of traditional, customary, cultural, subsistence, spiritual, and religious practices) within the MEA, and non-commercial fishing (provided that the fish harvested either in whole or in part, does not enter commerce through sale, barter, or trade, and that the resource is managed sustainably).

On September 23, 2016, the NMFS sent the Western Pacific Regional Fishery Management Council (Council) a letter requesting the Council's recommendations for amending the Hawaii and Pelagic FEPs to establish appropriate fishing requirements under the MSA including the prohibition on commercial fishing and the regulation of non-commercial fishing within the monument MEA. A similar process occurred in 2009 after the designation of marine national monuments for the Pacific Remote Islands, Rose Atoll and Marianas Trench.

The Council, at its 168th Meeting, recommended staff conduct public scoping sessions with the purpose of determining what information is available for the Council to begin the process of analyzing alternatives and recommending management regulations for the MEA.

Scoping Session Methods

Public scoping sessions were held on the islands of Hawaii (Hilo and Kona), Maui, Kauai, Oahu and Molokai. These sessions included an informational briefing on the Proclamation, the Monument Expansion Area, the Council's role in the rule-making process, and data discovery questions. The briefing was followed by a public comment session that allowed for questions as well. Comments were recorded and are provided in summary as well as in greater detail by scoping session.

Summary of Overall Comments

Many of the comments from the participants in the scoping sessions focused on understanding the process and what was expected. Regarding Native Hawaiian subsistence fishing, there were comments that inquired about the Office of Hawaiian Affairs's (OHA) participation in the process and that OHA should be the one to define Native Hawaiian subsistence fishing. Some participants commented on the use of "customary exchange" with some feeling that it wasn't

appropriate and others unsure.

While no distinct options were provided at the scoping meetings, regarding fishing regulations for the MEA, participants provided the following ideas:

- Creating different zones of where fish can and can't be taken
- Allowing for research fishing
- Determining whether charter fishing is included in the non-commercial definition
- A streamlined permitting process
- Clear and enforceable regulations

Other comments included the need to protect the area, increase food security, and understand what is in the area that needs to be protected. Concerns were also raised that some of the regulations developed would skirt the intent of the proclamation.

More details on comments from each public session are provided below.

Hilo Scoping Session

The Hilo scoping session was held at UH-Hilo's Edith Kanakaole Hall on Tuesday, December 6, 2016. The meeting began at 6:25 p.m. with nine persons participants. Council staff provided the informational briefing and opened the session for comments from participants. One participant questioned the legality of using the Antiquities Act to expand the monument and noted that the Magnuson Stevens Fishery Conservation and Management Act has the authority over fisheries management in the EEZ. Staff responded that the legality would be settled by lawyers if it is challenged, but right now the Council will need to make recommendations for regulations as requested by the National Marine Fisheries Service until told otherwise.

Another member of the public stated there must have been some kind of data on non-commercial fishing and wanted to know how much of it was going on in the MEA. Staff responded that this is part of the data discovery process that the Council is going through and that they don't have the data available right now.

A participant commented that the timeline for developing these regulations is very unrealistic, based on his experience. He said that it is very important to get these regulations correct the first time, because the regulations are unlikely to change and this is the chance to preserve opportunities for non-commercial fishing, especially for native Hawaiians.

Enforcement in the MEA was also a concern. Staff responded that NOAA OLE and the Coast Guard are responsible for enforcement.

When asked how the native Hawaiian permit works in PMNM, Staff responded that there is a native Hawaiian working group and that there are permit criteria. Someone responded that part of the purpose of adding a native Hawaiian working group was because a federal entity doesn't have the capability to determine what a native Hawaiian practice is. Those individuals would have a better way to evaluate permit applications for cultural practices.

The participant asked if she has to be native Hawaiian or prove that she is native Hawaiian for this permit. She asked because she wanted to know if the harvest of Honu (green sea turtle) would be allowed. Staff pointed out that the permit is for the practice and not by ethnicity. He also pointed out that the green sea turtle is protected under the Endangered Species Act. The participants pointed out that anyone could go in and do anything they wanted under the guise of the native Hawaiian permit. Another participant commented that there was talk about exempting native Hawaiians from gear restrictions if they used traditional gear. However, he pointed out, there are not that many plants left to make the nets, so native Hawaiians wouldn't be able to practice and that attitude amounted to colonialism. It does not accept that there has been change.

Participant asked what the trends were of populations in the existing monument. There was discussion that it's difficult to determine the baseline of the monument, since there have been changes in surveys types with management. Another commented that the corals in the NWHI were hit pretty hard during the last bleaching event.

When asked if there is anything they want to see in the regulations, one participant said clear, simple, enforceable regulations. Another pointed out that they did tuna tagging research in the area and will not be able to recover those tags due to the lack of access to those waters. Staff pointed out that that would be an important issue to bring up when the management plan is developed. The participant said it bothered him that these projects are being done in good faith and then they get the rug pulled out from under them and would like to see the science continue. He said that science was piggybacking on the work of the fishermen to avoid excessive costs and without fishermen, the likelihood of the research continuing would disappear.

Kona Scoping Session

The scoping session in Kona was held at the West Hawaii Civic Center on Wednesday, December, 7, 2016 and included 10 participants. Following the informational briefing, the participants were provided time to comment and ask questions.

A participant noted that in the area being considered for regulations (50-200 nm) there are only longliners. The participant noted the MEA was made to close commercial fishing. He said it would be better to compromise, maybe make it seasonal or quarterly to commercial fishing. Another member agreed saying that there isn't fish up there or subsistence fishing. It's not a place to play around, since it's so far from the nearest island.

Another participant asked if open and closed periods to allow fishing would be considered. Staff replied that it can be an option for non-commercial fishing.

Someone asked if research fishing was part of this discussion, and he thinks that it should be part of it. He also said that Coast Guard fishes in the NWHI which is an additional fishing activity that goes on in the NWHI. Someone talked about the yellowfin tuna tagging activity, to determine if the longliners up there would catch them and report back. With the closure of the MEA to commercial fishing, that the largest number of fish being caught by anybody is the longliners. Researchers don't have the opportunity to retrieve tagged fish since no one will be fishing up there. It's extremely important to have some provision for research fishing. Another participant chimed in saying that while they're fishing under this permit, they should get to keep

the fish. Unless they're being paid by NOAA or some other agency to perform that duty, they should be able to keep the fish.

A participant commented that the permit process is hard, because you can't even get the permits. Staff said they are unsure at this point, but that the permits are likely to come through the NMFS instead of through monuments, but that is also up in the air. There was a suggestion for the management regime to streamline the permitting process.

One participant wanted to know if there will be two management plans or one combined management plan for the MEA and PMNM. There were questions about how regulations would differ or be similar and needed to be considered. Another asked if an EIS was needed? Staff responded that it may not be needed as these are existing fisheries and the action is for providing permits.

Someone pointed out that pushing out the longliners pushes out the eyes on the water, commenting that there is lots of foreign fishing around that area.

There was concern about the MEA causing fishing vessels to have to travel further distances and that there should be free transit through the area.

Someone pointed out that there will not be any subsistence fishing in the MEA because it's too far from shore. Another commented that it would be really helpful if the folks at NMFS had some training on native Hawaiian traditional fishing and gathering rights as they're reviewing these regulations. They have a revolving door of people that have no connection to these areas.

Someone asked if the boundaries and definitions will be included in the regulations? Staff responded that the definitions and boundaries will need to be mentioned in the amendment.

One comment centered around for-hire charter fishing. The participant noted that for-hire charter fishing is a commercial business under the State of Hawaii. However, Federal fisheries consider for-hire charter fishing as a recreational activity. The participant noted that if a CML is required where they're operating they're required to carry one which conflicts with the existing monument definitions. His larger concern was that he sees for-hire charter fishing vessels as a real option for research fishing in the MEA. He said that it's not beyond the realm of possibility that someone would higher one of those vessels to tag up there. Previous tagging up there was because they had charter vessels out at Midway for researchers to use. It's likely that there would be a group of recreational tuna fishermen who would be willing to pay for the opportunity to support that research. He said that this conflicts with the recreational definition and that that charter vessel becomes a commercial activity.

Another commenter said that he has a federally registered commercial fishing vessel and that the definitions takes away the opportunity to recreationally fish if it's a commercially registered vessel. He said that there is also the question that if you are engaging in recreational fishing, but you hold a CML, are you prohibited from being in the MEA?

Maui Scoping Session

On Thursday, December 8, 2016, the Council held a public scoping session at the Courtyard Kahului Airport in Kahului, Maui. Council staff provided and informational briefing to the 15 participants and opened up the session to questions and comments.

A commenter asked who would go up there on a recreational basis. It's costly to go up there. He expressed concern about illegal fishing occurring as a result because there was no one there to provide extra eyes and ears for enforcement.

Another commenter asked what was the purpose and intent of the proclamation? If the purpose is to protect aquatic wildlife out there, we need a more holistic approach that takes into account radioactive materials from Japan, global warming, ocean acidification, coral bleaching, and RIMPAC. She said that these need to address these before fishing is eliminated and there cannot be a prejudice against fishermen. Where in the document are these factors? A lot of absent issues from this scoping. She had additional concerns that this process was too large to only have two public listening sessions and thought that the President did not take into account everyone's comments.

Another commenter questioned the native Hawaiian accessibility to gathering rights.

The first commenter asked if there were any plans to change the Proclamation or remove it. Staff responded that process was out of the control of the Council and that for now they are sticking to the Council process in order to meet the requirements of the Proclamation until told otherwise.

There was a comment on climate change and the participant asked if the closure of the area was able to make any change? Staff responded that climate change is a long-term thing so we will have to wait and see. The participant also noted that charter fishing might be considered commercial so that needs to be considered in the definitions.

There was some discussion on protected species and their role in the ecosystem, particularly monk seals and the amount of fish they take. The participant was concerned that nothing is being protected because the protected species will take the fish and the fishermen don't get to share in that take.

One commenter said that longline boats had to stay out 50 miles previously and now they have to go 200 miles out. He understands it was a small portion, but as a commercial fisherman, he said that we live on islands and food security was taken away from the people. To him, if you're taking this away, find out the percentage of food security that was taken away from our islands, and how are they going to replace that? Is there a management plan to replace that food security that was taken away? He said that it might have been a small percentage but still a percentage that was eaten here in the islands. He said that some plan is needed on how you're going to reimburse the people of Hawaii for the food security taken away from the people.

A participant said that he hasn't been active in this fishing area, but it's sad to think that people would vote on something like this. He said that after 50 miles, what are you really protecting?

Maybe a few seabirds? He said that it's so far, he doesn't know how you would be fishing commercially. Or even for subsistence. It's a protected area because of the remoteness.

Another participant noted that the State of Hawaii has the Aha Moku system. For any questions about whether fish should be allowed to be brought back, that needs to go through the moku process. Each area might have different traditions. Anyone who used to go up there to gather, they should have the opportunity to say whether fish can be brought back or not. She said that it cannot be free for all just because you're native Hawaiian.

One comment was that the Proclamation makes it sound like the Council hasn't been doing a good job, but the Council has been doing a good job so there isn't a need for these additional protections. He said the Proclamation doesn't really work other than creating a legacy and that the real issue is about food security as we will end up with more imports.

There were questions about the availability of data on fish populations. Staff replied that some surveys went on, but not on a consistent basis to be able to say there's less now than before. Some good science was done in recent years that found a lot of cool stuff but the area is so far and it costs so much to do this type of research.

A commenter said that fish are not going to stay inside the 200 nm boundary. She said that if there is no problem, they can't provide a solution. She said that some solutions may lie in the definitions if it can be redefined.

One commenter said that he was stuck on this food security thing. He said let the Hawaiians go up and catch their fish as he doesn't know how many Hawaiians will go up, but there is a need to allow to people to do that. With the food security issue, he said there is also a need to think about sustainability. He said if you close one area and save that area there are just going to be other areas that are harder hit in order to meet demand. No matter the closure, he said, it still requires people to go and eat but now we got to go take someone else's resources. He noted that everyone so used to driving to Foodland and getting frozen poke, but we should be able to feed ourselves from own areas.

A participant noted that OHA was designated as partner in policy management of PMNM and asked what is the role of OHA in terms of creating the management plan? Staff responded that OHA is part of the Monument Management Board and they will be included as a co-Trustee but that was still being finalized. Staff also noted that the Council will likely have a meeting with OHA and other Hawaiian groups to see what is amenable to Hawaiians as far as fishing is concerned. The commenter said that he was not in support of the Council defining subsistence as they have been opposed to the expansion and finds it ironic that they are now taking the lead in defining these terms. He also said that the Aha Moku should be part of this process and that OHA is given authority so they should be given the voice and creates a process for Hawaiians to have input. The commenter noted that he saw the Proclamation not as a taking but as an investment for the future. He explained that the amount of seafood taken out of the ocean cannot be sustained unless we protect an area that keep supplying it and that is a Hawaiian concept. He noted that we have been taking globally and this effort was a Hawaiian effort to provide more.

He also said that going up to PMNM and bringing back fish is not a Hawaiian practice and that OHA needs to be involved and drive this discussion.

The discussion amongst participants then continued about the purpose of the proclamation and the management of the area. Participants commented on the metrics of replenishment and comparison to other closed areas. The discussion continued for a long time on the purpose of the expansion and whether or not it impacts fishing.

One commenter asked why was this discussion not brought up in the native Hawaiian cultural working group? Staff responded that the regulation will have to go in under the Council process for development, but how that gets developed is open for discussion. He noted that we can ask OHA to develop definitions that the Council can put through its process and put that in front of Council as an option to consider.

Another commenter said that we all want to conserve, but not to the point we need to shut down everything. He said that the first thing we have to do is to get the data. Another commenter asked if delaying is an option in order to get the data first?

Another commenter said that everyone has the right to make a living and asked what if we have the research to collect data be done by people who had done the fishing in that area when it is closed? Who better to do that when the fishermen know that area the best? That way they have a way to make a living. Find a way to make them qualified to do the research rather than some PhD guy who never been there. That would be a more holistic approach. Take culture and find a way to make it economically feasible.

It was reiterated that the process needs to get OHA's view and that the Council needs to get information from them and they need to come out to the meetings.

Kauai Scoping Session

The public scoping session on Kauai was held Tuesday, December 13, 2016 at the Chiefess Kamakahahei Middle School cafeteria. Five participants were in attendance and were provided the informational briefings and time for public comments and questions.

A participant asked if the regulations will include the definitions that the current monument has where native Hawaiians can go fishing but cannot bring fish out. Staff replied that it could be something to look at. The commenter asked if others were asking about it. Staff said yes, in the context of providing similarity to current regulations.

There was a concern from one participant that they have GPS trackers but foreign boats don't and that resources will be taken by international vessels. He also commented that the US vessels have to email someone when going into the monument, but foreign guys don't have to so enforcement is going to be a problem in the MEA.

One participant wanted to know who was going to go fishing up there for subsistence (i.e. fish to eat). He said it takes a ton of fuel to go up there. Staff noted that there are reports of fishing by

people on Coast Guard vessels, research vessels, and other boats that are transiting or working in the area. The participant was concerned about longliners skirting the rules.

Another participant asked if they could receive a copy of the options paper in advance of the March Council meeting so that they can provide comments on the options. Staff responded that any options paper would be made publically available to participants prior to the Council Meeting.

Oahu Scoping Session

The scoping meeting on Oahu was held on December 15, 2016 at the Ala Moana Hotel's Garden Lanai. The nearly two dozen participants heard an informational briefing and were provided an opportunity to ask questions and provide public comment.

One participant asked if a phase out process would be considered and if there would be some compensation for fishers that were forced out of the monument expansion area? He noted that there should be some studies to be done prior to and after the monument closes on socio-economic impacts to fishing communities.

Another participant said that the monument expansion was created to for future generation but questioned whether the benefit would be in near term or long term. He said that the question is really to the younger generation if they want to reap the short term benefit or long term benefit.

There was also a comment on the cultural uses of the monument and that OHA should be given the opportunity to define the cultural practices and they should be involved in the decision process. One commenter had issues with the definition of cultural exchange for use of catch and trade for money and noted that it can be abused by native Hawaiians.

A participant asked if there was any interest in developing recreational fisheries in the NWHI. Staff responded that there was a comment in the Kona meeting that there is a long distance charter fishery so it is quite possible to have one.

One participant asked what the likelihood is of the president-elect upholding the proclamation. Staff said it really depends on the president elect on what he wants to do and the administration he establishes. The Council will continue to work on developing the amendment to meet the three-year deadline.

There was also some concern about the process because the Council came out against the expansion but participant with the concern said they look forward to the development and outcome of the process.

Molokai Scoping Session

The public scoping session on Molokai was held at the Kaunakakai Elementary School cafeteria on Saturday, December 17, 2016. The five participants in attendance were provided an informational briefing followed by an opportunity for questions and public comment.

There were some comments about the definitions for commercial and non-commercial fishing. Staff provided the definitions provided in MSA. There were questions about whether all of this had to be allowed at the same time or if different types of fishing could be allowed in different months?

There was also a question of whether spatial zones could be options for management? Staff responded that it could be an option and explained the bottomfish management regime in the area.

One participant was frustrated that the State of Hawaii wants straight line boundaries, yet they allow these types of boundaries that are not straight lines. He said that he used to fish in the area and that the fish comes from the water column and not the bottom and was concerned that the folks that came up with the proposal didn't understand this. He also said that bottomfishing is different because they know their spots and are not going to places where there is no fish. He said that the pelagic fish are not going to stay inside the boundaries all year-round so there is no reason to close the area. He agreed that the area should be opened up at certain times for fishing and closed when they think overfishing may be occurring.

Much of the discussion with participants centered on traditional and cultural practices. One comment was made regarding competition over ko'a and folks from outside coming to their areas. He said the discussion needs to take place between those folks and the local people. Another participant said that this should go to the Hawaiian community; if we're talking about the public, yes, but if you don't take it to the Hawaiian community, what would you put down for the cultural rules if you have not discussed this with the Hawaiian homesteaders if this hasn't been addressed at the meetings? Public meetings just don't work. She also noted that the cultural impacts of any regulations need to be assessed over both the short- and long-term. Another participant said that subsistence is good but not great and that the word should be perpetuate not subsist because perpetuate means it's always going to be there whereas subsistence means there is no perpetuation. Still another participant said that the islands have real names and the maps and other associated documents should use the real names of the islands. This is how our culture gets taken away from us by leaving off the real names.

One woman said that people have lost their connection to the land and its resources and noted that education and enforcement will be needed. She asked what will be available locally on each island that can help both of those issues.

Other questions were asked regarding the need for permits and current research and data collection efforts. Staff responded that permits will most likely be needed to fish and for other activities in the MEA. They also responded that there have been studies done in the NWHI but not specifically the MEA.

One participant asked what is in the MEA that would serve it a public interest to be made available. Another asked who is fishing there. Staff responded that they have heard that people have gone fishing there in the past and may have ties to the area but there are no current reports of fishing up there. A participant suggested that licenses should not come from out of state for fishing in that area, and if there are, it should cost more.