

**Fishery Management Measures for the Monument Expansion Area of the
Northwestern Hawaiian Islands**

November 30, 2022



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1 INTRODUCTION

1.1 Background Information

The National Marine Fisheries Service (NMFS) and the Western Pacific Fishery Management Council (Council) manage fishing for bottomfish management unit species (BMUS) and pelagic management unit species (PMUS) in the Exclusive Economic Zone (EEZ or federal waters, generally 3-200 nautical miles or nm from shore) around American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (CNMI) and Hawaii, and on the high seas through the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific Region (Pelagic FEP) as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. § 1801 *et seq.*).

On June 15, 2006, President Bush established the Northwestern Hawaiian Islands Marine National Monument (NWHI Monument) by issuing Presidential Proclamation 8031 (71 FR 36443, June 26, 2006) under the authority of the Antiquities Act (Act) (16 U.S.C. 431). The proclamation reserves all lands and interests in lands owned or controlled by the Government of the United States in the Northwestern Hawaiian Islands, including emergent and submerged lands and waters, out to a distance of approximately 50 nautical miles (nm) from the islands. Proclamation 8031 provides the Secretary of Commerce, through NOAA, with primary responsibility for managing the marine areas of the NWHI Monument, in consultation with the Secretary of the Interior. The proclamation provides the Secretary of the Interior, through the U.S. Fish and Wildlife Service (USFWS), with sole responsibility for the areas of the NWHI Monument that overlay the Midway Atoll National Wildlife Refuge (NWR), the Battle of Midway National Memorial, and the Hawaiian Islands National Wildlife Refuge, in consultation with the Secretary of Commerce. The proclamation also established prohibitions, restrictions and other provisions for the Secretaries of Commerce and the Interior to implement under their respective authorities to ensure the proper care and management of the NWHI Monument. They include, but are not limited to:

- Prohibit unauthorized access to the NWHI Monument;
- Provide for carefully regulated educational and scientific activities;
- Preserve access for Native Hawaiian cultural activities;
- Establish marine zones to manage human activities;
- Provide for visitation in a special area around Midway Atoll;
- Phase out commercial fishing over a 5-year period;
- Ban exploring for, developing, or producing oil, gas, or minerals and using or attempting to use poisons, electrical charges, or explosives in the collection or harvest of NWHI Monument resources;
- Prohibit introducing alien species from within or into the NWHI Monument; and
- Prohibit anchoring on corals.

For full text of Proclamation 8031, see Appendix 1.

On August 29, 2006, NOAA and the U.S. Fish and Wildlife Service jointly published a final rule codifying the provisions of Proclamation 8031 at 50 CFR 404 – Papahānaumokuākea Marine National Monument. On February 28, 2007, President Bush issued Presidential Proclamation

8112 renaming the Northwestern Hawaiian Islands Marine National Monument as the Papahānaumokuākea Marine National Monument or PMNM (72 FR 10029, February 28, 2007).

On August 31, 2016, President Obama, issued Presidential Proclamation 9478 (see Appendix 1), which established the Papahānaumokuākea Marine National Monument Expansion. This Monument Expansion (ME) is adjacent to the PMNM and includes waters and submerged lands out to approximately 200 nm from the islands, (See Figure 1). The proclamation provides the Secretary of Commerce, through NOAA, in consultation with the Secretary of the Interior, through the U.S. Fish and Wildlife Service (USFWS), with responsibility for management of activities and species within the MEA 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 directed the Secretaries of Commerce and the Interior to prohibit the following activities in the MEA:

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

For full text of Proclamation 9478, see Appendix 2.

The proclamation also authorizes the Secretary of Commerce to permit and regulate within the MEA 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), and Native Hawaiian practices (including exercise of traditional, customary, cultural, subsistence, spiritual, and religious practices). The proclamation also directs the Secretary of Commerce to promulgate implementing regulations under its authority that address specific actions necessary for the proper care and management of Monument objects, including fishery resources and to consider initiating the process under the National Marine Sanctuaries Act (NMSA) to designate the Monument as a national marine sanctuary.

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 MEA.

On November 19, 2021, the National Oceanic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries (ONMS) initiated the formal NMSA consultation with the Council referencing their intent to initiate the process to consider designating marine portions of the PMNM [and MEA] as a national marine sanctuary (86 FR 72214, December 21, 2021). The ONMS provided a letter to the Council with an opportunity to prepare draft fishing regulations for the proposed sanctuary as required by section 304(a)(5) of the NMSA. The Council's decision is guided by the provisions and processes set forth under MSA and implementing regulations at 50 CFR 600, but the proposed fishing regulations would also be measured for consistency with Presidential Proclamations 8031, 8112, and 9478, the NMSA, and the goals and objectives of the proposed sanctuary.

1.2 Proposed Action

Consistent with Proclamation 9478 and based on recommendations from the Council, NMFS would implement new requirements as follows:

- Codify the boundaries of the Monument Expansion Area as a management unit
- Implement the prohibition on commercial fishing in the Monument Expansion Area of the Northwestern Hawaiian Islands
- Establish management measures for non-commercial fishing in the Monument Expansion Area including, but not limited to:
 - Require Federal permits and reporting for non-commercial fishing to aid in the monitoring of fishing activities;
 - Require Federal permits for subsistence fishing that would allow for customary exchange (as defined in 50 CFR 665.12) in the Monument Expansion Area to help preserve traditional indigenous and cultural fishing practices; and
 - Limit customary exchange eligibility to residents and cultural/lineal descendants of Hawaii.

1.3 Purpose and Need for Action

The purpose of this action is to establish management measures that prohibit commercial fishing and provide opportunities for sustainable non-commercial fishing and Native Hawaiian fishing practices to continue in the MEA (50- 200 nm) consistent with provisions of Presidential Proclamation 9478. This action is needed because the proclamation directs the Secretary of Commerce to prohibit commercial fishing but authorizes the Secretary to permit and regulate non-commercial fishing and Native Hawaiian fishing practices in the MEA. The proclamation further directs the Secretary of Commerce to promulgate implementing regulations under its authority that address specific actions necessary for the proper care and management of Monument objects, including fishery resources. In addition, pursuant to Section 304(a)(5) of the National Marine Sanctuaries Act (NMSA), the Council is authorized to develop proposed fishing regulations that meet the goals and objectives of the NMSA, and the proposed sanctuary. Therefore, this action is also needed to fulfill the Council's obligation to develop proposed fishing regulations for consideration by the ONMS as part of the sanctuary designation process.

1.4 Action Area

The action area includes U.S. EEZ waters of the MEA extending 50 to 200 nm from shore west of 163° W longitude and does not include U.S. EEZ waters of the PMNM extending 3-50 nm (see Figure 1). This is because NMFS, ONMS and the Council have determined that Federal regulations at 50 CFR 404 - Papahānaumokuākea Marine National Monument provide sufficient regulations for the proper care of the marine areas in federal waters of the PMNM from 3-50 nm from shore. In addition, U.S. EEZ waters within the Midway Atoll National Wildlife Refuge and Hawaiian Islands National Wildlife Refuge are also excluded from the action area as these areas are managed by the U.S. Department of the Interior.

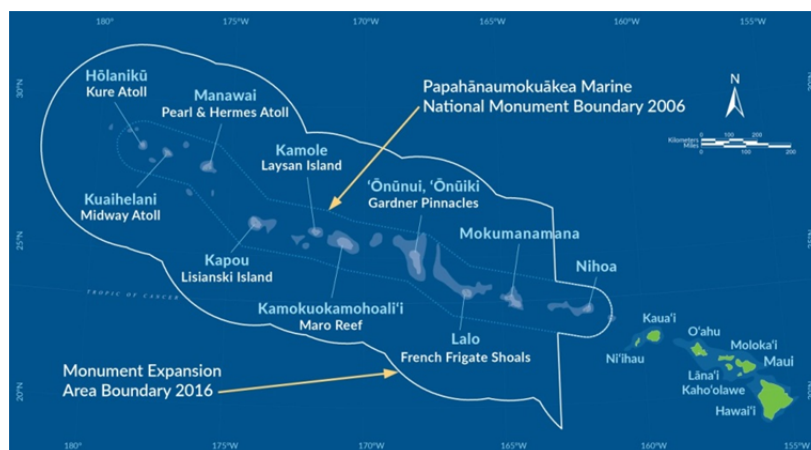


Figure 1: Map of the Northwestern Hawaiian Islands with the PMNM and MEA boundaries

Credit: NOAA

1.5 Decision(s) to be Made

This document will support a decision by the Regional Administrator (RA) of the NMFS Pacific Island Region, on behalf of the Secretary of Commerce, whether to approve, disapprove, or partially approve the Council's recommendation. The RA will use the information in this EA to make a determination about whether the proposed action would constitute a major federal action that has the potential to significantly affect the quality of the environment. If NMFS determines the action would *not* significantly affect the quality of the environment, NMFS will prepare a Finding of No Significant Impact (FONSI). If NMFS determines the proposed action is a major federal action that would significantly affect the quality of the environment, NMFS would prepare an environmental impact statement (EIS) before taking action.

1.6 List of Preparers

(In Alphabetical Order)

- Pua Borges, National Marine Fisheries Service, Pacific Islands Regional Office
- Joshua DeMello, Western Pacific Regional Fishery Management Council
- Mark Fox, National Marine Fisheries Service, Pacific Islands Regional Office

- Brett Schumacher, National Marine Fisheries Service, Pacific Islands Regional Office

1.7 Public Involvement

1.7.1 Initial Actions by the Council

At its 168th Council Meeting in October 2016 (81 FR 63740, Sept. 16, 2016), the Council directed staff to begin drafting options to amend the Hawaii and Pacific Pelagics FEPs for Council consideration that include draft regulations that would prohibit commercial fishing, allow non-commercial fishing, allow Native Hawaiian traditional fishing practices, and regulate other activities as appropriate.

In March 2017, the Council at its 169th Meeting (82 FR 11014, Feb. 17, 2017), reviewed public comments from scoping sessions held in December 2016 and directed staff to explore the utility of existing data in the development of options to amend the Hawaii and Pacific Pelagics FEPs and to present draft options to the Council at its 170th Meeting.

At the 170th meeting of the Council (82 FR 24952, May 31, 2017), the Council deferred action on fishing regulations in the NWHI Monument Expansion Area pending the Administration's review of the National Monuments.

In 2021, the Council revisited potential fishing regulations due to the proposal of a national marine sanctuary for the NWHI. The Council reviewed potential sanctuary goals and objectives and was provided a package requesting fishing regulations under section 304(a)(5) of the National Marine Sanctuaries Act. In response, the Council provided a draft for review based on a recommendation at its 190th Council Meeting in March 2022 (87 FR 11,046, Feb. 28, 2022). The Council recommended preliminarily preferred options for permitting and reporting requirements for commercial (outside of monument boundaries), non-commercial, Native Hawaiian practices, and research fishing within the sanctuary boundaries and developing an amendment to analyze alternatives parallel to sanctuary fishing regulations.

The Council took a preliminary position on fishing regulations at its 191st meeting in June 2022 (87 FR 32131, May 27, 2022) by supporting the prohibition on commercial fishing and establishing federal permits for non-commercial fishing in the Monument Expansion Area. The Council also directed staff to work out the details of the alternatives for initial action by the Council at its 192nd meeting in September.

The Council held their 145th meeting of the Scientific and Statistical Committee (SSC) and 192nd Council meeting in September, 2022 (87 FR 53732, September 1, 2022). At the SSC meeting, Council staff presented management options for consideration and requested guidance on a definition of subsistence fishing. Social scientists on the SSC conferred and provided several definitions for consideration by the Council. At the Council meeting, Council staff presented these definitions and presented management options for the MEA including prohibition of commercial fishing, allowing and regulating non-commercial fishing, allowing and regulating subsistence fishing including cultural exchange as a Native Hawaiian practice. The Council discussed these options but did not arrive at a consensus on a preliminarily preferred alternative. They directed Council staff to seek additional public input on the

amendment. In response, Council staff organized a series of meetings in early November, 2022 throughout the MHI to engage the public and solicit their feedback.

1.7.2 Coordination with Others and the Public

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 (81 Fed. Reg. 83204, Nov. 21, 2016; 81 Fed. Reg. 85935, Nov. 29, 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 Kamakahelei 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 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. At the 170th Council Meeting held on June 20-22, 2017 in Honolulu, Hawaii, the Council Deferred action on fishing regulations in the NWHI MEA pending the Administration's review of the National Monuments.

The Council, at its 192nd Meeting in November 2022, directed staff to solicit additional input from the community on alternatives for allowing non-commercial fishing and Native Hawaiian practices in the MEA, including a definition for subsistence fishing and options for including customary exchange. The following community meetings were held in November 2022 (87 FR 63036, October 18, 2022).

- November 1, 2022, Wilcox Elementary, Lihue, Kauai, Hawaii
- November 3, 2022, UH Maui College, Kahului, Maui, Hawaii
- November 4, 2022, Grand Naniloa Hotel, Hilo, Hawaii
- November 5, 2022, Royal Kona Resort, Kailua-Kona, Hawaii
- November 8, 2022, Lanikeha Community Center, Hoolehua, Molokai, Hawaii
- November 10, 2022, Ala Moana Hotel, Honolulu, Oahu, Hawaii

A report of the community meetings was reported to the Council at its 193rd Meeting, December 2022.

1.7.3 Summary of Public Comments Received

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 (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:

1. Creating different zones of where fish can and can’t be taken
2. Allowing for research fishing
3. Determining whether charter fishing is included in the non-commercial definition
4. A streamlined permitting process
5. 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.

Comments received during the community meetings held in November 2002 focused on Native Hawaiian fishing practices. In general, participants supported the opportunity for Native Hawaiians to fish in the MEA and agreed that it would be too costly for most people to participate. The idea of cost recovery was generally agreed to be able to allow participation for Native Hawaiians to practice their culture. Participants in most of the meetings also requested for commercial fishing access in the MEA.

2 DESCRIPTION OF THE ALTERNATIVES

This section describes a reasonable range of alternatives that meet the stated purpose and need for action. We also describe the no action (status quo) alternative, which will be the baseline against which the environmental effects of the action alternatives will be compared.

2.1 Alternative 1: No Action (Status Quo)

Under Alternative 1, the Council and NMFS would not establish any new management measure or associated fishing regulations for the MEA. While Federal regulations at 50 CFR 404 - Papahānaumokuākea Marine National Monument, including the prohibition on commercial fishing would continue to apply in the original boundary of the PMNM, which encompasses Federal waters 3-50 nm from shore, there would be no new regulations to implement the provisions of Presidential Proclamation 9478 in the MEA, which extends approximately 50-200 nm from shore. In the MEA, Proclamation 9478 would prohibit commercial fishing, but there would be no regulations codifying this prohibition in the Code of Federal Regulations. In the MEA, non-commercial fishing, including Native Hawaiian practices would be allowed, but largely unregulated as most of the fishing regulations for Hawaii bottomfish and pelagic fisheries at 50 CFR 665 – Western Pacific Fisheries, do not apply to non-commercial fisheries in EEZ waters encompassing the MEA.

2.2 Alternative 2: Extend the Original PMNM Non-Commercial Fishing Regulations into the MEA

Under Alternative 2, the Council and NMFS would amend the Hawaii and Pelagics FEP to establish new management measures and implement fishing regulations for the MEA that are identical to the regulations specified in 50 CFR 404 - Papahānaumokuākea Marine National Monument. Specifically, NMFS and the Council would codify fishing regulations prohibiting commercial fishing in the MEA.

Non-commercial fishing, including Native Hawaiian practices for bottomfish and pelagic management unit species (MUS) would only be allowed in the MEA as an ancillary activity to one of the six permitted activities authorized by the ONMS. The six permitted activities are (1) Research; (2) Education; (3) Conservation and Management; (4) Special Ocean Uses; (5) Native Hawaiian Practices; and (6) Recreation. Under this alternative, fish may only be caught for sustenance and must be consumed within the MEA. This means fish caught in the original PMNM cannot be removed from the boundary of the PMNM. Similarly, fish caught in the MEA cannot be removed from the MEA.

It is important to note that recreational fishing, that is, non-commercial fishing for sport or pleasure, would not be allowed under this alternative. This is because regulations at 50 CFR 404 defines recreational activity to mean an activity conducted for personal enjoyment that does not result in the extraction of Monument resources and that does not involve a fee-for-service transaction. As a result, recreational fishing, which involves the extraction of fish, including recreational charter fishing, which involves a fee-for-service transaction, cannot be permitted under the PMNM Recreational Permit.

Under this alternative, there would be no limit placed on the amount of bottomfish or pelagic MUS that could be caught in the MEA. Similarly, there would be no regulations requiring reporting of catch or specific restrictions on the types of gear used. However, ONMS would evaluate any request to engage in non-commercial fishing when reviewing permit applications and may allow non-commercial fishing, including Native Hawaiian practices if the methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to their impacts to Monument resources, qualities, and ecological integrity.

2.3 Alternative 3: Allow for Sustainable Non-Commercial Fishing and Native Hawaiian Practices in the MEA, Including Bringing Resources to the MHI; Do Not Allow for Community Sharing

Under this alternative, the Council and NMFS would amend the Hawaii and Pelagics FEP to prohibit commercial fishing in the MEA and establish new management measures and implement fishing regulations to allow for sustainable non-commercial fishing, including Native Hawaiian practices for bottomfish and pelagic MUS in the MEA. The management measures under this alternative are described in Section 3.3.

2.4 Alternative 4: Allow for Sustainable Non-Commercial Fishing and Native Hawaiian Practices in the MEA, Including Bringing Resources to the MHI and Limited Community Sharing

Under this alternative, the Council and NMFS would amend the Hawaii and Pelagics FEP to prohibit commercial fishing in the MEA and establish new management measures and implementing fishing regulations to allow for sustainable non-commercial fishing, including Native Hawaiian subsistence practices for bottomfish and pelagic MUS in the MEA. The management measures under Alternative 4 would include all of the provisions outlined under Alternative 3, except under this alternative, NMFS and the Council would establish a separate permit for Native Hawaiian subsistence practices. This permit would include certain eligibility criteria and would allow the permit holder to engage in limited sharing of MEA marine resources between fishermen and community residents, including family and friends of community residents, for goods, and/or services for cultural, social, or religious reasons. This sharing may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, fuel, or food, that may be necessary to participate in fisheries in the MEA. The Council may annually review and monitor the cost recovery information pursuant to this section for five years from the effective date of the final rule, at which time the cost recovery provision will expire.

2.5 Alternatives Not Considered in Further Detail

2.5.1 Prohibit Commercial and Non-Commercial Fishing, including Native Hawaiian Practices in the MEA

NMFS and the Council did not consider a complete prohibition on fishing in the MEA because such an alternative is not consistent with the purpose and need for action or the intent of Presidential Proclamation 9478. Presidential Proclamation 9478 intended the Secretary of Commerce to provide opportunities to permit and regulate sustainable non-commercial fishing and Native Hawaiian practices in the MEA and directs the Secretary of Commerce to promulgate implementing regulations under its authority that address specific actions necessary for the proper care and management of Monument objects, including fishery resources. As such, an alternative that would eliminate all fishing from the MEA was not considered in detail.

3 ANALYSIS OF MANAGEMENT ISSUES

The Council will consider each of the previous issues to determine which options to move forward with in developing a preferred alternative for fishing regulations in the NWHI MEA.

3.1 No Action

By taking no action, the Council would not provide a recommendation to NMFS on fishing regulations for the NWHI. This could represent a failure on the Council's part because there have been requests by NMFS PIRO and ONMS to provide these fishing regulations. A failure to provide regulations would necessitate the Secretary of Commerce to step in and provide a "secretarial amendment" to the FEPs in order to comply with the requirements of MSA and the NMSA.

An example of this occurring is with the Northeast Canyons and Seamounts Marine National Monument omnibus amendment being developed by NOAA Fisheries. In this case, the New

England and Mid-Atlantic Fishery Management Councils both voted against developing regulations, thus NMFS is then required to incorporate the area and commercial fishing prohibitions into their fishery management plans and regulations.

It is expected that if the Council chooses to take “no action” on this issue, the same situation would occur and NMFS would be required to develop the amendment and incorporate the commercial fishing prohibition, but may not pursue the non-commercial fishing issue.

Proclamation 9478 does not require the development of fishing regulations as fishing “may” be allowed as a managed activity. However, the Council was requested by NMFS and ONMS to provide fishing regulations for the MEA and a proposed National Marine Sanctuary, respectively. No Action would remove the Council from the process of developing fishing regulations for the MEA as well as the proposed Sanctuary. The responsibility of fishing regulations would then fall to the NMFS. NMFS could then implement fishing regulations through a Secretarial Plan if the Council fails to develop a plan if such fishery requires conservation and management (16 USC 1854).

3.2 Commercial Fishing

Alternatives 2 through 4 would require NMFS to prohibit commercial fishing as defined in 50 CFR 665 – Western Pacific Fisheries, would be prohibited in the MEA consistent with Proclamation 9478. However, this prohibition is not codified under the fishing regulations under 50 CFR 665. Commercial fishing does not currently exist within the boundaries of the MEA due to the establishment of the PMNM and MEA. However, commercial fishing did occur in the MEA prior to 2016.

Records of commercial fishing for Pelagic Management Unit Species (PMUS) occur back to the beginning of the record keeping for the State of Hawaii. The area had been utilized for both longlining and non-longlining prior to the closure from the proclamation. The number of non-longline pelagic fishermen in the NWHI has ranged from one to over a dozen and include bottomfish fishermen over the time series. In more recent years prior to the closure (2001-2003), PMUS fishermen had caught an average of 184,593 lbs. annually.

Currently, commercial fishing is allowed in the MEA under the Council’s existing FEPs but prohibited through Proclamation 9478. Those attempting to commercially fish in the MEA under the FEP regulations would be subject to the authority of the Proclamation as well. The prohibition could be incorporated into fishing regulations to both meet the proclamation as well as provide for consistent regulations for enforcement purposes.

The Council could choose to not prohibit commercial fishing as the Council has voiced its concerns previously regarding commercial fishing not impacting the Monument resources. It is likely that the commercial fishing prohibition would, however, be implemented by NMFS through a Secretarial Amendment process.

3.3 Non-Commercial Fishing

Non-commercial fishing is defined under MSA §665.12 as *“fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing.”* This definition was put in by the Council in reference to non-commercial fishing opportunities in other monuments as well as the main Hawaiian Islands.

Non-commercial fishing may be allowed in the MEA under Proclamation 9478 as long as fish harvested within the NWHI MEA, either in whole or in part, does not enter, or intend to enter, commerce or enter commerce through sale, barter or trade. While the proclamation provides an allowance for non-commercial fishing, this would need to be codified through the development of federal permits in order to conduct the activity within the MEA. Federal permits would also consider the need for reporting catch and effort, which species are affected, and which gears are allowed and/or prohibited. Proclamation 9478 also requires that the resources is managed sustainably and non-commercial fishing would also have to be consistent with the care and management of the objects within the MEA, so limits on fishing as well as dictating the disposition of catch should also be considered.

In order to provide the opportunity for fishing, NMFS would codify the boundary of the MEA in the Code of Federal Regulations, as depicted in Figure 1. The inner boundary of the MEA would be coterminous with the seaward boundary of the original PMNM, and the outer boundary being a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, with the easternmost boundary coterminous with 163° West Longitude.

3.3.1 Federal Permitting and Reporting

Management in the existing PMNM permits fishing for sustenance under a Native Hawaiian Practices Permit as well as for recreational fishing in the Midway Atoll Special Management Area. Twenty-three Native Hawaiian Permits were issued by PMNM from 2010-2020 with nineteen requesting to fish within the monument. Fishing is an activity permitted incidental to the Native Hawaiian Practice but catch must be used or consumed within the PMNM.

Establishing federal permits for the MEA would be specifically for fishing and would require an application and federal requirements as required by MSA and other applicable laws. This includes paying for application fees, potentially vessel and gear identification and marking, and vessel monitoring systems that are standard in developing federal permits.

Along with permits, a record of catch and fishing effort would be required through a federal logbook to be provided to NMFS after a trip. Data collected includes, but is not limited to, such information as species caught, number of fish, pounds of fish, location, etc.

The Council may choose to explicitly allow for non-commercial fishing to take place in the MEA through the development of a federal permit. A federal permit provides the opportunity to access and fish the MEA for non-commercial purposes. Under alternatives 3 and 4, any person

engaging in non-commercial fishing, including Native Hawaiian practices for bottomfish and pelagic MUS in the MEA must obtain a MEA non-commercial fishing permit and comply with reporting and record keeping requirements codified at [50 CFR 665.14 – Reporting and Recordkeeping](#), as required for all Magnuson-Stevens Act permits issued by NMFS. Under alternative 3, there would be no eligibility criteria for a MEA non-commercial fishing permit.

The Council could choose not to allow for non-commercial fishing by not providing a federal permit. While the Proclamation 9478 allows for non-commercial fishing as a managed activity, it does not require it and thus it is unlikely that NMFS would develop a Secretarial amendment to allow non-commercial fishing in the MEA. The Council's existing fishing regulations in the NWHI are still intact and may allow for non-commercial fishing in the area for precious corals, crustaceans, and bottomfish under the Hawaii FEPs in some form. However, none of the regulations are explicit for non-commercial fishing and may face enforcement challenges.

3.3.2 Management Unit Species

Federal permits would require designating which species are allowed to be fished. Most of the MEA is over 4,000 m in depth and over 50 miles from shore, resulting in nearly all of the fishable habitat as the pelagic ecosystem. There are a few places with shallower depths that may allow for non-pelagic fishing as well.

Fishing in the NWHI in the early 2000's included Pelagic Management Unit Species (PMUS), Bottomfish Management Unit Species (BMUS), and Crustacean Management Unit Species (CMUS). Precious Coral Management Unit Species (PCMUS) and Coral Reef Ecosystem Management Unit Species (CREMUS, now designated as Ecosystem Component Species, or ECS) are also in the fishery but not fished for at those times due to the establishment of the NWHI Coral Reef Ecosystem Reserve. In the last ten years, fishing under Native Hawaiian Permits in PMNM and at MASMA included pelagic species such as tunas, ono, and mahimahi; as well as bottomfish species such as uku.

The species that may be caught in the MEA are limited due to depth and habitat. The Council could therefore limit the available catch to those Pelagic and Bottomfish MUS which are more likely to occur in the MEA. This would also prohibit the catch and possession of Crustacean and Precious Coral MUS and also any Ecosystem Component Species. It is expected that pelagic management unit species would make up most, if not all, of the catch due to these reasons but that bottomfish may be available in particular locations such as the edge of Salmon Bank. Other species are less likely, but not impossible, so likely to be less of an impact and provide for the return of those species to the MEA.

Under alternatives 3 and 4, fishing would be allowed for Hawaii Bottomfish MUS as defined at [50 CFR 665.201](#) and Western Pacific Pelagic MUS as defined at [50 CFR 665.800](#). Fishing for all other Hawaii FEP MUS and Hawaii FEP ecosystem component species (ECS), including Hawaii crustacean MUS and Hawaii crustacean ECS, Hawaii precious coral MUS and ECS and Seamount Groundfish MUS, as defined in [50 CFR 665 - Subpart C, Hawaii Fisheries](#) would be prohibited.

Due to the depth and distance from shore, it is unlikely that CMUS, PCMUS, or CREMUS/ECS could be harvested in the MEA. Conversely, the Council could allow for all MUS and ECS to be harvested in the MEA, however likely it is that it would be caught in the area. This would allow for those species that are not pelagic or bottomfish to be taken and provided as food to the community. It would also ensure that fish were not returned dead to the water and utilized.

Pelagic Management Unit Species (Pacific Pelagics Fishery Ecosystem Plan)

English Common Name	Scientific Name	Hawaii
Mahimahi (dolphinfishes)	<i>Coryphaena</i> spp.	Mahimahi
Wahoo	<i>Acanthocybium solandri</i>	Ono
Indo-Pacific blue marlin Black Marlin	<i>Makaira mazara Makaira indica</i>	A'u, Kajiki
Striped marlin	<i>Tetrapturus audax</i>	Nairagi
Shortbill spearfish	<i>Tetrapturus angustirostris</i>	Hebi
Swordfish	<i>Xiphias gladius</i>	A'u k , Broadbill, Shutome
Sailfish	<i>Istiophorus platypterus</i>	A'u lepe
Pelagic thresher shark, Bigeye thresher shark, Common thresher shark, Silky shark, Oceanic whitetip shark, Blue shark, Shortfin mako shark, Longfin mako shark, Salmon shark	<i>Alopias pelagicus, Alopias superciliosus, Alopias vulpinus, Carcharhinus falciformis, Carcharhinus longimanus, Prionace glauca, Isurus oxyrinchus, Isurus paucus, Lamna ditropis</i>	Mano
Albacore	<i>Thunnus alalunga</i>	'Ahi palaha, Tombo
Bigeye tuna	<i>Thunnus obesus</i>	'Ahi po'onui, Mabachi
Yellowfin tuna	<i>Thunnus albacares</i>	'Ahi shibi

English Common Name	Scientific Name	Hawaii
Northern bluefin tuna	<i>Thunnus thynnus</i>	Maguro
Skipjack tuna	<i>Katsuwonus pelamis</i>	Aku
Kawakawa	<i>Euthynnus affinis</i>	Kawakawa
Moonfish	<i>Lampris</i> spp.	Opah
Oilfish	Gempylidae	Walū, Escolar
Pomfret	Bramidae	Monchong
Other tuna relatives	<i>Auxis</i> spp., <i>Scomber</i> spp., <i>Allothunus</i> spp.	Ke'o ke'o, saba, various
Neon flying squid, Diamondback squid, Purple flying squid	<i>Ommastrephes bartamii</i> , <i>Thysanoteuthis rhombus</i> , <i>Sthenoteuthis oualaniensis</i>	Squid, ika

Bottomfish Management Unit Species (Hawaii Archipelago Fishery Ecosystem Plan)

English Common Name	Scientific Name	Hawaii
Long-tail or Red Snapper	<i>Etelis coruscans</i>	Ulaula Koa'e; Onaga
Pink Snapper	<i>Pristipomoides filamentosus</i>	Opakapaka
Ruby or Squirrelfish Snapper	<i>Etelis carbunculus</i>	Ehu
Silver Jaw Snapper/Jobfish	<i>Aphareus rutilans</i>	Lehi
Brigham's Snapper	<i>Pristipomoides zonatus</i>	Gindai
Von Siebold's Snapper	<i>Pristipomoides sieboldii</i>	Kalekale
Hawaiian Grouper or Sea Bass	<i>Hyporthodus quernus</i>	Hapuupuu
Grey Snapper (green jobfish)	<i>Aprion virescens</i>	Uku

Crustaceans Management Unit Species

English Common Name	Scientific Name	Hawaiian
Kona Crab	<i>Ranina ranina</i>	Papa'i kua loa

English Common Name	Scientific Name	Hawaiian
Deep Water or Nylon Shrimp	<i>Heterocrapus sp.</i>	Ama ebi

Precious Corals Management Unit Species

English Common Name	Scientific Name	Hawaiian
Pink coral	<i>Pleurocorallium secundum</i>	NA
Red Coral	<i>Hemicorallium laauense</i>	NA
Gold Coral	<i>Kulamanamana haumeaae</i>	NA
Bamboo Coral	<i>Acanella sp.</i>	NA
Black Coral	<i>Antipathes griggi</i> , <i>Antipathes grandis</i> , <i>Myriopathes ulex</i>	NA

3.3.3 Allowable Gears

The current gears authorized under the FEP and in [50 CFR 600.725 – General Prohibitions](#) include bandit gear, handline, hook and line, rod and reel and spear. All other gear types, including longline, bottom set longline, trawl and poisons are prohibited.

The Council could choose to limit gears to what is already allowed under the FEPS or to allow for any and all gears. Limiting gears would allow for known impacts to target and non-target species to be accounted for and anticipate any issues. Current gears are analyzed and have Biological Opinions that show that there are likely low to no impacts on protected species. Allowing all gears provides for innovation in fishing to be effective, particularly when there are high costs associated with participating. However, those potential gear types may have wider impacts on protected species, habitat, etc., that are not currently accounted for and would require Biological Opinions and other consultations. The current list of prohibited gears in the fishery would continue to be observed and provides for sustainability of resources.

3.3.4 Sustainable Limits for Catch

The Council may choose to set limits on catch for the species allowed to be harvested by the allowable gears. The limit on catch may provide for a sustainably managed resource as intended by Proclamation 9478. In order to meet the mandate of the proclamation that fishing be managed sustainably, various options for looking at limiting catch are presented below. The information known from each of those options is presented for consideration.

3.3.4.1 Utilizing Existing Stock Assessments

Recent stock assessments that are available have shown that none of the Management Unit Species presented above are overfished, nor experiencing overfishing. Stock assessments exist for a few of the PMUS that are based on the Pacific-wide stock. However, not all PMUS have

been assessed. For those that have been assessed, a catch limit could be determined utilizing the portion of the unused amount of MSY from the stock assessment commensurate to the catch contribution of the US. For example, the MSY in the latest stock assessment for Bigeye Tuna was 140,720 mt and the median recent yield is 134,940 mt. The US total contribution to the total catch was 18,530, or 12.4% of the total catch. The unused portion of the MSY was 5,780 mt, so based on the percentage of total catch the US percentage of the unused portion would be 12.4% x 5,780, or 716.72 mt (or 1,580,097 lbs.). Similar stock assessments for striped marlin, albacore, and yellowfin could provide similar catch limits for those species available for catch in the MEA.

The latest bottomfish stock assessment for the NWHI was done in 2007 by NMFS PIFSC. This was the last time that the bottomfish MSY was available for the NWHI. At a zero-percent risk of overfishing, the MSY for bottomfish in the NWHI was 216,200 lbs. At a 50-percent risk of overfishing, the MSY was 764,000 lbs. These projections were for 2009-2010 fishing years and since the fishery in the NWHI has been closed since then, the expected MSY would likely be much higher.

The Biological Reference Points from the last stock assessment for the NWHI bottomfish

	Mau Zone	Hoomalu Zone
Carrying Capacity:	882,608 lb	3,062,650 lb
Zonal MSY:	100,399 lb	348,385 lb
Biomass:	441,304 lb	1,531,325 lb

Source: [Moffitt et al., 2006](#)

3.3.4.2 Utilizing existing limits as prescribed in Proclamation 8031

The Council could initially establish a catch limit for BMUS and PMUS specified in Proclamation 8031, which is 350,000 lb of BMUS and 180,000 lb of PMUS. This catch limit would apply to total catch from the PMNM and the MEA combined. NMFS and the Council would annually report fishery performance (e.g., number of permits issued and catch information, etc.) in the MEA in its annual Hawaii FEP and Pelagics FEP Stock Assessment and Fisheries Evaluation (SAFE) Reports. The Council would evaluate fishery performance after an appropriate time not to exceed 5 years and in consideration of the best available scientific information, evaluate whether the additional specific actions are necessary for the proper care and management of Monument objects, including fishery resources, as provided by Proclamation 9478.

3.3.4.3 Utilizing existing catch data in the NWHI

Existing permitting within the PMNM in 0-50 miles collects catch data from permittees. The amount of fish reported under Monument permits from 2010-2020 is in numbers due to permittees needing to consume the fish within the monument. In that ten year period, a total of 28 fish were caught, 17 PMUS, 10 BMUS, and one other species (ECS).

In the early 2000s, before the NWHI was closed to fishing, Hawaii fishermen caught more than 5,000 lbs. of bottomfish at Salmon Bank and over 250,000 lbs of pelagic fish in the entire NWHI using non-longline gears. Since the closure of the fisheries due to Proclamation 8031, much of the catch in the MEA had been relegated to longline fishing, which as a commercial fishery was prohibited by Proclamation 9478.

3.3.4.4 Monitor into the future to set the limit

Given that fishing is currently not occurring and that the anticipating level of fishing is unknown, a limit on catch could be determined based on data collected from permitted vessels in future years. With fishing levels expected to, but not guaranteed, to be low, there is an opportunity to utilize the data collected through the permit to set a limit on catch and/or effort at a level that is sustainable based on the existing effort. Monitoring and revising the limit based on this effort at a set interval would also allow for sustainable catch limits that are realistic and appropriate for the area.

3.3.5 Catch Disposition

Non-commercial fishing activities in the MEA are restricted by the proclamation in that fish that are harvested cannot be sold, bartered, or traded. However, fish may be brought out of the MEA for non-commercial uses. Within PMNM, fish can only be eaten or used within the PMNM. Fish can be used for sustenance and not be brought outside of the 200 mile boundary.

Proclamation 9478 allows for regulated activities, including non-commercial fishing if the resource is managed sustainably. Fisheries in the NWHI and the MEA are neither overfished nor experiencing overfishing. Any fishing activity that would take place in the MEA would therefore start from that point and sustainability would be measured by whether that activity has had any negative impact on the resources.

Under alternatives 3 and 4, BMUS and PMUS legally caught by an individual holding a valid MEA non-commercial fishing permit may be brought back to the main Hawaiian Islands and shared within the community but may NOT be used for reciprocal exchange (i.e., such as trade, barter, or sale), including the practice of [customary exchange](#) as defined in 50 CFR 665.12, even if the exchange is not intended for profit. Bringing fish back allows for those that would like the opportunity to fish there but not have the means to do so to experience and participate in the fishery. It also supplements the available fish to the community and contributes to the sustainability of the Hawaiian Islands by providing local seafood and reducing dependence on imports.

The disposition of the catch could also be limited to sustenance use where the fish that is harvested is consumed within the MEA. This would be in line with existing PMNM regulations making it easier to enforce, but also not allow for fish to be brought back and shared with the family or the community.

Enforcement could be impacted as fishing inside and outside of the MEA would need to be addressed, as well as in the PMNM and the MEA. Bringing fish out of the MEA may require

those fishermen that fish in the MEA to not fish commercially outside of the MEA on the same trip and to use VMS systems to ensure that fishing activity is constrained to the MEA.

3.3.6 Other Management Issues

Other provisions attached to federal permitting and reporting include observer and VMS requirements, notifications, and enforcement. Under alternatives 3 and 4, the following would be provided as part of the permitting system. The Council may choose to address any or all of these provisions.

Trip Mixing

To ensure fish caught from inside the MEA for non-commercial and Native Hawaiian practices are not commingled with fish caught commercially seaward of the MEA, NMFS and the Council would prohibit any person from fishing both inside and outside the MEA on the same trip. Similarly, to ensure fish caught inside the original PMNM for sustenance purposes are not commingled with fish caught in the MEA for non-commercial and Native Hawaiian practices and sharing in the MHI, NMFS and the Council would prohibit any person from engaging in both non-commercial fishing in inside and outside the MEA and sustenance fishing in the PMNM on the same trip. NMFS, in consultation with ONMS, may authorize fishing this activity only if the applicant only conducts sustenance fishing in the MEA and PMNM, and does not remove any fishery resource seaward of the MEA boundary.

Observer and VMS Requirements

All fishing vessels must carry an observer and an activated and functioning VMS unit on board at all times whenever the vessel is in the Monument when directed to do so by the Regional Administrator.

Notification

Any permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in Hawaii at least 24 hours before landing any catch harvested under an MEA permit, and report the port and the approximate date and time at which the catch will be landed. All catch is subject to inspection by authorized enforcement agents of the U.S. Coast Guard and the NOAA Office of Law Enforcement.

Other Requirements

All fishing vessels must also comply with regulations codified at 50 CFR 665 – Western Pacific Fisheries applicable in the EEZ comprising the MEA.

3.4 Native Hawaiian Subsistence Fishing

Native Hawaiian practices are allowed under Proclamation 9478, including subsistence fishing practices.

3.4.1 Federal Permitting and Reporting

Native Hawaiian Subsistence Practices Fishing Permit and Reporting: Any person engaging in Native Hawaiian subsistence practices must obtain a Native Hawaiian Subsistence Practices

Fishing Permit and comply with reporting and record keeping requirements codified at [50 CFR 665.14 – Reporting and Recordkeeping](#), as required for all Magnuson-Stevens Act permits issued by NMFS. To be eligible for a Native Hawaiian Subsistence Practices fishing permit, an individual must be a community resident who is descended from the aboriginal people indigenous to Hawaii who conducted fishing using traditional fishing practices in the waters of the Western Pacific region. This criteria is consistent with the eligibility requirement set forth in Section 305(i)(2) of the Magnuson-Stevens Act for participation in the Western Pacific Community Development Plan, as authorized by Congress (67 FR 18512, December 8, 2002).

Proclamation 9478 may allow for federal permitting and reporting of subsistence fishing activities for Native Hawaiian Practices. The establishment of a separate Native Hawaiian Subsistence Fishing Permit would require the same provisions as noted in section 2.3.1 such as catch and effort logbooks, applications, etc.

Native Hawaiian Practices permits are provided for within the existing PMNM and have been issued for sustenance fishing. From the period of 2010-2020, 23 permits were issued for Native Hawaiian Practices within PMNM and 19 permits requested fishing within PMNM.

Eligibility for a permit could be limited to community residents of the Hawaii Archipelago that are lineal or cultural descendants of the indigenous people of Hawaii. Those not from Hawaii or lineal descendants could only fish non-commercially and would not be afforded the disposition of the fish offered under the Native Hawaiian Subsistence Fishing permits. The community was concerned with outsiders and non-Hawaiians taking advantage or abusing Native Hawaiian practices of this opportunity for commercial purposes.

3.4.2 Catch Disposition

Alternative 4 would allow for BMUS and PMUS legally caught by an individual holding a valid MEA Native Hawaiian Subsistence Practices fishing permit may bring catch back to the main Hawaiian Islands for community sharing among the community, and for including limited community sharing. Permittees may trade, barter or sell catch to recoup some or all of the direct costs associated with the trip to the MEA. Direct costs include costs of supplies such as bait, fuel or ice needed for the trip, but do not include purchase, berthing, or maintenance of vessels or other costs external to the trip.

To ensure community sharing of fishery resources do not enter commerce in violation of the MEA Proclamation's ban on commercial fishing and does not result in the sale or trade for intended profit, which is the definition of "commercial fishing" pursuant to NMSA regulations at [15 CFR 922.3](#), NMFS and the Council could limit the value of goods, services, or money exchanged for catch from the MEA to customary exchange to not exceed a, which is a conservative estimate of cost for fuel and ice to make a trip from the main Hawaiian Islands to the MEA. Permittees would be required to document the amount and value of any exchange in a report to be furnished to NMFS in accordance with regulations at [50 CFR 665.14 – Reporting and Recordkeeping](#). This provision could also sunset five years from the effective date of the regulation, during which time the Council would review the effectiveness and appropriateness of the catch and trip cost records.

Native Hawaiians represent 21% of the population for the State of Hawaii but have a higher prevalence of chronic diseases such as asthma, arthritis, diabetes, hypertension, and heart disease¹. Native Hawaiians also make up half of Hawaii's homeless population and the ethnic group with the highest level of poverty and unemployment in Hawaii. Native Hawaiian subsistence fishing activities in the PMNM are restricted to sustenance fishing and fish may not be brought out of the PMNM. The MEA, however, may not be restricted to sustenance and may be allowed to be removed from the MEA and brought outside of the 200 mile boundary that could provide fresh, local seafood and opportunities for the Native Hawaiian community.

In previous interviews with Native Hawaiians, there was mention that residents of Niihau and Kauai went to Nihoa during the summer months and fished and brought fish back to their island. This provides evidence that fishing in the NWHI and bringing back fish was done and should be looked at to be done again.

The use of customary exchange, or 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, is used in the Marianas Trench and Rose Atoll Marine National Monuments to provide the opportunity for indigenous fishermen in those areas to fish and provide fish to their community. Customary exchange could be considered to provide that same opportunities to Native Hawaiians. However, it may be essentially impossible to be able to fish in the MEA due to the distance and relatively large cost to fish in that area and the relative socio-economic status of most of the Native Hawaiian community. Similar effects were observed for the indigenous of the other monuments so the ability to recover certain costs was added to the definition of customary exchange through monetary reimbursements for actual trip expenses that may be necessary to participate in those fisheries. The use of customary exchange with cost recovery could prevent disenfranchising Native Hawaiians from a privilege clearly intended by the President in Proclamation 9478.

Fishing conducted under the Native Hawaiian Subsistence Fishing Practices Permit would need to be limited to non-commercial fishing (i.e. resources harvested could not enter commerce through sale, barter or trade); appropriate and deemed necessary by traditional standards in the Native Hawaiian culture (*pono*); demonstrate an understanding of, and background in, the traditional practice, and its associated values and protocols; benefit the resources of the NWHI and the Native Hawaiian community; and supports or advances the perpetuation of traditional knowledge and ancestral connections of Native Hawaiians to the NWHI. The customary sharing of resources meets these ideals and contributes to community sustainability, food security, and social solidarity and can provide benefits that perpetuate traditional and customary skills and practices, social status, social networks, reciprocal exchange, and collective insurance that enhance the resilience of the Native Hawaiian community (Vaughn and Vitousek 2013).

¹ OHA Native Hawaiian Health Fact Sheet 2015. <https://www.oha.org/wp-content/uploads/Volume-I-Chronic-Diseases-FINAL.pdf>

4 References

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Appendix 1: Presidential Proclamation 9478

Proclamation 9478—Papahānaumokuākea Marine National Monument Expansion

August 25, 2016

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 Frigatebirds 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 near-shore 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 Hōkūle'a 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. Deep-sea 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 *Hiryū*, *Soryū*, *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 well-being 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 98–532 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 108–375, 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 non-commercial 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. Non-commercial fishing, provided that the fish harvested, either in whole or in part, cannot enter commerce through sale, barter, or trade, and that the resource is managed sustainably.

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