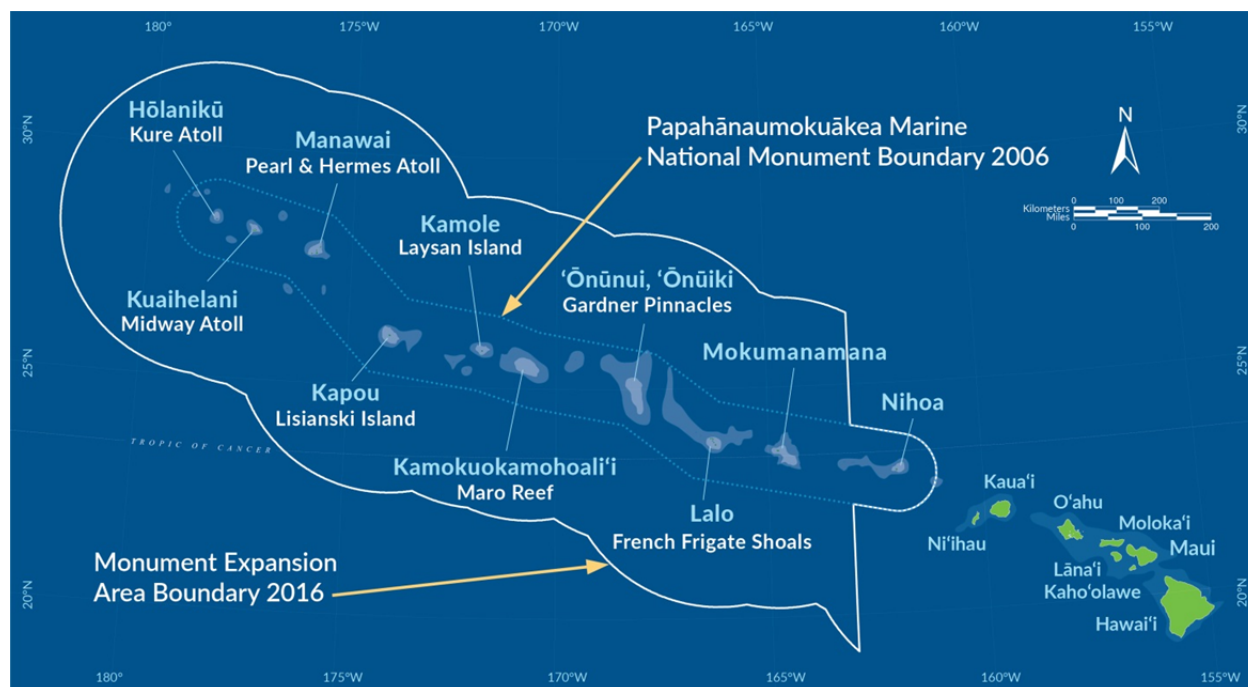


Proposed Northwestern Hawaiian Islands National Marine Sanctuary

Fishing Regulations Decision Paper



Map of the Northwestern Hawaiian Islands from NOAA

Prepared by Council Staff
March 2022

Summary

In 2000, President Clinton through Executive Orders (EO) 13178 and 13196 designated the Northwestern Hawaiian Islands (NWHI) Coral Reef Ecosystem Reserve. These EO included a provision for the Secretary of Commerce to initiate the process to designate the reserve as a National Marine Sanctuary. The sanctuary designation process began in 2000 and was subsequently halted in 2006 when President Bush, through the Antiquities Act, designated the NWHI instead as a Marine National Monument (Monument). In 2016, President Obama, under this same authority, designated the Monument Expansion Area (MEA) and included a provision that directed the Secretary of Commerce to consider initiating the process under the National Marine Sanctuaries Act to designate the MEA and the Monument seaward of the Hawaii National Wildlife Refuge as a national marine sanctuary to supplement and complement existing authorities. In 2020, Senator Schatz included a provision that directs NOAA to commence the process to designate the monument as a national marine sanctuary within the \$1.4 trillion omnibus spending bill.

As part of the sanctuary designation process under the National Marine Sanctuaries Act, section 304(a)(5) requires the appropriate fishery management council be given the opportunity to prepare draft regulations for fishing within the EEZ. NOAA has identified that proposed fishing management actions are necessary, and provided the Western Pacific Regional Fishery Management Council a package of materials intended to help the Council make a determination of what would best fulfill the sanctuary goals and objectives. The Council may decide to prepare draft fishing regulations and recommendations, determine that regulations are not necessary, or decline to make a determination with respect to the need for recommendations.

The purpose of this document is to provide the Council with the information needed to make a decision on whether draft fishing regulations are necessary and if they are, what regulations will need to be developed. There is a need for the Council to make a decision by March 31, 2022 in order to meet the NMSA consultation deadline. This decision paper provides the decision points and analysis to provide the Council with sufficient information to make a decision and respond to NOAA by March 31, 2022.

The Council's decision points include:

1. Are fishing regulations necessary for the proposed sanctuary?
2. If fishing regulations are necessary, would the Council like to prepare those fishing regulations?
3. What areas of the proposed sanctuary should the Council consider for recommending fishing regulations?
4. If yes, what fishery regulations would the Council like to see regarding commercial fishing and non-commercial fishing in the proposed sanctuary?

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Acronym List

EO	Executive Order
MEA	Monument Expansion Area
NMFS	National Marine Fisheries Service/NOAA Fisheries
NOAA	National Oceanic and Atmospheric Administration
NWHI	Northwestern Hawaiian Islands
OHA	Office of Hawaiian Affairs
ONMS	Office of National Marine Sanctuaries
PIFSC	NMFS Pacific Islands Fisheries Science Center
PIRO	NMFS Pacific Islands Regional Office
PMNM	Papahānaumokuākea Marine National Monument
USFWS	US Fish and Wildlife Service
WPRFMC or Council	Western Pacific Regional Fishery Management Council

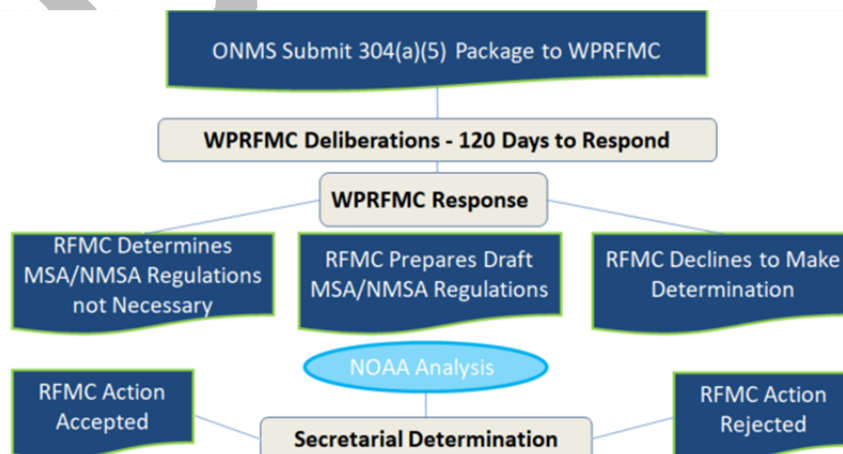
Introduction and Background

In 2000, President Clinton issued Executive Orders (EO) 13178 and 13196 that designated the Northwestern Hawaiian Islands (NWHI) Coral Reef Ecosystem Reserve. These EO included a provision for the Secretary of Commerce to initiate the process to designate the reserve as a National Marine Sanctuary. The sanctuary designation process began in 2000 and was subsequently halted in 2006 when President Bush, through the Antiquities Act, designated the NWHI instead as a Marine National Monument. In 2016, President Obama, under this same authority, designated the Monument Expansion Area (MEA) and included a provision that directed the Secretary of Commerce to consider initiating the process under the National Marine Sanctuaries Act to designate the MEA and the monument seaward of the HI National Wildlife Refuge as a national marine sanctuary to supplement and complement existing authorities. In 2020, Senator Schatz included a provision that directs NOAA to commence the process to designate the monument as a national marine sanctuary within the \$1.4 trillion omnibus spending bill.

On November 19, 2021, the National Oceanic and Atmospheric Administration's (NOAA) Office of National Marine Sanctuaries (ONMS) initiated the formal National Marine Sanctuaries Act (NMSA) consultation with the Western Pacific Regional Fishery Management Council (Council) referencing their intent to initiate the process to consider designating marine portions of Papahānaumokuākea Marine National Monument (PMNM) 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 Magnuson Stevens Fishery Conservation and Management Act (MSA) national standards but the proposed fishing regulations would also be measured against the existing Presidential Proclamation 8031, 8112, and 9478 for the PMNM, the NMSA, and the goals and objectives of the proposed sanctuary (see Appendix A).

In order to fulfill the Council's obligations under section 304(a)(5) of the NMSA, the Council may choose one of three options:

1. Recommend draft fishing regulations for the proposed sanctuary;
2. Recommend that fishing regulations are not necessary; or
3. Choose not to act (at all or in a timely manner).



The purpose of the is document is to provide the Council with the information needed to make a decision on whether draft fishing regulations are necessary and if they are, should the Council develop those regulations and if yes, what regulations will need to be developed. There is a need for the Council to make a decision by March 31, 2022 in order to meet the NMSA consultation deadline.

NOAA determined that current MSA regulations under 50 CFR 404, which apply from 3-50 nm around the NWHI, are consistent with the proclamations and the goals and objectives for the proposed sanctuary. However, NMSA 304(a)(5) provides the opportunity for fishing regulations in the entire sanctuary so the Council may consider a broader geographic scope for fishing regulations, including the PMNM, MEA, or other areas outside of those monument areas that are being discussed such as Middle Bank. Under the MSA, the Council has the authority to develop conservation and management measures necessary to manage fishery resources in the MEA. Regulations for the proposed sanctuary would add an additional layer of fishing regulations on top of what is already managed in the NWHI.

This action is intended to fulfill the Council's obligation under the NMSA as noted above. Should the Council recommend draft fishing regulations for the proposed sanctuary, the development of MSA regulations would proceed under the existing Council process for developing an amendment to its Hawaii Archipelago Fishery Ecosystem Plan. The process would commence at future meetings and along a timeline that meets the needs of the sanctuary designation process. Should there be extenuating circumstances wherein the proposed sanctuary requires an additional look at fishery regulations, the Council may be requested by NOAA to review its recommendation for fishing regulations at that time.

Management Area and Fisheries Regulatory Landscape

The Council makes recommendations for fishing regulations in the US Exclusive Economic Zone around the Hawaii Archipelago. The management area around the Northwestern Hawaiian Islands (NWHI) can be broken down into different management zones (see Table 1). These areas have different agencies responsible for management and allow different types of fishing.



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

Credit: NOAA

In the 0-3 nm offshore area subsistence fishing is allowed within the State of Hawaii Marine Refuge and Wildlife Sanctuary. The Midway Atoll National Wildlife Refuge, which includes waters from 0-12 nm around the atoll, is considered a Special Management Area within the PMNM. Sustenance fishing is allowed in this area under the management of the US Fish and Wildlife Service (USFWS) and is subject to permit and reporting requirements (50 CFR 404.11(h)).

Outside of that, the 3-50 nm offshore area was designated a Protected Species Zone by the Council which prohibits longline fishing around the NWHI. Subsequently, the NWHI Coral Reef Ecosystem Reserve (CRER) and then the PMNM were designated and fishing was limited to sustenance fishing by permit. Commercial and recreational fishing under the CRER was capped at existing fishing effort by EO 13178 and then modified by EO 13196. Commercial fishing was then phased out under Presidential Proclamation 8031 and amended by Proclamation 8112, though sustenance fishing was allowed. The Council's existing fishing regulations that provide for limited entry for bottomfish fishing and lobster fishing in this area were superseded by the designation of PMNM. The proposed sanctuary designation does not remove any existing regulations.

The furthest offshore area, 50-200 nm, included regulated fishing by commercial fisheries including longline and other pelagic fisheries. With Presidential Proclamation 9478 designating the area as the Monument Expansion Area, commercial fishing was prohibited but subsistence and non-commercial fishing, provided that the fish harvested either in whole or in part, cannot enter commerce through sale, barter, or trade, can occur if the resource is managed sustainably. Native Hawaiian practices including the exercise of traditional, customary, cultural, subsistence, spiritual, and religious practices is also allowed as a regulated activity through the proclamation.

Table 1: Types of Fishing Allowed by Management Area in the NWHI

Offshore Area	Management Area	Type of Fishing Allowed
0-3 nm	State Waters (included by agreement in PMNM)	Subsistence
0-12 nm	Midway Atoll Special Management Area	Sustenance
3-50 nm	Papahānaumokuākea Marine National Monument (PMNM)	Sustenance
50-200 nm	Monument Expansion Area (MEA)	Non-commercial; Native Hawaiian practices

Council Decision Points

1. The primary decision point is for the Council to decide if *fishing regulations are necessary*?

The Council is already mandated by Proclamation 9478 to provide recommendations for non-commercial fishing for the Monument Expansion Area. Whether the proposed sanctuary is designated or not, the responsibility for fishing recommendations in the MEA are still with the Council. The ONMS believes that fishing regulations are warranted for the proposed sanctuary as noted in the 304(a)(5) package. The necessity for fishing regulations would be for the proposed sanctuary only. The fishing regulations would also be used to satisfy the MEA provisions and go through the Council's amendment process.

The Council may decide yes that fishing regulations are necessary, or no, fishing regulations are not necessary and provide a rationale why it is not.

2. Should the Council decide that fishing regulations *are* necessary, the Council's secondary decision point would be to decide if ***it would like to prepare those fishing regulations and what fishery regulations would need to be prepared***

The proposed fishing regulations would be provided to the ONMS for consideration and review. Should these draft recommendations be accepted by ONMS, the proposed sanctuary management plan would adopt this language as sanctuary fishing regulations, but point to the MSA fishing regulations as those that take precedence. However, ONMS has indicated that it would include an additional policy consideration that that should the Council recommend changes to the fishing regulations in the future for whatever reason, duplicated sanctuary fishing regulations would "springboard" to become those fishing regulations that would take effect in the proposed sanctuary. For example, if the Council chose to prohibit commercial fishing in the MEA, the ONMS would prepare parallel regulations for prohibiting commercial fishing in the sanctuary. If in five years, the monument prohibitions were removed and commercial fishing could be conducted in the MEA again the Council could make recommendations to allow commercial fishing once again. However, if the Council's regulations were changed, ONMS and the fishing regulations would remain the same due to ONMS regulations that "springboard" into place. In essence, the sanctuary fishing regulations would remain the same.

The Council may secondarily decide that it will prepare or decline to prepare the fishing regulations.

3. What areas of the proposed sanctuary should the Council consider recommending fishing regulations?

The NMSA 304(a)(5) package that was provided to the Council requests fishing regulations for all marine areas and recommends the MEA. However, the boundaries of the proposed sanctuary are unknown at this time and may encompass other EEZ waters including those in the PMNM (3-50 nm) and areas outside of any other existing management area (i.e. Middle Bank). The Council may consider fishing regulation recommendations for any or all of the following areas:

- PMNM (3-50 nm)

PMNM was designated by Proclamation 8031 and NOAA believes the current Magnuson-Stevens Fishery Conservation and Management Act regulations under 50 CFR 404 are consistent with both the relevant provisions of Proclamations 8031 and 8112 and the goals and objectives for the proposed sanctuary. The current MSA regulations include the former FMP/FEP regulations that allowed for bottomfish, crustaceans, and precious coral fisheries, both

commercial and non-commercial, through federal permits. There is also an opportunity for indigenous communities to participate in fisheries through the Community Development Program in which 10% of the permits in the bottomfish fishery were reserved for the indigenous community.

Proclamation 8031 and 8112 phased out commercial bottomfish fishing and closed precious coral and lobster fishing. Sustenance Fishing is allowed while in the PMNM and subsistence fishing is allowed in conjunction with the Native Hawaiian Permit as well.

- MEA

The Monument Expansion Area, 50-200 nm offshore of the NWHI, NOAA recommends the Council propose regulations that are consistent with the fishing provisions of Proclamation 9478 and the goals and objectives of the proposed sanctuary. According to the 304(a)(5) package, providing primary management under the MSA in a joint regulatory approach with a national marine sanctuary would provide long term protection. The Council has also worked to develop fishing regulations for this area under the Proclamation 9478 independent of the proposed sanctuary. The Council's current fishing permits and associated regulations for bottomfish, crustacean, precious corals, and longline continue to exist in this area, but Proclamation 9478 prohibits commercial fishing and allows non-commercial fishing as a regulated activity.

- Other areas outside of the Monuments (e.g. Middle Bank)

The boundaries of the proposed NWHI is unknown and will remain unknown until public scoping and EIS/management plans are developed. There has been discussion during the Notice of Intent scoping about expanding the proposed management boundaries beyond the existing monument boundaries to incorporate more of the EEZ. Suggestions have been made to incorporate areas like Middle Bank, a popular commercial fishing area for Kauai Island fishers. This area was considered, but rejected, in previous monument and expansion boundary discussions. However, all areas that are suggested by the public will need to be considered, if warranted.

The Council may consider where potential fishing regulations would apply to either distinct individual areas or to all areas.

4. Lastly, if the Council decides that it will prepare fishing regulations for the sanctuary the Council's third decision point would then need to consider its available management possibilities and ***make recommendations for draft fishing regulations.***

Draft fishing regulations would be drafted through the Council's current process of amending its Hawaii Archipelago Fishery Ecosystem Plan. This process includes public hearings, Council initial and final actions, and the development of a regulatory amendment with the associated environmental assessment. Those regulations would be drafted parallel to the proposed sanctuary management plan which would include language to point at the Council's fishing regulations as well as the springboard language. The Council would consider regulations for fishing to include commercial fishing and non-commercial fishing.

Commercial Fishing

Commercial fishing defined by the MSA means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade (MSA §3(2)). The following may be considered by the Council regarding Commercial fishing:

- No Action

Under No Action, the Council would take no action to amend its FEPs and in its regulations where commercial fishing is neither federally permitted nor prohibited. However, commercial fishing is prohibited by Proclamation and taking no action would not meet the Council's obligations under Proclamation 9478.

- Allow commercial fishing through permitting and reporting

The Council's Hawaii FEP would be amended to allow commercial fishing and would require federal permits and logbooks for all participants. The Presidential Proclamations that established both the PMNM and the MEA prohibits commercial fishing within the NWHI. If the Council were to recommend commercial fishing regulations, those regulations would be reviewed and likely to be determined inconsistent with the proclamations by both ONMS and the National Marine Fisheries Service (NMFS). Allowing commercial fishing also does not meet the Council's obligation under Proclamation 9478.

- Prohibit commercial fishing in the NWHI MEA.

Explicitly prohibiting commercial fishing in the NWHI would require an amendment to the Hawaii FEP and close any opportunity for commercial fishing in the future. The Council could always reconsider re-opening commercial fishing but it is likely that the sanctuary fishing regulations would springboard to take precedent if that were to occur. The prohibition of commercial fishing may also meet the Council's obligations under Proclamation 9478.

Non-Commercial Fishing

The following definitions are provided at 50 CFR 665.12 as defined by MSA and the Council:

Recreational fishing means fishing conducted for sport or pleasure, including charter fishing.

Non-commercial fishing means fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery Conservation and Management Act, and includes, but is not limited to, sustenance, subsistence, traditional indigenous, and recreational fishing.

Customary exchange means the non-market exchange of marine resources between fishermen and community residents for goods, and/or services for cultural, social, or religious reasons.

Customary exchange may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, fuel, or food, that may be necessary to participate in fisheries in the western Pacific.

The Council would need to decide whether non-commercial fishing should be allowed, and if it is, should it be permitted with the associated federal logbooks and requirements. The Council's management choices would include, but are not limited to:

- No Action-non-commercial fishing unmanaged

Under No Action, non-commercial fishing would continue to be allowed, although unmanaged. Proclamation 9478 allows for the non-commercial fishing to be permitted as a regulated activity.

- Allow for Non-Commercial Fishing [with federal requirements]

The Council would recommend regulations allowing non-commercial fishing to be conducted in the MEA and include federal permitting and reporting requirements. Additional permit procedures and criteria would be included that determined transferability, fees, and timeliness of catch reporting amongst other required provisions (including other Conservation and Management Measures such as requirements to carry VMS, observers, gear requirements, etc.) to be discussed during the amendment process. This would also fulfill the regulation of non-commercial fishing under Proclamation 9478.

- Allow for Non-Commercial Fishing with federal requirements AND Customary Exchange

The Council would recommend regulations allowing non-commercial fishing to be conducted and include federal permitting and reporting requirements. Additional permit procedures and criteria would be included that determined transferability, fees, and timeliness amongst other required provisions to be discussed during the amendment process. The inclusion of customary exchange, which is included for other monuments, would also be included. The inclusion of customary exchange would be subject to review by ONMS as Proclamation 9478 allows for "Native Hawaiian practices, including exercise of traditional, customary, cultural, subsistence, spiritual, and religious practices" within the MEA. The definition of customary exchange could be revised and adapted to meet the need of the proposed sanctuary by removing the second part that allows sale to satisfy the language that prohibits this in the Proclamation.

- Prohibit Non-Commercial Fishing

Prohibiting non-commercial fishing would include amending the Council's Hawaii FEP to include language under regulated activities. Non-commercial fishing is included as a regulated activity under Proclamation 9478 and would be reviewed to determine if prohibiting fishing meets the Council's obligations.

The Council may decide on management for commercial and non-commercial fishing and provide draft regulations to the ONMS by March 31, 2022. A draft of the potential regulations is available in Appendix B. Fishing regulations to amend the Hawaii Fishery Ecosystem Plan would then be mirrored by an amendment that would follow the Council's existing process. NOAA believes this approach would allow the Magnuson-Stevens Fishery Conservation and Management Act to provide the predominant management function for fishing while assuring that NOAA continues to meet its independent obligation under the NMSA to protect sanctuary resources. However, to provide the predominant management function, the Magnuson-Stevens

Fishery Conservation and Management Act regulations would have to be in place prior to the national marine sanctuary designation and be accepted by NOAA as consistent with the relevant fishing provisions of Proclamation 9478 and with the goals and objectives of the proposed sanctuary.

Table 2: Fishing Regulation Obligations

Fishing Regulations	Does this meet Proclamation obligations and sanctuary goals and objectives?	Other info
<i>Commercial</i>		
Prohibit	Yes	Would close commercial fishing in the MEA
Allow	No	Would include federal requirements
<i>Non-commercial</i>		
Prohibit	Yes	Would close non-commercial fishing in the MEA
Allow	Yes	Would include federal requirements
Allow w/ modified Customary Exchange	Yes	Subject to review
<i>Existing Regulations</i>		
PMNM-Sustenance fishing	Yes	Could be included as housekeeping and consistent for MSA to manage fish and allow Native Hawaiian fishing data and reporting
Bottomfish Fishing	Probably Not	Fishing prohibited
Precious Coral Harvest	Probably Not	Fishing prohibited
Crustaceans/Lobster Fishing	Probably Not	Fishing prohibited
Bottomfish CDP	Maybe	PMNM allows for sustenance under a Native Hawaiian cultural practices permit

Appendix A: NMSA and Proposed Sanctuary Goals and Objectives

National Marine Sanctuaries Act

Title 16, Chapter 32, Sections 1431 et seq. USC, as amended by Public Law 106-513, November 2000

PROCEDURES FOR DESIGNATION AND IMPLEMENTATION SEC 304(a)(5) FISHING REGULATIONS

The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare draft regulations for fishing within the Exclusive Economic Zone as the Council may deem necessary to implement the proposed designation. Draft regulations prepared by the Council, or a Council determination that regulations are not necessary pursuant to this paragraph, shall be accepted and issued as proposed regulations by the Secretary unless the Secretary finds that the Council's action fails to fulfill the purposes and policies of this chapter and the goals and objectives of the proposed designation. In preparing the draft regulations, a Regional Fishery Management Council shall use as guidance the national standards of section 302(a) of the Magnuson-Stevens Act (16 U.S.C. 1851) to the extent that the standards are consistent and compatible with the goals and objectives of the proposed designation. The Secretary shall prepare the fishing regulations, if the Council declines to make a determination with respect to the need for regulations, makes a determination which is rejected by the Secretary, or fails to prepare the draft regulations in a timely manner. Any amendments to the fishing regulations shall be drafted, approved and issued in the same manner as the original regulations. The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within a proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

Proposed Sanctuary Goals

Goal 1. Resource Protection & Conservation Ensure the long-term viability and resilience of Papahānaumokuākea by protecting, preserving, enhancing and restoring its cultural and natural resources, with a focus on ocean and island health and human well-being.

Goal 2. Research & Monitoring Support, promote, conduct, and coordinate research and monitoring, incorporating multiple forms of knowledge to increase understanding of Papahānaumokuākea's cultural and natural resources, and to improve management decisions.

Goal 3. Governance & Operations Provide the necessary policy, programs, structure, and processes to ensure effective, integrated management and fulfill the kuleana of shared stewardship for Papahānaumokuākea.

Goal 4. Partnerships & Constituent Engagement Pursue, build, and maintain partnerships that generate active and meaningful involvement, with a commitment to

incorporate traditional values and stewardship ethics, to strengthen world class conservation, community engagement, constituent support, and connection of people to place.

Goal 5. Education, Mentoring & Interpretation Inspire current and future generations to mālama Papahānaumokuākea's cultural and biological resources through excellence in education and mentorship.

Proposed Sanctuary Objectives

Objective 1.

Provide long term lasting protection of Papahānaumokuākea consistent with and reinforcing the provisions outlined in Executive Order (EO) 13178, Presidential Proclamations 8031, 8112, 9478, and the regulations at 50 CFR § 404 through the designation of a national marine sanctuary.

Objective 2.

Augment and strengthen existing protections for Papahānaumokuākea ecosystems, living resources, and cultural and maritime heritage resources through the addition of National Marine Sanctuaries Act regulations.

Objective 3. Support and maintain existing co-management functions within the Papahānaumokuākea Monument Management Board to ensure unified governance in the spirit of seamless integrated stewardship.

Objective 4.

Provide a pu'uohonua to protect key habitats, vulnerable, endangered and threatened species and highly mobile marine species that regularly move across the boundaries of Papahānaumokuākea.

Objective 5.

Manage the sanctuary as a sacred site consistent with Native Hawaiian traditional knowledge, management concepts, and principles articulated within Mai Ka Pō Mai.

Objective 6.

Enhance community engagement and involvement, including engagement of the Indigenous Hawaiian community in the development and execution of management of the sanctuary.

Objective 7.

Enhance resource protection, increase regulatory compliance, ensure enforceability and provide for consultation through National Marine Sanctuaries Act authorities and regulations.

Objective 8.

Conduct, support and promote research, characterization and long-term monitoring of marine ecosystems and species and cultural and maritime heritage resources.

Appendix B: Potential Fishing Regulations

Note: These proposed regulations may create regulatory uncertainty with respect to the applicability of existing NWHI bottomfish and NWHI lobster and precious coral permits. Regulatory clarity would be needed during the Council process for amending the Hawaii FEP.

*Changes highlighted in yellow

1. The authority for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 665.12, add the definition of “Northwestern Hawaiian Islands Monument Expansion Area” in alphabetical order to read as follows:

§ 665.12 Definitions

* * *

Northwestern Hawaiian Islands Monument Expansion Area means area 50-200 nm of the EEZ around the Northwestern Hawaiian Islands

3. In § 665.13, revise paragraphs (f)(2) and add paragraph (f)(2)(xiv); to read as follows:

§ 665.13 Permits and fees

* * * * *

(f) Fees.

* * *

(2) PIRO will charge a non-refundable processing fee for each application (including transfer and renewal) for each permit listed in paragraphs (f)(2)(i) through (f)(2)(xiii) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs incurred in processing the permit. The fee may not exceed such costs. The appropriate fee is specified with each application form and must accompany each application. Failure to pay the fee will preclude the issuance, transfer, or renewal of any of the following permits:

* * *

(xiv) Northwestern Hawaiian Islands non-commercial permit

4. In § 665.14, revise paragraph (b)(1)(i) and (b)(2)(i) to read as follows:

§ 665.14 Reporting and recordkeeping

(b) Fishing record forms

(1) Applicability.

- (i) Paper records. The operator of a fishing vessel subject to the requirements of § 665.124, § 665.142, § 665.162, § 665.203(a)(2), § 665.242, § 665.262, § 665.404, § 665.424, § 665.442, § 665.462, § 665.603, § 665.624, § 665.642, § 665.662, § 665.801, § 665.905, § 665.935, ~~or~~ § 665.965 or § 665.XX or must maintain on board the vessel an accurate and complete record of catch, effort, and other data on paper report forms provided by the Regional Administrator, or electronically as specified and approved by the Regional Administrator, except as required in

paragraph (b)(1)(ii) of this section or as allowed in paragraph (b)(1)(iv) of this section.

* * *

- (iii) Recording. The vessel operator must record on paper or electronically all information specified by the Regional Administrator within 24 hours after the completion of each fishing day. The information recorded must be signed and dated, or otherwise authenticated, in the manner determined by the Regional Administrator, and be submitted or transmitted via an approved method as specified by the Regional Administrator, and as required by this section.

(2) *Timeliness of submission.*

(i) If fishing was authorized under a permit pursuant to § 665.142, § 665.162, § 665.242, § 665.262, § 665.404, § 665.442, § 665.462, 665.662, ~~or~~ § 665.801, ~~or~~ § 665.XX, and if the logbook information was not submitted to NMFS electronically within 24 hours of the end of each fishing day while the vessel was at sea, the vessel operator must submit the original logbook information for each day of the fishing trip to the Regional Administrator within 72 hours of the end of each fishing trip, except as allowed in paragraph (b)(2)(iii) of this section.

5. In 50 CFR part 665, add subpart J to read as follows:

**Subpart J – Northwestern Hawaiian Islands Monument Expansion Area
Sec.**

665. 970 Scope and purpose. The regulations in this subpart codify certain provisions of the Proclamation, and govern the administration of fishing in the Monument. Nothing in these regulations shall be deemed to diminish or enlarge the jurisdiction of the State of Hawaii.

665.971 Boundaries. The Monument Expansion Area includes the following:

(a) the waters and submerged lands of the area offshore of the Northwestern Hawaiian Islands. The shoreward boundary of the Monument Expansion Area is 50 nm. The seaward boundary of the Monument Expansion Area is 200 nm.

665.972 Definitions. The following definitions are used in this subpart:

Management unit species or MUS means the Hawaii Archipelago management unit species as defined in §665.201, 665.241, and 665.261, and the pelagic management unit species as defined in § 665.800.

Monument Expansion Area means the submerged lands and, where applicable, waters of the NWHI as defined in § 665.971.

Proclamation means Presidential Proclamation 9704 of September 13, 2016, “Monument Expansion Area.”

665.973 Prohibitions. In addition to the general prohibitions specified in § 600.725 of this part, and § 665.15 and subpart D of this chapter, the following activities are prohibited in

the Monument Expansion Area and, thus, unlawful for a person to conduct or cause to be conducted.

- (a) Commercial fishing in violation of §665.974(a).
- (b) Non-commercial fishing, except as authorized under permit and pursuant to the procedures and criteria established in §665.975.
- (c) Transferring a permit in violation of § 665.975(d).
- (d) Commercial fishing outside of the Monument Expansion Area and non-commercial fishing within the Monument Expansion Area on the same trip in violation of § 665.974(c).

665.974. Regulated activities.

- (a) Commercial fishing is prohibited in the Monument Expansion Area
- (b) Non-commercial fishing is prohibited in the Monument Expansion Area, except as authorized under permit and pursuant to the procedures and criteria established in § 665.975.
- (c) Commercial fishing outside the Monument Expansion Area and non-commercial fishing within the Monument Expansion Area during the same trip is prohibited.

665.975 Fishing permit procedures and criteria.

- (a) Northwestern Hawaiian Islands non-commercial permit.
 - (1) Applicability. Both the owner and operator of a vessel used to non-commercially fish for, take, retain, or possess MUS in the Monument Expansion Area must have a permit issued under this section, and the permit must be registered for use with that vessel.
 - (2) Eligibility criteria. A permit issued under this section may be issued only to a community resident of Hawaii.
 - (3) Terms and conditions.
 - (i) Customary exchange of fish harvested within the Monument Expansion Area under a non-commercial permit is allowed, except that customary exchange by fishermen engaged in recreational fishing is prohibited. Customary exchange of fish harvested under a non-commercial fishing permit in the Monument Expansion Area may include family and friends of residents of Hawaii fishing communities.
 - (ii) Monetary reimbursement under customary exchange shall not exceed actual fishing trip expenses related to ice, bait, fuel, or food.

665.976 International law.

These regulations shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.