

**DRAFT Amendment X to the Hawaii Archipelago and Pacific Pelagics
Fishery Ecosystem Plans**

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

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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 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.*).

In 2016, President Obama, under Presidential Proclamation 9478 (see Appendix 1) that set aside an area adjacent to the Papahānaumokuākea Marine National Monument that constituted a Monument Expansion Area (MEA). Through the proclamation, the Secretary of Commerce (NOAA), in consultation with the Secretary of Interior (USFWS), were provided responsibility for management of activities and species within the monument expansion area under their respective authorities (e.g. Magnuson-Stevens Fishery Conservation and Management Act (MSA), National Wildlife Refuge System Administration Act, Endangered Species Act (ESA), etc.). The Proclamation prohibited commercial fishing activities and anchoring on any living or dead coral. However, it also allows for regulated fishing activities, including Native Hawaiian practices (including exercise of traditional, customary, cultural, subsistence, spiritual, and religious practices) within the MEA, and non-commercial fishing (provided that the fish harvested either in whole or in part, does not enter commerce through sale, barter, or trade, and that the resource is managed sustainably).

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

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 Proclamations 8031, 8112, and 9478 for the PMNM, the NMSA, and the goals and objectives of the proposed sanctuary. On March 22, 2022 the Council provided the draft regulations to the ONMS for the proposed sanctuary.

1.2 Proposed Action

The proposed action is to be determined pending Council initial action at its 192nd Meeting to be held September 20-22, 2022, and final action anticipated at the December 2022 meeting. If the Council selects a preferred alternative, the action would amend the regulations implementing the Hawaii Archipelago and Pacific Pelagics FEP consistent with Proclamation 9478 and would implement new requirements as follows:

- Codify the boundaries of the Monument Expansion Area as a management unit area
- 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;
 - Allow customary exchange (as defined in 50 CFR 665.12) in non-commercial fishing 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 Presidential Proclamation that established the Monument Expansion Area in the Northwestern Hawaiian Islands contains specific requirements related to the management of fishing in the area. Specifically, Proclamation 9478 prohibits commercial fishing within the Monument Expansion Area and authorizes the Secretary of Commerce to manage non-commercial fishing on a sustainable basis and consistent with the overall conservation objectives of the Monument Expansion Area. The purpose of this action is to amend the Hawaii and Pacific Pelagics Fishery Ecosystem Plan and promulgate regulations consistent with the fishery-related requirements of Proclamation 9478.

This action is necessary in order to administer the Monument Expansion Area consistent with the conservation and management directives of Proclamation 9478. This action would codify the Monument Expansion Area's boundary and prohibit commercial fishing in the designated area, while authorizing non-commercial fishing (including traditional indigenous, sustenance, recreational, and charter recreational fishing) in the Monument Expansion Area.

1.4 Action Area

The Council makes recommendations for fishing regulations in the US EEZ around the Hawaii Archipelago. The management area around the 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.

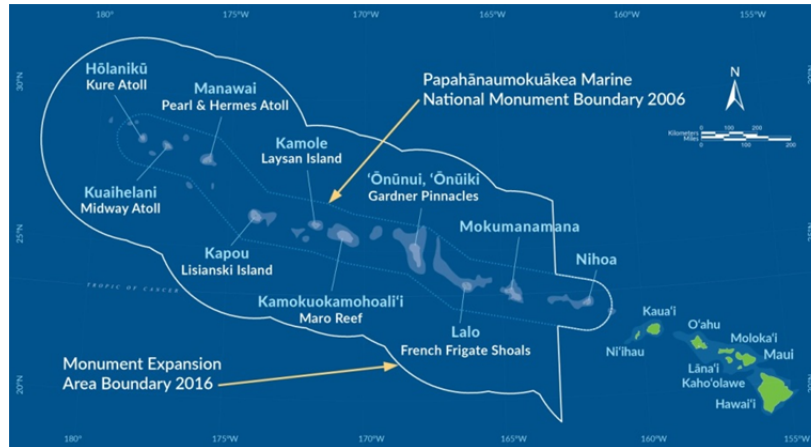


Figure 1: Map of the Northwestern Hawaiian Islands with the PMNM and MEA boundaries

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.

The action area for establishing permitting and reporting is the management area of the NWHI in the Hawaii FEP, or all areas of fishing operations in the US EEZ for any domestic vessels that fish, possess, or transship Hawaii or Pelagic Management Unit Species (MUS) within EEZ waters.

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

Hawaii Archipelago FEP

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

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

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

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

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

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

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

Pacific Pelagic FEP

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

Fisheries managed. The Pacific Pelagic FEP contains conservation and management measures for fisheries harvesting highly migratory fish species which include tunas, billfishes, nine pelagic sharks, and other non-demersal fishery resources. At present, pelagic fisheries are sizeable in American Samoa and Hawaii (comprising shallow-set (swordfish) and deep-set (tuna) longline fisheries and troll and handline fisheries), and smaller in scale in CNMI, Guam, and the PRIA. The Council has taken a series of management actions to conserve pelagic species caught by fisheries in the Western Pacific Region. When the Pelagics FMP was originally implemented in 1986, the use of drift gill nets was banned in U.S. EEZ waters of the Western Pacific Region. Subsequent management measures have included: permit and reporting requirements, mandatory vessel monitoring for domestic longline vessels, area and season limitations, limited entry permit programs, vessel size limits, measures to reduce bycatch quantity and mortality, and recommendations for multilateral internationally coordinated management.

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

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

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 Fed. Reg. 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 Fed. Reg. 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 Fed. Reg. 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 draft review based on a recommendation at its 190th Council Meeting in March 2022 (87 Fed. Reg. 11,046, Feb. 28, 2022). The Council recommended a 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 develop 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 Fed. Reg. 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 will review the alternatives and choose a preliminarily preferred alternative at its 192nd Meeting in September 2022.

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 Kamakahalei 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.

Executive Order 13792, established on April 26, 2017, directed the administration to review designations under the Antiquities Act. The results of this review was published by the Department of the Interior and recommended that the Proclamation should be amended or the boundary be revised, through the use of appropriate authority, including lawful exercise of your discretion granted by the Act, to ensure compliance with the provisions and intent of the Act while also allowing the regional fishery management council to make fishery-management decisions as authorized by the Magnuson-Stevens Fishery Conservation and Management Act. However, the Papahānaumokuākea Marine National Monument was not reported on.

Public comments were solicited at the Council meetings and advisory group meetings in 2021 and 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:

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

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

2 DESCRIPTION OF THE ALTERNATIVES CONSIDERED

The following sections describe a range of alternatives regarding commercial and non-commercial fishing within the NWHI MEA. Existing definitions of commercial fishing, non-commercial fishing, and customary exchange are codified in the MSA and/or the Code of Federal Regulations (50 CFR 665.12).

2.1 Development of the Alternatives

The proposed action is focused on fishing regulations that would satisfy the Council's responsibilities under Proclamation 9478. The alternatives reflect the action area and the multiple boundaries/jurisdictions currently in place. Alternatives were discussed by the Action Team and in consultation with NMFS and the Office of National Marine Sanctuaries.

Proclamation 9478 (Aug. 25, 2016) states the following regarding fishing activities and the management of fishery resources within the NWHI MEA:

Management of the Marine National Monument
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.

Prohibited Activities

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

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;

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;

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.

2.2 Description of the Alternatives

2.2.1 Alternative 1: No Action (Status Quo/Current Management); Do not amend the Hawaii Archipelago and Pacific Pelagic FEPs or promulgate regulations for management of fishing in the MEA.

Under the No-action Alternative, NMFS would not amend the Hawaii Archipelago or Pacific Pelagics FEPs or promulgate regulations that address the commercial fishing prohibition within the Monument Expansion Area (MEA) of the Northwestern Hawaiian Islands (NWHI) or to address the sustainable management of noncommercial fishery provisions.

Under this alternative, commercial fishing in the NWHI MEA would continue to be prohibited under the Proclamation 9478. Existing fishery regulations would continue to be enforced under the MSFCMA. NMFS would not implement the Council's fishery management recommendations for prohibiting commercial fishing or permitting non-commercial fishing.

Expected Fishery Outcomes

There is no currently fishery participation in the MEA as participation is dependent upon regulated activity as per the Proclamation. Non-commercial fishing could occur in the Monument, and would likely occur at the same low level as historically occurred. However, without an explicit direction for non-commercial fishing, it is unlikely that participants would attempt any type of fishing in the MEA. Non-commercial fishing, including fishing as ancillary activities to existing permits, including Native Hawaiian practices, in the MEA would not require a permit and be subject to existing policies and guidance on fishing within the NWHI.

2.2.2 Alternative 2: Amend the Hawaii and Pacific Pelagics FEPs to prohibit commercial fishing in the NWHI MEA and codify the MEA boundary.

Under Alternative 2, the Council would amend the Hawaii and Pacific Pelagics FEPs and NMFS would promulgate new regulations at 50 CFR Part 665 to codify the boundaries of the MEA and implement the prohibition on commercial fishing in the MEA.

Expected Fishery Outcomes

The commercial fishery currently does not exist within the MEA due to the Proclamation explicitly prohibiting commercial fishing. Commercial fisheries in the NWHI have slowly been eradicated through Presidential Proclamations and Executive Orders starting in 2000. The last of the commercial fishing, Hawaii longline fishing for pelagic species, stopped occurring in 2016.

2.2.3 Alternative 3: Amend the Hawaii and Pacific Pelagics FEPs to promulgate federal permits and catch reporting for non-commercial fishing within the NWHI Monument Expansion Area and codify the MEA boundary.

Under this alternative, the Council would amend the Hawaii and Pacific Pelagics FEPs and NMFS would promulgate new regulations at 50 CFR Part 665 to codify the boundaries of the MEA and promulgate new regulations at 50CFR 665 to implement the Council's recommendations for managing non-commercial fishing in the NWHI MEA.

Consistent with the Proclamations and based on recommendations from the Council, under Alternative 3, NMFS would implement a prohibition on commercial fishing, new requirements for a Northwestern Hawaiian Islands Monument Expansion Area non-commercial permit, and federal catch logbooks for "Non-Commercial Fishing" within the NWHI MEA.

- All fish harvested within the NWHI MEA, either in whole or in part, could not enter, or intend to enter, commerce or enter commerce through sale, barter or trade. This alternative would add this prohibition to the Code of Federal regulations thereby providing regulatory authority along with the Proclamation to prohibit commercial fishing in the MEA.
- The Monument Expansion Area (MEA) would be codified as a management area and defined as the following:
 - *an area seaward of the boundaries the Papahānaumokuākea Marine National Monument, as depicted on the map accompanying Presidential Proclamation 8031 as amended by Proclamation 8112 (see 50 CFR [§ 404.2](#)), to the extent of the*

seaward limit of the United States Exclusive Economic Zone (see [§ 600.10](#)) around the Northwestern Hawaiian Islands west of 163° west longitude.

- 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.*” Fish harvested from NWHI MEA under the federal non-commercial fishing permit would be allowed to be taken out of the MEA provided that fish that is harvested, either in whole or in part, is not intended to enter commerce, or enters commerce through sale, barter or trade.
- Permitting would require an application and follow federal requirements as required by existing federal permits for fisheries in the Western Pacific region. This includes an application and associated fees for processing; reporting and recordkeeping requirements; federal vessel identification and marking; and vessel monitoring systems. Requirements may also be applied to non-commercial vessels to stow potential commercial gear as well as a prohibition on both non-commercial fishing with the MEA and commercial fishing outside the MEA on the same trip.
- Eligibility for a permit would be limited to community residents of the Hawaii Archipelago or lineal or cultural descendants of the indigenous people of Hawaii.
- Non-commercial fishing activities, including customary exchange, would be limited to those fishing gears currently allowed in the NWHI/Papahānaumokuākea Marine National Monument.

Expected Fishery Outcomes

There is currently no non-commercial fishery participation in the MEA as participation is dependent upon regulated activity as per the Proclamation. The impact of this alternative to the fishery may be positive by encouraging fishing opportunities in the MEA. The amount of non-commercial fishing that may occur in the MEA of the NWHI is expected to be low due to the distance from the populated main Hawaiian Islands and the ability to travel for non-commercial purposes (due to high costs of fuel, ice, food, etc.). Limiting non-commercial fishing gears to currently allowed methods would also limit participation to certain vessels and could limit the amount of, and species, of fish extracted from the MEA.

2.2.4 Alternative 4: Amend the Hawaii and Pacific Pelagics FEPs to codify the MEA boundary and promulgate federal permits and catch reporting for subsistence fishing as a Native Hawaiian Practice in the MEA.

Consistent with the Proclamations and based on recommendations from the Council, under Alternative 4, NMFS would implement a new requirements for a Northwestern Hawaiian Islands Monument Expansion Area subsistence fishing permit and federal catch logbooks for subsistence fishing within the MEA.

- The Monument Expansion Area (MEA) would be codified as a management area and defined as the following:
 - *an area seaward of the boundaries the Papahānaumokuākea Marine National Monument, as depicted on the map accompanying Presidential Proclamation 8031 as amended by Proclamation 8112 (see 50 CFR [§ 404.2](#)), to the extent of the*

seaward limit of the United States Exclusive Economic Zone (see § 600.10) around the Northwestern Hawaiian Islands west of 163° west longitude.

- Under non-commercial fishing, all fish harvested within the NWHI MEA, either in whole or in part, could not enter, or intend to enter, commerce or enter commerce through sale, barter or trade. However, fishing under a subsistence fishing permit would allow fishers to take fish from the MEA and share with their family and the community through non-cash trading.
- Subsistence fishing may be defined under MSA §665.12 as “*fishing in which the fish harvested are intended for customary and traditional uses, including –*
 - *for direct personal or family consumption as food or clothing;*
 - *for the making or selling of handicraft articles out of nonedible byproducts taken for personal or family consumption, for barter, or sharing for personal or family consumption; and*
 - *for customary trade.**the term ‘family’ means all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and*
 - *the term ‘barter’ means the exchange of a fish or fish part –*
 - *for another fish or fish part; or*
 - *for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.*

This is the proposed definition of subsistence fishing in previous MSA drafts.

- Customary Exchange, as defined as it is in 50 CFR 665.12 as *the non-market exchange of marine resources between fishers and community residents for goods, services, and/or social support for cultural, social, or religious reasons. Customary exchange may include cost recovery through monetary reimbursements and other means for actual trip expenses (e.g. ice, bait, fuel, food) that may be necessary to participate in fisheries in the Western Pacific, could be included in the subsistence fishing permit definition.*
- Permitting would require an application and follow federal requirements as required by existing federal permits for fisheries in the Western Pacific region. This includes an application and associated fees for processing; reporting and recordkeeping requirements; federal vessel identification and marking; and vessel monitoring systems. Requirements may also be applied to subsistence fishing vessels to stow potential commercial gear; as well as a including a prohibition on both subsistence fishing within the MEA and non-commercial fishing within or commercial fishing outside the MEA on the same trip.
- Eligibility for a permit would be limited to community residents of the Hawaii Archipelago or lineal or cultural descendants of the indigenous people of Hawaii.

Expected Fishery Outcome

There is currently no subsistence fishery participation in the MEA as participation is dependent upon regulated activity as per the Proclamation. The impact of this alternative to the fishery may be positive by encouraging fishing opportunities in the MEA, particularly for Native Hawaiian communities, and provide for equity and environmental justice. The amount of subsistence fishing that may occur in the MEA of the NWHI is expected to be low due to the distance from the populated main Hawaiian Islands and the ability to travel for subsistence purposes (due to high costs of fuel, ice, food, etc.). The inclusion of cost recovery may provide for additional access to the underserved Native Hawaiian community.

2.2.5 Alternative 5: Amend the Hawaii and Pacific Pelagics FEPs to codify the MEA boundary and promulgate federal regulations to prohibit all fishing in the MEA.

Under Alternative 5, NMFS would promulgate new regulations at 50CFR 665 to prohibit all fishing activity (including commercial, non-commercial, and Native Hawaiian fishing) within the NWHI MEA. Consistent with the Proclamations and based on recommendations from the Council, under Alternative 5, fishing as an activity in the MEA, either as part of the activity or incidental to the activity (including research and any other permit for the MEA) would be prohibited.

- Federal regulations would be promulgated to prohibit all fishing within the MEA.
- The Monument Expansion Area (MEA) would be codified as a management area and defined as the following:
 - *an area seaward of the boundaries the Papahānaumokuākea Marine National Monument, as depicted on the map accompanying Presidential Proclamation 8031 as amended by Proclamation 8112 (see 50 CFR [§ 404.2](#)), to the extent of the seaward limit of the United States Exclusive Economic Zone (see [§ 600.10](#)) around the Northwestern Hawaiian Islands west of 163° west longitude.*

Expected Fishery Outcomes

There is no currently fishery participation in the MEA as participation is dependent upon regulated activity as per the Proclamation. Prohibiting all fishing under federal fishing regulations is likely to have an impact of the non-commercial sector of Hawaii's fisheries as the MEA would no longer be available to fishing. In that instance, prohibition is akin to the no-action/status quo alternative in that fishing would be unlikely to occur in the MEA. Those fishing for native or cultural practices or part of/incidental to research or other activities in the MEA would also be excluded from fishing in the MEA.

Table 2. Comparison of Features of **the Alternatives** provides a look at where fishing is allowed and prohibited under each alternative. Prohibition of fishing either by proclamation or regulation is indicated with red; permitted fishing is indicated in green; and fishing that could be managed but is prohibited under proclamation only is indicated in yellow.

Table 2. Comparison of Features of the Alternatives

	Alternative 1 No Action	Alternative 2 Commercial fishing	Alternative 3 Non- commercial Fishing	Alternative 4 Subsistence Fishing Permit	Alternative 5 Prohibit all fishing
Codify the MEA	No	Yes	Yes	Yes	Yes
Commercial Fishing	Prohibited by Proclamation	Prohibited by regulation	NA	NA	Prohibited by regulation
Non-Commercial Fishing	Prohibited unless managed	NA	Allowed with Federal Permit	NA	Prohibited by regulation
Subsistence Fishing as a NH Practice	Prohibited unless managed	NA	NA	Allowed with Federal Permit	Prohibited by regulation

3 DESCRIPTION OF THE AFFECTED ENVIRONMENT

3.1 Affected Physical Resources

The Monument Expansion Area, as designated by the Proclamation includes an area seaward of the boundaries the Papahānaumokuākea Marine National Monument, as depicted on the map accompanying Presidential Proclamation 8031 as amended by Proclamation 8112 (see 50 CFR § 404.2), to the extent of the seaward limit of the United States Exclusive Economic Zone (see § 600.10) around the Northwestern Hawaiian Islands west of 163° west longitude. This area encompasses approximately 442,781 square miles of open-ocean surrounding the atolls, islands, shoals, and reefs that make up the NWHI.

Most of the features of the NWHI are within 50 miles and not a part of the MEA, however a few seamounts have been identified as begin within the MEA. There are also shipwrecks and sunken vessels from World War II in the northwestern portion of the MEA considered part of the maritime cultural heritage of the United States.

3.2 Affected Biological Resources

Resource surveys specifically within the MEA have not been done but explorations have identified dense deepwater communities of corals and other organisms. Crustaceans, precious coral, and coral reef Management Unit Species (MUS) are not expected to occur within the MEA because of the deep pelagic ocean waters. The criteria for bottomfish habitat includes a depth range of between 100-400 meters which means bottomfish MUS may be available on the shallower seamounts. Pelagic MUS, such as tropical tunas and marlins, are most likely to be targeted and caught in the MEA.

Sea turtles, seabirds, monk seals, and other marine mammals are likely to occur in the MEA as they are commonly found within the NWHI, although closer to shore. Populations of protected species in the MEA are not known but would likely be encountered similarly to the pelagic waters around the MHI.

3.3 Socio-economic Setting

The fishing community of the MEA is based out of the Main Hawaiian Islands and most likely Kauai and Oahu. Due to the remote location of the MEA, costs for fishing, including fuel, ice, food, crew wages, etc. are therefore likely high as well.

3.4 Management Setting

The MEA currently has permits for precious coral, crustacean, bottomfish, and longline fishing. The administration of these permits is through the NMFS Pacific Islands Regional Office. Regulations also exist under the Hawaii Archipelago and Pacific Pelagics Fishery Ecosystem Plans that are enforced by NOAA Office of Law Enforcement and the US Coast guard.

Adjacent to the MEA is the Papahānaumokuākea Marine National Monument (PMNM) and the State of Hawaii which have additional management regimes which include permitting and access notifications. This management is included in a plan developed for the PMNM and is currently under revision. Additionally, the development of a National Marine Sanctuary is being proposed for the entire NWHI as well.

4 ENVIRONMENTAL EFFECTS OF THE ALTERNATIVES

This section describes the potential effects of each alternative on the components of the affected environment or other socio-economic elements identified in Section 3.0 above.

4.1 Potential Effects of Alternative 1: No Action (Status Quo)

4.1.1 Effects on Physical Resources

Under the No Action Alternative, the MEA would continue to be transited by other vessels but not by commercial fishing vessels. It is unlikely that non-commercial fishing would occur under this alternative and would therefore not be affected by non-commercial fishing vessels as well. All physical resources would continue to be affected at current levels.

4.1.2 Effects on Biological Resources

Under the No Action alternative, because of the remote distance from the Main Hawaiian Islands, it is unlikely that fishing would happen in the MEA. The most likely fishing going on in the area would be from the Hawaii longline fishery but because the fleet is outfitted with Vessel Monitoring Systems, incursions into the MEA would be known. At this point there have been little to no reports of longline fishing in the MEA after the designation of Proclamation 9478.

Alternative 1 would continue to the prohibition of commercial fishing in the MEA, pursuant to the Proclamation. Under this alternative, there would be no specific management of non-commercial fishing in the MEA which could result in some level of non-commercial fishing in the MEA but due to the distance as well as the monument designation, is unlikely to occur.

All marine harvests in the MEA must still comply with the Hawaii Archipelago and Pacific Pelagics Fishery Ecosystem Plans and regulations. Reported harvests of bottomfish, crustaceans, coral reef ecosystem species, and precious corals are subject to existing annual catch limits (ACLs) and a post season review of fishing to determine whether catch limits have been exceeded, and management adjustments, if needed. Due to the low level of likely fishing in the MEA, and the fact that fishing in the MEA likely involves a displacement of current fishing elsewhere in the Hawaii Archipelago, the impacts to pelagic, bottomfish, crustacean and coral reef ecosystem target and non-target stocks are considered sustainable.

Since there would be no commercial fishing in the MEA, the interactions between seabirds and other protected species experienced by commercial fishermen around the NWHI would not be experienced in the MEA.

4.1.3 Effects on Socio-economic Setting

Under the No Action alternative, residents of Hawaii are allowed to take non-commercial fishing trips to the MEA but the ability to access the monument without a permit is not clear. Sharing of fish caught in the MEA could occur as well, but commercial fishing would be prohibited.

4.1.4 Effects on Management Setting

Under the No-Action Alternative, commercial fishing is prohibited by the Proclamation. Enforcement of existing MSA regulations would continue. Under this alternative, any existing permits for the Hawaii Archipelago and Pacific Pelagics FEPs would still be needed to fish in the US EEZ around the NWHI. There would be no new costs for fishery management administration.

4.2 Potential Effects of Alternative 2

4.2.1 Effects on Physical Resources

Under Alternative 2, commercial fishing would be prohibited which would reduce any commercial activity and its impacts to the physical resources to near zero.

Alternative 2 also codifies the MEA which provides a boundary to the physical resources to establish potential monitoring of impacts from fishing.

4.2.2 Effects on Biological Resources

Alternative 2 would limit impact on biological resources through the prohibition of commercial fishing. Commercial fishing would likely eliminate longline vessels and gear from the MEA.

Due to the absence of commercial fishing in the MEA, the impacts to pelagic, bottomfish, crustacean and coral reef ecosystem target and non-target stocks are considered very low to absent.

Since there would be no commercial fishing in the MEA, the interactions between seabirds and other protected species experienced by commercial fishermen around the NWHI would not be experienced in the MEA.

4.2.3 Effects on Socio-economic Setting

Based on the distance from the MHI and the prohibition on selling catch, the expected number of trips for fishing to the MEA is low under Alternative 2. Participation by the community would remain the same as the impact of the high cost associated with fishing in the MEA would not be recouped through sales. The current commercial contribution to the economy from fish caught in the MEA is likely negligible or absent.

4.2.4 Effects on Management Setting

Alternative 2 would improve enforcement of the prohibition on commercial fishing by allowing enforcement of the prohibition to occur in accordance with the MSA. Compliance would be enhanced because the boundaries of the MEA would be codified in the FEPs and the regulations.

There would be very limited administrative costs to the government for changing the regulations and to the Council to change the FEPS for the prohibition on commercial fishing.

4.3 Potential Effects of Alternative 3

4.3.1 Effects on Physical Resources

Under Alternative 3, non-commercial fishing would be allowed which could put additional boats into the MEA over what is currently experienced. The fishing expected to be conducted are unlikely to reach the depths of most of the physical resources in the MEA.

Alternative 3 also codifies the MEA which provides a boundary to the physical resources to establish potential monitoring of impacts from fishing.

4.3.2 Effects on Biological Resources

Alternative 3 would limit impact on biological resources as non-commercial fishing would likely target pelagic MUS but at a lower level of catch and effort than commercial gear and utilizing non-longline gears such as troll and handline.

All marine harvests in the MEA must still comply with the Hawaii Archipelago and Pacific Pelagics Fishery Ecosystem Plans and regulations. Reported harvests of bottomfish, crustaceans, coral reef ecosystem species, and precious corals are subject to existing annual catch limits (ACLs) and a post season review of fishing to determine whether catch limits have been exceeded, and management adjustments, if needed. Due to the low level of likely fishing in the MEA, and the fact that fishing in the MEA likely involves a displacement of current fishing elsewhere in the Hawaii Archipelago, the impacts to pelagic, bottomfish, crustacean and coral reef ecosystem target and non-target stocks are considered sustainable.

Interactions between seabirds and other protected species with smaller vessels fishing closer to shore have been low and would be expected to be low for those smaller vessels conducting non-commercial fishing activities in the MEA.

4.3.3 Effects on Socio-economic Setting

Based on the distance from the MHI and the prohibition on selling catch, the expected number of trips for fishing to the MEA is low under Alternative 3. Limits placed on non-commercial fishing would also limit participation to those particular methods or gear types and may limit catch and cost recovery. The distance and depth of the MEA would essentially limit the ability of fishers to participate due to costs.

4.3.4 Effects on Management Setting

Alternative 3 would require enforcement of permits for non-commercial fishing in accordance with the MSA. Compliance would be enhanced because the boundaries of the MEA would be codified in the FEPs and the regulations.

There would be very limited administrative costs to the government for changing the regulations and to the Council to change the FEPS for the development of a federal permit and logbook for the MEA. An additional cost for outreach and education to the government for compliance would also be limited.

The costs to fishermen would be the costs of applying for and receiving a permit, which is a processing fee, if applicable.

4.4 Potential Effects of Alternative 4

4.4.1 Effects on Physical Resources

Under Alternative 4, subsistence fishing would be allowed which could put additional boats into the MEA over what is currently experienced. The fishing expected to be conducted are unlikely to reach the depths of most of the physical resources in the MEA.

Alternative 4 also codifies the MEA which provides a boundary to the physical resources to establish potential monitoring of impacts from fishing.

4.4.2 Effects on Biological Resources

Alternative 4 would limit impact on biological resources as subsistence fishing would likely target pelagic MUS but at a lower level of catch and effort than commercial gear and utilizing non-longline gears such as troll and handline.

All marine harvests in the MEA must still comply with the Hawaii Archipelago and Pacific Pelagics Fishery Ecosystem Plans and regulations. Reported harvests of bottomfish, crustaceans, coral reef ecosystem species, and precious corals are subject to existing annual catch limits (ACLs) and a post season review of fishing to determine whether catch limits have been exceeded, and management adjustments, if needed. Due to the low level of likely fishing in the MEA, and the fact that fishing in the MEA likely involves a displacement of current fishing elsewhere in the Hawaii Archipelago, the impacts to pelagic, bottomfish, crustacean and coral reef ecosystem target and non-target stocks are considered sustainable.

Interactions between seabirds and other protected species with smaller vessels fishing closer to shore have been low and would be expected to be low for those smaller vessels conducting subsistence fishing activities in the MEA.

4.4.3 Effects on Socio-economic Setting

Based on the distance from the MHI and the prohibition on selling catch, the expected number of trips for fishing to the MEA is low under Alternative 4. Limits placed on subsistence fishing would also limit participation to those particular methods or gear types and may limit catch and cost recovery. The permitting of subsistence fishing allows for equity and environmental justice for Native Hawaiians that lost the ability to fish in the NWHI due to the establishment of the monuments and the closure of fishing. These communities would also then be able to harvest fish in the MEA and bring it home to share with the community unlike the existing sustenance fishing allowed under current PMNM regulations. The distance and depth of the MEA would essentially limit the ability of fishers to participate due to costs but cost recovery could encourage participation by the underserved Native Hawaiian community.

4.4.4 Effects on Management Setting

Alternative 4 would require enforcement of permits for subsistence fishing in accordance with the MSA. Compliance would be enhanced because the boundaries of the MEA would be

codified in the FEPs and the regulations. However, the inclusion of cost recovery may require additional monitoring by enforcement and tracking by NMFS.

There would be very limited administrative costs to the government for changing the regulations and to the Council to change the FEPS for the development of a federal permit and logbook for the MEA. An additional cost for outreach and education to the government for compliance would also be limited.

The costs to fishermen would be the costs of applying for and receiving a permit, which is a processing fee, if applicable.

4.5 Potential Effects of Alternative 5

4.5.1 Effects on Physical Resources

Under Alternative 5, fishing would not occur in any form in the MEA and thus any impact to physical resources in the water column or at the bottom would be removed. The MEA would be impacted by any other vessels transiting the MEA to PMNM or through to other areas which could have an effect on the MEA waters from discharge or pollution.

4.5.2 Effects on Biological Resources

Under Alternative 5, all fishing would be prohibited resulting in maximum protection from fishing on the biological resources in the MEA. However, much of the pelagic MUS that are in the MEA are also highly migratory and thus would still be caught outside of the MEA as well, both commercially and non-commercially.

4.5.3 Effects on Socio-economic Setting

Alternative 5 prohibits fishing activity in the MEA. The fishing community in the MHI would be affected by reducing the opportunity to provide fish to the community in the markets and through the non-commercial exchange of fish.

4.5.4 Effects on Management Setting

Alternative 5 would improve enforcement of the prohibition on non-commercial fishing by allowing enforcement of the prohibition to occur in accordance with the MSA. Compliance would be enhanced because the boundaries of the MEA would be codified in the FEPs and the regulations.

There would be no administrative costs to the government for changing the regulations and to the Council to change the FEPS for the development of a federal permit and logbook for the MEA. There would also be no costs to fishermen for having to apply for and receive a permit and pay a processing fee.

5 REFERENCES

- WPRFMC. 2009a. Fishery Ecosystem Plan for the American Samoa Archipelago. Western Pacific Fishery Management Council. Honolulu, HI.
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- WPRFMC. 2009c. Fishery Ecosystem Plan for the Pacific Remote Island Areas. Western Pacific Fishery Management Council. Honolulu, HI.
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