



## **NWHI Monument Expansion Area Fishing Regulations**

*Public Meeting Briefing Paper*

*October 20, 2022*

### **Background and Introduction**

In 2016, President Obama, Presidential Proclamation 9478 set aside an area of 50-200 nm adjacent to the Papahānaumokuākea Marine National Monument (PMNM) as the 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).

### **Purpose**

The Presidential Proclamation that established the MEA 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 meeting is to seek input on the details of potential fishing regulations in order to administer fishing consistent with the conservation and management directives of the Proclamation.

### **Developing Fishing Regulations**

#### *Management Area*

The MEA consists of the waters from 50 nm around the NWHI out to the 200 nm boundary of the US Exclusive Economic Zone. The average depth in this area is approximately 5,000 meters (16,000 ft or 3 miles) with the majority (96.1%) of the area deeper than 4,000 m (13,123 ft). The benthic habitat in this area is mostly comprised of soft sediment and only 1% of the MEA is shallower than 3,000 m where deep-sea coral and sponge communities typically occur. The nearest point of the MEA is approximately 200 miles from Kauai and 300 miles from Oahu.

### *Fisheries and Management in the NWHI*

The NWHI was used by Native Hawaiians as far back as 1000 AD. Archaeological evidence including fishing shrines and fish hooks has established that fishing did occur in the NWHI. In the recent past of the 1700s – 1800s Native Hawaiians made regular trips to areas of the NWHI for turtles and seabirds with olonā fiber fishing lines suggesting bottomfish having taken place as well. In the 1800s – 1900s the area was exploited for whales, seals, reef fish, turtles, sharks, birds, oysters and sea cucumbers. Businesses extracted Guano and harvested bird skins and feathers and the NWHI was eventually designated as a bird reservation and eventually a National Wildlife Refuge. In the early 1900s the NWHI was fished for nearshore species with fishing stations established on the islands and motherships collecting fish from smaller sampans that fished nearby. Large commercial activity continued after WWII with fishing bases and cargo aircraft and eventually longlines and bottomfish fishing into the 1970s.

The Council established management programs for precious corals, crustaceans, and bottomfish in the 1980s to manage the fishing being conducted in the NWHI. Longline fishing was also prohibited within 50 nm around the NWHI in the early 1990s. In the midst of managing the coral reef fisheries in the early 2000s, the Council's efforts were interrupted by the designation of the NWHI as a Coral Reef Ecosystem Reserve and then as two Marine National Monuments. Fishing has been restricted within 3-50 nm since 2006 and from 50-200 nm since 2016.

Due to the distance and depth, fishing that is likely to be done in the MEA would include pelagic trolling and handlining, both of which operate in the upper part of the water column. In comparison, bottomfish fisheries operate in 75-400 m and longline fisheries operate in the first 400 m of the water column.

Bottomfish fishing trips to the NWHI in years prior to the designation of the monuments required larger vessels (greater than 40 feet) and trip costs were over \$2,600 for a five-day trip. With pelagic species averaging about \$4.53/lb., a vessel would need to land about 550lbs of fish per trip just to break even on trip expenses.

Current management in the NWHI does allow fishing to occur as an activity incidental to a permitted activity in the PMNM. Sustenance fishing for pelagic and bottomfish species is allowed but must be consumed within the monument. The USFWS also allows for limited trolling with artificial lures in its Midway Atoll special management area and the State of Hawaii allows for subsistence fishing within the 0-3 nm state boundary.

### *Potential Fishing Regulations*

The following options are available for the Council to consider in developing fishing regulations for the MEA. Additional measures may be suggested by the public or the Council in the development of regulations. It is important to note that federal permitting includes

annual reviews of catch and effort in accordance with existing Annual Catch Limits (ACLs) and standard requirements under 50 CFR 665 such as permit sanctions, gear restrictions, requirement for vessel monitoring system (VMS), at-sea observer coverage, notification requirements and other provisions required under the FEPs.

### ***1. No Action***

The Council has the ability to not take an action to provide recommendations for fishing regulations under this option. This does not stop fishing regulations from being developed, rather it removes the Council from the process of fishing regulation development and existing regulations would continue to be enforced. Proclamation 9478 would continue to allow for non-commercial fishing and Native Hawaiian subsistence practices and fishing regulations may be developed by federal agencies.

### ***2. Status Quo***

The status quo option would include developing fishing regulations for the MEA that mirror those already in place for PMNM. These regulations include prohibiting commercial fishing and allowing non-commercial fishing as an activity attached to the currently permitted activities including: Research, Education; Conservation and Management; Native Hawaiian Practices; Special Ocean use; and Recreation. Fishing would also be limited to sustenance with all fish caught required to be consumed within the monument.

### ***3. Prohibit Commercial Fishing***

Proclamation 9478 explicitly prohibits commercial fishing within the MEA. This option is being considered to prohibit commercial fishing by regulation. This would likely eliminate large US fishing vessels from fishing (including longlining) due to the high costs for those types of fishing activities.

### ***4. Require Federal permits and reporting for non-commercial fishing***

The Proclamation also allows for non-commercial fishing to occur as long as 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. This option would allow for sustainable management of the non-commercial activity by requiring permitting and reporting to establish a process to monitor any fishing that might occur. These permits would also allow for the Council to establish constraints on fishing if needed, including catch limits, gear restrictions, etc.

Non-commercial fishing is currently defined in 50 CFR 665.12 as “fishing that does not meet the definition of commercial fishing in the Magnuson-Stevens Fishery conservation and Management Act<sup>1</sup>, and includes, but is not limited to, sustenance, subsistence, traditional

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<sup>1</sup> Commercial Fishing means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

indigenous, and recreational fishing<sup>2</sup>. The Council may use this definition or develop a separate definition for non-commercial fishing.

Fish harvested under this option would be allowed to be taken out of the monument and brought back for consumption or other use as long as it does not sold, bartered, or traded.

#### ***5. Require Federal permits and reporting for subsistence fishing***

Native Hawaiian subsistence practices are also allowed under the proclamation and if that practice is fishing, would be managed by the National Marine Fisheries Service in the MEA. The Council may choose this option to be proactive with the management of this type of fishing and specifically define “subsistence fishing” and provide additional options that allow for cultural use of catch.

There are a couple of working definitions for subsistence fishing that the Council will be looking at that were developed by social scientists on its Scientific and Statistical Committee:

a. Define subsistence fishing without customary exchange

*Subsistence Fishing* means fishing for food to eat and to share without a monetary profit motive and may include fishing with any legal gear and the transport and holding of fish or fish products that can be shared or gifted among both immediate and extended family and friends in ways that contribute to community sustainability, food security, and social solidarity. **Subsistence fishing may include the exchange of fish and fish products for food or for non-edible items if the exchange is of a limited or non-commercial nature.**

b. Define subsistence fishing with customary exchange

*Subsistence Fishing* means fishing for food to eat and to share without a monetary profit motive and may include fishing with any legal gear and the transport and holding of fish or fish products that can be shared or gifted among both immediate and extended family and friends in ways that contribute to community sustainability, food security, and social solidarity. **Subsistence fishing may include customary exchange as defined in 50CFR665.12.**

c. Define subsistence fishing with customary exchange but without cost recovery

*Subsistence Fishing* means fishing for food to eat and to share without a monetary profit motive and may include fishing with any legal gear and the transport and holding of fish or fish products that can be shared or gifted among both immediate and extended family and friends in ways that contribute to community sustainability, food security, and social solidarity. **Subsistence fishing may include customary exchange as defined in 50CFR665.12, without cost recovery.**

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<sup>2</sup> Recreational Fishing means fishing for sport or pleasure

d. Subsistence fishing = sustenance fishing only, aligning with the PMNM permits

*Subsistence Fishing* means fishing for bottomfish or pelagic species in which all catch is consumed within the MEA, and that is incidental to an activity permitted under this part.

*Customary Exchange* means the non-market exchange of marine resources between fishermen and community residents, including family and friends of community residents, for goods, and/or services for cultural, social, or religious reasons. Customary exchange may include cost recovery through monetary reimbursements and other means for actual trip expenses, including but not limited to ice, bait, fuel, or food, that may be necessary to participate in fisheries in the western Pacific. Actual trip expenses do not include expenses that a fisherman would incur without making a fishing trip, including expenses relating to dock space, vessel mortgage payments, routine vessel maintenance, vessel registration fees, safety equipment required by U.S. Coast Guard, and other incidental costs and expenses normally associated with ownership of a vessel.

Customary exchange is allowed in the Rose Atoll and Marianas Trench Marine National Monuments as a means to allow for the indigenous people of those areas to participate in fishing in those areas. Allowing fish to be brought back and sold to cover costs allows for traditions and culture to continue in areas that were once important to their people without having to take on the burden of paying a large sum to practice that culture. To date, there have been no applications for a customary exchange fishing permit in those monuments and the monument management plans have not yet been completed.

### **NWHI MEA Fishing Regulations and You**

It is important for the Council to hear from the fishing community and the Native Hawaiian community to learn what is both needed and appropriate for the area. The Council would like to hear more about:

- Historical uses of the MEA;
- Which definition of subsistence meets the needs of the community;
- The potential inclusion of customary exchange; and
- Any demand for access to the fishery resources in the MEA.

Comments received will be summarized and provided to the Council for its consideration at its 193<sup>rd</sup> meeting in December 2022. The Council is expected to take final action on fishing regulations for the MEA and provide those recommendations to the National Marine Fisheries Service for implementation.

For more information on the NWHI Fisheries, visit [www.wpcouncil.org/nwhi-fisheries](http://www.wpcouncil.org/nwhi-fisheries). For additional comments, please email [info@wpcouncil.org](mailto:info@wpcouncil.org) or call (808)522-8220.